

Li and *Fa* in Contract Law from the Perspective of Chinese Legal Philosophy

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Abstract

Traditional Chinese law is strongly influenced by two schools of thought, namely Confucianism which emphasizes “rule by *li*” and Legalism which emphasizes “rule of *fa*”. Both schools of thought have different accentuations, specifically, “*li*” emphasizes trust, while “*fa*” prioritizes certainty. In light of this ambivalence, this research seeks to address the following problem formulation: (i) how do the principles of “*li*” and “*fa*” inform the foundation of legal agreements? (ii) how has the evolution of these principles been shaped by Mainland Chinese and Peranakan Chinese communities? To address these inquiries, this study delves into the influence of “*li*” and “*fa*” within contract law, specifically within the context of Contract Law among Mainland Chinese and Peranakan Chinese in Indonesia. The researcher conducts an exploration of the Analects of Confucius to elucidate the essence of “*li*” and delves into the texts of Shang Yang and Han Fei Zi to discern the essence of “*fa*.” The findings of this research are subsequently employed as a foundation for analyzing the impact of “*li*” and “*fa*” on legal practices in Mainland Chinese and Peranakan Chinese societies, viewed through the lens of legal philosophy.

KEYWORDS *Li, Fa, Confucianism, Legalism, Contract*

Introduction

The Western perception of China's historical legal system as being less advanced is often rooted in both factual misconceptions and cultural bias. Western legal scholars commonly define a civilized nation-state as one that upholds the rule of law as a fundamental principle.¹ In contrast, Chinese society, deeply influenced by Confucian values, traditionally holds the belief that truly civilized individuals do not require strict legal regulation. Instead, the rule of law is primarily applied to address behaviors that are considered uncivilized, where legal measures are deemed necessary to control such actions.²

The Confucian approach places less emphasis on the law and instead values qualities such as honesty and mutual trust. Western jurists often have a limited perspective when it comes to comprehending the moral, cultural, and legal framework of Chinese society. Consequently, they assume Chinese individuals may resist adopting modern legal practices. The reluctance to fully embrace the rule of law should not be interpreted as a rejection of modernity. Rather, it underscores the significance of fostering harmonious relations among the parties. In situations where the parties engaged in a transaction upholding the principles of honesty and mutual trust, the necessity of constructing a comprehensive formal agreement, potentially involving a notary, is questioned.³

In ancient China, commercial transactions were initially governed by local customary laws, which eventually gave way to codified legal systems in response to the evolving needs of society. The establishment of regulations pertaining to ownership, contracts, and dispute resolution can be traced back to the Xi Zhou Dynasty's reign (11-10 BC). The impetus for making these regulations arose from the recognition of several shortcomings inherent in customary law: its unpredictability, regional disparities, and lack of transparency. Furthermore, customary law was deemed ill-suited to address the challenges posed by the dynamic changes in society and the economy during those times. In response to these challenges, more standardized legal frameworks began to emerge,

¹ Min Pun, "The East-West Dichotomy: From Orientalism to Postcoloniality," *IOSR Journal of Humanities and Social Science* 24, no. 1 (2019): 75. Compare with Martin Kryger, "What's the Point of the Rule of Law?," *Buffalo Law Review* 67, no. 3 (2019): 744.

² Silvia Nico, "Modern Chinese Legal System: Is There Any Reference to the Imperial Thought? Confucianism, Legalism, and Rule of Law with Chinese Characteristics," *Legal Worldwatch*, 2021, 71–72.

³ Nico, 72.

ultimately leading to the development of codified contract law.⁴ However, it's important to acknowledge that customary law laid the foundation for what we now recognize as national law, including common law and civil law. Under the umbrella of national law, these legal systems became more rigid compared to their earlier, more adaptable forms under customary law. The volatility of national laws underscores their transitory nature, while customary law remains relatively stable. Regardless of China's advancements in national law, the historical legacy of customary law continues to influence its legal landscape.⁵

In contractual agreements, ethics and law often intersect within the same article or clause. This indicates that merely relying on the legal framework for certainty is insufficient. In fact, legal certainty, in many instances, is susceptible to being “manipulated”, rendering its legitimizing influence more advantageous in capitalist and liberal systems. This is because the element of legal certainty contributes to the predictability sought after and favored by those with vested interests.⁶ Therefore, ethical considerations, such as the principle of “good faith,” assume great significance to prevent agreements from descending into mere “contract individualism.” In her article “Fascism, Community, and the Paradox of Good Faith” (1994), Sylviane Colombo underscored the pivotal role of good faith as a contractual obligation. Good faith implies a sense of community and a heightened self-awareness of one's responsibilities toward society.⁷

In the study conducted by Chris Provis titled “Business Ethics, Confucianism, and the Different Faces of Ritual” (2020),⁸ it was observed that Confucian ethics related to ritual (li) exerted an influence on the ethical landscape of the Chinese business world. While Chris Provis's research shares a common focus on the values of “li”, it primarily delves into the examination of these “li” values. In contrast, the present research engages in a broader dialogue, encompassing both “li” and “fa” values within the realm of law.

⁴ Lei Chen, “History of Chinese Contract Law,” *Chinese Contract Law Civil and Common Law Perspectives*, 2017, 1.

⁵ Liu Yigong, “Chinese Legal Tradition and Its Modernization,” *US-China Law Review* 8:458 (2011): 459.

⁶ Ofer Raban, “The Fallacy of Legal Certainty: Why Vague Legal Standards May Be Better for Capitalism and Liberralism,” *Boston University Public Interest Law Journal* 19:175 (2010): 1.

⁷ Sylviane Colombo, “Fascism, Community, and the Paradox of Good Faith,” *South African Law Journal* 111:3 (1994): 482.

⁸ Chris Provis, “Business Ethics, Confucianism and the Different Faces of Ritual,” *Journal of Business Ethics* 165, no. 2 (2020): 191–204, <https://doi.org/10.1007/s10551-019-04306-5>.

Fokky Fuad Wasitaatmadja's research as outlined in his book "Legal Ethnography: Legal Culture of Common Chinese Society" (2020),⁹ the influence of Confucian ethics on contract law among the Chinese community in Benteng Kampung Sewan, Tangerang, was investigated. What aligns Fokky's research with the current study is the exploration of Confucius's impact on the Chinese Peranakan community in Indonesia. Nevertheless, the distinction lies in the approach: Fokky's research employs an ethnographic perspective to scrutinize the behavior of the *Peranakan* Chinese community in Indonesia when it comes to contracting, while the present research centers on the realm of legal philosophy.

How do the principles of "li" (礼) in Confucianism and "fa" (法) in Legalism imbue the legal foundation of agreements with ambivalence? In addressing this inquiry, this research seeks to delve into the underpinnings of agreements through the lens of "li" and "fa" two principles that hold distinct perspectives on the foundation of agreements within their respective philosophical schools. To accomplish this, the researchers delved into the Analects of Confucius to elucidate the essence of "li" and examined texts attributed to Legalist thinkers, notably Shang Yang and Han Fei Zi, to uncover the essence of "fa" Subsequently, the researchers endeavored to juxtapose and synthesize the roles played by these two principles in shaping the legal landscape of agreements, with a particular focus on their impact on Chinese Contract Law.

Exploring the meaning of “li” in Confucianism

Confucianism, or *Rujia* (儒家), originated with Confucius and was further developed by his disciples. It underscores the significance of fostering a harmonious society, where individuals adhere to principles of reason and morality, thereby contributing to the creation of a peaceful and prosperous nation during their lifetime.¹⁰ The quintessence of Confucius' teachings is encapsulated in his golden rule, which advises, "... Do not do to others what you would not want them to do to you..." as articulated in the Analects of Confucius 12.2.¹¹

Confucianism is the essence of traditional Chinese culture, and its contributions are important to world culture. Specifically, the Analects, as classics and emblems of Confucianism, played a significant role in the

⁹ Fokky Fuad Wasitaatmadja, *Etnografi Hukum: Budaya Hukum Masyarakat Cina Jelata* (Jakarta: Prenadamedia Group, 2020).

¹⁰ Vu Hong Van, "Overview of Confucianism and the Basic Content of Confucianism," *South Asian Research Journal of Humanities and Social Sciences* 2, no. 4 (2020): 285.

¹¹ Roberto Eno, *The Analect Confucius*, 2015, 59.

development and promotion of Confucianism globally. The Analects describe the words and deeds of Confucius and his students in various themes, including learning, personal development, politics, life, and natural law. However, the most crucial aspect of the Analects of Confucius is politics. Confucius had been an official in the State of Lu and had experience traveling to other countries to realize his political ideals. This implies that Confucius himself had great enthusiasm for participating in state governance. Therefore, apart from being considered an accomplished educator and philosopher, he is also considered a statesman who has lofty political ideals and aspirations. Qian confirmed this, “Confucianism places great emphasis on humanity. Politics is the greatest thing of mankind”¹²

When discussing the relationship between the individual and the community in the Confucian context, the concept of “family” plays a key role in it. In Confucian ethics, husband-wife relationships have different meanings and structures. This means that husband and wife are not related by blood like parents and children or siblings, but rather they participate in the order of human relations in a “joint” manner and enjoy the same status. This dense structure implies that such relationships have special significance for the order of human relations.¹³

In essence, the family comprises fundamental relationships, including those between husbands and wives, parents and children, and siblings. Building upon these core human connections, families can expand into more extensive networks of clans and lineages. Confucianism offers comprehensive insights into the ethical conduct expected within these roles, with concepts like *xiao* (孝) and *ti* (悌)¹⁴ playing pivotal roles in contemporary Confucian studies. While the relationships between spouses, parents, children, and siblings may seem intimate on the surface, there exists a subtle structure underlying these familial bonds, which holds profound significance in the realm of human connections. This is where the Confucian tradition demonstrates its remarkable insight.¹⁵

¹² Shujuan Kong, “Positive Discourse Analysis of Political Thought in The Analect from the Perspective of Metaphor,” *Theory and Practice in Language Studies* 12, no. 1 (2022): 2339.

¹³ Qingnian Meng, “Individual and Unity (Hetu): The Generative Structure of Human Relations from the Confucius Perspective,” *Religions* 14, no. 8 (2023): 1.

¹⁴ Xiao (孝) in Confucianism refers to “filial piety” towards parents, while “ti (悌) or “Brotherly Obedience” refers to an attitude of love and respect towards older siblings. Read: Zbigniew Wesółowski SVD, “The Virtues of Xiao (Filial Piety) and Ti (Brotherly Obedience) as Two Pillars of Confucian Familism,” *Studia Warmińskie* 59 (2022): 315–36.

¹⁵ Meng, “Individual and Unity (Hetu): The Generative Structure of Human Relations from the Confucius Perspective,” 2.

The "unity" as exemplified in the husband-wife relationship epitomizes the ethical framework of family and the broader hierarchy of human relationships as articulated in Confucianism. Remarkably, even though the connections between parents and children or between siblings might not be precisely characterized as "unity," the relationship between husband and wife, despite originating from individuals unrelated by blood, evolves into an exceptionally close-knit unity. In this light, Confucianism suggests that a family isn't simply an amalgamation of homogeneous kinship ties; instead, it forms a tightly bonded nucleus. This structure underscores the unique significance of the husband-wife relationship within the intricate tapestry of human relations according to Confucian philosophy.¹⁶

In the *Liji* text (禮記) regarding "Wangzhi" (王制) it is stated that, "七教：父子、兄弟、夫婦、君臣、長幼、朋友、賓客" (Free translation: *The seven lessons (morality) are: (duties between) father and son; older brother and younger brother; husband and wife; ruler and minister; young and old; between friends; host and guest*)

Confucian society—and the institutional order that underlies it—views the individual as the root of the state. The basic structure of such an order is described in the Confucian classic, *The Great Learning* (*Da Xue* 大學):¹⁷ "*The ancients, wishing to prove their extraordinary benevolence throughout the kingdom, first ordered their states. To bring order to their states, they first aligned their families. To harmonize their family, they first cultivate their individuals. To cultivate their individuals, they first refine their hearts.*"

In Confucianism, "li" is intricately linked to the practice of offering sacrifices to the gods in pursuit of blessings. During the Zhou Dynasty, this concept encompassed a set of behavioral norms rooted in the patriarchal system. However, as the Zhou royal family's influence waned, the political dimension of "li" also receded, gradually transforming into what we now recognize as etiquette and tradition within society.¹⁸ This translation was influenced by the reigns of both the Shang Dynasty (c. 1600-1045 BCE) and the Western Zhou Dynasty (c. 475-221 BCE), during which "li" encompassed various aspects of interpersonal etiquette, including wedding ceremonies, funeral rites, mourning rituals, and more.

¹⁶ Meng, 3.

¹⁷ Jana S. Rošker, "Models of Humanism in Ancient China: An Explanation Centered on Early Confucian Ethics," *Religions* 14, no. 1 (2023): 1.

¹⁸ Shuwen Liu dan Xiaodong Jie, "On the Coherence of Mencius' Concept of Li: An Analysis Based on Moral Reasons Internalism," *Religions* 14, no. 8 (2023): 2.

“Li” generally refers to social norms and institutions. As a social norm, “li” functions as a basic guideline in actions and throughout a person’s life. As a social institution, “li” takes real form in various social organizations, including political systems. Therefore, “li” in the broadest sense is normative, meaning that it provides normative reasons for someone to act. Normative reasons refer to considerations that support or dis-support an action.¹⁹

Moreover, “li” often serves as a criterion for discerning the moral correctness or wrongness of actions and as a guide for determining what ought or ought not to be done. The normative essence of “li” becomes apparent in how individuals can gauge the morality of an action through its alignment with “li” and in their expectation that others should likewise adhere to “li”. In a more specific context, “li” constitutes a moral rationale for an individual’s conduct.

Thus, the meaning of “li” in Confucianism is not as simple as conservative behavior or practices in ancient China.²⁰ Indeed, generally “li” is translated as “ritual”, “politeness”, “etiquette”. “Li” is believed to be a legacy of the past which is depicted as a prosperous life. Therefore, it is also believed that if one practices “li” in daily life, one’s life will undoubtedly be prosperous.²¹

Confucianism places significant emphasis on the moral dimension of “li”. Consequently, violations of the requirements of Zhou Li are regarded as grave moral transgressions. Nonetheless, Confucianism also acknowledges that the moral worth of an action cannot solely hinge on its conformity to external norms; it must consider the intentions, emotions, and character of the actor. For instance, in the *Analects of Confucius* 3:4,²² when Lin Fang (林放) inquires about fundamental principles concerning ritual, Confucius responds, “What an excellent question! In celebratory ceremonies, it is preferable to display frugality over extravagance. In mourning ceremonies, it is better for there to be genuine sorrow rather than a mere formality.”

Confucius established this concept based on his deep reflection on the traditional notion of ritual or “li”. Therefore, he interpreted rituals in direct relation to humanity. Confucius saw that only this was possible as an offer to society about internalizing external social norms into a form of immanent moral consciousness. This can be seen from the following quote,²³ “子曰:” 人而不仁

¹⁹ Liu dan Jie, 2.

²⁰ Thomas Radice, “Li (Ritual) in Early Confucianism,” *Philosophy Compass* 12, no. 10 (2017): 1, <https://doi.org/10.1111/phc3.12463>.

²¹ Radice, 1.

²² James Legge, “《八佾 - Ba Yi》,” Chinese Text Project, accessed on 8 September 2023, <https://ctext.org/analects/ba-yi>.

²³ Rošker, “Models of Humanism in Ancient China: An Explanation Centered on Early Confucian Ethics,” 8.

，如禮何？人而不仁，如樂何？” (Translation: *The Master said, "If a man be without the virtues proper to humanity, what has he to do with the rites of propriety? If a man be without the virtues proper to humanity, what has he to do with music?"*)

In this context, limiting and controlling human behavior through external rituals is not only important, because none of this is possible (at least in the long term) unless one has an understanding of the question of why this is important—even for oneself. The meaning of social morality can only be seen or understood if the primacy of humanity is internalized. Only under the condition that we perform rituals and enjoy music based on this kind of inner awareness can we truly develop a moral subject within ourselves that is both immanent and transcendent. However, as Mencius, one of the two most influential successors of Confucius, stated, this can only be done consciously by individuals, as Mencius thought, 仁義禮智，非由外鑠我也，我固有之也。 (Translation: Humaneness, propriety, respectability, and wisdom are not brought into me from outside, but are inherent in myself)²⁴

In Analects of Confucius 12.1, Yan Yuan (顏淵) sought guidance from the Master (Confucius) on achieving perfect virtue. Confucius responded, saying, *"To yield oneself and return to humility and decency, that is perfect virtue... Do not gaze upon that which contradicts modesty; do not lend an ear to that which contradicts politeness; do not utter words that contradict politeness; do not engage in actions contrary to decency."*²⁵

All restrictions in "li" are intended so that someone who practices them can create harmony by not acting or behaving outside of self-control which has the potential to disrupt the lives of other people.²⁶ However, this limitation does not mean that humans in the Confucian conception have an evil nature (so they need to limit their behavior) as the Legalists think. Like the optimism of Mencius (孟子) as one of Confucius' students, that humans basically have good nature,²⁷ Confucius did not outright think that humans were evil. In his ethical offers, Confucius chose to develop human good nature, one of which is through "li". This can be seen in his emphasis on the importance of self-cultivation, namely the urge to develop virtues in humans.²⁸ In fact, even though in

²⁴ Rošker, 8.

²⁵ James Legge, “(顏淵) Yan Yuan,” accessed on 15 June 2023, <https://ctext.org/analects/yan-yuan>.

²⁶ Yinghua Lu, “Respect and the Confucian Concept of Li (ritual propriety),” *Asian Philosophy: An International Journal of the Philosophical Traditions of the East*, 2020, 1–2.

²⁷ Zou Xiaodong, “Editor’s Introduction: Reevaluating the Traditional Confucian Division between Mencius and Xunzi,” *Journal of Chinese Humanities* 6, 2020, 1.

²⁸ Henrique Schneider, *An Introduction to Hanfei’s Political Philosophy: The Way of The Ruler* (Cambridge: Cambridge Scholars Publishing, 2018), 92.

Confucianism it is known as "xiaoren" (小人) as the opposite of "junzi" (君子), "xiaoren" is not a "bad person", but a "normal person" who has not practiced self-cultivation yet, so his mind is still focused on himself. Alone. Meanwhile, a "junzi" is a person who has been well cultivated, and therefore has broader and more critical thinking. The figure of "junzi" is suitable to be a leader, because his human qualities exceed those of ordinary or normal people (*xiaoren*).²⁹

The good-bad opposition is quite vague in Confucianism. In fact, Confucius differentiated between the wise and the virtuous, two things which in general discourse (outside of Confucianism) are almost equal. This can be seen in Analects of Confucius 6.23, "The Master said: the wise find pleasure in water; whose priority is to find pleasure in the mountains. The wise, active; priority, calm. The wise, joyful; those who are superior, live long."³⁰

In ancient Chinese thought, water serves as a symbol of adaptability, showcasing its remarkable ability to conform to its surroundings, whether contained in a glass, a serene pool, or even within a less pristine ditch. This inherent quality of water is held in high esteem by the Daoist school of philosophy, particularly emphasized in *Dao De Jing* (道德经) Chapter 78.³¹ When connected with the quote from Confucius's Analects mentioned earlier, it becomes evident that a wise individual derives satisfaction from their capacity to adapt gracefully to diverse circumstances. Furthermore, in Chinese philosophical tradition, the concept of a "mountain" symbolizes the bridge between Heaven and Earth. Its lofty peaks symbolize the elevated spirituality often associated with revered figures such as Buddhist deities and emperors.³² In essence, those who embody the virtues highlighted in the Analects of Confucius are individuals who derive contentment from their virtuous character.

Water with its flexibility makes it look active, while mountains with their fixed nature give the impression of calm. It is not surprising that many people do asceticism and meditation by choosing mountains as their location. Regarding joy or happiness, it contains special notes in Confucianism. In Confucianism, happiness alone is not enough. This school idealizes ethical happiness as true happiness. Thus, great political achievement in the Confucian view is not ethical happiness, but only ordinary happiness. Ethical happiness

²⁹ Schneider, 94.

³⁰ Roberto Eno, *The Analect of Confucius: An Online Teaching Translation*, 2015, 27–28.

³¹ Wang Jin-guang, "Water Philosophy in Ancient Society in China: Connotation, Representation, and Influence," *Philosophy Study* 9(12) (2019): 751–52.

³² Jessica Rawson, "The Origins of Chinese Mountain Painting: Evidence from Archeology," *Elsley Zetlyn Lecture on Chinese Archeology and Culture* 117 (2003): 3, 44, 46., <https://doi.org/10.5871/bacad/9780197262795.003.0001>.

refers to a state where a person's desire for self-satisfaction is successfully subdued into an ethical desire. This is reflected in Analects of Confucius 17.21 which immortalizes Confucius's conversation with Zai Wo (宰我) during the mourning period, where according to tradition (*li*), the mourning period lasts three years. This tradition prevailed throughout the Chinese empire at that time as a form of respect for the deceased,³³

“...The Master asked, ‘If you, after a year, eat good rice, and wear embroidered clothes, will you feel comfortable?’ ‘I think so’, answered Wo. The Master said, ‘If you feel comfortable, do it. When a junzi is in mourning, good food is not sweet to him, music does not bring joy, living in luxury does not bring him comfort; therefore, he did not indulge in these things. Now, if you feel comfortable, do it’...”

In short, "li" in Confucianism is an ethical offer from Confucius and his students so that in their daily practices, a person needs to continue to adhere to decency or propriety so that balance or harmony in society is not disturbed.

Exploring the meaning of "fa" in Legalism

The main idea of the Legalists is to create order by strengthening the state. Strengthening the state is generally defined as strengthening the position of the ruler by standardizing the instruments or government and administration owned by the ruler. Standardization as intended includes a set of general rules that are valid and apply to everyone, uniformity of punishment weight, size, and unit of calculation, as well as a predictable administrative process. Generally, Legalists adhere to the idea that where the state is regulated, communities and society will also be organized. Order leads to strength and strength leads to order.

Chinese Legalism, referred to as "*Fajia*" (法家) by Sima Tan (司马谈), exhibits similarities to the Western legal philosophy known as Legal Positivism. First, both Legal Positivism and Legalism share the foundational principle of requiring the law to maintain neutrality, devoid of values, impartial, and free from human interests.³⁴ This alignment is particularly evident in Legalism's concept of "*xu*" (虚), signifying "emptiness," which mandates that the law must

³³ Eno, *The Analect of Confucius: An Online Teaching Translation*, 98.

³⁴ Widodo Dwi Putro, *Kritik Terhadap Paradigma Positivisme Hukum* (Yogyakarta: Genta Publishing, 2011), 55.

remain untainted by subjective biases when discerning the objective facts surrounding an event with an empty mind.³⁵

Second, Legal Positivism assumes that "law for law",³⁶ is implicitly the same as Legalism with its "rule by law" which is then explained through Han Fei Zi's thoughts as a combination of the thoughts of his predecessors Legalists, such as Shang Yang, Shen Bu Hai, and Shen Dao, namely thoughts entitled "*Fa* (法) – *Shu* (術) – *Shi* (勢)". The *Fa* requires legal certainty, whereby the law runs the country (not the rulers who run it) so that even though the rulers are weak, the law with its certainty will strengthen them. Apart from that, legal certainty plays a role in providing legitimacy in imposing sanctions on those who violate it and providing rewards to those who comply. *Shu* wants the bureaucratic administration carried out by the ruler to be under full legal supervision. It is hoped that this supervision will be able to make the rulers put aside their personal intentions and choose to make the law the main guideline for behavior. This is a reflection of Han Fei Zi's thoughts which stated, "It is dangerous for a ruler to trust others. He who trusts others can be manipulated by others" (it is dangerous for a ruler to trust others. Whoever puts his trust in others will be masterminded by others). Therefore, the ruler is just a shadowy oiler of the state machinery. *Shi* emphasizes the position of a ruler (not the ruling self) as legitimizing power and authority so that every ruling self must practice non-action (*wu wei*, 无为), emptiness, and submission.³⁷

Third, Legal Positivism abandons abstract legal philosophy, even though it secretly declares itself to be a school of legal philosophy,³⁸ so it is similar to Legalism which opposes Confucianism because of its rule by virtue. Legalism is also similar to Legal Positivism in that it tends to teach practical legal skills, as in Shang Yang's thought about "*dingfa*" (定法) requiring rewards in the form of promotion by one level, receiving an additional 1 *qing* (顷)³⁹ of land, and 9 *mu* (亩)⁴⁰ of land in his residence to everyone who succeeded in taking one enemy soldier's head.⁴¹ This is one of the legal skills emphasized in Legalism - maintaining the dignity of the law from its enemies. Legalists also tried to kill

³⁵ Kwang-Kuo Hwang, "Leadership Theory of Legalism and Its Function in Confucian Society," 2008, 11, <https://doi.org/10.1017/CBO9780511753763.006>.

³⁶ Putro, *Kritik Terhadap Paradigma Positivisme Hukum*, 55.

³⁷ Schneider, *An Introduction to Hanfei's Political Philosophy: The Way of The Ruler*, 15–16.

³⁸ Putro, *Kritik Terhadap Paradigma Positivisme Hukum*, 55.

³⁹ A unit of area equivalent to 100 mu or 6.67 hectares.

⁴⁰ A unit of area is equal to one-fifteenth of a hectare.

⁴¹ Olivia Milburn, "Headhunting in ancient China: The history of violence and denial of knowledge," *Bulletin of the School of Oriental and African Studies* 81, no. 1 (2018): 104, <https://doi.org/doi:10.1017/S0041977X17001446>.

philosophical studies, by burning Confucian books which they threatened to potentially poison people's thinking as thought by Li Si (李斯). His call for the burning of Confucian books and prohibiting historical education with the permission of Qin Shi Huang (秦始皇) as the First Emperor was what sparked conflict between the Legalists and the Confucianists at a higher level.⁴²

Fourth, Legal Positivism employs deductive reasoning (syllogisms) to reach conclusions. A parallel can be drawn to Legalism, where deductive reasoning is apparent in the Legalists' belief that all humans share a common tendency toward selfishness, leading to the enforcement of strict laws against violators (Major Premise). Considering that Han Feizi, Shang Yang, and Li Si are human beings (Minor Premise), it logically follows that all three of them should receive severe punishment if they are found to have violated the law (Conclusion). Indeed, the tragic fates of these three Legalists provide a poignant illustration. Han Feizi met his demise by ingesting poison, administered by his former student, Li Si, who accused Han Feizi of being "two-faced". Li Si brought this accusation before the King of Qin, who admired Han Feizi's writings and invited him to ask for help regarding his country which was on the verge of collapse. Han Feizi had already appeared before the King of Qin, but first Li Si complained that Han Feizi would definitely fight Qin and side with his country, namely Han. Consequently, King Qin initiated an investigation against Han Feizi, who, unable to present a defense to the king, resorted to taking poison.⁴³

Meanwhile, Li Si died horribly with a much heavier sentence because he and Zhao Gao conspired to falsify a will after Qin Shi Huang's death, then urged the eldest son, Fu Su (扶蘇), to commit suicide so that the youngest son, Hu Hai (胡亥), became the second emperor after Qin Shi Huang. Shang Yang did not escape a tragic death as a result of treating Qin Huiwen (秦惠文), who was the king of Qin, like a "commoner". Due to this, Shang Yang was accused of treason and ultimately sentenced to death.⁴⁴

Legalists adhere to the belief that despite the myriad differences among individuals, there exists an overarching commonality: the inclination to evade punishment and seek personal gain. Guided by this belief, Legalists advocate for the fundamental tenets of rule by law, which include the rigorous and

⁴² Chenglin Liu, "Confucius and The Chinese Legal Tradition," *Michigan State International Law Review* 28, no. 3 (2020): 509.

⁴³ Burton Watson, *Han Fei Zi: Basic Writing* (New York: Columbia University Press, 1893), 13–14.

⁴⁴ Budiono Kusumohamidjojo, *Sejarah Filsafat Tiongkok: Suatu Pengantar Komprehensif* (Bandung: Penerbit Yrama Widya, 2022), 204.

unwavering punishment of lawbreakers and the rewarding of those who adhere to the law.⁴⁵ Shang Yang, a prominent Legalist, expressed concern that without such measures, human beings would invariably engage in relentless pursuit of their self-interests. Han Feizi, another influential Legalist thinker, harbored deep suspicions about the inherent nature of humanity, which he regarded as inherently flawed. He went so far as to assert that even intimate relationships like those between spouses are founded on self-serving motivations. Han Feizi specifically emphasized procreation as evidence of these self-serving inclinations, contending that parents conceive children with the primary objective of securing their own future comfort, thus involving long-term calculations of profit and loss.⁴⁶

The wisdom in Legalism government is “Unification of rewards, unification of punishment, unification of education” (Chinese: 壹赏, 壹刑, 壹教).⁴⁷ Each of these three aspects has consequences which are summarized in Shang Yang's legacy of thought regarding “*dingfa*” meaning “applying objective standards to everyone” and “*yi min*” (一民) meaning “applying the principle of equality, equal taste”. First, impose a punishment for those who conceal a crime commensurate with the punishment imposed on the actual perpetrator of the crime. Second, abolish land rights and give them to soldiers according to their military success. Third, promote agriculture and prioritize agriculture over trade. Fourth, burn Confucius' books so that the influences of Confucianism disappear.⁴⁸ The tragedy of “burying books and burying Confucian scholars” during Qin Shi Huang's reign left a deep impression on the memories of Confucian followers.⁴⁹ Han Feizi is of the view that in a country where the ruler is intelligent, there is no need for books. It is enough for the law itself to teach.

The Legalist government, while drawing both criticism and admiration, found itself under scrutiny from figures like Sima Tan (司马谈), a Chinese astronomer and historian of the Western Han Dynasty. Sima Tan contended that Legalism is a one-time meaning it is no suitable for continuous application. The persistent enforcement of Legalist principles could give rise to a perception of cold-blooded, particularly through its stringent enforcement of obedience to established laws. Conversely, Sima Tan recognized and applauded the Legalists'

⁴⁵ Kusumohamidjojo, 214.

⁴⁶ Kusumohamidjojo, 225.

⁴⁷ *Read*, Text written by Shang Jun Shu “赏刑 - Rewards and Punishments”.

⁴⁸ Kusumohamidjojo, *Sejarah Filsafat Tiongkok: Suatu Pengantar Komprehensif*, 215–16.

⁴⁹ Sen Qi dan Xinyi Wang, “An Analysis of the Reason Why Confucianism Become an Orthodox Thought in the Han Dynasty,” *Advances in Social Science, Education and Humanities Research* 638 (2021): 703, <https://doi.org/10.2991/assehr.k.220110.134>.

unwavering commitment to preserving the integrity of hierarchical structures between the ruler and the ruled, ensuring that both operated within their defined responsibility.⁵⁰

Not a few readers were "stunned" by the strictness of the punishments that the Legalists determined and imposed on the violators. In fact, the final sentence was handed down to the originator of Legalism thought itself. It must be admitted that Legalism's firmness in enforcing the law has become an icon of this school of thought, as well as being the focus of criticism. However, the firmness of à la Legalist law enforcement was certainly adapted to the context when Qin Shi Huang succeeded in uniting the various kingdoms in China that were at odds with each other. Legalism is seen as a school of law that is effective in reading the signs of changing times through a sophisticatedly organized central government.⁵¹ The Great Wall of China is one of the legacies of the Legalists' glory, especially under the reign of Qin Shi Huang, although it must be admitted that the construction process claimed many victims.⁵²

In articulating the advantages of Legalism, the researchers draw upon the perspectives of Legalist thinkers. Firstly, Legalism offers a more pragmatic response to the requirements of a society in chaos,⁵³ akin to Hobbes' characterization of it as "*homo homini lupus*" (humans are wolves to other humans).⁵⁴ Instead of embroiling in dispute about justice which has so many different forms, Legalists consider that order is more appropriate to apply to humans who have an evil nature. This is also reinforced by Han Feizi's words,

"[In the past] the number of people was small, while the necessities of life were large. Therefore, people do not disagree with each other. However, nowadays people don't think of them as a big family anymore. If the number of children is five, and each child has five more children, so that before the grandfather's death, there may have been twenty-five grandchildren, the result is that the number of

⁵⁰ Paul R. Goldin, "Persistent Misconceptions About Chinese Legalism," *Journal of Chinese Philosophy* 38, no. 1 (2011): 89, <https://doi.org/10.1111/j.1540-6253.2010.01629.x>.

⁵¹ Kusumohamidjojo, *Sejarah Filsafat Tiongkok: Suatu Pengantar Komprehensif*, 214.

⁵² Dennis R.M. Campbell, "Zhou and Qin Dynasty: China" (World History Project, n.d.), 4.

⁵³ Ying-Syuan Huang dan Anila Ashgar, "The Political Initiative of Taiwan's Education for Sustainable Development: Looking Through The Lens of Chinese Legalism," *Policy Futures in Education*, 19, no. 8 (2021): 928, <https://doi.org/10.1177/1478210321995650>.

⁵⁴ Maximilian Lakitsch, "Hobbes in the Anthropocene: Reconsidering the State of Nature in Its Relevance for Governing," *Alternatives: Global, Local, Political* 46, no. 1 (2021): 6, <https://doi.org/10.1177/03043754211008677>.

people is [increasingly] greater, while the necessities of life are [increasingly] less. Meanwhile, someone has to work hard with little income. Eventually, quarrels among the crowd often occurred.”⁵⁵

These concerns led to the establishment of a comprehensive legal framework capable of meting out punishments and rewards. Secondly, Legalism places an unwavering emphasis on the profound reverence for the law, surpassing even the reverence for morality advocated by Confucianism. According to Han Feizi, morality is a virtue that cannot be implemented, which is why Legalists prioritize the Fa as the "control of social institutions".⁵⁶ The hierarchical structure of placing the law above rulers and rulers above the people exemplifies the meticulous orderliness of a nation's governance. Thirdly, by positioning the law above both rulers and subjects, Legalism ensures that rulers are not exempt from legal scrutiny. Thus, the law doesn't solely concentrate on regulating the populace through *Er Bing* (二柄) or "the two hands of the ruler," which involve the dispensation of punishment and reward,⁵⁷ but it also extends its application to rulers themselves. This is evident in historical accounts of the death sentences of Han Feizi, Shang Yang, and Li Si. These instances serve as a testament to the impartiality of the law, which applies equally to both the people and the rulers. This underscores the Legalists' unwavering commitment to Shang Yang's principles of "*dingfa*" and "*yi min*".

Meanwhile, the weaknesses of Legalism are studied through criticism of other schools of thought such as Confucianism and Daoism. Legalism does not pay attention to questions regarding the nature of reality or the purpose of human life, as dominates Confucianism, Daoism, and Mohism.⁵⁸

Criticism of Legalism is as follows; First, Confucianism as the main antithesis of Legalism believes that instead of ordering people with punishments or rewards, Confucius chose to order society through "*li*" (禮) which means "procedures, customs, rituals".⁵⁹ Confucianists believe that humans are

⁵⁵ Fung Yu-Lan, *Sejarah Filsafat Cina (Short History of Chinese Philosophy)* (Yogyakarta: Pustaka Pelajar, 2017), 207.

⁵⁶ Huang dan Ashgar, "The Political Initiative of Taiwan's Education for Sustainable Development: Looking Through the Lens of Chinese Legalism," 929.

⁵⁷ Owen Flanagan dan Jing Hu, "Han Fei Zi's Philosophical Psychology: Human Nature, Scarcity, and The Neo-Darwinian Consensus," *Journal of Chinese Philosophy* 38, no. 2 (2011): 315, <https://doi.org/10.1111/j.1540-6253.2011.01632.x>.

⁵⁸ Kusumohamidjojo, *Sejarah Filsafat Tiongkok: Suatu Pengantar Komprehensif*, 213.

⁵⁹ Kusumohamidjojo, 227.

basically good. He only needs to continue to hone that goodness through rituals and customs, as he said in *Analects of Confucius* 2.4,⁶⁰

“When I was fifteen years old, I set my heart on studying. At thirty, I had my own stand. At forty years old, I am not plagued by confusion. At fifty years old, I understood Tian's commands. At sixty years old, I heard it with obedient ears. At seventy years old, I follow my heart's desires and do not cross the line.”

Based on this quote, Confucian criticism of Legalism in this case is that human obedience to the law if it is based on threats, will not educate humans to be wise. Law enforcement full of threats with the intention of scaring people into committing violations of the law will only “delay” people from carrying out their own interests. This means that when a person does not feel directly supervised by the law, he will act disobediently. This did happen to Li Si, for example, even though he was ultimately sentenced to death. For this reason, Confucius prioritized one's self-cultivation. Instead of teaching others, it is better to teach yourself first to live a life of virtue, so that you become a “man of virtue” (君子, *Junzi*).⁶¹ Referring to *Analects of Confucius* 2.1, Confucius also alluded that, “He who administers government through his virtue may be compared to the north pole star, which maintains its place and all the stars point towards it.”

Second, Daoism, the criticism can be seen from the expression of one of the Daoists, namely Zhuang Zi in the text *Zhuang Zi* 3.1, “...Be careful of your reputation if you do good, be careful of punishment if you do evil. Take the natural middle path as your permanent path. [That way] you can protect your body, fulfill your life, care for your relatives, and live your life to the fullest.”⁶²

What Zhuang Zi wants to convey is that a person should not live too extreme or live to the extreme. This is in line with the spirit of Daoism which prioritizes balance or harmony as symbolized by *Yin-Yang* (阴阳).⁶³ The *Yin-Yang* complementarity opposition is also expressed in the *Dao De Jing*, precisely

⁶⁰ Eno, *The Analect of Confucius: An Online Teaching Translation*, 5.

⁶¹ Ge Xiaoyu, Li Xiaoming, dan Hou Yubo, “Confucian Ideal Personality Traits: Junzi Personality (Exploration of Psychological Measurement),” *Acta Psychologica Sinica* 53, no. 12 (2021): 1321, <https://doi.org/10.3724/SP.J.1041.2021.01321>.

⁶² Roberto Eno, *Zhuangzi: Inner Chapter (versi 1.1)*, 2019, 27.

⁶³ David McLachlan Jeffrey, “Ancient Daoist Wisdom and Its Associated Principle of Yin-Yang for Contemporary Classroom as Foundations for a Harmonious World,” *Philosophical Inquiry in Education* 28, no. 3 (2021): 237, <https://doi.org/10.7202/1085078ar>.

Chapter 42,⁶⁴ “Dao gives birth to One. One gives birth to Two. Two give birth to Three. Three gave birth to all creation. All things carry *Yin* but embrace *Yang*. They combine their life breath to produce harmony.”

Thus, the criticism of Legalism, if examined from the perspective of Daoism, is that Legalism is too extreme in viewing humans and in terms of enforcing the law. Humans in the view of Legalism are seen as evil, without paying attention to the good sides of humans, so that law enforcement is so extreme (black and white): if you are evil, then you are punished; if it benefits the country, then they are rewarded. In fact, *Yin-Yang* does not only stop at reading as opposition but also as complementarity, which is symbolized by the presence of a white dot on the black part and a black dot on the white part. It is also depicted with a curved center line, not straight, as a symbol of rejection of extremes.⁶⁵

Still regarding criticism of Legalism, despite the high respect that Legalists have for the law, the researchers view that in Legalism there are still quite blurred boundaries between the position of law and ruler in terms of forming laws. This means that any written law in this case is a product of the ruler. Who can guarantee that the law purely contains the interests of the ruler or the common interest if only the ruler “animates” the law through his power and the people are only tasked with obeying it?

“*Fa*” is the main principle in Legalism. In this “*fa*” lies the dignity of the law and the legal throne with its legitimate power. The coercive connotation of “*fa*” is strengthened by the orientation of criminal law towards administering punishment (*xing*).⁶⁶ However, the meaning of “*fa*” is not limited to “law”. More broadly than that, the meaning of “*fa*” according to Han Fei Zi is “the art of government”.⁶⁷ This can be seen in Shang Yang's (衛鞅) thoughts as outlined in “The Book of Lord Shang” Chapter 5,⁶⁸

“Punishment begets coercion; coercion begets power; power begets fear; fear begets virtue; and virtue is born from punishment. Consequently, when punishment is significant, rewards must be sparing; when rewards are meager, punishments must be severe. People have their desires and aversions, coveting the six indulgences while shunning the four hardships. Embracing the six

⁶⁴ Chu Yi dan Li, “Yin Yang: A New Perspective in Understanding the Development of Religion in Contemporary China,” *Cultural and Religious Studies* 2, no. 2 (2014): 79.

⁶⁵ Yi dan Li, 81.

⁶⁶ Chad Hansen, “Fa (Standards: Laws) and Meaning Changes in Chinese Philosophy,” *Philosophy East and West* 44, no. 3 (1994): 454–55, <https://doi.org/10.2307/1399736>.

⁶⁷ Lars T. Helliksen, “Autocratic Bureaucratism: Han Fei’s Ancient Chinese Strategies of Governance as Contrasted with Machiavelli’s Political Philosophy,” 2002, 23.

⁶⁸ Pines Yuri, *The Book of Lord Shang* (New York: Columbia University Press, 2017), 139.

excesses, the country becomes weak; while enduring the four hardships fortifies the army. Hence, a Just Monarch employs punishment nine times and rewards only once. When He punishes nine times, the sway of the six excesses is curtailed; through one reward, the four hardships are imposed. By quelling the allure of the six excesses, new wrongdoers arise in the state; by enforcing the four hardships, the army stands unrivaled.”

Shang Yang's concept of the "six excesses," also known as the "six parasites," encompasses (1) "year-end excesses," which lead to farmers becoming lethargic in their work; (2) "food surplus," causing farmers to indulge excessively at year-end; (3) "excess of beauty," where farmers are beguiled by the allure of luxurious clothing and indulgent meals; (4) "excessive preferences," ensnaring traders with an infatuation for luxury goods; (5) "excessive aspirations," which foster embezzlement among officials; and (6) "excessive behavior," which can incite officials to engage in nefarious actions or misconduct. Conversely, the "four hardships" entail: (1) agriculture; (2) participating in warfare; (3) valuing intellect and collectively enforcing punishment; and (4) punishment.⁶⁹

Law within the framework of Legalism rejects the elements of morality or virtue, thus making it objective. This objective law is the standard for governing the people and is a method or technique for controlling ministers and officials in order to keep the legal position safe, well-ordered, rich, and full of power.⁷⁰

The tendency to impose criminal penalties in Legalism is based on the Legalists' assumption that humans are evil.⁷¹ Therefore, the focus of law in Legalism is the provision of law or rewards or known as "*er bing*" (二柄).⁷² This is based on the thought of Shang Yang's belief that "If people live in humiliation, they value rank; if they are weak, they respect position; and if they are poor, they appreciate gifts."⁷³

The Legalists' distrust of human nature is expressed in laws that are very firm and indiscriminate in their enforcement. This is in accordance with the Chinese character (*hanzi*) "*fa*" which contains the element of water, precisely the punishment is applied evenly as water flows regardless of place. This is the

⁶⁹ Shizan Yuan, "The Book of Lord Shang and Chinese Authoritarianism" (n.d.), 9.

⁷⁰ Ján Ďurica, "Han Fei: His Thought and Work and the Problem of Inconsistencies," *SOS* 13, no. 1 (2014): 68.

⁷¹ Cooner Peta, "Confucianism or Legalism? A Grand Debate on Human Nature and Economic Thought," *E-International Relations*, 2018, 2.

⁷² W.K. Liao, *The Complete Works of Han Fei Tzu: A Classic of Chinese Legalism* (London: Arthur Probsthain, 1939), 46.

⁷³ Liao, 46.

spirit of "equality before the law" in Legalism.⁷⁴ Apart from that, "fa" also contains the spirit of legal certainty. This legal certainty is what justifies the law as having the authority to occupy a higher position than the people and at the same time legitimizes the giving of punishments or rewards to those who are deemed worthy of receiving them.⁷⁵ In short, no matter how harsh the law is, it is the law.⁷⁶ This is in line with the thoughts of Hen Fei Zi (韓非子) in his text Chapter 49 "Five Pests" about law,⁷⁷

"Humanity may make someone shed tears and be reluctant to apply punishment, but the law makes it clear that such punishment must be applied. The ancient kings let the law reign supreme and did not give in to their tearful yearnings. It is therefore clear that humanity cannot be used to achieve order in the state..."

"Li" dan "fa" as the Legal Basis of Agreement

One of the spirits of traditional Chinese law is humanism which is derived from the teachings of Confucianism, namely virtue, truth, ritual, wisdom, and belief (仁义礼智信). Virtue (仁), which is often also interpreted as "love", is at the heart of all of Confucius' teachings. This means that whether it is truth, ritual, wisdom, or belief, it is based on love. This love for fellow human beings is what underlies the Confucian ethic, "Do not do to others what you would not want done to you" (己所不欲，勿施于人).⁷⁸

However, another spirit that animates traditional Chinese law is rule by law (依法治国) which is promoted by the Legalists. They believe that it is in the law that all disputes find their solution and that the nobility should enjoy no more legal privileges than others. Everyone should be equal before the law, no matter what their wealth or power. In short, "there is no hierarchical distinction before the law" (刑无等级).⁷⁹

These two schools of thought have different emphases, where Confucianism prioritizes love (including trust), while Legalism does not provide space for aspects of morality that are considered unrealistic, including humanism. The different emphasis in the two schools that animate traditional Chinese law has implications for the basis of agreements: apart from being based

⁷⁴ Lachlan Thomas-Walters, "The Complexities of Translating Legal Terms: Understanding Fa (法) and the Chinese Concept of Law," *Melbourne Asia Review*, 2021, 3.

⁷⁵ Thomas-Walters, 5.

⁷⁶ J.J.L. Duyvendak, *The Book of Lord Shang* (London: Arthur Probsthain, 1928), 52.

⁷⁷ Watson, *Han Fei Zi: Basic Writing*, 88.

⁷⁸ Yigong, "Chinese Legal Tradition and Its Modernization," 463.

⁷⁹ Yigong, 464–65.

on trust (which is emphasized on "li" in Confucianism), it still prioritizes legal certainty (which is emphasized on "fa" in Legalism).

The CLC does not recognize the principle of "freedom of contract" because it is considered contrary to Confucianism. This is based on the view that this principle has a spirit of individualism and freedom which is incompatible with Confucianism. The second reason is that, since the founding of the People's Republic of China in 1949, the economy has been planned centrally and strictly, making it impossible for individuals or business entities to have free access to the market. Economic plans and policies must play an important role at that time. Therefore, it is impossible to recognize "freedom of contract" as a fundamental principle in a centrally planned economic system. Finally, freedom of contract has long been criticized in China as a capitalist concept that any socialist system should avoid. In China, it has long been believed that the "ideology of individualism" marks the main difference between capitalism and socialism. This belief continues to influence minds even in China today. This is why the CLC uses the idea of "voluntariness" and not "freedom of contract" in the context of contract formation, which reflects the transformation from a centrally planned economy to a market economy, and takes into account the goal of developing a socialist market economy.⁸⁰

Basically, the principle of "voluntariness" contains two elements: (1) the right of the parties to a contract to enter into a contract voluntarily and within the limits of the law; (2) prohibition against other people from unlawfully interfering with the contract.

Apart from the principle of "voluntariness", another aspect that is no less important in Chinese contract law is the "Socio-economic" aspect. "Socio-economic" literally means involving social and economic factors. This term is often used in areas of law that are closely related to social issues, such as employment law. It has been shown above that the CLC exhibits strong Chinese characteristics, although it transplants many concepts and provisions from Western norms and international agreements. Because law is generally embedded in culture, contract law reflects the social life of a particular society. Implicitly, the parallel emphasis of these two schools can be seen in several articles of Chinese Contract Law (CCL):

⁸⁰ Junwei Fu, "Towards a Social Value Convergence: a Comparative Study of Fundamental Principles of Contract Law in the EU and China," Oxford University Comparative Law Forum, 2009, <https://ouclf.law.ox.ac.uk/towards-a-social-value-convergence-a-comparative-study-of-fundamental-principles-of-contract-law-in-the-eu-and-china/>. See also Dolot Alhasni Bakung, Thanh Nga Pham, and Mohamad Hidayat Muhtar. "Disparity in the Doctrine of Promissory Estoppel between Indonesia, the Philippines and the United Kingdom." *Journal of Law and Legal Reform* 5, no. 1 (2024): 267-304.

First, Article 3 of Chinese Contract Law – "The parties to a contract have the same legal status, and neither party can impose its will on the other party." The influence of "*li*" in Confucianism in this article can be seen in the sound of the article "... neither party can impose its will on another party.", which is in accordance with the spirit of "*li*" regarding the importance of balance hinted at by Confucius in Analects 12.2, "... do not commit acts contrary to decency." Meanwhile, the influence of "*fa*" in Legalism in this article can be seen in its emphasis on the same position or status in the eyes of the law when both parties involve themselves in a contract.

Second, Article 6 of Chinese Contract Law, - "The parties are obliged to pay attention to the principle of good faith in exercising their rights and fulfilling their obligations." The emphasis on the principle of good faith is in accordance with the principle of propriety which is the core of "*li*". Meanwhile, the influence of "*fa*" can be seen in the use of the phrase "must". This phrase implies compliance with the law as a necessity.

Third, Article 7 of Chinese Contract Law – "Parties in making and fulfilling contracts must comply with laws and administrative regulations and respect social ethics, and must not disturb the socio-economic order or harm social and public interests." The order not to disturb the social, economic order, or harm social and public interests is the essence of "*li*" itself. Meanwhile, the influence of "*fa*" can be seen in how laws and administrative regulations "supervise" the making and fulfillment of a contract.

Fourth, Article 10 Chinese Contract Law – "Parties in making a contract can use written, oral or other forms." In this case, the influence of "*li*" and "*fa*" is in balance, precisely, giving space for verbal contracts also opens up space for trust as the basis of a contract. Likewise, contracts in written form fulfill the need for the principle of legal certainty which is one of the essences of "*fa*".

Fifth, Article 107 Chinese Contract Law – "If one of the parties fails to carry out contractual obligations or if performance is not in accordance with the agreement, he must be responsible for breach of contract by continuing performance, taking corrective action, paying compensation, and so on." The order to take action to continue the performance, make improvements, and pay compensation is nothing more than a restorative effort to restore the balance disturbed by the failure of one of the parties to the contract to carry out its obligations according to the agreement. This corresponds to the essence of "*li*" in Confucianism. However, similar commands have another reading from the perspective of "*fa*". To be precise, continuing performance and remedial action to pay compensation is another form of "punishment" as a consequence of breach of contract, considering that, according to the principle of *pacta sunt servanda*: every agreement made legally applies as law for those involved in it.

The concepts of "li" and "fa" in contractual agreements are evident in the transactional and debt-related practices of the residents of Sewan Village, Tangerang, a predominantly trading community near Jakarta. For these traders, mutual trust is fundamental to the trader-customer relationship. Disputes over rights due to defaults are considered taboo and detrimental to long-term relationship harmony. Consequently, they often opt for deliberation to resolve conflicts, with many traders even conceding, viewing customer defaults as a common aspect of trade. Defaults frequently occur due to circumstances such as a family member's illness necessitating medical expenses or a downturn in market conditions that hinders income generation needed to repay debts. In this context, "li" from Confucianism underpins the contractual relationships between traders and customers in the form of mutual trust that the people of Sewan Village are unaware of.

Meanwhile, the value of "fa" can be seen from how traders rely on notes to indicate the existence of a contractual relationship between the two parties, making it easier for them when they want to collect debt payments from the person concerned. However, some people in Sewan Village apply a buy-and-take system, requiring immediate or next-day cash payments for cakes taken by retailers. Thus, cakes that have been taken by a cake retailer cannot be returned to them if there are unsold cakes. This practice reflects the Legalist influence through "fa" (law), establishing order and legal certainty through record-keeping, ensuring that all parties in the contractual relationship are aware of their rights and obligations.

In conclusion, "li" and "fa" operate in harmony and strengthen each other in contractual relationships. However, over time, "fa" has become more dominant as a measure against defaults, indicating a decline in mutual trust. Increasingly, disputes are being taken to court, a practice that contradicts the Confucian value of "li," which considers such actions inappropriate. The rise in court disputes reflects a growing demand in modern society for legal certainty to ensure justice.

The Influence of “Li” and “Fa” on the Chinese *Peranakan* Community in Indonesia

The influence of Confucianism is not only in mainland China but also in Indonesia. Even though the distance between China and Indonesia is recorded at 4,198 km, the influence of Chinese legal culture is still felt, including in the field of trade. The Chinese people migrated to the archipelago around the 17th

century.⁸¹ Even though the Chinese Peranakan⁸² have mixed with various tribes in Indonesia such as Javanese, Malay, Bugis, Madurese, and Balinese, the emotional connection with Chinese culture is still strong. In fact, whatever belief or religion a Chinese person is, he will be careful and still treat the teachings of Confucius with respect.⁸³

As an illustration, in trade relations in Sewan Village, Tangerang⁸⁴, in South Kalimantan, Belitung, Riau Islands, to Bangka, and other areas in Indonesia in general, the Chinese Peranakan community has a very strong "li" influence where they emphasize mutual trust among business partners. This is shown in business relationships, they do not enter into written agreements. However, that doesn't mean that they don't have records. They emphasize mutual trust and therefore notes play an important role in reminding them of the rights and obligations of each party. They use notes in the form of notepads, and notes on sheets of paper, and some use receipts as proof of payment. These notes function as a reminder and binder between the parties involved.⁸⁵

Traditional traders who sell rice, toiletries, children's toys, and so on initially pay for the goods in advance. However, after getting to know and trust each other, they just need to record each other's items and their prices, because payment is made later.⁸⁶

In their trade relationships, they endeavor to uphold a harmonious and orderly environment, emphasizing strong moral values centered around honesty and trust. When asked whether they possess a deep comprehension of Confucius's teachings, they often assert that their understanding is rooted in the ancestral traditions passed down within their families.⁸⁷ While they may acknowledge not having a comprehensive grasp of Confucius's teachings, they unconsciously integrate fundamental Confucian values into their daily lives. These values include the commitment to honesty and trust, respect for parents, and more, which they naturally apply in their everyday interactions.⁸⁸

⁸¹ Nimas Yuhyih Wakindiyah, "Migrasi Etnis Tionghoa ke Indonesia: Analisis Peran dan Kontribusi Komunitas Tionghoa dalam Pembentukan Identitas Nasional Indonesia," *Ranah Sejarah: Journal of Historical Science and Education* 1, no. 2 (2023): 30.

⁸² Chinese Peranakan are the descendants of Chinese immigrants who since the end of the 16th century have lived in the archipelago (now Indonesia), including British Malaya (now West Malaysia and Singapore)

⁸³ Kusumohamidjojo, *Sejarah Filsafat Tiongkok: Suatu Pengantar Komprehensif*, 86.

⁸⁴ Wasitaatmadja, *Etnografi Hukum: Budaya Hukum Masyarakat Cina Jelata*, 174.

⁸⁵ Provis, "Business Ethics, Confucianism and the Different Faces of Ritual," 191–204.

⁸⁶ Provis, 191–204.

⁸⁷ Yong Li, "Confucian Philosophy of Family: Interpretation or Justification," *Asian Philosophy* 32, no. 2 (2022): 152–63, <https://doi.org/10.1080/09552367.2022.2024346>.

⁸⁸ Wasitaatmadja, *Etnografi Hukum: Budaya Hukum Masyarakat Cina Jelata*, 221.

In their business relationships, they prioritize the cultivation of mutual trust, recognizing that damaging the trust of their business partners is tantamount to tarnishing the reputation and honor of their community. This means that if an individual fails to uphold the trust of their business partners, for instance, by engaging in deceitful practices, they are likely to face social sanctions within the business community. Such sanctions can lead to the erosion of long-term economic benefits. Additionally, when disputes arise, they typically steer clear of legal proceedings. Resorting to litigation is viewed as a taboo practice, as it can besmirch an individual's reputation and undermine their dignity. Consequently, in the event of a dispute, they strive to resolve it extrajudicially through methods like negotiation, reconciliation, and mediation⁸⁹ all guided by the value of restoring harmony, in accordance with the principles of Yin-Yang philosophy (阴阳).⁹⁰

However, legal culture is not a static building, there is always a shift in values, especially in big cities where old values are starting to be pushed aside by the pace of modernity and are being merged into capitalism.⁹¹ For example, in early 2023, the Chinese Peranakan community in Jakarta was shaken. A company took the Amurva Bhumi Vihara temple to court. This monastery is a place of worship for Buddhists, Confucians, and Taoists, and was founded in 1925. The owner of the company is a Peranakan Chinese and is still young. Meanwhile, the temple administrators are elderly Chinese Peranakans.⁹² The company claims that the 462 m² road access to the monastery is part of the company's property. South Jakarta District Court Decision Number 761/Pdt.G/2022/PN.Jkt.Sel. win the company. The court's decision stated that Defendant Vihara Amurva Bhumi had committed an unlawful act against the Plaintiff so that the place of worship was sentenced to have to pay rent for the

⁸⁹ Anne Judith Fariana, "Talking Disputes into Harmony': China Approaches International Commercial Arbitration," *American University International Law Review* 4, no. 1 (1989): 140–41.

⁹⁰ Wasitaatmadja, *Etnografi Hukum: Budaya Hukum Masyarakat Cina Jelata*, 220–22. Read: Yong Yang, Youqing Fan, dan Jianfeng Jia, "The Eastern Construction of Paradoxical Cognitive Framework and Its Antecedents: A Yin-Yang Balancing Perspective," *Chinese Management Studies* 16, no. 5 (2022): 1081-1107.

⁹¹ Usman, "Confucianism Ethic and the Spirit of Capitalism," *DINIKA: Academic Journal of Islamic Studies* 1, no. 2 (2016): 177–78. Read also Harriet T. Zurndorfer, "Confusing Confucianism With Capitalism: Culture as Impediment and/or Stimulus To Chinese Economic Development," London School of Economics and Political Science, accessed on 12 September 2023, <https://www.lse.ac.uk/Economic-History/Assets/Documents/Research/GEHN/GEHNConferences/conf3/Conf3-HZurndorfer.pdf>.

⁹² The administrators of the Amurva Bhumi Vihara 60-75 years. Interview, August 2023

road access to the monastery amounting to Rp. 1,386,000,000 (one billion three hundred and eighty-six million rupiah). In fact, the Panel of Judges granted forced money (*dwangsom*) of Rp. 200,000 (two hundred thousand rupiahs) for each delay in the Defendant (in this decision, Amurva Bhumi Vihara) implementing the decision which has permanent legal force.⁹³

The South Jakarta District Court's ruling against the monastery triggered a vehement response from the Chinese Peranakan community. Numerous private television networks, owned by members of the Chinese Peranakan community, extensively covered the case, leading it to go viral. This, in turn, resulted in companies embroiled in disputes with the monastery facing severe criticism from netizens, who deemed their actions as uncivilized. Advocates from the Chinese Peranakan community rallied to support the monastery without seeking compensation. They believe that the company owners who sued the monastery are ignoring the noble values of Confucius.⁹⁴

Conclusion

The evolution of Confucianism and Legalism has played a pivotal role in shaping the trajectory of legal development in China, including the realm of contract law. Initially reliant on customs, Chinese contract law has transitioned toward modern, codified legal frameworks. However, these two schools of thought diverge in their emphases. Confucianism places a strong emphasis on the aspect of trust, deeply rooted in the principle of "li," while Legalism prioritizes the aspect of legal certainty, grounded in the principle of "fa." These distinct philosophical foundations exert notable influence on contract law, particularly concerning the principles underpinning the formation and fulfillment of contracts.

In Chinese Contract Law, the interplay between the "li" and "fa" principles underscores a dynamic legal culture. The "li" principle emphasizes propriety, balance, trust, and good faith, while the "fa" principle focuses on legal

⁹³ Novianti Siswandini, "Akses Masuk Vihara Amurva Bhumi Terancam Sengketa Tanah dengan PT. Danataru Jaya, Pengurus: Itu Tanah Hibah Pemprov DKI," TV One News, 2023, <https://www.tvonenews.com/berita/128629-akses-masuk-vihara-amurva-bhumi-terancam-sengketa-tanah-dengan-pt-danataru-jaya-pengurus-itu-tanah-hibah-pemprov-dki>.

⁹⁴ See Novianti Siswandini, "Akses Masuk Vihara Amurva Bhumi Terancam Sengketa Tanah dengan PT Danataru Jaya, Pengurus: Itu Tanah Hibah Pemprov DKI", *Online News TVOne*, retrieved from <https://www.tvonenews.com/berita/128629-akses-masuk-vihara-amurva-bhumi-terancam-sengketa-tanah-dengan-pt-danataru-jaya-pengurus-itu-tanah-hibah-pemprov-dki>

certainty, supervisory roles, equality, and accountability for violations. This duality reflects a nuanced understanding of law that avoids rigid black-and-white distinctions. Much like the Yin-Yang symbol, which illustrates the coexistence of opposites—where each side contains a seed of the other—Chinese legal philosophy embraces complexity and fluidity, rejecting simplistic extremes. This holistic perspective enriches the practice of law, fostering a system that values both ethical principles and legal rigor.

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