

# THE DAO AGAINST THE TYRANT: THE LIMITATION OF POWER IN THE POLITICAL THOUGHT OF ANCIENT CHINA

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## I. Introduction

THE EFFECTIVE LIMITATION OF POWER is a central theme in classical liberal and libertarian political philosophy. Scholars in this tradition believe that it is necessary to establish limits and restrictions on power, and to keep it within narrow bounds in order to avoid tyranny and oppression. The historical origins of this concern can be drawn from a long tradition in ancient and medieval thought in the West. If we look for analogues of this tradition outside the history of Western thought, however, the political philosophy of early China does not leap to mind as a likely source. As is generally emphasized, ancient Chinese thinkers did not develop any conception of individual rights and most were preoccupied with the achievement of a unified government under the direction of a virtuous monarch, which they saw as the most important element for the establishment of order and prosperity.

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However, in times fraught with political turmoil, war, and the centralization of power, and as a result of debates between diverse schools of thought that dealt with political and social phenomena, Chinese philosophy did develop some ideas about the necessity of the limitation of power. In these ancient works we find, for instance, arguments supporting low taxation and the reduction of government expenditure, along with condemnation of expansionist war and defense of the right of resistance against tyrannical government, among others. Libertarian scholarship can benefit from the knowledge and analysis of these arguments, which have been recognized by Murray Rothbard, Bruno Leoni, and Roderick Long.<sup>1</sup> The purpose of this paper is to describe and study ideas about the limitation of power that were defended by the different schools of ancient Chinese thought, and further, to suggest some reasons why they failed to prevent the emergence of an authoritarian imperial government in early China.

Since it is important to place the ideas of early Chinese philosophers in their proper historical context, Section II of the paper gives a brief account of Chinese ancient history. Section III describes the doctrine of the Mandate of Heaven, an early development of Chinese political philosophy that justified revolt against an oppressive government and influenced the ideas of later thinkers. Sections IV to VII examine the arguments of the schools that are more favorable to the limitation of power. Section IV presents the reasons Confucius adduces for (a) the need for a government based on ethical principles, (b) the reduction of taxes, (c) the importance of custom and tradition as opposed to coercive legislation, and (d) the possibility of disobeying the king when he behaves inadequately. Mencius develops many of these principles and advances a strong case for the right of resistance and even tyrannicide. This section concludes by arguing that Xunzi introduced certain novelties that led to the erosion of the Confucian principles of government. Section V then explains that Mozi's transcendent foundation of moral principles, his call for the reduction of government spending, and his rejection of aggressive war based on the defense of private property are limits to the king's power. They are, however, undermined by his resolute support for an authoritarian government as the only way to escape war and chaos. Section VI discusses the controversial topic of Daoist anarchism and concludes that, while it is true that Laozi and Zhuangzi display a profound

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<sup>1</sup> See Murray N. Rothbard, "Concepts of the Role of Intellectuals in Social Change Toward Laissez Faire", *The Journal of Libertarian Studies*, Vol. 9, No. 2, 1990, pp. 43-67; Bruno Leoni, "Two Views of Liberty, Occidental and Oriental (?)", *Libertarian Papers*, Vol. 1, 15, 2009; Roderick T. Long, "Austro-Libertarian Themes in Early Confucianism". *Journal of Libertarian Studies*, Vol. 17, No. 3, 2003, pp. 35-62.

distrust of government, their rejection of purposive action leads them to discard any conscious measure directed at the limitation of power. Section VII claims that the Huang-Lao school presents a political philosophy with numerous similarities to classical liberalism, such as the defense of limited government under the rule of law and the right of resistance as the last resort in checking the power of the ruler. Section VIII then examines the ideas of the Legalist school, which championed unlimited monarchical government and helped the first king of the Qin dynasty succeed in his quest to unify China. Finally, section IX concludes some suggestions as to why important reasons for the limitation of power failed to prevent the rise of the authoritarian government of the Qin dynasty.

## II. China during the Periods of Spring and Autumn (770-476 BC) and Warring States (475-221 BC)

According to Chinese classical historiography, at the beginning of Chinese civilization there were five legendary emperors. The last of them, Emperor Yu, gave way to the first dynasty when his son was spontaneously appointed his successor by the people. This would be the first of the Three Dynasties—the Xia, Shang, and Zhou—that Chinese tradition dates between 2000 and 221 BC.<sup>2</sup> Each reigned for a prolonged period of time, but their leaders suffered progressive moral degeneration, which led to tyrannous kings who were finally overthrown and replaced by the new dynasty. Thus, the Xia ended with the reign of Jie, and was superseded by the Shang. This dynasty was then replaced by the Zhou, after overthrowing the king Di Xin.<sup>3</sup>

The Zhou dynasty is divided in turn into two periods. The first lasted from 1045 to 771 BC where a feudal-type sociopolitical system was established. The king was the center of political and religious loyalties, and ruled from the capital, surrounded by a great number of territories controlled by feudal lords. However, this was not a centralized political system. The feudal rulers paid tribute and offered military services to the Zhou king, but also enjoyed considerable autonomy. This system, unified around the king's religious authority, was later idealized by thinkers such as Confucius.

The second period began in 770 BC, when hostile tribes executed the king and the capital then moved east (which is why this period is also known

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<sup>2</sup> For a study of this period see Dolors Folch, *La construcción de China: el período formativo de la civilización china* (Barcelona: Ediciones Península, 2002).

<sup>3</sup> This monarch is also known as tyrant Zhou. However, this name, written with an entirely different character (紂), is not related to the Zhou (周) dynasty.

as Zhou of the East). It ended with the establishment of the Qin dynasty in 221 BC. This era is also divided in two: the first period is known as the Spring and Autumn (770-476 BC) and the second as the Warring States (475-221 BC). Both periods witnessed a steady disintegration of the feudal system. In addition to the weakening of the Zhou king—who eventually held no more than residual significance—there were numerous feudal lords who lost their lands and status due to power struggles within states and among branches of the ruling houses. There was also ruthless competition between states, which multiplied laws and increased taxes while warring continuously to expand their territory. At the end of this process, a single state, the Qin, stood victorious. It annexed the remaining territories to itself, and its first emperor, Shi Huangdi, formally abolished the feudal system.<sup>4</sup>

While the feudal system was in place, the lords used a hereditary system of civil servants directly related to the nobility for government work. But with the disintegration of feudalism, some of the former noblemen had to find a different form of livelihood. According to Feng Youlan, the Chinese schools of thought arose from these old nobles who had lost their status and became private teachers or advisers.<sup>5</sup>

### III. The Doctrine of the Mandate of Heaven

When the Zhou overthrew the last representative of the Shang and established a new dynasty, they justified their action by invoking the Mandate of Heaven. According to this mandate, a natural order of the universe existed, derived from a celestial and sovereign god (Tian 天, Heaven). The sociopolitical order should reflect this natural order. The last sovereign of the Shang, after a long process of moral decline, violated the principles of this cosmo-political order by not obeying the will of Heaven, placing an excessive confidence in the power of his royal ancestors, and violently oppressing the population. As a result, the Zhou believed it was legitimate to overthrow the Shang king because he had become a tyrant and had lost Heaven's blessing.

The Zhou were the new recipients of the Mandate of Heaven because their family had gradually acquired the collective virtue (de 德) necessary to replace the old dynasty, and also because they enjoyed the support of the people, as well as many noble families. This modification in celestial will

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<sup>4</sup> See Victoria Tin-Bor Hui, *War and State Formation in Ancient China and Early Modern Europe* (New York: Cambridge University Press, 2005) pp. 54-108.

<sup>5</sup> Feng Youlan (Fung Yu-lan), *A Short History of Chinese Philosophy* (New York: Free Press, 1948) pp. 36-37.

could be discerned by observing astronomical shifts and changes, such as special planetary alignments.

The *Book of Documents* (*Shujing* 書經), a collection of memories from the mythical times of the five emperors to the first rulers of the Zhou Dynasty, claims that the Shang ruler lost the Mandate of Heaven because of his depravity. For example, in the speech named “The Great Declaration” king Wu, seeking support for his campaign against the Shang, sets forth his reasons for rebellion in the following manner:

Heaven and earth is the parent of all creatures; and of all creatures man is the most highly endowed. The sincerely intelligent (among men) becomes the great sovereign; and the great sovereign is the parent of the people. But now, Shâu, the king of Shang, does not reverence Heaven above, and inflicts calamities on the people below. Abandoned to drunkenness and reckless in lust, he has dared to exercise cruel oppression. He has extended the punishment of offenders to all their relatives. He has put men into offices on the hereditary principle. He has made it his pursuit to have palaces, towers, pavilions, embankments, ponds, and all other extravagances, to the most painful injury of you, the myriads of the people. He has burned and roasted the loyal and good. He has ripped up pregnant women. Great Heaven was moved with indignation, and charged my deceased father Wăn to display its terrors; but (he died) before the work was completed...The iniquity of Shang is full. Heaven gives command to destroy it. (*Shujing*, “The Great Declaration I”, 泰誓上)<sup>6</sup>

Although until recently the consensus among specialists was that this doctrine was mainly an original development by the Zhou rulers to justify what would otherwise be considered an usurpation of political power, there are authors who believe that a continuity exists between the Mandate of Heaven of the Zhou and the prevalent ideas in the time of the Shang dynasty.<sup>7</sup> In any case, the doctrine of the Mandate of Heaven had deep

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<sup>6</sup> *The Sacred books of China: The texts of Confucianism. Part I The Shu King, the Religious Portions of the Shi King, the Hsiao King, vol 3 of The Sacred Books of the East*, trans. James Legge (Oxford: Clarendon Press, 1879) p.125-126. Many scholars believe that this section of the book is a forgery that did not belong to the original text. Nevertheless, it is an accurate and most colourful exposition of the doctrine. The reader should also be cautioned that the authorship of many of the ancient books discussed in this paper remains controversial.

<sup>7</sup> For an example of the idea that the Mandate of Heaven was an innovation, see Herrlee G. Creel, *Chinese Thought: from Confucius to Mao Tse-tung* (London: The University of

political implications. It was not only a legitimizing principle of Zhou rule: it also introduced the possibility that the Zhou might be overthrown by another family if they did not fulfill their religious and political obligations. The doctrine of the Mandate of Heaven was therefore an important justification for fighting a tyrannical government, and it would influence the political thought of many schools.<sup>8</sup>

#### IV. The Confucian School

##### *Confucius*

Confucius is the main philosopher of the Ru (儒, men of letters) school of Chinese thought, and his influence in Chinese culture and civilization is enormous. Nevertheless, he enjoyed relatively little influence during while alive. His life is usually dated 551-479 BC, at the end of the Spring and Autumn period, and it was during this time of great social change and political instability that he spread his teachings. His main objective was not philosophical reflection in itself, but political practice. Confucius aimed at influencing contemporary politics and for that, he traveled from one

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Chicago Press, 1953) p. 15. On the other hand, the historian of religions, Mircea Eliade, says that we find the roots of this particular doctrine in the theology of the Shang period. Mircea Eliade, *A History of Religious Ideas, Vol. 2, From Gautama Buddha to the Triumph of Christianity*, trans. by Willard R. Trask (Chicago: University of Chicago Press, 1982) pp. 3-44. See also David W. Pankenier, who states that: “In view of the evidence of a fundamental consistency between late Zhou cosmological conceptions and their second millennium BC antecedents, the Zhou claim to have re-established the continuity of a cosmopolitical tradition that took its cues from Heaven and the natural order appears well founded”. D.W Pankenier, “The Cosmopolitical background of Heaven’s Mandate”, *Early China* 20, 1995, p. 176.

<sup>8</sup> This influence is also seen in Chinese military thought, especially in the book known as *The Six Secret Teachings*, which is the only military classic written from the revolutionary perspective of the Zhou dynasty: “*The Six Secret Teachings* purportedly records the Tai Kung’s political advice and tactical instructions to Kings Wen and Wu of the Chou dynasty in the eleventh century B.C. Although the present book evidently dates from the Warring States period...some scholars believe it reflects the tradition of Ch’i military studies and therefore preserves at least vestiges of the oldest strata of Chinese military thought.” Ralph D. Sawyer, *The Seven Military Classics of Ancient China* (New York: Basic Books, 2007), p. 23. This ancient book not only discusses strategy and tactics but also proposes policy measures such as the reduction of government spending and the imposition of light taxes.

kingdom to the next offering governors his counsel in the hope of putting his ideals into practice. He believed he was destined to restore the model of society identified with the first governors of the Zhou dynasty, and not until the end of his days did he sadly admit he would never be able to fulfill this task.

Confucius' philosophy is revealed through conversations with his disciples, collected in the *Analects*. In his political philosophy we find, a "clear and liberal idea of the unsurpassable limits of government in any desirable society."<sup>9</sup> In the first place Confucius believed the king should behave in an ethical manner. In doing so he would promote imitation of virtuous conduct by the rest of the people:

*To 'govern' means to be 'correct'. If you set an example by being correct yourself, who will dare to be incorrect? (Analects 12.17)*<sup>10</sup>

To behave in an upright way the king should adopt a series of virtues, the most important of which is what is usually translated as benevolence, goodness, or humanity (ren 仁). This virtue embraces a complex web of moral obligations of man toward himself and others. Although Confucius does not give a systematic description of this virtue, in the diverse dialogues with his disciples, he explains attitudes and behavior which lead to achieving benevolence. For example, in one place, Confucius tells us to care for others.<sup>11</sup> In another he states that he who can, should practice reverence, magnanimity, kindness, trustworthiness, and diligence, and that this will increase goodness in the world.<sup>12</sup>

But, in order to allow for the imitation of this virtuous conduct, the first task of the king is to enrich the population through a policy of noninterference. As Benjamin Schwartz puts it, for Confucius the people "can become open to moral influence only when the heavy burden of oppression has been lifted from their shoulders."<sup>13</sup> This means that the king should, among other things, limit his expenses and reduce the burden of taxation:

Duke Ai said to Master You, "The harvest was poor and I cannot satisfy my needs. What should I do?"

<sup>9</sup> Leoni, "Two Views of Liberty, Occidental and Oriental (?)", p. 10.

<sup>10</sup> Confucius, *Confucius Analects: with selections from traditional commentaries*, translated by E.G Slingerland (Indianapolis: Hackett Publishing, 2003) p. 133.

<sup>11</sup> Confucius, *Confucius Analects*, p. 136.

<sup>12</sup> Confucius, *Confucius Analects*, p. 202.

<sup>13</sup> Schwartz, *The World of Thought in Ancient China*, p. 107.

Master You said, “Why do you not try taxing the people one part in ten?”

“I am currently taxing them two parts in ten, and even so I cannot satisfy my needs. How could reducing the tax to one part in ten help?”

Master You answered, “If the common people’s needs are satisfied, how could their lord be lacking? If the common people’s needs are not satisfied, how can their lord be content?” (*Analects* 12.9)<sup>14</sup>

Confucius was also quite skeptical with respect to the positive law enacted by government (fa 法) and considered rites (li 禮) a superior mechanism of social organization.<sup>15</sup> While the former was an instrument used by rulers to achieve their goals through the application of punishment and reward, rites consisted of a series of guided ceremonial acts that expressed moral principles and traditional social obligations as a whole. This distinction is very similar to what Friedrich Hayek establishes between ‘taxis’ and ‘cosmos.’ The first concept refers to specific orders directed at the achievement of specific objectives, deliberately enforced and is common to organizations. The second refers to a spontaneous order which has arisen evolutionarily, and not designed by any human being. This spontaneous order does not have to have a specific objective, but allows for the growth of social life.<sup>16</sup>

<sup>14</sup> Confucius, *Confucius Analects*, p. 129.

<sup>15</sup> “This ‘positive law’...is undoubtedly represented in Chinese thought by the term fa, just as the customs of society based on ethics (e.g. that men do not normally and should not, murder their parents) or on ancient taboos (e.g. incest), are represented by li, a term which, however, includes all kinds of ceremonial and sacrificial observances...Confucian jurists exalted ancient custom, arbitration and compromise, confining positive law to purely penal (criminal) purposes.” Joseph Needham, *History of Scientific Thought, Vol. 2 of Science and Civilisation in China*, (Cambridge: Cambridge University Press, 1956), p. 519.

<sup>16</sup> The more common view is that the idea of spontaneous order is a Daoist one. However, in his discussion of Confucian anticipations of contemporary libertarian ideas, Roderick Long says that: “The libertarian notion of spontaneous order, for example, appears to have originated in the Confucian tradition, only to be borrowed by Taoist writers and put forward as a Taoist invention (muddling it up with primitivism in the process).” Roderick T. Long, “Austro-Libertarian Themes in Early Confucianism”, *Journal of Libertarian Studies*, Vol. 17, No. 3 (summer 2003), p. 39. On the other hand Edward Slingerland affirms that the idea of spontaneous order is even older, has pre-Confucian roots, and served as a central ideal for all early mainstream Chinese thinkers. See Edward

It could be argued that since Confucius was a reformist trying to restore the ancient rites of the Zhou dynasty that he cannot be considered a defender of spontaneous order. But modern libertarians are reformists in the same way as Confucius when they advocate the return to a gold standard, for example. In the same way some libertarians believe that an earlier monetary system permits better economic coordination without the need for state planning, Confucius thought that the rites permitted a better organization of social life. In this respect, Herbert Fingarette offers a very Hayekian account of the Confucian differentiation between *fa* and *li*:

Confucius characteristically and sharply contrasts the ruler who uses *li* with the ruler who seeks to attain his ends by means of force. (2:3) The force of coercion is manifest and tangible, whereas the vast (and sacred) forces at work in *li* are invisible and intangible. *Li* works through spontaneous coordination rooted in reverent dignity.<sup>17</sup>

It could also be objected that the Confucian conception of law and custom is different from Hayek's, because for Confucius, tradition (especially the tradition of observing rituals) ought to be nailed to the ground at every opportunity. Hayek, in contrast, is talking about a constantly evolving order and would not object to the substitution of new habits for old rituals provided only that it bubbled up from the bottom rather than being imposed from the top. However, I argue that this difference is more apparent than real.<sup>18</sup> In the first place, Confucius does not condemn *all* changes in ritual but *only those that alter its essential meaning*:

The Master said, "A ceremonial cap made of linen is prescribed by the rites, but these days people use silk. This is frugal, and I follow the majority. To bow before ascending the stairs is what is prescribed by the rites, but these days people bow after ascending. This is arrogant, and—though it goes against the majority—I continue to bow before ascending. (*Analects* 9.3)<sup>19</sup>

Second, Hayek does not consider all changes in an evolving tradition justified, but only those that resolve conflict between a given rule and the rest

Slingerland, "Effortless Action: The Chinese Spiritual Ideal of Wu-Wei", *Journal of the American Academy of Religion*, Vol. 68, No. 2 (June 2000), pp. 293-328.

<sup>17</sup> Herbert Fingarette, *Confucius: the Secular as Sacred* (New York: Harper & Row, 1972), p. 8.

<sup>18</sup> I heavily draw here from the arguments advanced by Roderick T. Long, "Austro-Libertarian Themes in Early Confucianism", pp. 52-56.

<sup>19</sup> Confucius, *Confucius Analects*, p. 87.

of the moral beliefs upheld by it.<sup>20</sup> It is also important to note that Hayek considered the willingness to submit to traditions and conventions an essential feature of a free society. He affirms that “coercion can probably be kept to a minimum in a society where conventions and tradition have made the behavior of man to a large extent predictable.”<sup>21</sup> I believe that Confucius would not have much trouble to agree with this claim. For Confucius, the multiplying of rules not only represented a sign of moral decline, but was also a useless method in the organization of society. On the other hand, respect for rites develops people’s moral virtues and favors a peaceful order in the absence of coercion:

When the ruler is correct his will is put into effect without the need for official orders. When the ruler’s person is not correct, he will not be obeyed, no matter how many orders he issues. (*Analects* 13.6)<sup>22</sup>

He also tells us that:

If you try to guide the common people with coercive regulations and keep them in line with punishments, the common people will become evasive and will have no sense of shame. If, however, you guide them with Virtue and keep them in line by means of ritual, the people will have a sense of shame and will rectify themselves. (*Analects* 2.3)<sup>23</sup>

This set of moral principles and social guidelines represented by rites, independent of the ruler’s specific objectives and which also establishes strict limits of conduct, is a powerful counterweight to political power.<sup>24</sup>

Another important element which serves as a political counterweight in Confucius’ work, derived from respect to rites, is his resolute defense of the five basic relationships of traditional Chinese society. These relationships articulated in the following pairs: ruler-subject, father-son, husband-wife, older brother-younger brother and the relationship between friends. Each

<sup>20</sup> Friedrich A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (London: Routledge & Kegan Paul, 1982), p. 167.

<sup>21</sup> Friedrich A. Hayek, *Individualism and Economic Order* (Chicago: The University of Chicago Press, 1948), p. 24.

<sup>22</sup> Confucius, *Confucius Analects*, p. 141.

<sup>23</sup> Confucius *Confucius Analects*, p. 8.

<sup>24</sup> As Hayek says, “the degree of power of control over the extended and more complex order will be much smaller than that which we could exercise over a made order or *taxis*...Any desire we may have concerning the particular position of individual elements, or the relation between particular individuals or groups, could not be satisfied without upsetting the overall order.” Hayek, *Law, Legislation and Liberty*, p. 42.

one of these relations distinguishes between the functions and behavior of the members of the pair, setting down, in turn, a series of reciprocal actions between them. Thus, for example, a subject must obey a ruler, but the ruler must rule fairly. For society to be in order, each person must obey the obligations of their position in every one of the pairs.<sup>25</sup>

Confucius considers family relations of utmost importance, as well as all the obligations and loyalties derived from them. When a ruler of a kingdom praised the action of a man who reported his own father for stealing a sheep, Confucius said that:

Among my people, those who we consider 'upright' are different from this: fathers cover up for their sons and sons cover up for their fathers. 'Uprightness' is to be found in this. (*Analects* 13.18)<sup>26</sup>

Evidently, a way of thinking that promotes family ties and loyalty among members before government interests cannot be well received by those looking to maximize political power. Such was the case with the thinkers of the Legalist school, who would confront the Confucian school directly. Robert Nisbet reminds us that intermediate associations such as the family or clan, where the individual socializes in direct contact with other members in the group, impose serious restrictions on the growth and centralization of political power by establishing independent laws, obligations, and moral principles.<sup>27</sup> Those who seek to increase the scope and capacity of political power do not only try to break these intermediate associations, but also bring any supporting doctrines into disrepute.

We also find in Confucius an approach to the right of resistance similar, in certain ways, to the ideas of some European philosophers of the modern age. For some of these thinkers there was a difference between a tyrant without a title (*ex defectu tituli*) and a tyrant by performance (*ex parte exercitii*), that is, there is a difference between a usurper and a ruler with

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<sup>25</sup> Confucius, *Confucius Analects*, p. 130.

<sup>26</sup> Confucius, *Confucius Analects*, p. 147. The defense of this institution, even in this controversial case, is quite important for Confucius because it is in the family where one learns the moral principles that are essential for the maintenance of a peaceful and prosperous social order. But, even if it were true, as sometimes is objected, that this refusal to turn over relatives or guests to government authorities (no matter what they did) could lead to ganglands and lawlessness, we have to remember that, from a radical libertarian perspective, the most dangerous and powerful gang is always government itself.

<sup>27</sup> See Robert Nisbet, *Community and Power* (New York: Oxford University Press, 1962).

legitimate origins who behaves in an unjust and oppressive manner.<sup>28</sup> For Confucius (even though he does not make this differentiation explicitly) it was legitimate to use violence against the first kind of ruler but not against the second. In Confucius' time none of the ruling families could claim to have acquired the Mandate of Heaven, due to their lack of moral virtue. In the absence of any legitimate candidate for the position of universal king, Confucius was still loyal to the remnants of the old house of Zhou. He thought it was justified to depose a ruler who had usurped his position and whose legitimacy did not come from the hereditary principle of the old sociopolitical structure of the Zhou dynasty. So when a minister of one of the states of the period killed his rightful ruler, Confucius called upon the duke of the state of Lu to depose the usurper.<sup>29</sup>

And even though Confucius does not justify open rebellion against a despotic legitimate sovereign, he does defend a kind of gentle resistance in such cases. The main pillar of Confucius' teachings is tradition. For him, Chinese tradition had left behind a series of moral principles and sociopolitical institutions, which reached their fullest expression in the first governments of the Zhou dynasty, and which were also necessary to end the serious distortions of virtue and social instability of the period. This instability was caused, in large part, by the bad behavior of the rulers who did not respect the institutions and moral principles handed down by tradition. They merely looked to increase their power and influence. For scholars in official posts, it was a moral obligation to react to this behavior, to the point even of risking life and limb. Firstly, a counselor must reprimand his king if the ruler makes unwise decisions. In the case that the monarch does not heed the cautions, one is not obliged to follow his orders and may resign and flee from his post. As a last resort, one must accept imprisonment or death before unjust decisions. Thus, when talking about the last king of the Shang dynasty, Confucius says:

The Master of Wei left his side, the Master of Ji became his slave, and Bi Gan remonstrating with him and was therefore put to death. Confucius said, "In them, the Shang had three Good men." (*Analects* 18.1)<sup>30</sup>

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<sup>28</sup> Dalmacio Negro Pavón, "Derecho de Resistencia y Tiranía", *Anales del Seminario de Metafísica*, No. extra 1, 1992, pp. 692-693.

<sup>29</sup> See Benjamin Schwartz, *The World of Thought in Ancient China*, (Cambridge, Mass: Harvard University Press, 1985) p. 116.

<sup>30</sup> Confucius, *Confucius Analects*, p. 213.

Furthermore, Confucius believed that a gentleman (junzi 君子) develops and perfects moral virtues through study and practice. In other words, Confucius gave moral significance to the term ‘gentleman’ independent from the social origin of the individual. Gentlemen are a kind of natural aristocracy which the ruler must use as ministers and counselors, although it was perfectly possible for a gentleman not to have an official position (as was the case with Confucius for the greater part of his life). The model of behavior is the gentleman, who, when confronted with unfair monarchic decisions, does not have an unconditional obligation of obedience. We may then conclude that Confucius has solid grounds from which to justify disobedience on behalf of any man who aspires to behave morally despite a tyrannical leader.

Lastly, we must also mention the doctrine of the rectification of names, which Confucius considered of great importance. In applying this principle, Confucius advises the kings not to use words to describe situations which they do not truly characterize. Instead, rulers should change the situation, including their own behavior, so that they can properly use a certain word to describe it. This principle is crucial for the maintenance of social order because “if the language is not used in ways which conform to its correct imbedded meanings, the entire human order will become disjointed.”<sup>31</sup> Mencius would later base his doctrine of the right of resistance and tyrannicide on the principle of the rectification of names.

### *Mencius*

Mencius was another of the chief philosophers of the Confucian school. He was born in the state of Zou in the 4<sup>th</sup> century BC, and like Confucius and many others, was a traveling philosopher in search of a ruler who would put his teachings into practice, to institute peace and justice in violent times. The book titled after him was composed after he abandoned his political activity.

In regard to the right of resistance, Mencius is the most important author in Chinese political philosophy. His reflections made rulers turn pale after conversations about this delicate subject; Mencius did not hesitate to explain what he thought was right, even when his views put him at risk of attracting the ruler’s hostility.

For Mencius, in every man there exist determined innate tendencies toward virtue which must be developed in an adequate environment in order

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<sup>31</sup> Schwartz, *The World of Thought in Ancient China*, p. 92.

to perfect them. That is, the nature of man is good, but cannot be developed without the necessary conditions (just as the nature of a seed is to become a tree, but needs an adequate environment to do so)<sup>32</sup>. The most complete development of human nature is represented by the legendary emperors Yao and Shun, as well as Confucius himself. However, every man, according to Mencius, has a mind that cannot bear the suffering of others, and to develop this incipient virtue, man must exercise it through the extension of his sympathies to include others. In other words, man must expand those cases in which he feels loathing for others' suffering to more and more general cases.<sup>33</sup> For example, it is natural for a father to love his sons. And for the father to develop his virtue, he must widen this feeling to include greater numbers of people.<sup>34</sup> The ruler must also do this to become a true king like Yao or Shun, and not become like a feudal lord of the time.<sup>35</sup> The true king, who practices benevolence, does not depend on force to survive. One of the features of a true king is that the people follow him voluntarily. Mencius says that:

[N]owadays, there are none, among those who shepherd people, who do not have a taste for killing people. If there were one who did not have a taste for killing people, the people of the world would crane their necks to look for him. If it were genuinely like this, the people would turn to him like water flowing down copiously. (*Mengzi* 1A6)<sup>36</sup>

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<sup>32</sup> Mencius, *Mengzi*, trans. Brian W. Van Norden (Indianapolis: Hackett Publishing, 2008) pp. 149, 152.

<sup>33</sup> Mencius, *Mengzi*, pp. 45-46.

<sup>34</sup> This Confucian idea of human sympathy as the basis of morality has a great deal of resemblance to the *Theory of Moral Sentiments* of Adam Smith: "In Confucianism love's manifestations exhibit a hierarchical structure. Love starts from its (supposedly) most intimate and stable basis—love of one's parents and the rest of the members of the family. As far as sympathy is concerned, Smith believed in a similar hierarchy." Wei-Bin Zhang, *On Adam Smith and Confucius: The Theory of Moral Sentiments and the Analects* (New York: Nova Science Publishers, 2000) p. 49.

<sup>35</sup> "Treat your elders as elders, and extend it to the elders of others; treat your young ones as young ones, and extend it to the young ones of others, and you can turn the world in the palm of your hand" (*Mengzi* 1A7.12). Mencius, *Mengzi*, p. 11.

<sup>36</sup> Mencius, *Mengzi*, p. 7.

Mencius insists on the need to reduce taxes so people may be prosperous, happy, and attract populations from neighboring countries (important at a time when wars and starvation decimated the population).<sup>37</sup>

What would happen if the ruler does not rule fairly and justly? Is it possible to react in some way against an unfair ruler? Mencius states that one can, through the application of the Confucian principle of the rectification of names. In the first place he rejects any justification of a reason of state. A crime is a crime, whoever commits it:

Is there any difference between killing a person with a club and killing him with a blade?

The king said ‘there is no difference’

Mengzi continued, ‘Is there a difference between using a blade and government?’

The king said ‘There is no difference’ (*Mengzi* 1A4)<sup>38</sup>

Mencius compares the action of a king who rules unfairly with that of particular individuals or lower ranking officials who do not perform the tasks with which they have been entrusted (similar to what Manegold of Lautenbach would later argue in the Middle Ages<sup>39</sup>). If the incompetence of the subject to perform tasks is proven, his services are no longer required:

Mengzi spoke to king Xuan of Qi saying ‘If among Your majesty’s ministers there were one who entrusted his wife and children to his friends and traveled to the distant state of Chu, and when he returned his friend had let his wife and children become cold and hungry, how should he handle this?’

The king said, ‘Abandon his friend’

Mengzi said, ‘if the chief Warden is not able to keep order among the nobles, how should one handle this?’

The king said, ‘Discharge him’

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<sup>37</sup> For a study of Mencius’ proposal for tax reform see Charles Adams, *For Good and Evil: the Impact of Taxes on the Course of Civilization* (Lanham, Maryland: Madison Books, 2001) pp. 45-51.

<sup>38</sup> Mencius, *Mengzi*, p. 5.

<sup>39</sup> Carl Watner, “Quod Omnes Tangit: Consent Theory in the Radical Libertarian Tradition in the Middle Ages”, *Journal of Libertarian Studies*, Vol. 19, No. 2 (spring 2005), pp. 75-76.

Mengzi said, 'If the region within the four borders is not ruled, then how should one handle this?' The king turned toward his attendant and changed the topic. (*Mengzi* 1B6)<sup>40</sup>

If the king does not rule justly he stops being king and becomes another individual against whom a defensive action can be taken, even including tyrannicide. In this way, when one of the kings of the period (referring to the last Shang king) asked Mencius if it is acceptable for subjects to assassinate their rulers, he said:

One who mutilates righteousness should be called a 'crippler'. A crippler and mutilator is called a mere 'fellow'. I have indeed heard of the execution of this one fellow Zhou, but I have not heard of it as the assassination of one's ruler. (*Mengzi* 1B8)<sup>41</sup>

Nevertheless, these measures must be taken while respecting a series of conditions, which are found dispersed in several passages in Mencius' work. For example, it is necessary to have the support of the most virtuous nobles and the voluntary adherence of the people before taking any action against the king.<sup>42</sup> Furthermore, the right to overthrow the king and establish a new dynasty may only be exercised as a last resort, when the ruler behaves in ways as corrupt as the last kings of the Xia and Shang dynasties:

If a dynasty has the World, Heaven will dismiss it only if the rulers are like tyrant Jie and tyrant Zhou. (*Mengzi* 5A6.4)<sup>43</sup>

And even in this case it should first be certified that the king has neglected prevalent customs and other signs of good government from past times. In the case that the king does not reach such a high degree of corruption, one of his ministers may temporarily replace him, as long as the ruler can be reinstated once reformed (otherwise the minister would be accused of usurpation).<sup>44</sup> These measures are destined to ensure just and fair governance of the people, which is the most important part of the sociopolitical structure; the king is the least important part.<sup>45</sup> Therefore, for Mencius, the legitimacy of a monarch does not depend on hereditary succession. According to him, there is a double source of legitimation for a king: the will of Heaven and the satisfaction of the people. When the old king

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<sup>40</sup> Mencius, *Mengzi*, p. 24.

<sup>41</sup> Mencius, *Mengzi*, p. 26.

<sup>42</sup> Mencius, *Mengzi*, p. 34.

<sup>43</sup> Mencius, *Mengzi*, p. 125.

<sup>44</sup> Mencius, *Mengzi*, p. 179.

<sup>45</sup> "The people are the most important, the altars to the land and grain are next, and the ruler is the least important" (*Mengzi* 7B14). Mencius, *Mengzi*, p. 187.

chooses a successor, the new king may rule legitimately if two conditions are met: first, Heaven does not show any discontent through signs such as atmospheric phenomena (rain, wind, and thunder), and second, the people are satisfied with the new ruler and government affairs are well administrated:

Yao put Shun in charge of the ritual sacrifices, and the various spirits were pleased with him. This was Heaven accepting him. He put Shun in charge of affairs, and the affairs were well ordered, and the people were at ease with him. This was the people accepting him. Heaven gave it to him, and people gave it to him. Hence, as I said, ‘The Son of Heaven cannot give the world to another person.’ (*Mengzi* 5A5.6)<sup>46</sup>

Clearly, if the legitimacy of political power derives from this double source, all attacks on the will of Heaven and its natural order or against the well-being of the people are motives for its withdrawal.<sup>47</sup> Thus, for Mencius, resistance against a tyrannical government is justified.

### *Xunzi*

The third major figure of Confucianism is Xunzi, who lived during the third century BC. Xunzi was a professor in a famous school of literates—the academy of Jixia, in the kingdom of Qi—at a time when the systematic application of Legalist ideas about government placed the kingdom of Qin on the road to the conquest and unification of all of China.

Xunzi was a brilliant thinker who maintained numerous principles of Confucianism, but who also introduced certain novelties which lead to an erosion of Confucian political philosophy. The best known statement of this philosopher’s work is summed up in the slogan that “human nature is evil,”<sup>48</sup> intended to contradict Mencius’ statements that man is innately good. For Xunzi, a bad nature meant that man is born feeling multiple desires that conflict both among themselves and with those of other individuals. If these natural urges are not corrected, society will fall into chaos and no individual will be sure of satisfying his desires. To rectify this, learned men invented moral principles and rules for social behavior expressed in the rites (*li*). Every

<sup>46</sup> Mencius, *Mengzi*, p. 124.

<sup>47</sup> The Huguenot thinkers of sixteenth century France would also base their theories of resistance on a similar double source of legitimate monarchical power. See Stephanus Junius Brutus, *Vindiciae Contra Tyrannos* (Madrid: Tecnos, 2008) p. 25.

<sup>48</sup> “Human nature is evil; any good in humans is acquired by conscious exertion” (*Xunzi* 23.1a). Xunzi, *Xunzi: A Translation and Study of the Complete Works*, 3 vols., trans. John Knoblock (Stanford, Calif.: Stanford University Press, 1988–1994), Vol. 3, p. 150.

man who uses his intelligence to analyze the rites may discover the need of them because they allow for the satisfaction of people's desires in a peaceful way through the social division of labor:

All people desire and dislike the same things, but since desires are many and the things that satisfy them relatively few, this scarcity will necessarily lead to conflict... Yet even the able find it impossible to be universally skilled, and it is impossible for an individual to hold every office. If people live in alienation from each other and do not serve each other's needs, there will be poverty; if there are no class divisions in society there will be contention. (*Xunzi* 10.1)<sup>49</sup>

Apart from the cultural mechanism of rites, it is also necessary to control the behavior of common people who have not reached the moral development of the gentleman (*junzi*) by way of sanctions and punishment:

From the position of the knight up to the supreme position, all must be moderated through ritual and music. The ordinary masses, the Hundred Clans, must be controlled by law and norms of behavior. (*Xunzi* 10.3a)<sup>50</sup>

This positive law decreed by the ruler cannot be discrete, but must be subject to the principles of reason:

Governmental ordinances, edicts, regulations, and standards that are not in accord with reason by so much as the tip of a hair should not be applied to the Hundred Clans. (*Xunzi* 11.12)<sup>51</sup>

Reason therefore shows us the characteristic elements of the ideal government system. They are the same for all historical periods: the ruler should respect rites, must apply punishment justly using objective standards, and must limit expenses and reduce taxes to enrich the population. Through these government rules, the king would attract the population and allow other kingdoms to join voluntarily him. He who achieves these things is a real king legitimized by Heaven, while he who violates these obligations will place his kingdom in danger and will ultimately be destroyed. Nonetheless, *Xunzi* also considers a third possibility between these two extreme types of ruler:

<sup>49</sup> *Xunzi*, *Xunzi*, Vol. 2, p. 121. *Xunzi* advocated a hierarchical society where the upper classes received compensation for their services to the State, while the commoners received profits from their activities. However, as Knoblock points out, this hierarchy should not be fixed. "If the descendants of the noble are incapable they should become commoners; if commoners cultivate themselves, they should be given high rank." *Xunzi*, *Xunzi*, Vol. 2, p. 85.

<sup>50</sup> *Xunzi*, *Xunzi*, Vol. 2, p. 123.

<sup>51</sup> *Xunzi*, *Xunzi*, Vol. 2, p. 167.

the lord protector, a ruler who, although he does not follow Confucian ideals of virtue, at least applies rational principles of government which do not place his kingdom in danger and allow him to stay in power. In the absence of a true king to unify China through voluntary adhesion brought about by his moral authority (something highly improbable at that time), Xunzi seems to accept the lord protector as the “second best option”:

One who uses the state to establish justice will be king; one who establishes trust will be a lord-protector; and one who establishes a record of expediency and opportunism will perish. (*Xunzi* 11.1a)<sup>52</sup>

Even though Xunzi establishes several limits to the king’s action and defends a type of society based on the social division of labor as a guarantee of prosperity, some of the elements of his philosophy paved the way for the final victory of the Legalist school, which defended the absolute power of the king (Han Feizi, one of the most important defenders of Legalism, was disciple of Xunzi). The idea that the moral principles of society are tools designed by specific men for specific purposes, the characterization of human nature as a fountain of conflicts, and the defense of punishments and rewards as means to control the common people, are all elements of the Legalist school of thought. If the sages of ancient times invented moral rules to organize society, why could not the same be done by a king who aspires to unify the empire (like the first Qin dynasty emperor would do, following Legalist advice)? If the rationale for respecting traditional rituals is utility, why maintain them when they form an obstacle to the king’s objectives?

## V. Mozi

Another of the schools of thought that emerged during this period is represented by Mozi (5<sup>th</sup> Century BC), who was one of the first philosophical rivals of Confucius. Mozi seems to come from a new substratum of men with humble origins who aspired to progress due to their skills and knowledge. He became famous for using his knowledge of defensive tactics to help cities under siege during the continuous wars of the period.

One of the main points of disagreement between Mozi and the Confucian school came from his doctrine of universal love. For him, the social disorder of the times stemmed from the selfishness of those who did not love others as they loved themselves. To end wars and aggression each person should love others as they love themselves. Expanding the doctrine of

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<sup>52</sup> Xunzi, *Xunzi*, Vol. 2, p. 150.

love toward everyone means that nobody hurts anyone else, just as they would not hurt themselves:

If men were to regard the states of others as they regard their own, then who would raise up his state to attack the state of another? It would be like attacking his own. If men were to regard the cities of others as they regard their own, then who would raise up his city to attack the city of another? It would be like attacking his own. If men were to regard the families of others as they regard their own, then who would raise up his family to overthrow that of another? It would be like overthrowing his own. (*Mozi*, 16:2)<sup>53</sup>

On the other hand, Confucians defended gradations in love. For instance, they thought it more natural for individuals to love their relatives more than strangers. Respect and goodwill toward others would derive, as in Mencius' case, from extending one's own sympathies to include more people.

Mozi did not share the Confucian respect for tradition either,<sup>54</sup> because, according to him, rites, funerals, and music move people away from their daily occupations and lead to excessive expense on unnecessary things. Mozi says that a traditional practice cannot be justified solely because it is a custom.<sup>55</sup> There are certain barbaric and violent customs that are unjust and which should be condemned. For him, a practice can only be justified if it is beneficial for the people; he rejects the rest as useless or superficial.<sup>56</sup> The principles of both universal love and utility come from the will of Heaven (*Shangdi* 上帝), which loves all men and wants prosperity and benefit for them.<sup>57</sup>

Mozi considers that by following the main principles of justice based on the will of Heaven, one can plan and regulate several aspects of people's daily lives in detail, deciding which are beneficial or not. He proposes moderation in funeral expenses, reduction of the period of mourning,<sup>58</sup>

<sup>53</sup> Mozi, *Mozi: Basic Writings*, trans. Burton Watson (New York: Columbia University Press, 2003) p. 42.

<sup>54</sup> Mozi, *Mozi*, p. 132.

<sup>55</sup> Mozi, *Mozi*, p. 79.

<sup>56</sup> This has led many scholars to argue that Mozi is a utilitarian philosopher. However, Hao Changchi argues that since Mozi's moral theory is primarily concerned with the fulfilment of the material needs of the other it cannot be defined as utilitarian. Hao Changchi, "Is Mozi a Utilitarian Philosopher?" *Frontiers of Philosophy in China* 1 (3), pp. 382-400.

<sup>57</sup> Mozi, *Mozi*, pp. 81-95.

<sup>58</sup> Mozi, *Mozi*, pp. 69-80.

banning of music,<sup>59</sup> and the regulation of the production of goods, eliminating those too luxurious or unnecessary.<sup>60</sup> To be fair, much of Mozi's criticism is directed against the consumption of luxury goods by rulers, entailing higher taxation and greater impoverishment of the people. But he does not stop there. He believes that certain goods such as clothing, housing, or food have a given purpose. Anything that goes beyond that purpose is considered a waste of resources and should be forbidden:

For this reason, the sage kings of ancient times, in establishing their rules for moderation in use, said: 'Throughout the world all the many artisans—wheelwrights and cart makers, tanners and salters, potters and metal workers, and carpenters—should each do the work they are capable of.' They [also] said: 'Everywhere they should provide enough for the people's use and then stop.' Anything over and above this is wasteful and does not add to the benefit of the people so the sage kings did not do it. (*Mozi* 21.2)<sup>61</sup>

He even says that people should be forced to marry and establish a home for themselves early in life to promote population growth.<sup>62</sup> Mozi believes all these things should not be left to the whims of the people, and that the ruler should use force and punishment to impose them, molding their behavior.<sup>63</sup> This insistence on compulsory austerity was criticized by Confucian thinkers such as Xunzi, since it would eliminate people's incentives to improve their situation:

Whether Mozi were to have control over a territory as large as the world or as small as a single state, it would be pressed to such extremity by his measures that all clothing would be coarse and gross and all food would be bad and detestable, with only hardship and grief when music and joy have been condemned. Those reduced to such a state are deprived; if they are deprived, there is not enough to satisfy their natural desires; if their desires are not satisfied, then incentives will not work. (*Xunzi* 10.8)<sup>64</sup>

The task of the king and the origin of political institutions are explained through one of the first examples of the theory of the social contract in the history of political thought. According to Mozi, at the beginning of history

<sup>59</sup> Mozi, *Mozi*, p. 119.

<sup>60</sup> Mozi, *Mozi*, pp. 65-66.

<sup>61</sup> Mozi, *The Mozi. A Complete Translation*, trans. Ian Johnston, (Hong Kong: The Chinese University Press, 2010) p. 205.

<sup>62</sup> Mozi, *Mozi*, pp. 66-67.

<sup>63</sup> Mozi, *Mozi*, p. 39.

<sup>64</sup> Xunzi, *Xunzi*, Vol. 2, p. 128.

men lived in a state of nature in which disorder and selfishness reigned. To end this situation, men decided to choose the best one among them to rule:

In ancient times, when mankind was first born and before there were any laws or government, it may be said that every man's view of things was different...throughout the world people all resorted to water, fire, and poison in an effort to do each other injury...The world was chaotic as though it were inhabited by birds and beasts alone.

To anyone who examined the cause, it was obvious that this chaos came about because of the absence of rulers and leaders. Therefore the most worthy and able man in the world was selected and set up as Son of Heaven. (*Mozi*, 11:1-2)<sup>65</sup>

After the ruler is selected he becomes the head of a pyramidal socio-political structure, with ministers, feudal lords, and officials, all the way down to the common people. In this system the inferiors have no independence of their own but must follow the orders of their immediate superiors.<sup>66</sup> Even though this theory gave the ruler great power to regulate and plan the lives of his subjects, it also imposed limits which could not be breached. In the contract, Mozi does not give origin to moral principles but establishes the most skilled among men as the one in charge of developing and defending the principles of government stemming from Heaven. Because he supports the principles of justice in a transcendental order, that is, in the will of Heaven, if the ruler breaches these principles he loses his function as the enforcer of social order. In this case political institutions lose all sense and fall into the state of nature. At the time of Mozi, kings and feudal lords behaved inadequately because they did not defend universal love, waged unjust wars and choked the population with taxes to finance spending. Mozi proposed that governments should limit their expenses, reduce taxes, and renounce aggressive wars or they would be punished by Heaven.<sup>67</sup>

In this condemning of wars of aggression one can detect a Mohist idea of the right of resistance against an unjust government. In the first of the three discourses against unjust aggression that we find in Mozi's book, the condemnation is based upon the right to private property. An argument similar to that of Cicero or Saint Augustine is used in comparing individual

<sup>65</sup> Mozi, *Mozi*, pp. 35-36.

<sup>66</sup> "Upon hearing of good or evil, one shall report it to his superior. What the superior considers right all shall consider right; what the superior considers wrong all shall consider wrong" (*Mozi*, 11:2). Mozi, *Mozi*, p. 36.

<sup>67</sup> Mozi, *Mozi*, pp. 83-84.

criminal actions and government crimes. It argues that if a thief enters someone's orchard to steal fruit, this is a crime and should be punished. If the theft is large, the crime is large. In turn, murder is a major crime because it produces greater harm, so the punishment must also be greater. Mozi says that everybody (including the rulers) condemns these things and knows they are unrighteous. Nonetheless, the rulers always try to justify their offensive wars. But, in fact, these wars are greater crimes because they produce greater harm, and should have a greater punishment:

If someone kills one man, he is condemned as unrighteous and must pay for his crime with his own life. According to this reasoning, if someone kills ten men, then he is ten times unrighteous and should pay for his crime with ten lives, or if he kills a hundred men he is a hundred times as unrighteous and should pay for his crime with a hundred lives. (*Mozi*, 17:2)<sup>68</sup>

In the second of the discourses it is said that wars of aggression cause extensive damage, leaving the population exhausted with taxes, mobilizing enormous amounts of resources for destruction, and sending thousands of men to their deaths simply to satisfy the expansionist cravings of some depraved rulers.

In the third of the discourses against unfair aggression, aggressive and defensive wars are differentiated. The wars waged to finish off the tyrant Jie, the last king of the Xia dynasty, and the tyrant Zhou, the last king of the Shang dynasty, were right and just wars, done to stop the atrocities of criminal rulers who offended Heaven and oppressed the people.<sup>69</sup> So for Mozi, defensive actions against aggressive wars are justified (as we already said, he and his disciples were famous for helping cities under siege), and he considers the wars of the founders of the Shang and Zhou dynasties against their tyrannical kings as legitimate.<sup>70</sup>

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<sup>68</sup> Mozi, *Mozi*, p. 54.

<sup>69</sup> Mozi, *Mozi*, pp. 55-63.

<sup>70</sup> However, Yuri Pines argues that the “fantastic accumulation of portents and omens” and “endless stories of cosmic disasters” that Mozi describes in detail to prove that the punishment of those tyrants was decreed by Heaven lead to the “conclusion that only a comparable accumulation of omens and portents would justify war or rebellion in the future. Mozi turns the overthrow of Jie and Zhouxin into exceptional events, which are of limited relevance to the present. Under normal circumstances, nobody should claim that he is a new recipient of Heaven’s Decree.” Yuri Pines, *Envisioning Eternal Empire: Chinese Political Thought of the Warring States Era* (Honolulu: University of Hawai‘i Press, 2009) p. 62.

In conclusion, it can be said that the establishment of a transcendental foundation for the moral order which the king cannot alter, the call for low taxation, the reduction of government spending, and the rejection of aggressive war, are all elements in Mozi's political philosophy that have the potential to restrict the power of the king. These elements are, however, undermined by Mozi's strong advocacy of an authoritarian government as the only possible escape from war and chaos. Unlike Confucius, Mozi thought that coercion was an essential instrument to make the people behave in a moral way. As Yuri Pines states, "being the supreme moral exemplar under Heaven, the monarch should be granted limitless political power to supervise and correct his subjects, if needed, through harsh punishments."<sup>71</sup> However, Mozi's condemning of unjust aggression can be used to condemn the Mohist model of government itself. As we have seen in one of the passages of the Mozi, the condemnation of unjust aggression is based on the comparison to aggression on private property (if someone steals fruit from another's orchard). But the same aggression occurs if the ruler forces his subjects to live a life of austerity, or to marry at an early age. The orchard argument is, in fact, an anticipation of the libertarian Non-Aggression Principle, which forbids the initiation of physical force against persons or property. If Mozi followed this argument to its logical conclusion he should have recognized the essential injustice of government coercion. Yet because he considered the establishment of a ruler the only way to escape the war of all against all, he could not grasp this insight.

## VI. Daoist Anarchism

During the political instability of the Warring States period many thinkers believed they had a moral obligation to try to restore peace and inspire prosperity. With this objective in mind they developed their philosophical doctrines. But other philosophers believed instead that it was more important to avoid the political struggles of the period. We can identify two trends in this withdrawal from politics: the moralist who retires in protest against the corruption of the times and the man who simply prefers the comforts and tranquility of private life.<sup>72</sup> The latter is best represented by Yan Zhu, who teaches that one should avoid all social relations that could be harmful to one's own life. The Daoists Laozi and Zhuangzi (4<sup>th</sup> century BC)

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<sup>71</sup> Yuri Pines, *Envisioning Eternal Empire*, p. 34.

<sup>72</sup> A.C. Graham, *Disputers of the Tao: Philosophical Argument in Ancient China*, (Peru, Illinois: Open Court, 1989) p. 54.

are representatives of the first philosophical trend (though in the book of Zhuangzi we can also find ideas akin to those of Yan Zhu).

For Laozi and Zhuangzi, the fundamental principle is the Dao, which is a reality that cannot be defined because it has no specific attributes; it has no forms and no limits, but it is the origin of all definite realities. The Dao manifests itself in nature, which is an order that runs spontaneously and without deliberate planning or premeditation. To conform to the Dao man must follow the principle usually translated as non-action (wu wei, 無為). This means that man should act spontaneously, following the natural course of things. When applied to the political activity of the king this means that a ruler must refrain from interfering with the lives of his subjects as much as possible. For Laozi, the more restrictions, prohibitions, and laws there are, the more poverty and violence develop as a consequence.<sup>73</sup> This has led some scholars to welcome the Daoists as the first defenders of a laissez-faire policy. Murray N. Rothbard, for example, states that:

The Taoists are the world's first libertarians, who believed in virtually no interference by the State in economy or society.<sup>74</sup>

This statement has been challenged by Roderick T. Long who claims that Daoist libertarianism has been overrated:

The Taoists were deeply suspicious of statism, yes, and God love 'em for it, but why were they so? To a significant degree, it was because they associated statism with other things that also aroused their suspicion: reason, language, commerce, civilization. The notion that those items could exist and flourish without centralized government control was as foreign to the Taoists as to any statist; they accepted the connection, but reversed the evaluation.<sup>75</sup>

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<sup>73</sup>Lao Tzu (Laozi), *Tao Te Ching*, trans. D.C Lau (Baltimore: Penguin Books, 1963), p. 118.

<sup>74</sup> Murray N. Rothbard, *Economic Thought before Adam Smith, Vol. 1 of An Austrian Perspective on the History of Economic Thought* (Cheltenham, UK: Edward Elgar, 1995), p. 23.

<sup>75</sup> Long, "Austro-Libertarian Themes in Early Confucianism", p. 36. Furthermore, Rothbard, as one of the most important representatives of the praxeological approach to economics, points out that all human action consists of purposeful behavior: "Praxeology rests on the fundamental axiom that individual human beings act, that is, on the primordial fact that individuals engage in conscious actions toward chosen goals. This concept of action contrasts to purely reflexive, or knee-jerk, behavior, which is not directed toward goals." Murray N. Rothbard, *The Logic of Action One: Method, Money, and the Austrian School* (Cheltenham, UK: Edward Elgar, 1997), p. 58. He also criticizes Friedrich Hayek for the lack of confidence in human reason that he shows in some of his works:

So the Daoists disliked commerce, tools, material improvement, and knowledge just as they disliked all the interventions of the state. For them, all are characteristics of civilization, and civilization is nothing but an artificial departure from the natural simplicity of the Dao. However, one can dislike commerce and civilization and still be libertarian. For libertarianism is a political philosophy concerned with the proper use of force, and not a philosophy of life.<sup>76</sup> As long as you reject the initiation of violence it does not matter what kind of life you think more appropriate for man. The trouble with Laozi is that before applying the principle of non-action he urges the king (supposedly a sage king and follower of the Dao) to put an end to all the institutions of civilization in order to restore the primitive nature of ancient times.

Reduce the size and population of the state. Ensure that even though the people have tools of war for a troop or a battalion they will not use them; and also that they will be reluctant to move to distant places because they look on death as no light matter. Even when they have ships and carts, they will have no use for them; and even when they have armor and weapons, they will have no occasion to make a show of them. Bring it about that the people will return to the use of the knotted rope, will find relish in their food and beauty in their clothes, will be content in their abode and happy in the way they live. Though adjoining states are within sight of one another, and the sound of dogs barking and cocks crowing in one state can be heard in another, yet the people of one state will grow

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“In short, for Hayek, reason and rationalism are synonymous with government coercion, and coercion can only be attacked by also attacking reason.” Murray Rothbard, *Murray N. Rothbard vs. the Philosophers: Unpublished Writings on Hayek, Mises, Strauss, and Polyani*, ed. Roberta A. Modugno (Auburn, Alabama: Ludwig Von Mises Institute, 2009) p. 64. But the Daoist philosophers are far worse than Hayek in their distrust of human reason and the possibility of conscious human improvement. They reject, not only all purposive action as something meaningless and impossible, but also traditional and evolutionary rules of behavior such as the rites (li). As Brooke Ziporyn puts it, to “consciously weigh alternatives, apply your understanding to make a decision about what is best, and then deliberately follow the course you have decided on—this is the fundamental structure of all purposive activity and conscious knowledge, the basis of all ethics, all philosophy, all human endeavours at improvement, and this is precisely what Zhuangzi seems to consider ridiculous and impossible.” Ziporyn, introduction to Zhuangzi, *Zhuangzi: the Essential Writings with Selections from Traditional Commentaries*, trans. Brook Ziporyn (Indianapolis: Hackett Publishing Company, 2009) pp. xvi-xvii.

<sup>76</sup> See, for example, Walter Block, “Libertarianism and Libertinism.” *Journal of Libertarian Studies*, Vol. 11, No. 1, 1994, pp. 117-128.

old and die without having had any dealings with those of another.  
(*Daodejing* 80)<sup>77</sup>

As Schwartz points out:

What the language suggests is not a spontaneously, emerging, anarchist state of affairs but a state of affairs brought about by a sage ruler.<sup>78</sup>

This problem also seems to arise with Zhuangzi. It is true that he expects nothing from politics. He defends the principle of non-action, saying that if a man of virtue were obliged to rule the world he would not act, and compares the feudal Lords with robbers and murderers:

He who steals a belt buckle is executed, but he who steals a state is made a feudal lord. (*Zhuangzi* 10:4)<sup>79</sup>

But his view of how to return to the primitive happiness of ancient times does not seem quite libertarian:

Hence, only when sagacity is destroyed and wisdom abandoned will the great robbers disappear. Smash the jades and crush the pearls, and the small robbers will not arise. Burn the tallies and shred the seals, and the people will become plain and straight. Break the measures and split the scales, and the people will no longer bicker and fight. Only when we decimate the sagely laws throughout the world will the people be able to listen to reason. Only when we uproot and scramble the Six Modes, smelt down the flutes and zithers, and plug up the ears of Master Kuang will the people of the world be able to hang on to their keen hearing. Only when we destroy patterns and ornaments, scatter the Five Colors, and glue up Li Zhu's eyes will the people of the world be able to their keen vision. Only when we destroy the hooks and rope levels, abandon the compasses and T-squares, and break Carpenter Chui's fingers will the people of the world be able to retain their own skills... Only when we cut away the virtuous practices of Zheng and Shi, restrain the mouths of Yang and Mo, and cast away Humanity and Responsibility will the Virtuosity of the people of the world find its oblivious unity. (*Zhuangzi* 10:5)<sup>80</sup>

Furthermore, if Zhuangzi's philosophy is anarchist, it is an anarchism that precludes any action against a tyrannical government. He discards in

<sup>77</sup> Lao Tzu (Laozi), *Tao Te Ching*, p. 142.

<sup>78</sup> Schwartz, *The World of Thought in Ancient China*, p. 213.

<sup>79</sup> Zhuangzi, *Zhuangzi*, p. 64.

<sup>80</sup> Zhuangzi, *Zhuangzi*, pp. 64-65.

advance the possibility of improving the situation of a tyrannical state through any deliberately-conceived plan.<sup>81</sup> For Zhuangzi, it is more important to focus on oneself to achieve the Dao:

The Consummate Persons of old made sure they had it in themselves before they tried to put it into others. If what is in yourself is still unstable, what leisure do you have to worry about some tyrant? (*Zhuangzi* 4:2)<sup>82</sup>

These two Daoists do not explicitly lay out any kind of right for legitimate active resistance, nor do they propose any conscious measure destined to restrain the behavior of a bad king, which they saw as an unavoidable feature of their own corrupt times. For these two philosophers, the only proper way for the wise man is to retreat from public life. Given the Daoist bias against purposive action, this should not be a surprise. Since removing a king for his actions would be an example of an action motivated by a conscious and deliberate purpose, it represents the attempt of an unenlightened mind that has not yet attained the Dao.<sup>83</sup>

## VII. The Huang-Lao School

This school of thought takes its name both from a mythical character of ancient times, the Yellow Emperor (Huangdi 黃帝), and from Laozi. This was a Daoist school that flourished in the academic circles of Jixia in the state of Qi (from the fourth century B.C). One of the main works of this school is the *Huangdi Sijing* (黃帝四經). If the Daoists were the first defenders of anarchism, then the Huang-Lao school, as exemplified in the *Huangdi Sijing*, shared many ideas with the political views of classical liberalism. In this work we find a philosophy that reinterprets many Daoist ideas and shares common

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<sup>81</sup> Zhuangzi, *Zhuangzi*, pp. 24-27.

<sup>82</sup> Zhuangzi, *Zhuangzi*, p. 24.

<sup>83</sup> Rothbard thinks it is possible Laozi called for this retreat only as an strategy, and not as a matter of principle: "I submit that while contemporary Taoists advocate retreat from the world as a matter of religious or ideological principle, it is very possible that Lao-tzu called for retreat not as a *principle*, but as the only strategy that in his despair seemed open to him. If it was hopeless to try to disentangle society from the oppressive coils of the State, then he perhaps assumed that the proper course was to counsel withdrawal from society and the world as the only way to escape State tyranny." Murray N. Rothbard, "Concepts of the Role of Intellectuals in Social Change Toward Laissez Faire", *The Journal of Libertarian Studies*, Vol. 9, No. 2, 1990, p. 46. Based on the above discussion, I believe this opinion to be mistaken.

assumptions with the Legalists while also imposing serious restrictions on government.

For the *Huangdi Sijing*, as for Laozi and Zhuangzi, the Dao is an ineffable reality, the origin of all specific things. Nevertheless, for Laozi and Zhuangzi, following the Dao means rejecting all purposive action, which leads them to reject civilization and material improvement. For the *Huangdi Sijing*, the principle of non-action means something different: basically, the king should establish a government based on law and refrain from interfering with the social structure derived from the Dao.

The *Huangdi Sijing* places high importance on the use of laws, punishments, and rewards. But for the *Huangdi Sijing*, the Dao, not man, is the foundation of all law:

It is out of Dao that the law comes into being. These laws, prescribed according to calculus of gains and losses, are yardsticks to measure and to distinguish what is correct from what is incorrect. Therefore, he who has mastered Dao formulates laws but dares not violate them. Once the laws have been formulated, he dares not ignore them [Therefore,] only after one is able to keep oneself [conscientiously] within the bound of laws, will one see and know [things] All-under-Heaven without being misled. (*Huangdi Sijing* 1.1.1)<sup>84</sup>

We could say that the *Huangdi Sijing* defends a limited government based on the natural law of the Dao. The main functions of government are to maintain law and order within the state and to defend the country against foreign enemies. The king must use punishment and reward to see to it that laws are respected, but must also be just in his judgments and avoid the temptation to use the law for any private interest.<sup>85</sup> It is also important to maintain a strong national defense against foreign invasion, but the king must not wage aggressive and unjust wars.<sup>86</sup>

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<sup>84</sup> *The Four Political Treatises of the Yellow Emperor: Original Mawangdui Texts with Complete English Translations and an Introduction*, trans. Chang, Leo S. and Yu Feng (Honolulu: University of Hawaii Press, 1998) p. 100.

<sup>85</sup> “Those who formulate laws and regulations are not allowed to create confusion [in formulating them]. Only when pure impartiality without self-interest [is given priority], and all punishments and rewards are fully carried out, is a good government achieved” (*Huangdi Sijing* 1.3.7). *The Four Political Treatises of the Yellow Emperor*, p. 112.

<sup>86</sup> “If one initiates war without consideration of principles, and one attacks those who ought not to be punished, Heaven will inflict twofold disasters upon one” (*Huangdi Sijing* 1.7.3). *The Four Political Treatises of the Yellow Emperor*, p. 134.

In domestic policy the government must win the approval of its people, avoiding as much interference with their lives as possible. It is important to reduce taxes and prohibitions, as well as to respect the people's customs and habits:

Following the customs of the common people manifests regard for popular feelings. The reason for bestowing rewards and benefits upon people is to love and encourage them. To make common people gain profit, one must open the forbidden areas [such as forests and lakes], relax limitations and reduce taxation imposed by outposts of the tax. (*Huangdi Sijing* 1.3.3)<sup>87</sup>

If the king does not follow these rules of government, disorder and injustice will spread in the country, the people will be impoverished, and defenses against foreign enemies will be weakened. As a consequence, the king will lose the approval of his people as well as his position or even his life. We find in the *Huangdi Sijing* many pieces of advice that remind us of the doctrine of the Mandate of Heaven described in the *Book of Documents*. If the king does not follow the law laid down by Heaven and becomes a tyrant he will be punished by either the action of men or by Heaven itself:

He who does not follow the constant [regulations of] heaven and does not husband the manpower of his people, whatever he does, will be without achievement. It is called rebellious accomplishment to nourish the dying and to punish the living. [Under such a situation], if there is no human punishment by death, then there will necessarily be the retribution of heaven. (*Huangdi Sijing* 1.8.3)<sup>88</sup>

Another work of this school is the *Huainanzi* (淮南子), a philosophical anthology written by diverse authors and compiled under the patronage of prince Liu An of Huai Nan around 140 BC, during the early Han dynasty.

The *Huainanzi* elaborates a political philosophy that considers law one of the fundamental pillars of good government. The system of law has a penal function. Its objective is to prevent and punish criminal behavior, and its application must be impartial and universal. At the same time this system of law lets the king embrace the principle of non-action (*wu wei*). The king must limit his own action to the defense of the legal system. The *Huainanzi* holds that the will of the people is the foundation of the law and the king cannot change the law arbitrarily to make it fit his own interests. In this way laws suppose a strict limitation on government:

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<sup>87</sup> *The Four Political Treatises of the Yellow Emperor*, p. 109.

<sup>88</sup> *The Four Political Treatises of the Yellow Emperor*, p. 140.

Laws, records, propriety and Rightness were used to restrain the ruler so that he could not exercise absolute authority. (*Huainanzi* 9.23)<sup>89</sup>

For the *Huainanzi* the ruler was established to serve a purpose—defend and protect his people. If he does not fulfill this mission and he becomes a threat, then it is perfectly right to depose him with the use of force:

A ruler is established in order to curtail the violent and punish the disorderly. Now if one commands the strength of the myriad people yet conversely commits cruelty and robbery, this is like a tiger sprouting wings. How can it not be eliminated? (*Huainanzi* 15.2)<sup>90</sup>

One of the lines a ruler must not cross pertains to the resources taken from the people. Taxes must be limited to the minimum necessary to maintain law and order.<sup>91</sup> When the ruler follows this principle the people are not impoverished and can work peacefully to improve their situation:

Thus humane princes and enlightened rulers are restrained in what they take from those below; they are measured in supporting themselves. As a result, the people can receive the bounty of Heaven and Earth and not encounter the difficulties of hunger and cold. But if they are greedy rulers and violent princes, they vex those below, plundering and confiscating [goods] from the people to gratify their insatiable desires. (*Huainanzi* 9.27)<sup>92</sup>

For the *Huainanzi*, the use of military force to start wars of conquest, whose objective is always the increase and centralization of power, cannot be justified. Any military endeavor must be reserved as a punitive action against those rulers that behave in an oppressive manner to their own people:

<sup>89</sup> Liu An, *The Huainanzi: A Guide to the Theory and Practice of Government in early Han China*, translated by John S. Major, Sarah Queen, Andrew S. Meyer and Harold D. Roth (New York: Columbia University Press, 2010) p. 320. See also Roger T. Ames, *The Art of Rulership: a Study of Ancient Chinese Political Thought*, (Albany: State University of New York Press, 1994) pp. 139-141.

<sup>90</sup> Liu An, *The Huainanzi: A Guide to the Theory and Practice of Government in early Han China*, p. 582.

<sup>91</sup> “The author of this text, aware of the pragmatic inadequacy of earlier Taoist political theory, concedes the minimal amount of political structure necessary to guarantee the maximum degree of individual freedom.”, Ames, *The Art of Rulership: a Study of Ancient Chinese Political Thought*, p. 152.

<sup>92</sup> Liu An, *The Huainanzi: A Guide to the Theory and Practice of Government in early Han China*, p. 330.

Thus the military of a hegemon or King...when he hears that the ruler of an enemy state is being cruel to his people, he raises the military and descends on [the enemy's] borders. (*Huainanzǐ* 15.2)<sup>93</sup>

This military action must have precise limits and a clear objective. It is forbidden to cause harm to the persons and property of the territory attacked, and the action's only goal must be the removal of a tyrannical government, following the principles of the doctrine of the Mandate of Heaven:

His conquest of the kingdom does not touch the people; he [only] discards their ruler and changes their government...This was how Tang and Wu became Kings. (*Huainanzǐ* 15.2)<sup>94</sup>

We may conclude then that the political philosophy of the Huang-Lao school contains numerous similarities to the political ideas of classical liberalism. Especially important is the idea that the principal function of government is to defend a system of law that punishes criminal behavior, while simultaneously allowing the maximum amount of individual freedom. In this system, the king is subject to the rule of law and must refrain from waging aggressive wars and from extracting more resources from the people than the amount necessary to maintain law and order. The last means of checking the power of the ruler is violent action directed at the removal of a tyrant. We have in the Huang-Lao a philosophy that establishes numerous limitations and restrictions on political power<sup>95</sup> which, if contravened, would result in the elimination of the king and his substitution by one better suited for the job.

### VIII. The Legalist School

The ideas of the Legalist school represent a total departure from many ancient Chinese customs and traditional ideas about government and society. The Legalists thinkers, unlike those of others schools, were only interested in the most effective methods to increase and maintain the power of the state. They disdained traditional political and social institutions and independent moral principles, and insisted on the idea of positive law (*fa*) as the only

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<sup>93</sup> Liu An, *The Huainanzǐ: A Guide to the Theory and Practice of Government in early Han China*, p. 582.

<sup>94</sup> Liu An, *The Huainanzǐ: A Guide to the Theory and Practice of Government in early Han China*, p. 583.

<sup>95</sup> See Randall P. Peremboom, *Law and Morality in Ancient China: The Silk Manuscripts of Huang-Lao* (Albany: State University of New York Press, 1993) pp. 100-102.

proper method of ruling society. They were the ideal men for the feudal lords of the period, who, in their continuous struggle for political supremacy, needed new methods of government and new ways to legitimize their power. With the Legalists, all limitation of government disappears, leaving the people at the mercy of an absolute ruler.

One of the most important Legalist thinkers is Shang Yang (4<sup>th</sup> Century BC), who was also a minister in the State of Qin. Tradition attributes to him the famous *Book of Lord Shang* (*Shang jun shu* 商君書), in which are described many of the political reforms that the state of Qin implemented on his advice. The objective of these reforms was to make the state as strong as possible and to put an end to the influence of all intermediate institutions and associations.<sup>96</sup>

Shang Yang established a new system of land tenure, where the farmers could become individual proprietors of their lands. This was probably done in order to directly collect taxes that previously went to the feudal lords.<sup>97</sup> Shang Yang considered agriculture and war the only two beneficial activities for the state: through agriculture it was possible to feed the soldiers, and through war it was possible to defeat other kingdoms. Shang Yang believed these activities should be promoted while all other professions, especially commerce, should be heavily regulated and discouraged through prohibitions, taxation, and punishment.<sup>98</sup> Shang Yang also established a new organization of the people into groups of five or ten men, who were mutually responsible for each other, and were obliged to denounce each other's crimes. If they did not denounce their peers, they were subjected to horrifying punishments. The importance of the traditional family-system was undermined by discouraging people from living together.<sup>99</sup> All traditional virtues such as benevolence,

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<sup>96</sup> "More than two thousand years ago, the Legalists understood that the stability of a totalitarian state depends on an atomized populace with minimal personal ties. When a pervasive atmosphere of mutual distrust is generated among the common people, then the possibility of any organized civil association, which may threaten the dominant status of the ruler, is removed." Zhengyuan Fu, *China's Legalists: The Earliest Totalitarians and Their Art of Ruling*, (Armonk, NY: M.E Sharpe, 1996) pp. 42-43.

<sup>97</sup> J.J.L. Duyvendak, introduction to Shang Yang, *The Book of Lord Shang: A Classic of the Chinese School of Law*, trans. J.J.L. Duyvendak (London: Arthur Probstain, 1963) pp. 44-48.

<sup>98</sup> Shang, *The Book of Lord Shang*, p. 234.

<sup>99</sup> Duyvendak, introduction to Shang, *The Book of Lord Shang*, pp. 14-15.

justice, and filial piety are attacked.<sup>100</sup> The people should not follow any other norm of conduct but the law laid down by the ruler. All these things are done in order to make the people weak and dependent on government:

If the government takes such measures as the people hate, the people are made weak, and if it takes such measures as the people like, the people are made strong. But a weak people means a strong state, and a strong people means a weak state. (*Shang jun shu* 5:20)<sup>101</sup>

The importance of positive law is the most relevant feature of the Legalist system applied by Lord Shang: law is the tool government must use to achieve its goals:

When about to establish a state, it is necessary to examine standards and measures, to pay attention to law and order, to be vigilant in government duties, and to consolidate occupations with what is primary. When standards and measures are regulated in accordance with the times, the customs of the country may be changed and the people will follow the standard regulations; if rules and laws are clear, the officials will commit no depravity; if the duties of the government are dealt with uniformly, the people will be available for use; if occupations with what is primary are consolidated, people will take pleasure in agriculture and will enjoy warfare. Now a sage, in establishing laws, alters the customs and causes the people to be engaged in agriculture, night and day. (*Shang jun shu* 3:8)<sup>102</sup>

For the Legalists the law is created and promulgated by the ruler to control the people and to achieve his objectives, which are identified with the general interest of the State. The ruler can change the law arbitrarily and so he is situated above the law. As Zhengyuan Fu states:

The ruler, being the creator of the law, is above and beyond the law. Law as embodiment of the ruler's will, is subject to change at his arbitrary discretion...Law can always be changed at the arbitrary whim of the ruler. This was justified on the grounds that the social and external conditions are variable and the ruler must steer the

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<sup>100</sup> "A country which is administered by the aid of odes, history, rites, music, filial piety, brotherly duty, virtue and moral culture, will, as soon as the enemy approaches, be dismembered; if he does not approach, the country will be poor" (*Shang jun shu* 1:4). Shang, *The Book of Lord Shang*, p. 200.

<sup>101</sup> Shang, *The Book of Lord Shang*, p. 307.

<sup>102</sup> Shang, *The Book of Lord Shang*, p. 234.

course of the state according to his judgment of the changing times and circumstances.<sup>103</sup>

Another Legalist thinker is Han Feizi (3<sup>rd</sup> Century BC), who was the great synthesizer of the school. Han Feizi, like Xunzi, his master, believed that everybody acts motivated only by personal interest. To avoid the disorder that would follow if people were allowed to act freely, he designed a system of government. He integrates three main ideas of other Legalist thinkers in his system. The first is the already-mentioned law (fa) of Lord Shang. The ruler should establish a system of norms of conduct for everyone, designed to increase the power of the state, enforced through punishments and encouraged by rewards.<sup>104</sup> The second idea is the concept of shu (術) of Shen Buhai. This is a method designed to make sure the people in the service of the king are highly efficient in their jobs. In this view, the king should employ and reward his ministers and public servants based on their capacities and achievements.<sup>105</sup> The third notion is the art of ruling (shi 勢) of Shen Dao. According to this principle, the ruler must not act or propose any course of action. He must let his ministers and other officials propose different plans for meeting objectives, rewarding through law he who achieves success and punishing he who fails.<sup>106</sup> With this system the state will be ruled well. The people are considered just another tool or resource at the hands of the ruler and the power of the king over his subjects is absolute:

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<sup>103</sup> Zhengyuan, *China's Legalists: The Earliest Totalitarians and Their Art of Ruling*, pp. 66-67. In fact this feature of the legalist system of government is something that happens in all territorial monopolies. As Randy Barnett argues, modern States situate themselves above the law since they do not obey the substance of their own laws: "For example the State says that citizens may not take from another by force and against his will that which belongs to another. And yet the State through its power to tax "legitimately" does just that... More essentially, the State says that the person may use force upon another only in self-defense, i.e. against another who initiated the use of force. To go beyond one's right of self-defense would be to aggress on the rights of others, a violation of one's legal duty. And yet the State by its claimed monopoly forcibly imposes its jurisdiction on persons who may have done nothing wrong. By doing so it aggresses against the rights of its citizens, something which its rules say citizens may not do." Randy E. Barnett, "Fuller, Law and Anarchism", *Libertarian Forum*, Vol. 9, No. 2 (February 1976), p. 7.

<sup>104</sup> Han Feizi, *Han Feizi: Basic Writings*, trans. Burton Watson, (New York: Columbia University Press, 2003), pp. 83-84.

<sup>105</sup> Han, *Han Feizi*, p. 19.

<sup>106</sup> Han, *Han Feizi*, p. 18.

But the ruler occupies a position whereby he may impose his will upon others, and he has the whole wealth of the nation at his disposal, he may dispense lavish rewards and severe penalties, and by wielding these two handles, may illuminate all things through his wise policies. (*Han Feizi* 49:8)<sup>107</sup>

Following the Legalist policies the state of Qin would finally result in the defeat of the other kingdoms and the unification of China under the rule of Shi Huangdi, the first emperor of the Qin Dynasty. This emperor would combine all the characteristics of a tyrant. He heavily taxed his people, continually forced them to labor in the army and on public works such as the Great Wall, established a harsh system of punishments, persecuted and killed literates and scholars, forbade and destroyed the works of the different schools of thought, and disarmed the people to reduce all possibility of rebellion.<sup>108</sup>

## IX. Conclusions

The political thought of the different schools of ancient China is rich and diverse, and many of the major philosophers of the period supported ideas that have the potential to limit the power of the king. Nevertheless, they also embraced ideas that are detrimental to this limitation, and help explain the initial success of the Legalist school.

One of these is the idea that men should be promoted for office on the basis of merit and ability. This idea breaks down the hereditary principle of the feudal nobility and the ideology associated with it. This meritocratic principle, instead of promoting liberty, works against it, because the kings attract men of talent from all social classes. These men are almost inevitably

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<sup>107</sup> Han, *Han Feizi*, p. 109.

<sup>108</sup> In his *Historical Records* (*Shiji* 史記), Sima Qian quotes the philosopher Jia Yi, who wrote: “The First Emperor of Ch’in, harbouring an avaricious heart and following a self-assertive mind, not trusting his meritorious vassals or keeping close to intellectuals and commoners, abolished the kingly way of ruling, established his personal authority, banned writings and books, stiffened punitive laws, promoted craft and power, neglected benevolence and righteousness, and made tyranny the first rule of the world” (*Shiji* 6:283). Ssu-ma Ch’ien, *The Grand Scribe’s Records. Vol. 1, The Basic Annals of Pre-Han China. Vol. 7, The Memoirs of Pre-han China*, William H. Nienhauser, Jr., ed. (Bloomington and Indianapolis: Indiana University Press, 1994) p. 168. For a different translation of Jia Yi’s essay in chapter 48 of the *Shiji*, see Sima Qian, *The First Emperor: Selections from the Historical Records*, translated by Raymond Dawson (New York: Oxford University Press, 2007) pp. 139-142.

those who are skilled in increasing the power of their masters. The more they free themselves from the moral restrictions attached to old customs and practices, the more success they achieve, so kings tend to select advisers who are both intelligent and amoral. Defenders of a government based on ethical principles are progressively discarded.<sup>109</sup>

A second detrimental idea is the moral constructivism found in some of these philosophers. Whether they say that morality is just a useful invention of sage kings (like Xunzi) or that political power is the only way to put an end to the natural disorder of society (like Mozi), they place enormous power in the hands of the king to control society and to mould people's behavior.

The third idea is the importance that all these philosophers attach to the principle of universal government. As Eric Voegelin says, the political order of early China was not an empire but the organization of a clan society that understood itself as the ecumene of human civilization. This order would gradually collapse with the decline of the Zhou dynasty, which produced dissociation between power and spirit. Political institutions lost their legitimacy as a source of spiritual order due to the fight for supremacy between the feudal rulers. This spiritual legitimacy would be taken up by the virtuous Confucian and Daoist sages.<sup>110</sup> Unfortunately, they never believed that political decentralization and peaceful and virtuous government were compatible. For many of them, especially the Confucians, one of the main purposes of the true king was to unify the world under a single government, just as the sage rulers of the past had done. They also believed that all attempts to achieve political unification based on violence ran against the cosmological nature of things, and so were doomed to failure.<sup>111</sup> But the success of Qin showed that Legalist ideas of government were far more

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<sup>109</sup> As Knoblock says: "Confucius, Mo Di, and Mencius met with no success, although they traveled from court to court. Shang Yang found a patron in the Duke of Qin, but the duke was bored by discussions of True Kingship and wanted to know how to gain universal dominion. Xunzi confronted skepticism about philosophies of True Kingship, interest in the practices of the lords-protector, but, far worse, preoccupation to the point of obsession, with techniques of increasing wealth and reputation. Self-control, moral self-cultivation, and ritual propriety were scarcely ever admired; they were pieties to be endorsed but systematically ignored in any important issue and in the pursuit of self-gratification" Xunzi, *Xunzi*, Vol. 2, pp. 139-140.

<sup>110</sup> Eric Voegelin, *The Ecumenic Age*, edited with an introduction by Michael Franz, Vol. 4 of *Order and History*. Vol. 17 of *The Collected Works of Eric Voegelin*. (Columbia, Missouri: University of Missouri Press, 2000) p. 369.

<sup>111</sup> Voegelin, *The Ecumenic Age*, p. 364.

useful in achieving the end of political unification than were the principles of virtuous government defended by other schools. The success of Qin was a fatal blow to the numerous constraints on government upheld by those schools. And we should also take into account the ability of the state to manipulate the ideologies that place restrictions on its actions.<sup>112</sup>

When the Qin dynasty was overthrown, Confucianism would become the official doctrine of the Han dynasty. But it was a Confucianism deprived of many of its characteristic features and mixed with Legalist ideas of government. Under the cover of a respected ideology such as Confucianism, many Legalist reforms would continue to exist in the political system of the Han dynasty. The ideas of meritocracy, moral constructivism, and universal government worked against intermediate institutions and the moral principles associated with them; without their influence to counteract the power of the state, it was far more difficult to give support to doctrines that defend the limitation of power.

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<sup>112</sup> "Power possesses some mysterious force of attraction by which it can quickly bring to heel even the intellectual systems conceived to hurt it." Bertrand de Jouvenel, *On Power: Its Nature and the History of Its Growth*, (Boston: Beacon Press, 1962) p. 59.

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