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Research Article

BUREAUCRATIC TRADITION OF CHINA: CONFUCIANISM AND LEGALISM

*Elshad ASSADULLAYEV**

Abstract: There are quite a few important classical Chinese texts, which specifically deal with government and administration. The traditional classification of philosophies is known as the Hundred Schools of Thought. Details such as described by the grand historian Sima Qian provided a substantial understanding of the era. Thus, there can be identified two major bureaucratic traditions that have been subject to dispute throughout the history of China: Confucianism and Legalism. In Confucian thought, there is an emphasis on the moral justification of bureaucracy. It focuses on ideas such as filial piety and benevolent government. Legalism, on the other hand, concentrates on the authoritarian rule and administrative techniques of rewards and punishments. Moreover, during the 1970s, a considerable collection of written legal codes and regulation from the 3rd century B.C. was discovered. The carefully designed documents indicate that administrative efficiency was attained through the bureaucratic procedures. Two schools, which mostly define not only China's history but also the whole of East Asia, have been the focus of study. The aim is to shed light on the questions of authority and administration.

Keywords: Confucianism, Legalism, Bureaucracy, China, Law, Authority, Administration.

ÇİN'İN BÜROKRATİK GELENEĞİ: KONFÜÇYANİZM VE LEGALİZM

Öz: Çin'de, yönetim alanında birçok önemli klasik metin bulunmaktadır. Felsefelerin geleneksel sınıflandırılması Yüz Düşünce Okulu olarak bilinmektedir. Antik Çin büyük tarihçisi Sima Qian, çağının önemli bir anlayışını temsil etmekteydi. Böylece, Çin tarihi boyunca iki büyük bürokratik gelenek ihtilafa neden olmuştu: Konfüçyanizm ve Legalizm. Konfüçyanizm düşüncesinde, bürokrasinin ahlaki temeline vurgu yapılmaktadır. Ataya saygı ve hayırsever hükümet gibi fikirlere odaklanılmaktadır. Legalizm düşüncesi ise otoriter iktidar ile ödül ve cezalar üzerinde yoğunlaşmaktadır. Ayrıca, 1970'lerde, M.Ö. 3. yüzyıldan kalma önemli yazılı belge ve koleksiyonlar bulunmuştur. Bu belgeler, idari verimliliğe bürokratik prosedürler aracılığıyla ulaşıldığını göstermektedir. Sadece Çin tarihini değil, Doğu Asya'nın tamamında etkili olan bu iki yaklaşım makale boyunca tartışılmıştır. Makalenin otorite ve yönetime ilişkin sorularını aydınlatmaktadır.

Anahtar Kelimeler: Konfüçyanizm, Legalizm, Bürokrasi, Çin, Hukuk, Yetki, Yönetim.

I. Introduction

The major classical text in the Confucian tradition is *Lún Yǔ* (Analects); reflecting the deeds and sayings of Confucius (551-479 BC) it was put together by his followers. Furthermore, there are five classical texts within the Confucian

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canon: *Shi Jing* (Odes), *Shu Jing* (Documents), *Li Chi* (Rites), *I Jing* (Changes), and *Chun Qiu* (Spring and Autumn Annals). During the coming centuries, these texts were part of the curriculum to examine the prospects for the Chinese imperial bureaucracy (Fukuyama, 2011, Chapter 2; Nylan, 2008, p. 1). There are scripts of two major Confucian thinkers in ancient China by Mencius (372-289 BC) and by Xunzi (313-238 BC). There are also documents illuminating the Legalist school. *Shangjun Shu* (Book of Lord Shang), the collection of writings that represent the thought of Shang Yang (390-338 BC), the fragments attributed to Shen Buhai (400-337 BC) and Shen Dao (350-275 BC), and Han Feizi, the book by the most influential Legalist Han Fei (280-233 BC). There are main texts of Daoism: *Dao De Jing* (The Book of the Way), referring to the semi-legendary figure of Laozi (approx. 5th century BC or later), and *Zhuangzi* credited to the philosopher Zhuangzi (369-286 BC). Additionally, there were schools within the Hundred School of Thoughts in China, such as the Mohists (pragmatists), the Logicians (the school of names) and the Naturalists (*Yin-Yang* cosmologists). Their ideas were either partially lost, or absorbed by the other schools mentioned above. Most of the aforementioned schools and thinkers were also described by Sima Qian in *Shiji* (Records of the Grand Historian), (started by Sima Qian's father Sima Tan).

At the beginning of the Eastern Zhou period (770-256 BC), there were more than a hundred states. During the first half of it, the Spring and Autumn period, none of the states was strong enough to conquer the rest, so the goal was to establish dominance. The rise of bureaucracy and meritocratic principles in the selection of officials within the historical developments during the Spring and Autumn period provided opportunities for the talented to offer private education. This is the time when Confucius rises as a great teacher. It is known that after serving as a government official Confucius concentrated on teaching (Zhao, 2015, pp. 170–171). To Confucius, to be able to establish a good society, it is not the law, but virtue that should be taken as a basis. Confucian values are grounded on ideas such as *ren* (benevolence) and *li* (ritual). Total bureaucratization of ancient China sometimes is accounted to the second half of the Eastern Zhou, the Warring States period.

Two great masters of ancient Confucian thought are Mencius and Xunzi. While the influence of Xunzi was instant and largely defined his age, Mencius was especially important to the Neo-Confucians a thousand years later. The ideas between the two were sharply different. The dialectic corresponds with that of Rousseau and Hobbes. While Mencius believed in the intrinsic benevolence of human nature, Xunzi claimed that the nature of man is evil. As men naturally hate each other, according to Xunzi, there should be the civilizing impact of teachers and laws (Manson, 1987, p. 275). In fact, Xunzi's political thinking, in a way, is a connection between Confucianism and Legalism. Moreover, two famous Legalists, whose influence in the establishment of the despotic Qin dynasty is well-recorded, Han Fei, the grand master of the Legalist thought and Li Si (280-208 BC), the chancellor and adviser to the ruler of the Qin, are the students of Xunzi. Unlike Confucianism, Legalism is an impersonal and amoral technique of statecraft. It stresses on punishment and reward. The principle of intrinsic human evil is particularly dominant in Legalism. It advocates that the selfish outcome is what motivates people. Since everyone's

interests are in conflict, there has to be a strong state. The state would establish a proper way of conduct and would punish those who misbehave. The state is the main regulating mechanism of a society, as well as of all aspects of the life of individuals. The Legalist school promotes equality before the law; punishments applied to all, except ruler.

II. The Mandate of Heaven

A key concept in the political history of China is the “Mandate of Heaven” (*Tiānmìng*). It is repeatedly mentioned in the classical scripts and is a pivotal concept in almost all major traditions of China, especially the Neo-Confucianism, except the Legalism. Mencius is particularly important in the discussion of this idea. The specific notion is said to be developed during the establishment of the Zhou dynasty (1046-256 BC). When overthrowing the Shang dynasty (1600-1046 BC), the Zhou faced resistance from the Shang aristocratic circles. Consequently, the Zhou came up with an idea that would justify their dominion. The concept claims to have a divine source, so that who possesses it has the divine right to rule. However, once possessed its canons should be carefully followed. Otherwise, the right to rule may be lost in the same fashion it was gained. The ruler must take care of its people well-being; he must be a moral exemplar. Thus, the performance of a ruler was constantly measured by these criteria. This way the Zhou dynasty secured the rule. Moreover, the ancient documents (*Yi Zhou Shu*) revealed that initially, the Zhou had not been the most potent of the states. It is said that due to the fact of receiving the Mandate it had been able to conquer the more powerful (Zhao, 2015, p. 53).

Principles of monopolization of power and rule by law are inherited in the Legalism. Per contra, the Mandate of Heaven makes a ruler vulnerable to its subjects, as he is not an absolute authority. He is a king/emperor as long as he holds the Mandate. To illustrate, this is completely different from “The Divine right of kings” in Europe, where the ruler was not accountable to anyone, or any earthly authority. He derived legitimacy from God, and only the God could judge him. Therefore, he was above the law. In the Mandate concept, however, even the idea of rebellion against the king is implicitly legitimate (Zhao, 2015, p. 54). The choice of heaven is revealed through the people. Mencius reckoned that the king was the son of heaven. Heaven provided him a mandate to deliver well-being for the people. If he did not govern righteously, the people could overthrow him. The Chinese notion of “people-based politics” emphasized that the will of the people was the will of heaven (Jung, 1994, p. 191; Mo, 2003, p. 63). A ruler, in order to sustain a political legitimacy, must be accepted by the people. Thus, such a performance-oriented legitimacy deduced from the mandate provided reasons and justifications for the regicide. Indeed, the Mandate of Heaven, *Tiānmìng*, has been an important factor throughout the history of China, and today, the Chinese word “revolution”, *gémìng*, includes the “mandate” word, and means, “to change the Mandate” (Jung, 1994; Schell, 1995, p. 22; Schrecker, 2004, p. 6).

The ruler needs to be accurate and cautious in his state policies. The Confucian thought teaches that the ruler must be capable of seeing the *Dao* (Peerenboom, 2002, p. 33). Signifying the natural order of the Universe, it is an

important doctrine within the traditions of China. Mencius believed that there is a unity of *Dao* (way) and the will of the people. In case of natural calamities and other difficulties that prevented people to carry out orders given by a king, the question of mandate arose. By practicing *Dao* in his governance, the ruler would gain the support of the people (Chan, 2007, p. 186). While to Confucians, *Dao* meant proper social relations and rule by virtue, to Legalists it was good law, administration, and authoritative rule. To Daoists, all this was a sign of deterioration.ⁱ

III. Bureaucratic Morality in Confucianism

It is generally conceived that the Weberian theory dehumanizes workers and erases individuality. In Confucian culture, each individual employee has moral value rooted in him rather than in the impartial legal-rational bureaucratic authority (Im, Campbell, & Cha, 2013, p. 292). Weber has regarded Confucianism as a barrier to development. Comparing the Protestant and Confucian ethics, he has explained the reasons for the emergence of Western capitalism and its derivatives, such as individualism, competition, and profit-maximization. To Weber, the Protestant ethic in the West has been a far more favorable environment for the development (Giddens, 2002, p. xv). Confucianism does not endorse analogous rational instrumentalism, and does not sanctify the transcendence of mundane affairs, as in Hinduism. Confucianism lacks individual prayer and knows only ritual formula (Weber, 1951, p. 146). Giddens (2002) has clarified that an ethic which emphasizes rational adjustment to the world “as it is” could not have produced a moral dynamism in economic activity similar to that of European capitalism.

Huntington (1993, p. 300) has argued that Confucian ethics is anti-democratic by nature, as it favors the community over the individual, authority over freedom, and duties over rights. However, there is a perception that some aspects of Confucianism are compatible with democracy, but in a shape of Confucian democracy, rather than liberal democracy (Tan, 2003, p. 201). Unlike democracy, the classical Confucian theory is one of guardianship, and meritocratic (Chan, 2007, p. 188). Furthermore, there is an emphasis on moral élite. A community selects the best ones for the authority. The authority in the Confucian assessment is morally obligated to secure peace and justice. As follows, people also have a moral responsibility to support their leaders given that the leaders exercise their obligations. Here, Frederickson (2002, p. 613) has identified similarities between this Confucian idea of reciprocity and European social contract of Locke, Rousseau, Kant, and Rawls. Another parallel with Western philosophies, in this case with the ideas of Montesquieu, is that a government of moral conventions is to be favored to a government of laws because an increase in lawmaking signals failure in collective morality. Frederickson (2002, p. 617) has proposed that while to Waldo public administration is a form of politics, to Confucius, it would be a form of morality. The public administration might be considered as the law in action. In Confucian thought, bureaucratic relations are guided by the moral principles. Instead of public administration as the law in action, public administration is morality in action. Also, in the Western model, management principles of the public and private sectors normally share similarities, which makes feasible a

higher flow of inter-sector job mobility. Indeed, classical organizational theorists, such as Taylor and Fayol, have been influential within both sectors. In the East Asian countries, however, government positions are most widely considered superior to those in the private sector (Im, Campbell, & Cha, 2013, p. 294).

In the Confucian thought, human beings are perceived in relation to the natural *Gemeinschaft* structures and it is through society they are cultured to become human (Bellah, 1991, p. 122; Dao, 1996, p. 47; Peerenboom, 2002, p. 28). As Confucius believed in the good nature of people, it meant that all societal problems had their origins in the deterioration of ethics. Thus, he held that through the ethical cultivation of people there is a possible renovation of the benevolent society (Dao, 1996, p. 47; Zhao, 2015, p. 180). The famous golden rule that appears in one form or another in nearly all major world religions and traditions, which maintains the relationship between individuals in the community, “Do not do to others what you not want others to do to you” appears in the Analects. Understanding of right and wrong, and doing right rather than wrong means that an intelligent person knows what is wrong, and righteous doesn’t do what is wrong (Frederickson, 2002, p. 621). Confucius believed that the most efficient way to forestall people from doing wrong is to develop their ethics. It is an inward way that suits the good nature of people and potentially prevents misconducts from the root. Prevention of crimes by law is an outward way. It is a post factum prevention by punishment. Dao (1996, p. 56) has expressed that it deals only with the symptoms. Furthermore, punishments ensure submission to the government by means of violence. Whereas in rule by virtue the loyalty is guaranteed by winning over people’s minds and hearts. Frederickson (2002, p. 614) has clarified that according to the Confucian tradition laws make people tricky and encourage amorality (legally but immorally). The laws usually tell us what not to do, rather than what to do.

To establish a benevolent society Confucius suggested deploying the talent. The rulers must create such circumstances for virtuous people, who may not even necessarily have widespread support. Thus, under such conditions, the vicious men, though supported by the masses, could not be promoted. The concept of *ren*, which is a central doctrine in the Confucian thought, meaning benevolence, finds its application in a person and in interpersonal relationships. Accordingly, Confucians’ approach to morality is holistic. Likewise, the public administration should apply benevolence, where a bureaucrat is not merely a functionary, also is an intellectual and teacher. (Lam, 2003, p. 154). Humans must be educated to become honorable. In Analects 19.13 (2003, p. 225): “Zixia said, “One who excels in his official position should then devote himself to learning. One who excels in learning should then devote himself to official service”. The Chinese scholar-ruler, the “gentlemen” (*Junzi*) means an educated and moral public official, who is an actor in the context of moral action. The government acts also are moral acts. An official has to be benevolent, well-educated, loyal, incorruptible by money and titles, practice filial piety and self-cultivation. The authority for the action is neither based on law nor delegated from a leader, it is engrained in bureaucrat’s idea of the good. Hence, political authority is set for those who can display moral and intellectual qualities. A head of state leads with moral power (Frederickson, 2002, p. 616). Confucius

(2003, p. 8; Analects 2.1) said: “One who rules through the power of Virtue is analogous to the Pole Star: it simply remains in its place and receives the homage of the myriad lesser stars”. Here, the harmony brought about by Heaven is to be a model for the human ruler, who is in a *Wu-wei* fashion will transform the world to order through the power of his moral virtue. *Wu-wei* is generally assumed as the Daoist concept, meaning non-action or effortless action.ⁱⁱ

Mencius stressed on the human nature and the role of individuals in society and governance (Drechsler, 2015, p. 115). His thought was particularly important in the Neo-Confucianism, which appeared much later and dominated during the Song (960–1279 AD) and Ming (1368–1644 AD) dynasties. It refers to the schools of Confucianism, which were against the dominance of Buddhism, although influenced by it, and the antisocial impact of Daoism. The Neo-Confucian rationalism consists of ideas of inclusive humanist vision that integrates personal self-cultivation with social ethics (Lam, 2003, p. 155). Neo-Confucians, based on the ideas of Mencius, believed in the good nature of humanity. The Song era was abundant with prominent statesmen and thinkers, such as Wang Anshi (1021-1086 AD), the major political reformist, and Sima Guang (1019-1086 AD), the brilliant scholar and politician who opposed Wang Anshi measures. Among the influential philosophers of the period was the greatest rationalist Confucian Zhu Xi (1130-1200 AD). The good governance of Zhu Xi conserved the tradition of Classical Confucians, where the government must practice benevolent policy to care for the people.ⁱⁱⁱ Wang Yangming (1472-1529 AD) from the Great Ming Empire, was another important Neo-Confucian thinker. During the Ming, as the merchant class gained more significance, Neo-Confucians became positive about the morality of the class. Wang thought that it would be possible for them to become sages if they could harmonize their body and mind. Proposing the “uniting thought and action” and returning to the moral idealism of Mencius, he claimed that moral education should be based on the “good conscience” (Lam, 2003, p. 156).

IV. Administrative Techniques in Legalism

Legalism or *fajia* is a school of thought that endorses strict and harsh laws. The Legalists were the political visionaries who used the law as a tool for achieving political ends (Hulsewé, 1981, p. 3). Though *fa* usually is described as law, there are other meanings inherited within it such as “standard” and “method”, and altogether this means *fajia* (Goldin, 2011, p. 7). According to the Legalist-Daoist theorist, Shen Dao, if the ruler neglects *fa*, the punishments and rewards will be a product of his mind. If the ruler decided between mild and harsh treatment on the grounds of his own reason, then people would be rewarded differently for the same merit and punished differently for the same fault. Thus, *fa* makes it sure that people are treated according to their deeds (Goldin, 2011). The *fa* of Shang Yang, as Han Fei proclaimed, is not a just legal code, but a model of social organization (Schwartz, 1985, p. 335). *Fa* is usually contrasted with *li* (ritual, propriety, customs, moral conduct), exemplified in Confucianism. Contrary to *li*, which may be defined as principles imposed by society (history, culture), *fa* is a code that enforced by sovereign. The aim of both is regulation of people (Lee & Lai, 1978, p. 1309).

The Legalist realpolitik can be divided into three main groups. One was the thought of Shang Yang. To him, *fa* (law or regulation) was the most significant aspect of politics. Another group was led by Shen Buhai, who considered *shu* (bureaucratic method, handling men, statecraft) to be the most important factor. Shen Dao represents another path and stresses on *shih* (power or authority). Han Fei, the last great Legalist thinker, reviews all three ways and embraces them into a comprehensive doctrine. If the ruler is intelligent, he is like Heaven rules fairly according to the law (*fa*). He handles men (*shu*) by implementing his authority (*shih*) (Fung, 1968, pp. 157–158). Whereas there were earlier forerunners of the Legalist school, such as Guan Zhong (720–645 BC), and later, during the early Warring States period, Li Kui (455–395 BC), it becomes more apparent through the works of three contemporaries, Shang Yang, Shen Buhai and Shen Dao (a younger contemporary). Subsequently, the developed Legalist techniques precisely influenced the laws of the state of Qin.

In 1975, the discovery of multiple tombs provided additional information about the administrative regulations of the Qin prior to the unification of China by its illustrious emperor Shi Huangdi (259–210 BC). The sources display that the effectiveness was achieved through the bureaucratic procedures. For instance, grain supplies were under strict regulation; cattle and horses were constantly inspected. If government animals (horses, cattle) died, handing over the hides, horns, and bones and writing detailed reports would be required (Hulsewé, 1981, p. 18). When a request was made for any reason, it had to be submitted in writing. There were no oral requests or requests through third parties allowed. When the documents were transferred or received, the month, day and time of their receipt or dispatch had to be recorded. Moreover, during the period of post-unified China, Li Si, the Legalist thinker and chancellor to the Shi Huangdi, facilitated the standardization of the written Chinese. Therefore, it becomes evident that the Qin was a highly organized state with an extensive amount of administrative and criminal laws (Kruger, 2003, Chapter 8; Lewis, 1999, pp. 13–48).

There are several major ancient books from which we can fully grasp the canons of Legalism. The first of them is *Shangjun Shu*, presumably a collection of thoughts of Shang Yang. To him, a strong state necessitates supreme law. Private criticism of the law is considered potentially hazardous. In fact, any type of opinion about law, be it positive or negative, is forbidden. While Confucians referred to the Book of Odes or Book of Documents, in *Shangjun Shu*, these books were perceived as destabilizing factors. Shang Yang, essentially, declared that the scholars are bad people who do not perform manual labor. When people have a private opinion about some matters, a state is in disorder. Shows of private bravery result in a weakening of army (Shang, 2011, Chapter 18). Lord Shang held that the sovereign should not be paying attention to the ancient traditions and judgments of the people, but base his judgments on modern realities and current state interests. The laws ought to be clear and straightforward. The violations of laws must be sternly penalized. The ruler himself is above the law, but all other subjects, including the heir to the throne, must strictly abide by the law. The people have no right to discuss the laws issued by the ruler. The people should only blindly obey. Also, all people must be respected in accordance with their merit, and not due to their origin.

Since man is inherently defective, because of a small gain, he is capable of serious crimes, unless he is stopped by fear of severe punishment. Punishment produces force, force produces strength, strength produces awe, and awe produces virtue. The origins of virtue are in punishments (Shang, 2011). Confucian ethics may be regarded as especially bad in wartime. Although Legalists tolerated it during the time of peace and order. The tractate, indeed, reveals quite a tolerable attitude when the state order is preserved. (Fields, 1989, p. 5). Criticizing Confucians (also Mohists) Han Fei (2003, p. 103) wrote:

“... the people will bow naturally to authority, but few of them can be moved by righteousness. Confucius was one of the greatest sages of the world. He perfected his conduct, made clear the Way, and traveled throughout the area within the four seas, but in all that area those who rejoiced in his benevolence, admired his righteousness, and were willing to become his disciples numbered only seventy. For to honor benevolence is a rare thing, and to adhere to righteousness is hard. Therefore within the vast area of the world only seventy men became his disciples, and only one man—he himself—was truly benevolent and righteous.”

At the time of Qin Empire, there was an incident of criticism towards the emperor. During a banquet, by referring to the previous dynasties, the ideas of decentralization have been addressed to the First Emperor.^{iv} The response was that such state of affairs would be destabilizing. Here, Shi Huangdi tolerated such criticism and didn't put any kind of punishment. Centralization debate was long established by that time. The chancellor Li Si theorized that decentralization was equal to turmoil. He considered criticisms by scholars as private and selfish; it was regarded as actions against the government. Li Si proposed to burn the books owned by privates and to execute scholars whose rhetoric used the past to criticize the present and those officials who protect the critics. With an exception of some medicine and farming records, the rest of the Confucian thought, rituals, music, works of the Hundred Schools were allegedly burned during the Qin era, however, some passed into the Han Dynasty (Fields, 1989, p. 18). Yet, this particular case of criticism somehow was neglected. There are accounts of inconsistency found in the sources concerning this.

Shen Buhai is another major theorist of the legalist thought. On account of his reflections, Han Fei developed the impartial administrative technique of defining rewards and punishments in accordance with a subject's true merit. The major administrative technique offered by Shen Buhai was *Xingming*, that is, comparing an official's "performance" (*xing*) to the duties prescribed by his "title" (*ming*), and afterward rewarding or punishing him accordingly (Goldin, 2011, pp. 8–10). The "performance" and "title" must be corresponding. The ruler decides on the duties according to their words and evaluates their accomplishments according to their duties (Goldin, 2013, p. 9). To get a job done, the best method is to wait for one to offer his service. Then the "title" is appointed to one who has volunteered. Later, the ruler needs to compare the official's "performance" to his "title". In other words, one does not pick the best suitable for a job (for example, to repair a bridge), but waits for one to offer a proposal. As a result, one bids with a cautiously calculated plan. *Xingming* is borrowed by Han Fei (Creel, 1975). He anticipated that ministers would promise as much as they could, based on rivalry, but not exaggerate it, as they

would be held responsible for any shortages. This way, if a minister underperformed, i.e. his performance was not as good as his title, then he would be punished. The punishment would be prescribed precisely because his “performance” and “title” did not match, and not because he underperformed. Similarly, if one achieved well, better than he initially had offered, he would be punished as well. His punishment was not because of his small promise, but because the performance and the title did not match^v (Goldin, 2013).

V. Who is the Authority?

Dao (1996, p. 50) has argued that the Confucian state bears elements similar to definition conceptualized by Weber. Nevertheless, unlike Weber’s definition of the state, regarding the legitimate use of violence, the Confucians emphasized the embodiment of the people. The Legalist Shen Dao acknowledged that authority is not based on coercion. The coercive power instead rests on the acceptance of authority (*shih*). Such legitimate power enables the ruler to preserve the social order. The ruler cannot impose all the techniques of coercion, without possession of authority. The authority is grounded on the fact of the rulership, and not on the ruler. Similar to Weber’s non-traditional and non-charismatic legal-rational framework, it is rather abstract and impersonal, though individualized in a ruler. If the principle of the rulership is challenged, for example by the Mandate of Heaven, the foundation of authority is destroyed (Schwartz, 1985, pp. 339–341). In Legalism, ruler entirely monopolizes the state power.

Political unity, as a central factor for Confucianism, is naturally required to protect the state from the external dangers and to govern the country in the most efficient way. It is the centralization of political power, not the Western ideas of separation of powers, checks and balances, which describes the Confucian state the best. Confucian state unites the government with political-administrative power that concentrated in the bureaucracy (Dao, 1996, p. 51). As long as the ruler is legitimized by the mandate, he holds all-embracing powers. Yet, as the question of mandate was still important for the Confucians, as well as ritual and family authority, the rulers of the Warring States period favored Legalism since its state power was truly unchecked. However, sovereign and value-free practices in the premodern society could not sustain value-based challenges in the long run. This was among the reasons for the failure of the Qin Empire (Zhao, 2015, pp. 192-193).

Much of China’s history up until the modern times can be seen in terms of tensions between Confucianism and Legalism. Fukuyama (2011, Chapter 7) has described Confucianism as backward-looking, which seeks legitimacy in ancient rituals. Whereas Legalism is forward-looking, which sees the Confucian stress on the family as an obstacle to the consolidation of political power. Furthermore, Mao Zedong, similar to the Legalist rulers before him, saw traditional Confucian morality as an impediment to social progress. It is suggested that the Maoist China is the Legalist “utopia” with the Marxist-Leninist premises. Nevertheless, the Legalism should not be assumed as the strict following of the law. As in other world traditions, prior to state and independent of it, there was the body of rules that were sanctified by the sacred authority. Such a law was believed to be older and more legitimate than the

authority of a ruler. This is the rule of law. Scholars distinguish between the rule of law and rule by law (Fu, 1996, Chapter 4; see also Dyzenhaus, 2006; Fukuyama, 2011; Tamanaha, 2004). In the rule of law, the executive is constrained by the existing laws that apply to everyone; rule by law, such as in the theory of Hobbes, suggests that the ruler uses law and bureaucracy as an instrument of power.

Daoists, whose metaphysical doctrines allied them with the gentry, were against the popular education (Weber, 1951, p. 46). In *Dao De Jing*, it states that recruiting policy in the service of state building would only rush the kingdoms toward modernization and war, taking the common people further from the simple life that they once enjoyed. In fact, Laozi was against the policy of promoting the capable because he wanted to simplify government, not to develop it (Laozi, 2001, p. 33; Stanza 3). The stanza below shows how this Daoist position is related to the Legalist conceptualization.

*“Do not promote those who excel.
And folk will have no cause to quarrel.
Prize not goods too hard to find.
And people won’t be turned to crime.
These objects of desire unviewed,
The people’s thoughts remain subdued.
Thus under a wise man’s rule.
Blank are their minds. But full their bellies,
Meek their wills. But tough their bones.
He keeps the folk. From knowing and craving,
And the intellects. From daring to lead.
By acting himself without taking the lead.
Inside his kingdom all is well ruled.”*

Roberts (Laozi, 2001, p. 35) observes that in this stanza the relationship between the wise and the governed is similar to the relationship between the commander and the troops in ‘The Art of War’. In Sunzi (2009, p. 44): “He [The commander] burns his boats and breaks his cooking-pots; like a shepherd driving a flock of sheep, he drives his men this way and that, and nothing knows whither he is going.” Daoism, as well as Buddhism, seek for the peace by turning away from society. Confucianism, however, proclaims that people ought to change the situation by changing their behavior. Therefore, with no reference to the outer forces, Confucianism tries to deal with the problems of this world through the actions of people in this world (Dao, 1996, p. 47). By addressing the social behavior of people in society (*li*), Confucianism focuses on five basic human relationships: ruler to ruled, father to son, husband to wife, elder brother to younger brother, friend to friend. The first two are especially important to proper governing

“Father to son” relationship-filial piety (*xiao*), the virtue of being a dutiful son or daughter, may be considered as the most important of the relations. Rulers govern with a paternalistic attitude and set a moral example to his subjects (Berman, 2010, p. 26). The pattern of obedience to parents is reflected in the hierarchical obedience in government and administration. The Universe is orderly, harmonious, united and nourishing. The government is a subcategory in the system of the universe. It is legitimate only by heaven’s will,

as heaven is the most eminent authority in the world.^{vi} This is the core principle of administration in Confucianism, that determines how the government operates (Dao, 1996, p. 50). Legalism does not validate such administrative behavior. In the fragments by Shen Dao, the total rejection of moral influence is vivid in his declaration, which states that a filial son is not born in the house of a kind parent. Similarly, a loyal minister does not emerge under a sage ruler (Schwartz, 1985, p. 246). Confucian theory supports that in case of conflict situations, filial piety preceded all other virtues. In a patrimonial state, this principle was used as a template for all relations of subordination. It is what an official would consider as the primary virtue, from which, all others issue (Weber, 1951, p. 158). This principle is discussed in the Analects 13.18 (2003, p. 147). It talks about a man who betrayed his father.

“The Duke of She said to Confucius, ‘Among my people there is one we call ‘Upright Gong.’ When his father stole a sheep, he reported him to the authorities.’ Confucius replied, ‘Among my people, those who we consider ‘upright’ are different from this: fathers cover up for their sons, and sons cover up for their fathers. ‘Uprightness’ is to be found in this.’”

Han Fei spoke about this case and showed that Confucian thought goes against the idea of the absolute authority. Han Fei, by providing further details regarding this incident, specified that Upright Gong was put to death by the local authorities due to the violation of the *xiao* doctrine. Thus, an honest subject of his sovereign was considered a villain^{vii} (2003, p. 106). Another source of a Confucian origin tells the story from an alternative viewpoint. It expresses that the father was to be sentenced after being reported by his son. The Upright Gong, however, asked the officer to be allowed to replace his father. Then the Upright Gong said that when he had reported his father, it was the virtue of honesty and when he had replaced him, it was filial piety. He postulated that he had been ethical in both cases. As a result, the king pardoned him. Confucius in the story, by rectifying names, asserted that it would be better to be dishonest than to practice honesty of this kind (Katz-Goehr, 2009, pp. 41–43). The Legalist and the Confucian versions construct the discursive argument. The questions of loyalty, obedience, and authority are at the center of discussion.

The illustration does not imply that parents could not be criticized if they did not live up to the pattern of their ancestors. However, this is not disobedience. Though, as Bellah (1991, p. 94) has noted, the rebellion against tyrannical rulers has a classic justification in Confucianism, most notably in Mencius, still, especially in neo-Confucianism, the political rebellion was also considered similar to disobedience to parents. The initial justification of rebellions has been typically in terms of Daoist or Buddhist traditions, only if successful, Confucianism stepped in. This is a question or a dilemma that public officials may have faced: service for those who were immoral but in power. On the one hand, there is obedience, which is based on the principle of filial piety. On the other hand, there is action by morality. The qualities of a competent official may be in conflict. Thus, courage is another moral attribute that public officials must have. Mencius specifically developed a detailed theory of bureaucratic courage, where dissent is necessary but not obligatory if it leads to lethality without results. It resembles what Arendt has criticized: the blind

loyalty and failure of courage of bureaucrats in Nazi Germany (Frederickson, 2002, pp. 619–620).

VI. Conclusion

When it comes to the Public Administration field, there is a tendency of Western hegemony on scholarly thought, from classical and behavioral schools to Digital-Era Governance or Neo-Weberian State. Certainly, there are many world thinkers and statesmen who can benefit the field, from Kautilya in India, who lived at the same time with three big Legalists of the pre-Qin era China, to Nizam al-Mulk in the Seljuk Empire, who was a contemporary of Wang Anshi. In this manner, Drechsler (2015, p. 106) has identified three major world bureaucratic paradigms, the Chinese, Islamic and Western, all of which share a large body of theoretical literature, centuries of practice and strong relevance. Frederickson (2002, p. 610) has marked that while in Western thought the moral basis of bureaucracy is rather feeble, there is an ancient and durable public administrative morality in Eastern thought. He has expressed that Confucius is to the ethics of bureaucracy as Weber is to the structure and behavior of bureaucracy. An attempt to redefine the ethical dimensions of modern administrative science was projected at the Minnowbrook Conferences.

The countries of the Confucian heritage^{viii} have been successful in adapting to the new realities of the last decades and have become economically prosperous. Yet, Confucianism is still a critical factor in East Asia. Despite that as an organized ideology Buddhism and Shinto have survived much better in Japan. Bellah (1991, p. 122) has argued it still exists in many unconscious ways. Besides, Tokugawa Confucianism had historical importance for the upcoming modernization brought on by the Meiji Restoration. Koreans adopted Confucianism during the early Chosun era (1392–1910) by driving out the Buddhists. The Korean Neo-Confucians stressed on an ideal scholar, *seonbie*, which, with some nuances, can be regarded as an equivalent to the more known *junzi* from the Chinese bureaucracy. Nonetheless, likewise, under the modern discourse that denounces what it considers the backward practices, the new paradigm has arisen. The American public administration with an accent on democracy and modernization has been especially dominant since the end of the 2nd World War. Then it has evolved to a criticism of the Traditional in a form of the Korean New Public Management movement (Im, Campbell, & Cha, 2013, pp. 286-288). Taiwan, comparable to Japan and South Korea, has also heavily modernized its bureaucracy. Singapore, in this respect, has been more successful as it voluntarily joined the Western path and has been able to maintain its own course, that is the Confucian capitalism of Lee Kuan Yew (Drechsler, 2015, p. 112). Indeed, the modernization that China, along with most other countries, experienced was also a challenge to two and a half millennia old thinking.

In contrast with Confucians, who appeal to the first and the greatest of the sages Confucius himself, the Legalists refer to the thought of Han Fei, the last of the grand masters of the school. Modern legal positivism, such as that of Austin shares some similarities with the Chinese Legalism, particularly of Han Fei. However, it should be acknowledged that the latter is rather a political method. The term Confucianism, in turn, may relate to distinct periods of its

evolution. There are teachings of Confucius, polar viewpoints of Mencius and Xunzi, the Neo-Confucian branches, as well as the modern intellectual movement of the New Confucianism, which began as a response to the Chinese modernization. From the mid-nineteen century, China suffered several defeats. This convinced many intellectuals that China needed social and economic reforms. The school has reviewed the role of Confucianism in life of Chinese people, and has delivered an answer to the West (Drechsler, 2015, p. 117). The spectrum of the Legalist thought, in this regard, is narrower. Nonetheless, both traditions have been in constant interaction. After the demise of the Qin, the Legalist thought did not die out. The subsequent dynasty, the Han, along with adopting the Huang-Lao,^{ix} acquired the characteristics of both Confucianism and Legalism. Even in spite of the firm position of Confucians on the Legalism, politicians, such as Wang Anshi, from the following dynasties incorporated some of its tenets. Thus, the model of the Confucian-Legalist state has been applied, thereby, in fact, in the upcoming centuries to the present times, it would become part of China's way, with one of the sides occasionally outweighing another.

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ⁱ Many scholars distinguish the philosophical Daoism and the religious Daoism. Here, in this context, it is philosophical Daoism (Lao-Zhuang).

ⁱⁱ Creel (1982, p. 68) debated the origins of the term referring to a ruler's behavior in the Legalist thought of Shen Buhai.

ⁱⁱⁱ According to Robert N. Bellah, Neo-Confucian religiosity is limited by the lack of transcendent leverage in Confucian symbolism. That is why there is no foundation for an independent religious community. The authentic possibility for creative social innovation is often precluded by the absence of transcendent loyalty that provides legitimation for it. For more see Tu Weiming (1985, Chapter 8).

^{iv} Qin Shi Huangdi has been a controversial figure in the Chinese culture. However, with the rise of national consciousness, people rather appreciate the quest for unification of China. The story of the First Emperor has been narrated many times in books, films and TV series. A particular case is "Hero", a 2002 film by Zhang Yimou, stylized in wuxia genre. The celebrated film has centered on the plot of assassination of Shi Huangdi. The ambiguity relies on the question of to whom one refers as a hero, to the assassin or to the emperor. The conflict lays in different levels (See Rawnsley & Rawnsley, 2010).

^v There are multiple stories regarding this. See, e.g., Goldin (2013, pp. 9–10): “In the past, Marquis Zhao of Han [r. 362–333 B.C.E.] once got drunk and fell asleep; the Supervisor of the Hat saw that his lord was cold, and put a robe over him. When [the marquis] awoke from his sleep, he was pleased, and asked his attendants: “Who put this robe on me?” The attendants replied: “The Supervisor of the Hat.” The lord accordingly found both the Supervisor of the Robe and the Supervisor of the Hat guilty of a crime. He found the Supervisor of the Robe guilty of dereliction in duty, and he found the Supervisor of the Hat guilty of overstepping his office—not because [the marquis] did not dislike being cold, but because he considered the overextension of offices more damaging than cold. Thus the enlightened ruler domesticates his ministers as follows: ministers cannot attain merit by overstepping their offices or failing to match the words they put forth. If they overstep their offices, they are to die; if they fail to match [their words], they are to be convicted. If they keep to their offices and remain faithful to their words, the thronging ministers will be unable to form cliques and act in one another’s behalf.”

^{vi} There is a view that the universe is an organic system of interdependent parts. An individual receives blessings from his parents, his ruler, and from heaven and earth. In return, he owes all from whom he has received. He owes filial piety to his parents and loyalty to his ruler. See Bellah (1991).

^{vii} This Confucian idea is similarly discussed in Mencius 7A35 (2009, p. 152): “Tao Ying asked, “If, while Shun was Son of Heaven and Gao Yao was minister of justice, the Blind Man (Shun’s Father) had murdered someone, what would have happened?” Mencius said, “Gao Yao would have apprehended him; that is all.” “But wouldn’t Shun have prevented this?” “How could Shun have prevented it? Gao Yao had received the authority for this.” “Then what would Shun have done?” “Shun would have regarded abandoning the realm as he would abandoning an old shoe. Secretly, he would have taken his father on his back and fled, dwelling somewhere along the seacoast. There he would have happily remained to the end of his life, forgetting, in his delight, about the realm.”

^{viii} In an analysis of cross-cultural differences by Inglehart and Carballo (1997) a cluster of countries with a unique Confucian culture has been identified. The analysis of available data also has presented that China is the least religious and the most state-oriented society.

^{ix} Huang-Lao is usually referred to as religious Daoism. The name includes the mythical figure of Huangdi, the Yellow Emperor from 2600 BC, and Laozi, semi-legendary old master.