

MEANINGS OF ARCHAIC LAW IN THE WORK OF CONFUCIUS AS A SOURCE OF CHINESE LAW

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Abstract

Confucius's ideas are a basic element in the thinking and evolution of mankind, bringing a very important contribution in the development of law principles. Confucius's ideas on Law and the principles by which society is organized and managed properly can be summarized in the following lessons: "The superior man is dominated by love of justice, the common man is dominated by the love of gain". Confucius required to be respected traditions, customs and rituals in order to have a stronger society and citizens that obey the laws. The teachings of Confucius were a main source of law which later formed the principles of Chinese law.

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I. INTRODUCTION

For most of the history of China, its **legal system has been based on the Confucian philosophy** of social control through moral education, as well as the Legalist emphasis on codified law and criminal sanction.

In the philosophy of Confucius we find a rigorous systematization of ancient customs because its teachings are based on research traditions, customs from different administrative regions with local traditions.(Bonciog, 2010)

One of the major Chinese philosophical schools - the Confucianism - strongly influenced the idea of law in China. Briefly, under Confucianism, the state should lead the people with virtue and thus create a sense of shame which will prevent bad conduct.

Historically, the people's awareness and acceptance of ethical norms was shaped far more by the pervasive influence of custom and usage of property and by inculcating moral precepts than by any formally enacted system of law.

Master Kong Qiu (Kong Fu Zi) called by Europeans in the seventeenth century, Confucius was born on August 27, 551 BC. in the village of Lu in the Shandong province. it is assumed that its genealogical tree would have to move the king Yellow - Xuanyuan (2697-2597 BC), regarded as the founder of the first Chinese state structures - Huang He, the Yellow River valley. Confucius's ideas are a basic element in the thinking and evolution of mankind, bringing a very important contribution in the **development of law principles**.

II. CONFUCIANISM – A MAJOR CLASSICAL LEGAL THEORY

In the year 518 BC Confucius chose the capital Louyang in order to know imperial rituals and the life of people in the lands Qin, Song, Wei, Cheng. He occupied a number of positions as governor, minister, counselor in the land administration Li.

There are three basic elements in Confucianism: “Ren”, “Li” and “Dao”, which show the fundamental value of Confucianism. It is very necessary to analyze these basic elements and find the relationship among them, so as to picture the thinking way of Confucianism and its difference from the rule of law. (Guoji, 2008)

The basic premise of Confucianism is the idea that human beings are fundamentally good. With this optimistic view on human potential, Confucius advocates for ruling through li – traditional customs, mores, and norms – which allow people to have a sense of shame and become humane people with good character, rather than through government regulations and penal law. The idea is that people will internalize the acceptable norms and only take proper actions. This will not only lead to a harmonious social order, but it will also provide the additional benefit of improving an individual’s inner character and the overall quality of the society. (http://en.wikipedia.org/wiki/Chinese_law)

The approach and attempt to know and then transmits the ideas and teachings of Kong Zi - Confucius defining step requires knowledge of the period he lived in great thinker. Confucius's name is attributed to the end of the first part of the Zhou Dynasty - Spring and Autumn Period (770-476 BC). Zhou dynasty known as the classical age of Chinese culture and civilization, marking eight centuries of Chinese history 1046-221 BC and fall in phase transition from slave to feudal society. Historians have classified Chinese Zhou Dynasty developments in the following steps:

- 1046 - 770 BC. Zhou era or early or Sunset / West Era;
- 770 - 221 BC. Late or Eastern Zhou, divided in Spring and Autumn Period - Chunqiu (770 - 476 BC.) Spring and Autumn Period bearing the designations from chronic principality Li - Spring and Autumn Annals. Main events ranging between 722-481 were conducted in spring and autumn and were referred to the ideograms - Chun and Qiu - spring and autumn;
- 476 - 221 BC. Shitai Zhanguo - Warring States Period. (Buzatu, 2009)

The vision researcher Anne Cheng Zhou period is based on three main ideas: “royalty, the principle of hereditary transmission of the titles and functions and unifying power of a religious system centered on King”. (Cheng, 2001)

During the United Zhou lived most important philosophers and Chinese thinkers among which Confucius, Lao-zi, Meng-zi (Mencius), Mo-zi.

Like Socrates, Confucius did not leave humanity a work written. (Drimba, 1984)

The works attributed to the great thinker were edited after his death. Professor George Vlăduțescu states that “the four books of the school founded by Confucius Da Xue - *Great study*, *Zhong-Yong - invariability on the middle way*, *Lun Yu - Analects* and *Meng Zi*, which according to tradition is called after the writer name, are Confucians by the spirit, but not by the letter / word“. (Vladutescu, 1980)

Confucius philosophy was built on three important pillars:

- man is an individual who belongs to nature and society and in this context he must shape the way in life understanding harmony universal order;
- man actions at individual level but also at the community level must focus their actions based on moral principles and hence how government extended a state must have the foundation of moral principles;
- any action, fact committed by individual must fall in observance of rites, the reverse coin observance of rites leads to disharmony and chaos.

Theories of Confucius are based on the principle of humanity and generosity - jen. This principle considered that all people are good by nature flesh, but to preserve and develop morality education is required. In order to discover the human knowledge the perfect man must help his fellows to fulfill their ideals. "Jen is the nobility of Heaven, the dignity of man (...) and every man has it in himself. If man is Jen as natural aptitude, this virtue must be developed through a complete education, the only way able to transform ordinary individual in true man." This education can not be imposed from outside, it is self-knowledge, self-discipline. Following jen, man will remain faithful to the principles of its own nature - zhong, he will apply them on others as on himself - chou, he will practice honesty and fairness - yi, he will be kind and generous, will respect filial devotion and he will obey and will respect the laws". (Brosse, 2007)

Confucius's ideas on Law and the principles by which society is organized and managed properly can be summarized in the following lessons: "The superior man is dominated by love of justice, the common man is dominated by the love of gain". (Buzatu, 2009)

Related to this, Confucius promoted the design / conceiving and implementation principles such as: governmental morality, social justice, leadership and management support to the political institutions of an exemplary moral person and a good education, and in the state must be continually trained officials as pawns of good governance.(Buzatu, 2009) Confucius believes that: "To govern means to keep right."

Confucius tried to find solutions to fix some imperfections functioning of contemporary society with him, so that "any restoring order in the society in accordance with the cosmic order - the mandate of Heaven, is about human definition model - kiun-zi." (Brosse, 2007)

In the same time Confucius required to be respected traditions, customs and rituals in order to have a stronger society and citizens that obey the laws.

Codified laws require external compliance, and people may abide by the laws without fully understanding the reason for compliance. As such, a social order achieved through formal laws does not come with the additional benefit of better citizenry. It is worth noting, however, that even Confucius did not advocate for the elimination of formal laws. Rather, according to Confucius, laws should be used minimally and reserved only for those that insist on pursuing one's self-interests without taking into account the well being of the society.(http://en.wikipedia.org/wiki/Chinese_law)

In his work "The Great Study", Confucius focused on the presentation of the way to perfection through knowledge in harmony with the principles of universal order. In this work Confucius underline that a leader who wants to lead the people right has to "make the world to enjoy peace and harmony." (Confucius) Related to this, the great thinker urged the governing "to watch carefully upon the rational and moral principle from him. If the governing will have virtues arising from the rational and moral principle, then he will have the people hearts, and if he will have the people hearts, he will have the territory; if he will have the territory, he will have its income; if he will have the income, then he will be able to use them to manage the state." (Confucius)

The Confucius recommends that the leader has a moral behavior and not to focus on the personal gains because that will cause that citizens will have as goal their own earnings, to the detriment of society. If the prince will respect public property and will use fair the public revenue then "people will remain within the limits of order and obedience." (Confucius)

The great philosopher wanted to print the pages of history the idea that "the nation Chu does not believes that gold ornaments and stones are precious, but for this nation the virtuous people, good and wise public servants are the only things considered to be precious."(Confucius)

In the work *Unchanging on the middle path* Confucius identified nine rules that the government should follow “self-correction and self-improvement, the worship of the wise, the love of parents, honoring the first state officials or ministers, to be in perfect harmony with all other officials or magistrates, treat and love people like a son, to attract /draw around him all the wise and artists, to welcome the people and the foreigners who come from far away, to deal with friendship all the great vassals.”(Confucius) An important element that is developed in the work *Unchanging on the middle path* is defining the human ideal according with the principle of honesty based on the communion between harmony and balance.

As Confucius rejects the general use of formal laws to achieve social order, what lies vital to Confucius’ theory is the willing participation by citizens of the society to search for commonly accepted, cooperative solutions. In addition to willing participation of citizens, there must also be grounds or bases upon which commonly acceptable solutions can be arrived at - the concept known as li. Li is commonly understood as a set of culturally and socially valued norms that provide guidance to proper behaviors that will ultimately lead to a harmonious society.

These norms are not fixed or unchangeable over time but rather a reflection of what is accepted at a particular time in a particular context. When conflicts arise, the li have to be applied and interpreted to produce a just result and restore the harmony of the society. However, in the absence of any procedural safeguard afforded by codified laws, interpretation of li is subject to abuse.(http://en.wikipedia.org/wiki/Chinese_law)

Concerning the development of the state’s financial development, Confucius presented this situation: “When a prince loves humanity and practices virtue, it is impossible for people to not love righteousness, and when people love justice, it is impossible not to have a prince with all his tasks happy satisfied; and also the taxes properly required to not be paid properly.”(Confucius)

In addition to good preparation and fairness as essential qualities, Confucius believes that people should not “be anxious that they do not have public jobs, but to be concerned to acquire the skills needed to occupy those positions. Do not be grieved that are you are not yet known, but look for to become worthy of being known.”(Confucius) More than that, the great philosopher denounced the old system which was based on heredity transmission functions within the nobility system and proposed that the appointment and promotion in the civil service to start from fairness and good training: “training of persons possessing competence and moral integrity and attribution of the positions based on merit only.” (Lazar, 2007)

These principles for the organization of examinations for the selection of civil servants were respected until 1991 when the Qing dynasty was removed. Confucius's name is linked to the development of private education in China. As a way of teaching he encouraged debates on various topics and focuses on judgment.(Budura, 2010)

III.CONCLUSIONS

Recognizing that people in a society hold diverse interests, Confucius charges the ruler with the responsibility to unify these interests and maintain social order. This is not done by dictatorship but by setting an example. Therefore, a ruler needs not to force his people to behave properly. Instead, the ruler needs only to make himself respectful, and the people will be induced and enlightened by his superior virtues to follow his example – an ideal known as wuwei. Nevertheless, the ruler must know and understand the li to be able to create solutions to conflict and problems the society faces. As the people are to follow the moral standards and example set by the ruler, to a large extent, the quality of the ruler determines the quality of the political order.(http://en.wikipedia.org/wiki/Chinese_law)

The teachings of Confucius were a main source of law which later formed the principles of Chinese law. Emperor Han Wudi (156-87) recognized his work as state doctrine and represented the foundation of empires that have succeeded until 1911, when the founding of the Republic of China occurs.

IV. REFERENCES

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