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The fate of Confucianism

焚書坑儒 (fen shu keng ru; 213 BC)

- the burning of books and burying of Confucian scholars (fen shu keng ru) ‘annihilated the Confucian learning’. (史記 , 卷六十五 57)
- Emperor Hui repealed Qin emperor’s radical prohibition of possession of books containing Confucian teachings. (192 BC) 漢書 , 卷八十五 (儒林列傳)
- Rulers of Han wished to resuscitate Confucian teachings, but suffered from lack of texts. 漢書 , 卷八十五 73 , 儒林列傳 , 漢書
- Dong Zhong Shu (董仲舒 179BC – 104BC),
- Wu Ti 漢高祖 (reign 141BC – 87BC),
- Si Ma Qian (司馬遷 145BC – 86BC), author of 史記
- Jesus (c. 4BC – CE 30)
- Ban Gu (班固 CE 32 – 92, author of 漢書) describes the cruel punishments practised during the short-lived Qin dynasty: “During the Warring States period, Han (漢) employed Shen Zi and Qin employed Shang Yang. They introduced collective punishments and execution of all related family members of a criminal. They increased bodily mutilation punishments such as boring of cranium, rib-removal and boiling. At the time of Qin Shi Huang (秦始皇 221-210 BC), all Warring States were conquered and former king’s laws have been destroyed and officials in charge of Li have been abolished. Governing was done entirely by punishments. The emperor personally scrutinised all the documents. During the day, he presided over trials. At night, he did the paperwork. ... However, crimes multiplied. Criminals in orange suit filled the streets. Prisons became crowded like busy markets. People all over the world had grievances and rebellions started. Han (漢) dynasty was thus born and prospered. When Gao Zu entered the palace for the first time, he promised three

chapters of law, that is, murderers shall be executed, those who cause injuries or commit theft shall be punished appropriately. The complicated and cruel punishments of Qin were thus abolished. Countless people were overjoyed.”

- 商鞅, 商鞅變法... (商, 鞅, 12-14)

1. Suppression of ‘false’ opinions

In my humble opinion, anything other than the six arts and Confucian subjects should be banned and not be presented. When false and extreme theories are annihilated, the opinions can be unified and the law shall become clear and people will know what to obey. 商鞅(商, 鞅 39)

2. Genesis

‘Heaven, earth, and man: they are the root of everything. Heaven creates, the earth nourishes, and man completes. Heaven creates with filial piety (xiao) and fraternal love (ti), the earth nourishes with food and cloth, and man completes with ethics and music.

‘Failure to have filial piety and fraternal love is to lose what you are created with, failure to have food and cloth is to lose what you are to be reared with, failure to have ethics and music is to lose what you are to complete everything with.’ (商鞅, 商鞅 1)

- Superior position of **xiao** and **ti**
- They became an absolute, ineluctable code of human conduct made in heaven. They are ‘baked’ in all of us.
- Humans may be made by humans; but filial piety is made in heaven?

Being true (真) means to be true to what Heaven ordained as human nature. Heaven ordained humans to do 仁 and to have shame – unlike the wild beasts. 天地之性，人為貴。五行之土，貴於稼穡。居於土中，氣上則見，氣下則隱。此天之道，不可及也。 (《禮記·禮運》, 第 4 章)

3. 陽尊陰卑 (Yang is noble; Yin is base)

- Ancient tradition: Harmony between Yin and Yang
 - Now Yin, now Yang. This is called Dao. Continuing this is good. Completing this is the nature. A man of integrity would call it integrity. A man of wisdom would call it wisdom. 道，可道，非常道。名，可名，非常名。 (《老子》, 第 1 章)
 - Dao brings forth one, one brings forth two, two bring forth three, three bring forth everything. Everything is equipped with yin and contains yang. Mixture of these two energies makes harmony.’ 道生一，一生二，二生三，三生萬物。道者，萬物之宗，天地之母。 (《老子》, 第 42 章)
 - ‘How great is yang! With yang begins everything. How vast and permeating is yin! With yin is created everything.’
 - Thus, Yin Yang and four seasons are the end and the beginning of everything and the root of death and life. If you go against them, disasters will appear. If you obey them, terrible diseases will not arise. This is called enlightenment. 陰陽者，天地之道也。聖人法之，以治天下。 (《淮南子》, 第 3 章)
- However, Dong Zhong Shu advanced a completely new vision: Cosmic struggle between Yang and Yin and Yang’s suppression of Yin (陽尊陰卑):
 - Yang is the virtue of the almighty Heaven; Yin is the punishment of the almighty Heaven. 陽者，天之德也。陰者，天之罰也。 (《春秋繁露》, 第 1 章)
 - Everything bad belongs to Yin. Everything good belongs to Yang. Yang is virtue. Yin is punishment. 陽者，天之德也。陰者，天之罰也。 (《春秋繁露》, 第 1 章)

feelings of love, to have the utmost intent to achieve harmony without fighting, to regulate your likes and dislikes in accordance with the code of conduct, not to have the intent to hurt or to hate, not to harbour ill feelings, not to have jealousy, not to have sad desires, not to have sinister schemes and not to do any deviant or evasive action. Therefore, your mind is at ease, your will is serene, your energy is harmonious, your desire is under control, your affairs are effortlessly done, your conduct is in line with the Way. In this way, you achieve peace, ease, harmony and reason and thus have no reason to fight. This is called 仁. (論語 2)

- First take the plank out of your own eye; don't judge your neighbour
 - 仁 (ren) means to give comfort to others (仁 ren). Rightness (義 yi) means to correct myself (義 wo). This is why 仁 sounds like 仁 and 義 sounds like 義. You must realise that 仁 is about others; 義 is about correcting myself. ... The method of 仁 consists in loving others; it does not consist in loving oneself. The method of 義 consists in correcting myself; it does not consist in correcting others.
 - Be not judges of others, and you will not be judged; do not condemn others and you will not be condemned. Seek instead to correct yourself and keep yourself from sin (zheng wo 正我). (論語)

5. Dong Zhong Shu's theory of Omen

- Small scale disasters are the cautions of Heaven. Major catastrophes are the threats sent by Heaven. When the caution does not work, Heaven terrifies men with threats. The root of all disasters and catastrophes lies in misgovernment. When things in government begin to go

can have them as food and clothes. Of old until now, it has always been like this. Now, imagine a person dearly loved his son and did everything to benefit him. If the son grows and does not reciprocate the father's love, all noble men of the world will say that it is immoral and blasphemous. Heaven loves everything on earth and shower benefits on us by providing all these things. Look at even the smallest tip of a hair. There is nothing which is not the work of Heaven. 天 , 地 6

天 : 天 地 人 ? 天 地 人 , 天 地 人 ? (天 17.19)

The Mater said, "Does Heaven say anything? Four seasons come and go. All sorts of things are born. Does Heaven say anything?"

Legalist ideas of law, human nature and statecraft

Reading:

Burton Watson, *Han Feizi: Basic Writings* (New York, 2003) PP. 97-130

0. Confucianism v Legalism

- rule by virtue (de 德), relying on human being's ethical integrity (ren 仁), rightness (yi 义), ethical code of conduct (li 礼) and wisdom (zhi 智)
- rule by law (fa 法), relying on a well-designed system of punishments (xing 刑) and rewards (shang 赏)

1. Criticism directed to Confucian “chaos” and “ ”

- Thus, what saves a country is not 仁(ren) or 义(yi). A loving person (君子) is compassionate, generous and spends money easily. A violent person (小人) has a heart full of anger (怒) and easily carries out executions. If you are compassionate and generous, you won't bear to see hardship. You spend money easily, you would love to donate. If you have a heart full of anger, your hatred will appear to people below you. You easily carry out executions and people will be wasted. If you cannot bear to see hardship, pardons will be liberally given. If you love to donate, rewards will be showered where there is no achievement. If your hatred shows itself, those below you would have grievances against their superiors. If you easily execute people, people will eventually rebel. ... Therefore, it is said, “Both benevolent men and violent men are the ones ruining a country.” 君子之德，小人怨之，小人怨之，小人怨之... 君子之德，小人怨之，小人怨之... (Lunyu, 12 6)
- Followers of Confucius disrupt law with their erudition. The brave ones break the prohibition with their martial valor. And yet, kings treat them with courtesy and ceremony. This is why there is chaos. ... Thus, those who practise 仁 should not be given honours. Honouring them means that other people's achievements will be harmed. People with erudition and learning should not be employed. Employing them would mean that the law will be disrupted. 君子之德，小人怨之，小人怨之... 君子之德，小人怨之，小人怨之... (Lunyu, 12 8)
- If you abandon the compass and ruler and instead rely on your arbitrary feel, even Xie Zhong [a legendary master carpenter] cannot finish a wheel. If you throw away the meter and try to guess the length, even Wang Ni [a legendary craftsman] cannot divide a stick in halves. (Lunyu, 12 2) (But compare what Xun Zi says about Li at 12 9

and 15)

▪ Five vermins

- 博古通今，學古不學今 (Learned persons cite the ways of the ancient kings and invoke ren yi (仁義). With impressive appearance and attire and with eloquence, they question the present day's law and make the king's mind torn between the two)
- 好古不今，借外自強 (Antiquarians talk about the ancient time but in fact they tell lies. Borrowing foreign nations' power, they achieve their private gain and abandon the government's interests.)
- 聚眾揚威，犯上作亂 (Militia will gather together and boast about their unbending spirit. And they become famous and violate all sorts of rules.)
- 貴族世襲，弄權弄勢 (Courtiers and lobbyists will emerge from influential families. They spend lots of money to bribe important people and evade the burdensome military duties.)
- 商賈爭利，巧取豪奪 (Merchants and craftsmen make useless items. They buy up things cheap, bide their time and rob farmers of their income.)

▪ 論語，卷九，15.9

▪ 論語，卷九 (Lunyu 4.8)

▪ 論語，卷九 (Lunyu 6.24)

▪ 論語，卷九 (Lunyu 4.10)

▪ Having explained the choices made by Bo Yi, Shu Qi, Yu Zhong, Yi Yi, Zhu Zhang, Hui of Liu Xia, and Shao Lian, Confucius says, 博古通今，學古不學今 (Lunyu, 18.8)

2. Thoroughly “rational” approach

- Bright ruler's way of governing is that even the base may challenge the noble on matters of virtue and

rightness. The subordinates should be entitled to press charges against the superiors, judgments must be based on evidence, petitions must be heard without any hurdles. In this manner, the clever may not defraud others. Rewards should be based on assessment of achievement. Commissioning must be based on evaluation of ability. Through a surveillance of originating causes and observation of bad result, those who are at fault must be punished and those who are capable must be employed. Thus, stupid ones will not be given a task. The clever would not dare defraud others. When the stupid are not allowed to decide the matter, things would work without fail. (Mencius, Book 2)

- In order to rule the world, you need to rely on human nature. To like and to dislike is part of human nature and this is why reward and punishment can work. Reward and punishment working, prohibitions and commands can have effect. This is all there is to the true method of governance. (Mencius, Book 1)
- When people pursue self interest, things will work out fine. ... Suppose you hire a labourer to plough and sow your field. If you spend money to prepare nice food and pay him good wage, that is not because you love him. That is because, if you do that, your employee will plough more deeply and sow more carefully. If your labourer puts in a great deal of effort to plough and sow your field, that is not because he loves you. That is because, if he does that, he will get nice food and decent wage. ... What moves our mind is ultimately our self-interest. (Mencius, Book 3, 30)

3. Promoting “uniformity” by eliminating

governance

- ‘Those who rule a country must choose [a technique] which works for many and discard the ones which work for fewer people.’

7. Ren(仁), yi(義) and wu wei (無為)

- ‘Thus, we do not fear the accusations that we undermine the ruler’s interest. We do not mind the sufferings which would follow such accusations. Our determined quest for material resources to bring all the people to their fulfilment is an act of moral fortitude and wisdom. To fear the accusations about harming the ruler’s interest and to shun the risk of death following from such accusations is to know how to look after yourself and to ignore the comfort and well-being of all the people. It is a base conduct.’ (論語·微子篇第 20 章第 2 節)
- ‘to rule without ruling (wu wei er zhi; 無為而治)’ – everything must be driven by pursuit of self-interest.
- 無為 : 無所事事 , 無所事事 (論語 4 . 16)

Shang – Zhou: transformation of ancient Chinese society

[King Wen \(文王\)](#) (Founder of Zhou 周)

Shu Jing, ([Kang Gao \(trans.\)](#))

[Feudal states of Zhou](#)

[Spring and Autumn Period](#)

1. Zhou's conquest of Shang

- Relocation of Shang clans to Qishan
- Setting up a new capital Cheng Zhou (Luo Yang) (after suppressing the rebellion of King Wu's two brothers)
- Sending out family members to govern new territories (e.g. Kangshu, younger brother of Duke of Zhou, given a territory and 7 clans of Yin to rule)
- Living together with the "conquered" Yin clans
- Yin clans allowed to live by their customary law as long as it does not threaten Zhou rule: See Kang Gao, Jiu Gao

2. Conflict of laws, personal principle of law – from *Shu Jing*

- waishi – affairs involving 'foreigners' [Yin people viewed by Zhou rulers]
- niesi – 'peregrine praetor'?

When the 'external affairs (waishi)' are presented to you, let the appropriate legal officer (niesi) deal with them according to the punishments of Yin which stand to reason. – Shu Jing, ([Kang Gao \(trans.\)](#))

[Duke of Zhou's advice to Kangshu about alcoholic drinks]

I tell you, you must definitely warn the ministers [Zhou people] sent out to Yin, all lords of the surrounding areas, our great officers, our administrative staff, all officers sent over there, all kinds of ceremonial staff, and certainly the ones who are in charge of ancestral ceremonies, and a fortiori, those officers who supervise agriculture and public order, that alcoholic drinks are strictly regulated. If you nevertheless receive reports of drinking parties, you must arrest them all and send them back to Zhou. I shall put them to death.

If, however, various ministers and officers of Yin origin are

found intoxicated, you may not put them to death. You must instead warn and rehabilitate them so that this point becomes clear to them. – Shu Jing, [Jiu Gao](#)

3. Fengjian and disintegration of zu

- Economic growth, technological advancement
- Forced relocation, co-habitation of different clans
- Waning of the powers of clan head
- Emergence of 'family (jia, 家)' as the base unit (rather than the clan 宗)
- Zhou Li: Clan rite, family rite

4. Feudalism in medieval Europe

- '*Homagium est iuris vinculum* [Homage is a bond of law]' – Bracton (c. 1220-1230) trans. Thorne, ii.228.
- 'The bond of trust [*fidelitatis connexio*] arising from lordship and homage should be mutual, so that the lord owes as much to the man on account of lordship as the man owes to the lord on account of homage, save only reverence' – Glanvill (c. 1190), 9.4.
- *Obligatio est vinculum iuris (Inst. 3.13.pr)*

5. Zongfa-feudal system of Zhou and the significance of Li (礼)

- Blood tie, Family, ancestry, sacrifice
- Ceremonial re-affirmation of family hierarchy
- 'Dealing with the ancestors consists in respecting the respectable; dealing with the descendants consists in loving the lovable. Dealing with the brothers and collaterals consists in uniting the family members and relations through festive occasions, clearly defining

their order and distinct positions according to *Li* and rightness. This is all there is to the way of human-beings.’ – *Li Ji*, *Da Zhuan*

- *Li* 禮 in the context of ancestral sacrifice, court visits, diplomatic encounters, marriage, capping and funeral.
- Politeness? Etiquette? Good manners?

8. Family ethics (孝, 悌) in the zongfa feudal political arrangement

Those who commit the crime of robbing, stealing, treachery, killing, laying hands on other's goods or committing violence without fearing one's life, are to be abhorred. But the greatest evil to be abhorred all the more is lack of filial piety and brotherly love. The son who does not serve his father with respect, but greatly hurts his father's heart; the father who does not love his son, but hates him; the younger brother who does not think of Heaven's brightness, and does not respect his elder brother; the elder brother who does not have compassion for his tender younger brother, and treats him coldly and suppress him: if we do not deal with the people who commit these crimes, the law which our people have received from the Heaven will be greatly annihilated and disturbed. I say, this is why these conducts need to be constrained. They must have the punishment or execution as set down by the king Wen without pardon. – Shu Jing, Kang Gao

[Rebellion of the Three Guards](#): Guanshu Xian (管叔鮮), Caishu Du (蔡叔度), and Huoshu Chu (霍叔處) together with Wu Geng (of Yin)

Kang Shu Feng was the [Duke of Wei](#)

European Legal History and Roman Law

The course aims to offer an overview of the Roman law and Roman legal institution, which form the basis of European legal system. The students will have an opportunity to have a glimpse of legal argument structure and the sophisticated legal analysis discernible from Roman legal sources. It is hoped that a comparative outlook one can have as a result of the study of Roman law will help deepen one's understanding of the modern Korean law.

The following topics will be covered:

1. Expansion of Rome: Political and legal institutions of the Roman Republic
2. Sources of the Roman law
3. Overview of the Roman litigation
4. Division of Personal status
 - liberi / servi
 - sui iuris / alieni iuris
 - Roman citizenship
5. Tutorship, Guardianship, Marriage, adoption
6. Acquisition of things
7. Iura in re aliena
8. Obligations
 - ex contractu (sale, lease, mandate, partnership)
 - ex maleficio (lex Aquilia, iniuria)
9. Roman law in medieval Europe