

AUSTRO-LIBERTARIAN THEMES IN EARLY CONFUCIANISM

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CONFUCIANISM: THE UNKNOWN IDEAL

When scholars look for anticipations of classical liberal, Austrian, and libertarian ideas in early Chinese thought, attention usually focuses not on the Confucians, but on the Taoists, particularly on Laozi (Lao-tzu), reputed author of the Taoist classic *Daodejing* (*Tao Te Ching*).¹

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A note on Chinese names and terms: There are several systems of romanization for Chinese names, the two most familiar being Pinyin and, in English-speaking countries, Wade-Giles, with the former now beginning to displace the latter. The two systems are different enough that terms in one system are often unrecognizable in the other. In two instances, in addition to the Wade-Giles and Pinyin transliteration, names are commonly Latinized: Confucius and Mencius.

Throughout this essay I employ Pinyin. For the reader's convenience, I also give the Wade-Giles equivalent (when it differs from the Pinyin) and the Latin in parentheses at the first occurrence of each term in text and footnotes. Terms in quotations and names of published articles and books are left as is, with the equivalents in parenthesis as appropriate.

An appendix of transliterations is offered at the end of the article.

¹Laozi (Lao-tzu), *Daodejing*, in *Readings in Classical Chinese Philosophy*, ed. and trans. Philip J. Ivanhoe and Bryan W. Van Norden (New York: Seven Bridges Press, 2001), pp. 157–201. The reader is cautioned that the authorship of many ancient texts is in controversy, e.g., writings attributed to Laozi or Kongfuzi (K'ung-fu-tzu or Kongzi or Confucius) may have been written by them, their students, or others. Many such ancient text are available in multiple translations, and, in several instances, I will be drawing from more

For example, David Boaz's *Libertarian Reader* is subtitled "Classic and Contemporary Writings from Lao-tzu to Milton Friedman."² In *Libertarianism: A Primer*, Boaz identifies Laozi as the "first known libertarian."³ No Confucian thinker makes an appearance in either work. Murray Rothbard likewise declares, in the first chapter of his *History of Economic Thought*: "The Taoists were the world's first libertarians, who believed in virtually no interference by the state in economy or society, and the Confucians were middle-of-the-roaders on this critical issue"—coming from Rothbard, this characterization of Confucianism amounts to irrevocable damnation and consignment to outer darkness.⁴

Whatever Boaz and Rothbard agree on must practically be libertarian orthodoxy; nevertheless, I venture a dissent. It is true that Taoist writings often contain magnificent insights into the effectiveness of spontaneous order and the evils of coercion and governmental control, and it is likewise true that the Confucians can all too often be preachy, hidebound, starchy apologists for an authoritarian status quo. If that were the whole story, the Taoists would have to win hands down. But it is not the whole story, and once the whole story is on the table, it will become clear that, from a libertarian perspective, the Taoists have been overrated and the Confucians underrated.

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.

than one translation. I shall endeavor to be clear about which translation I am citing in such cases.

²David Boaz, *The Libertarian Reader: Classic and Contemporary Writings from Lao-tzu to Milton Friedman* (New York: Free Press, 1997).

³David Boaz, *Libertarianism: A Primer* (New York: Free Press, 1997), p. 27.

⁴Murray N. Rothbard, *Economic Thought before Adam Smith*, vol. 1 of *An Austrian Perspective on the History of Economic Thought* (Cheltenham, U.K.: Edward Elgar, 1995), p. 23. The only Confucian to earn Rothbard's praise as a proto-libertarian is 2nd century BCE historian Sima Qian (Ssu-ma Ch'ien), about whom more below. However, Rothbard does not identify Sima as a Confucian or, apparently, see any continuity between his ideas and the distinctive themes of the Confucian tradition. See Rothbard, *Economic Thought before Adam Smith*, pp. 26–27.

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With regard to reason and language, one of the central messages of Taoism is that all abstract categories and linguistic distinctions falsify our lived experience—a doctrine that has traditionally been anathema to libertarians.⁵ The Taoists oppose government control because it is too rational; trying to impose planning on society and trying to impose coherence on one's own thoughts are equally bad, and for the same reasons. The Confucians, by contrast, resemble contemporary libertarians in their stress on logical consistency and precision in terminology. Indeed, they are strikingly reminiscent of today's libertarians in their obsession with what Confucians call the “rectification of names”⁶—dissolving pernicious ethical and political mystification by applying the proper descriptions to social phenomena—whereas for the Taoists, all such classifications are arbitrary and optional, since “the way that can be spoken is not the constant Way” and “the name that can be named is not the constant name.”⁷

With regard to commerce and civilization, here is Laozi's sketch of the Taoist utopia:

Lessen the population. Make sure that even though there are labor saving tools, they are never used. Make sure that the people look upon death as a weighty matter and never move to distant places. Even though they have ships and carts, they will have no use for them. . . . Make sure that the people return to the use of the knotted cord [in lieu of writing]. . . . Then even though neighboring states are within sight of each other, [and] can hear the sounds of each other's dogs and chickens . . . people will grow old and die without ever having visited one another.⁸

⁵For the views of F.A. Hayek and Ayn Rand on this issue, see Roderick T. Long, “The Benefits and Hazards of Dialectical Libertarianism,” *Journal of Ayn Rand Studies* 2, no. 2 (Spring 2001), pp. 406–18.

⁶Kongfuzi (K'ung-fu-tzu or Confucius), *The Analects of Confucius (Lun Yu): A Literal Translation With an Introduction and Notes*, trans. Chichung Huang (Oxford: Oxford University Press, 1997), pp. 132–33. The reader is cautioned that *Analects* is available in more than one translation, and three different translations are cited in this article. See also Xunzi (Hsün Tzu), *Hsün Tzu: Basic Writings*, ed. and trans. Burton Watson (New York: Columbia University Press, 1963), pp. 139–56.

⁷The opening lines of the *Daodejing*; for a discussion of their translation, see Ivanhoe and Norden, *Readings in Classical Chinese Philosophy*, p. 159.

⁸Laozi, *Daodejing*, p. 199. There is a flavor of Pol Pot; one wonders how the sage advice to “lessen the population” is going to be implemented.

Bao Jingyan (Pao Ching-yen), a later Taoist that Rothbard singled out for praise, offers a similarly primitivist portrait:

In earliest antiquity, there were no rulers and no officials. . . . There were no trails and paths through the mountains, and neither boats nor bridges existed in the waters. When streams and valleys offered no passage, there was no spreading land-ownership encroachment. . . . Purity and naïveté resided in all breasts, so calculating thoughts did not arise. People munched their food and disported themselves; they were carefree and contented. . . . They have no spreading lands to arouse avarice, they have no walled cities to be taken as useful, they possess no gold and gems that others might covet.⁹

No writing, education, material improvements, curiosity, travel, or trade—this is not exactly the Hayekian “Great Society.” Anarchic it may be, but it is less the dynamic market-based anarchism of Rothbard than the primitivist, acorn-munching anarcho-stagnation of Rousseau’s *Second Discourse*.¹⁰ If this is the price of freedom, statism begins to look good.

The early Confucians, by contrast, may not be as radical in their anti-statism as the Taoists, but they make up for this flaw by firmly yoking their anti-statism to the cause of civilization, commerce, and the Great Society; their overall program looks more like contemporary libertarianism than the Taoist program does. One 2nd c. BCE Confucian text, while noting approvingly Laozi’s hostility to despotism,¹¹ sharply criticizes Laozi for wanting to “drag the present age back to the conditions of primitive times and to stop up the eyes and ears of the people”; the best ruler instead “accepts the nature of the people,” which is to long for “ease and comfort,” and “beautiful sounds and forms.”¹²

⁹Quoted in Kung-chuan Hsiao, *From the Beginnings to the Sixth Century A.D.*, vol. 1 of *A History of Chinese Political Thought*, trans. F.W. Mote (Princeton, N.J.: Princeton University Press, 1979), pp. 624–27. See also Rothbard, *Economic Thought before Adam Smith*, pp. 25–26.

¹⁰Jean-Jacques Rousseau, *First and Second Discourses*, ed. Roger Masters (New York: Bedford/St. Martin’s, 1969).

¹¹Sima Qian, *Records of the Grand Historian: Han Dynasty II*, rev. ed., trans. Burton Watson (Hong Kong: Columbia University Press, 1993), pp. 379–80.

¹²Sima, *Han Dynasty II*, pp. 433–34.

POWER AND MARKET

Confucianism, like Chinese philosophy more generally, emerged during a lengthy period of political fragmentation in the wake of the collapse of the Zhou (Chou) Dynasty; this five-century interregnum between the Zhou and Qin (Ch'in) dynasties, running from the 8th through 3rd centuries BCE, is called the Eastern Zhou period.¹³ As in Renaissance Italy, with political decentralization came bloody warfare on the one hand, and economic and cultural flowering on the other. As the empire split into independent states, scholars competed vigorously for the chance to serve as political advisors to the emerging new régimes; it is from this situation that Chinese philosophy emerged.¹⁴ The resulting era of cultural creativity is sometimes called the “hundred schools” period. One of these schools was the Confucian tradition, founded by the itinerant teacher Kongfuzi (K'ung-fu-tzu or Confucius; 6th–5th c. BCE); Kongfuzi's doctrines were soon elaborated by a host of subsequent thinkers, most notably Mengzi (Meng-tzu or Mencius; 4th c. BCE), Xunzi (Hsün-tzu; 3rd c. BCE), and Sima Qian (Ssu-ma Ch'ien; 2nd c. BCE).

While no school of early Chinese thought is *consistently* libertarian, the Confucians score higher than any of their rivals, offering many intriguing anticipations of contemporary libertarian ideas, while the Taoists often receive undeserved credit for what are properly Confucian ideas. 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). The dependence of Taoism on Confucianism has been obscured by the fact that Laozi, the purported author of the *Daodejing*, has traditionally been identified with Lao Dan (Lao Tan), an older contemporary of Kongfuzi. This would place the *Daodejing* in the 6th century BCE, making its author the earliest proponent of spontaneous order in Chinese literature. Both Boaz and Rothbard accept this early date, but contemporary Sinologists are now

¹³The Eastern Zhou period is often divided into the Spring-and-Autumn period (8th–5th c.) and the Warring States period (5th–3rd c.). The name “Eastern Zhou” derives from the location of the nominal capital maintained by what was left of the Zhou royal house during this era; the preceding era, that of the Zhou Dynasty proper, is called the Western Zhou.

¹⁴See Burton Watson, introduction to Xunzi, *Hsün Tzu*, pp. 3–4; and Cho-yun Hsu, *Ancient China in Transition: An Analysis of Social Mobility, 722–222 B.C.* (Stanford, Calif.: Stanford University Press, 1965), pp. 3–4.

in near-unanimous agreement that the *Daodejing* is a product of the 3rd century BCE (or the late 4th, at the earliest).¹⁵ This redating means that the spontaneous-order teachings of Laozi, like those of his Taoist contemporary Zhuangzi (Chuang-tzu), were composed *after* the spontaneous-order teachings of Confucians like Kongfuzi and Mengzi.

The natural universe, Kongfuzi observes, maintains order without giving commands,¹⁶ and the ruler should do likewise, remaining motionless like the north star and letting the people revolve spontaneously around him.¹⁷

If you yourself are correct, even without the issuing of orders, things will get done; if you yourself are not correct, although orders are issued, they will not be obeyed.¹⁸

Was not Shun one who ruled by means of *wuwei* [non-action]? What did he do? He made himself reverent and took his position facing south [i.e., adopted the ritual posture of the Emperor], that is all.¹⁹

Mengzi concurs with Kongfuzi's preference for spontaneous order over imposed order:

There was a man from Sung who pulled at his rice plants because he was worried about their failure to grow. Having done so, he went on his way home, not realizing what he had done. "I am worn out today," said he to his family. "I have been helping the rice plants to grow." His son rushed out to take a look and there the plants were, all shriveled up. There are few in the world who can resist the urge to help their rice plants grow.²⁰

¹⁵See, e.g., Fung Yu-lan, *The Period of the Philosophers (From the Beginnings to circa 100 B.C.)*, vol. 1 of *A History of Chinese Philosophy* (Princeton, N.J.: Princeton University Press, 1952), p. 170; and Angus Graham, *Disputers of the Tao: Philosophical Argument in Ancient China* (La Salle, Ill.: Open Court, 1989), pp. 215–19.

¹⁶Kongfuzi, *Analects*, trans. Huang, p. 170; cf. Xunzi, *Hsün Tzu*, pp. 79–88; and Mengzi (Meng-tzu or Mencius), *Mencius*, trans. D.C. Lau (London: Penguin, 1970), p. 143. The reader is advised that more than one translation of *Mencius* is cited in this article.

¹⁷Kongfuzi, *Analects*, trans. Huang, p. 52.

¹⁸Kongfuzi, *Analects*, trans. Huang, p. 134.

¹⁹Kongzi (Kongfuzi or K'ung-fu-tzu or Confucius), *Analects*, in Ivanhoe and Norden, *Readings in Classical Chinese Philosophy*, p. 41.

²⁰Mengzi, *Mencius*, trans. Lau, p. 78.

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It is in reading such Taoist-sounding Confucian passages as these that we need to remind ourselves that the Confucians came first.

Kongfuzi's enthusiasm for spontaneous order translates into a distinct lack of enthusiasm for the institution of punishment.²¹ Later Confucians generally have a more favorable attitude toward punishment,²² but still favour moderating its harshness; in particular, the common practice of punishing the entire family for the act of an individual is forcefully rejected.²³

Consider 2nd-century BCE Confucian Jia Yi (Chia I):

When punishments and penalties accumulate, the people turn away in resentment. . . . When they are bludgeoned with laws and commands, and as the application of laws and commands reaches the point of saturation, the prevailing mood among the people is one of sadness.²⁴

The Confucian position contrasts with that of another rival school, the Legalists, who argued that punishments should be as harsh as possible to maximize their deterrent effect.²⁵ Legalists favored punishing minor transgressions as harshly as major ones, a policy later implemented in the Qin Dynasty. Sima Qian takes obvious satisfaction in describing the way in which this policy backfired.²⁶ When minor and major transgressions were punished equally harshly, people became willing to commit a major transgression to avoid being caught for a minor one (a point also made nowadays by libertarian critics of

²¹Kongfuzi, *Analects*, ed. Huang, pp. 52, 130; also Kongfuzi, *The Analects of Confucius: A Philosophical Translation*, trans. Roger T. Ames and Henry Rosemont Jr. (New York: Ballantine, 1998), pp. 164–65.

²²This is especially true of Xunzi, the most tough-minded and regulation-happy of the early Confucians. See 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. 37.

²³Mengzi, *Mencius*, trans. Lau, p. 65; Xunzi, *Xunzi*, vol. 3, p. 166–67; and Sima Qian, *Records of the Grand Historian: Han Dynasty I*, rev. ed., trans. Burton Watson (Hong Kong: Columbia University Press, 1993), pp. 290, 470–71.

²⁴Quoted in Hsiao, *From the Beginnings to the 6th Century A.D.*, p. 479.

²⁵Han Feizi (Han Fei-tzu), *Han Fei Tzu: Basic Writings*, trans. Burton Watson (New York: Columbia University Press, 1964), p. 103.

²⁶Sima, *Han Dynasty I*, pp. 1–2; and Sima Qian, *Records of the Grand Historian: Qin Dynasty*, trans. Burton Watson (Hong Kong: Columbia University Press, 1993), p. 80.

“three strikes–you’re out” laws). For all their vaunted insight into incentive structures, the Legalist architects of the Qin legal system failed to grasp this crucial principle—a failure that ultimately led to the collapse of their régime, when a battalion of soldiers already facing the death penalty for a minor infraction (tardiness!) decided they had nothing to lose in trying to overthrow the government.

Confucian writings are characterized by unrelenting hostility to governmental abuse of power. Sima Qian complains that the builders of the Great Wall “made free with the strength of the common people,”²⁷ and describes power-hungry public officials as “in fact no different from a bunch of bandits who swoop down upon men with drawn swords.”²⁸ Mengzi condemns the seizing of private property for government use;²⁹ he likewise condemns imperialist expansionism:

A benevolent man would not even take from one man to give to another, let alone seek territory at the cost of human lives. . . . Those who are in the service of princes today all say, “I am able to extend the territory of my prince, and fill his coffers for him.” The good subject of today would have been looked upon in antiquity as a pest upon the people. To enrich a prince who is neither attracted to the Way nor bent upon benevolence is to aid a Chieh [i.e., a tyrant].³⁰

Mengzi also writes:

In wars to gain land, the dead fill the plains; in wars to gain cities, the dead fill the cities. This is known as showing the land the way to devour human flesh. Death is too light a punishment for such men.³¹

And Xunzi argues that a ruler who favors peace and commerce will “hold his armies in reserve and give his soldiers rest”; he can “sit back at ease and goods will pile up, all will be well ordered, and there will be enough of all things to go around.”³²

The Confucians also had a generally libertarian, or at least a classical liberal, attitude toward taxation. Xunzi writes:

²⁷Sima, *Qin Dynasty*, p. 213.

²⁸Sima, *Qin Dynasty*, p. 427.

²⁹Mengzi, *Mencius*, trans. Lau, p. 113.

³⁰Mengzi, *Mencius*, trans. Lau, p. 178.

³¹Mengzi, *Mencius*, trans. Lau, p. 124.

³²Xunzi, *Hsiün Tzu*, pp. 53–54.

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The tax on the fields shall be one tenth. At barriers and in markets, the officials shall examine the goods but levy no tax. The mountains, forests, lakes, and fish weirs shall at certain seasons be closed and at others opened for use, but no taxes shall be levied on their resources. . . . Goods and grain shall be allowed to circulate freely, so that there is no hindrance or stagnation in distribution. . . . Thus, the people living in lake regions have plenty of lumber and those living in the mountains have plenty of fish. . . . Such goods serve above to adorn worthy and good men, and below to nourish the common people and bring them security and happiness. This is what is called a state of godlike order.³³

Sima Qian observes that taxes on shipping discourage trade, making goods scarcer and more costly;³⁴ hence he cites the maxim: “Wealth and currency should be allowed to flow as freely as water!”³⁵ One modern scholar notes that the Confucians “observed the problem of taxation from the viewpoint of production, which was rather exceptional in the history of ancient financial thought.”³⁶

Like Adam Smith, the Confucians insist that the “wealth of nations” should be measured in terms of the wealth of the populace, not of the government. Xunzi writes:

[A ruler] who pays attention only to the collection of taxes will be lost. Thus, a king enriches his people, a dictator enriches his soldiers, a state that is barely managing to survive enriches its high officers, and a doomed state enriches only its coffers and stuffs its storehouses. But if its coffers are heaped up and its storehouses full, while its people are impoverished, this is what is called to overflow at the top but dry up at the bottom.³⁷

Accordingly, the Confucians advocated a maximum tax rate of about ten or eleven percent. (The rate actually prevailing was rarely below twenty, and often much higher.)³⁸

³³Xunzi, *Hsün Tzu*, pp. 43–44. For similar advice from Mengzi, see Mengzi, *Mencius*, trans. Lau, pp. 65–66, 82.

³⁴Sima, *Han Dynasty II*, p. 81.

³⁵Sima, *Han Dynasty II*, p. 437.

³⁶Hu Jichuang, *A Concise History of Chinese Economic Thought* (Beijing: Foreign Languages Press, 1988), p. 53.

³⁷Xunzi, *Hsün Tzu*, p. 38.

³⁸Kongfuzi, *Analects*, trans. Huang, pp. 127–28; cf. Wing-tsit Chan, ed., *A Sourcebook in Chinese Philosophy* (Princeton, N.J.: Princeton University

Confucianism has a reputation of being suspicious of commerce and trade, foreign trade especially, but this reputation stems from a later period when the Confucians had established themselves as a privileged bureaucratic and intellectual class, hostile to social mobility and to the new ideas that foreign trade brings.³⁹ While early Confucianism contains both pro-commerce and anti-commerce strands, the pro-commerce strands predominate. Admittedly, the Confucians do tend to emphasise agricultural over mercantile pursuits,⁴⁰ but Xunzi and Sima Qian, for example, nevertheless sing the praises of foreign trade, which ensures that “wherever the sky stretches and the earth extends, there is nothing beautiful left unfound, nothing useful left unused.”⁴¹ Mengzi expresses a dim view of entrepreneurial profit,⁴² but for Xunzi, when “farmers labor with all their energy to exhaust the potential of their fields” and “merchants scrutinize with keen eyes to get the utmost from their goods,” this is a symptom of positive social order and “perfect peace.”⁴³

Sima, in his praise of Kirzner-style entrepreneurial alertness, waxes nearly Randian:

These, then, are examples of outstanding and unusually wealthy men. None of them enjoyed any titles or fiefs, gifts, or salaries from the government, nor did they play tricks with the law or commit any crimes to acquire their fortunes. They simply guessed what course conditions were going to take and acted accordingly, kept a sharp eye out for the opportunities of the times, and so were able to capture a fat profit. . . . There was a special aptness in the way they adapted to the times. . . . All of these men got where they did because of their devotion and singleness of purpose. . . . [T]here is no fixed road to wealth, and money has no permanent master. It finds its way to the man of

Press, 1963), pp. 94, 106. Sadly, the Confucians’ maximum rate was also the minimum; Mengzi states that while a higher rate would be rapaciously tyrannical, a lower rate would be barbarically uncouth. See Mengzi, *Mencius*, trans. Lau, p. 179. (Well, I didn’t promise libertarian purity.)

³⁹This is a recurrent theme in Louise Levathes, *When China Ruled the Seas: The Treasure Fleet of the Dragon Throne, 1405–1433* (Oxford: Oxford University Press, 1994).

⁴⁰Sima, *Han Dynasty II*, p. 84.

⁴¹Xunzi, *Hsiün Tzu*, pp. 43–44; cf. Sima, *Han Dynasty II*, p. 434.

⁴²Mengzi, *Mencius*, trans. Lau, p. 92.

⁴³Xunzi, *Xunzi*, vol. 1, p.195.

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ability like the spokes of a wheel converging upon the hub, and from the hands of the worthless it falls like shattered tiles. . . . Rich men such as these deserve to be called the “untitled nobility.”⁴⁴

Sima adds that “Poverty and wealth are not the sorts of things that are arbitrarily handed to men or taken away,”⁴⁵ but instead track the absence or presence of effort and skill. For Sima, anyone who forgoes productive work, choosing dependence on others without feeling shame, can “hardly deserve to be called human.”⁴⁶

Xunzi also expresses enthusiasm for economic prudence and providence: if all people “gave free rein to their desires,” never deferring consumption or conserving for the future, then “the material goods of the whole world would be inadequate to satisfy them.” A person who “consumes his provisions in an utterly extravagant manner, not considering the consequences,” will, in Xunzi’s gentle description, inevitably “freeze, starve, be reduced to holding a begging gourd and sack, and will wind up as a skeleton lying in a drainage ditch.” The inculcation of “regulations, ritual, and moral principles” leads human beings to “consider the long view of things,” and, thus, to “moderate what they expend and control what they desire, harvesting, gathering, hoarding, and storing up goods in order to perpetuate their wealth.”⁴⁷

The Confucians also recognized the importance of the division of labour, and the existence of mutual gains from trade. Mengzi observes:

To trade grain for implements is not to inflict hardship on the potter and the blacksmith. The potter and the blacksmith, for their part, also trade their wares for grain. In doing this, surely they are not inflicting hardship on the farmer either. . . . [I]t is necessary for each man to use the products of all the hundred crafts. If everyone must make everything he uses, the Empire will be led along the path of incessant toil.⁴⁸

The Confucians hit upon other economic principles as well. For example, Mengzi sees that the relative values of two kinds of good

⁴⁴Sima, *Han Dynasty II*, p. 453.

⁴⁵Sima, *Han Dynasty II*, p. 435.

⁴⁶Sima, *Han Dynasty II*, p. 449.

⁴⁷Xunzi, *Xunzi*, vol. 1, pp.193–95.

⁴⁸Mengzi, *Mencius*, trans. Lau, p. 101; cf. p. 109; Xunzi, *Hsün Tzu*, p. 44; and Fung, *The Period of the Philosophers*, p. 295.

depends on specific increments of those goods in a given context of choice, and thus comes tantalizingly close to discovering the marginalist-subjectivist solution to the diamond-water paradox. He writes:

Which is more important, the rites or food? [The rites.] Suppose you would starve to death if you insisted on the observance of the rites, but would manage to get something to eat if you did not. Would you still insist on their observance? . . . In saying that gold is heavier than feathers, surely one is not referring to the amount of gold in a clasp and a whole cartload of feathers?⁴⁹

Mengzi also understands the dangers of governmental interference with market prices. Here, he summarizes the views of utopian theorist Xuzi (Hsü-tzu)⁵⁰ who had advocated the equalization of prices:

If we follow the way of Hsü Tzu, there will be only one price in the market, and dishonesty will disappear from the capital. Even if you send a mere boy to the market, no one will take advantage of him. For equal lengths of cloth or silk, for equal weights of hemp, flax, or raw silk, and for equal measures of the five grains, the price will be the same; for shoes of the same size, the price will also be the same.

Mengzi replies:

That things are unequal is part of their nature. . . . If you reduce them to the same level, it will only bring confusion to the Empire. If a roughly finished shoe sells at the same price as a finely finished one, who would make the latter? If we follow Hsü Tzu, we will be showing one another the way to being dishonest.⁵¹

The later Confucian document *Yantielun* (*Yen T'ieh Lun*) concurs that if we “standardize the price,” then consumers will be left with “no choice at all between the good and the bad” products.⁵² (Here, Mengzi and the *Yantielun* have anticipated the libertarian case against rent control: if landlords are forbidden to charge more for a well-maintained property than for a badly-maintained one, they will have no incentive to keep their properties in good repair, and so consumers will be deprived of the opportunity to choose higher quality housing.)

⁴⁹Mengzi, *Mencius*, trans. Lau, p. 171.

⁵⁰Not to be confused with the Confucian Xunzi (Hsün-tzu).

⁵¹Mengzi, *Mencius*, trans. Lau, p. 104.

⁵²Quoted in Hsiao, *From the Beginning to the 6th Century A.D.*, p. 463.

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Sima Qian too is aware of the operations of the price system, and clearly understands the case for letting it correct itself automatically:

Society obviously must have farmers before it can eat; for-esters, fishermen, miners, etc., before it can make use of natural resources; craftsmen before it can have manufactured goods; and merchants before they can be distributed. But once these exist, what need is there for government directives, mobilizations of labour, or periodic assemblies? Each man has only to be left to utilize his own abilities and exert his strength to obtain what he wishes. Thus, when a commodity is very cheap, it invites a rise in price; when it is very expensive, it invites a reduction. When each person works away at his own business then, like water flowing downward, goods will naturally flow forth ceaselessly day and night without having been summoned, and the people will produce commodities without having been asked. Does this not tally with reason? Is it not a natural result?⁵³

Sima also grasps the connection between price inflation and the expansion of the money supply, and, in an early foray into public-choice analysis, tells how a bureaucratic agency established to regulate the iron and salt industries ended up being captured by the very merchants it was supposed to regulate.⁵⁴

In the *Yantielun*, we find the Confucians arguing:

[T]he physical strength of people may vary; in some regions they are stronger, and in others weaker, presenting quite different conditions. The need may be for larger or smaller implements, circumstances may demand here one shape, there another; localities vary and practices change, and in each particular situation, each implement has its advantages. As the government imposes a single standard for all, iron implements are deprived of their specific aptness, and the farmers lose thereby the particular advantages of each.⁵⁵

Here we see a striking anticipation of Friedrich Hayek's idea that a central planner must necessarily lack "knowledge of the particular circumstances of time and place" on which individual economic actors base their decisions.⁵⁶

⁵³Sima, *Han Dynasty II*, p. 434.

⁵⁴Sima, *Han Dynasty II*, p. 69–71.

⁵⁵Quoted in Hsiao, *From the Beginnings to the Sixth Century A.D.*, p. 463.

⁵⁶Friedrich A. Hayek, *Individualism and Economic Order* (Chicago: University of Chicago Press, 1980), p. 84.

But the Confucians did not merely notice this or that economic principle; they also grasped the *form* and *ground* of economic principles in general. In a passage reminiscent of Menger's and Mises's critiques of economic historicism, Xunzi writes:

Abandoned incorrigible people say: Ancient and present times are different in nature; the reasons for their order and disorder differ. And many people are thus misled. . . . But why cannot the Sage be so deceived? I say it is because the Sage measures things by himself. Hence by himself he measures other men; by his own feelings he measures their feelings. . . . Past and present are the same. Things that are the same in kind, though extended over a long period, continue to have the self-same principles.⁵⁷

Xunzi not only acknowledges the *necessity* and *universality* of economic principles, he also recognizes their dependence not on empirical observation but on introspection.⁵⁸ Hence, the Confucians anticipate the praxeological method of Austrian economics.⁵⁹

As we have seen, Confucians are quick to point out the beneficial social consequences of *laissez-faire*, but it would be a mistake to infer that the Confucian case for liberty is purely consequentialist. Respect for the choices of others is not just good social policy, it is also a principle of interpersonal ethics: *shu*, or reciprocity, is summed up in the Confucian maxim: "Do not impose upon others what you yourself do not desire."⁶⁰ This statement of the Golden Rule is echoed repeatedly throughout the early Confucian writers, and recommends a broad disposition to behave cooperatively toward others.⁶¹ But the Rule is *not*

⁵⁷Quoted in Fung, *The Period of the Philosophers*, p. 284.

⁵⁸The Confucian text *Liji (Li Chi)* makes a similar point: "The *Book of Odes* says, 'In hewing an axe handle . . . the pattern is not far off.' If we take an axe handle to hew another axe handle and look askance from one to another, we may still think the pattern is far away. Therefore the superior man governs men as men, in accordance with human nature." Excerpted in Chan, *Source Book in Chinese Philosophy*, pp. 100-1.

⁵⁹Hayek, *Individualism and Economic Order*, pp. 63-75.

⁶⁰Kongzi, *Analects*, trans. Ivanhoe and Van Norden, p. 42.

⁶¹Kongfuzi, *Analects*, trans. Huang, p. 74, 125; Mengzi, *Mencius*, trans. Lau, p. 182; Chan, *Source Book in Chinese Philosophy*, pp. 92, 101; and Graham, *Disputers of the Tao*, p. 20.

Libertarians have sometimes expressed a preference for the Confucian formulation of the Golden Rule over the Christian version, on the grounds

understood to require cooperative behaviour toward those who refuse to respond in kind; the Confucian sage is not a pushover.⁶² To practice *shu* is to cultivate a *reciprocating* disposition.

THE MARKET FOR LIBERTY

Confucians, as we have seen, favor a political order within which market principles are free to operate. But they go one step further: they apply market principles to the political order itself. Workers, Mengzi tells us, should be paid for their actual accomplishments, not for their good intentions.⁶³ The ruler, too, is seen as a person selected to provide a service; if he does not do his job, he should be discharged:

[MENGZI] “If the Marshal of the Guards was unable to keep his guards in order, then what should be done about it?”

[KING XUAN] “Remove him from office.”

[MENGZI] “If the whole realm within the four borders was ill-governed, then what should be done about it?”

The king turned to his attendants and changed the subject.⁶⁴

As a service provider, the ruler must compete for customers with the rulers of rival states. If a ruler adopts *laissez faire* policies and

that the Confucian version is characteristically negative (the so-called “Silver Rule”) rather than positive. But this is a confusion, for three reasons. First, there is nothing un-libertarian about positive obligations as such; what is un-libertarian is the *enforcement* of positive obligations. (For that matter, the enforcement of negative obligations is *equally* un-libertarian, except in the single case of the obligation to refrain from *aggression*—which is surely just *one* of our negative obligations.) Second, as Nivison points out, Confucian authors in any case alternate freely between negative and positive formulations, and seem to have regarded them as equivalent. And third, the two formulations *are* equivalent, as Nivison likewise shows: “If, having promised to appear this evening, I had not done so, I would still have done something, namely, breaking a promise. Not doing something to another is always, under another description, doing something to that person, and conversely.” David S. Nivison, *The Ways of Confucianism: Investigations in Chinese Philosophy*, ed. Bryan W. Van Norden (LaSalle, Ill.: Open Court, 1996), p. 62. Hence, the importance of defining libertarian rights in terms of *aggression*, rather than, say, harm.

⁶²Kongzi, *Analects*, trans. Ivan and Van Norden, p. 39.

⁶³Mengzi, *Mencius*, trans. Lau, p. 109.

⁶⁴Mengzi, *Mencius*, trans. Lau, pp. 66–67.

cultivates good will, then merchants, farmers, and scholars from rival states will vote with their feet, coming to settle in his kingdom;⁶⁵ if they cannot come to him, they will entreat him to come to their state and liberate them.

In the market-place, if goods are exempted when premises are taxed, and premises exempted when the ground is taxed, then the traders throughout the Empire will be only too pleased to store their goods in your market-place. If there is inspection but no duty at the border stations, then the travellers throughout the Empire will be only too pleased to go by way of your roads.⁶⁶

If a ruler demonstrates a love for righteousness, the Confucians maintain, “people from other states will flock to him with their children swaddled on their backs.”⁶⁷ But “when wealth is gathered in the ruler’s hand, the people will scatter away from him.”⁶⁸ “If a ruler ill-uses his people to an extreme degree,” Mengzi remarks, “he will be murdered and his state annexed; if he does it to a lesser degree, his person will be in danger and his territory reduced.”⁶⁹ His ministers will, quite properly, either depose him or abandon him for another state,⁷⁰ and his subjects will not fight to defend him.⁷¹

A king who rules unjustly has no legitimate claim on his subjects’ obedience, according to Kongfuzi:

Duke Ding said: “One remark that can lose a state—is there such a thing?”

Master Kong replied: “One remark cannot do something like that. However, there is one close to it. One man’s saying goes: ‘I find no joy in being sovereign except that,

⁶⁵“This expectation derives some substance from the mobility of populations at this period; rulers were, in fact, competing to attract knights with new ideas and skills to their courts . . . and peasants to their still unopened lands.” Graham, *Disputers of the Tao*, p. 114.

⁶⁶Mengzi, *Mencius*, trans. Lau, p. 82; cf. pp. 54–58; Kongfuzi, *Analects*, ed. Huang, p. 136; and Xunzi, *Hsiün Tzu*, p. 53–55.

⁶⁷Kongfuzi, *Analects*, trans. Huang, p. 133; cf. Chan, *Source Book in Chinese Philosophy*, p. 106.

⁶⁸Chan, *Source Book in Chinese Philosophy*, p. 93.

⁶⁹Mengzi, *Mencius*, trans. Lau, pp. 118–19.

⁷⁰Mengzi, *Mencius*, trans. Lau, p. 159.

⁷¹Xunzi, *Hsiün Tzu*, pp. 52–53.

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whatever I say, no one disobeys me.’ If what he says is good and no one disobeys him, is it not good? If it is not good and no one disobeys him, is it not almost true that one remark can lose a state?”⁷²

Mengzi offers a similar example:

King Xuan of Qi asked, “Is it the case . . . that Wu struck down [his ruler] Zhou? . . . Is it acceptable for subjects to kill their rulers?”

Mengzi said, “One who violates benevolence should be called a ‘thief.’ One who violates righteousness is called a ‘mutilator.’ A mutilator and thief is called a mere ‘fellow.’ I have heard of the execution of a mere fellow ‘Zhou,’ but I have not heard of the killing of one’s ruler.”⁷³

Here we find Mengzi invoking the Confucian doctrine of “rectification of names” to justify regicide. Kongfuzi had taught: “Let a sovereign act like a sovereign, a minister like a minister, a father like a father and a son like a son.”⁷⁴ The line could also be translated: “Treat sovereigns as sovereigns, treat ministers as ministers, treat fathers as fathers, treat sons as sons,”⁷⁵ but the essential point remains the same: each social role defines a code of proper behaviour for the holder of that role, as well as for others in relation to the holder.⁷⁶ But Kongfuzi had also taught that speech must be “in accordance with actuality,” so that “the gentleman only applies names that can be properly spoken.”⁷⁷ Mengzi infers that a ruler deserves the title of “king” only so long as he lives up to the job description;⁷⁸ otherwise he becomes a mere

⁷²Kongfuzi, *Analects*, trans. Huang, pp. 135–36.

⁷³Mengzi, *Mengzi*, in Ivanhoe and Van Norden, *Readings in Classical Chinese Philosophy*, pp. 120–21.

⁷⁴Kongfuzi, *Analects*, trans. Huang, p. 128.

⁷⁵Chad Hansen, *A Daoist Theory of Chinese Thought: A Philosophical Interpretation* (Oxford: Oxford University Press, 1992), pp. 67–68. Hansen point out that what Kongfuzi *literally* says is typically cryptic: “Sovereign sovereign, minister minister, father father, son son.”

⁷⁶For a similar idea in Stoicism, see Epictetus, *The Discourses of Epictetus*, ed. Christopher Gill, trans. Robin Hard (London: J.M. Dent, 1995), pp. 95–98.

⁷⁷Kongzi, *Analects*, trans. Ivanhoe and Van Norden, pp. 34–35.

⁷⁸This idea too has parallels in early Greek thought; one of the earliest statements is in Xenophon’s *Memorabilia*. See Xenophon, *Memorabilia; Oeconomicus; Symposium; Apology*, trans. E.C. Marchant and O.J. Todd (Cambridge, Mass.: Harvard University Press, 1992), p. 229.

“fellow,” and defying him involves no disloyalty. One earns the right to royal office by winning the support of the people; in short, the Mandate of Heaven (i.e., legitimacy) accrues to the service provider who outdoes his competitors in pleasing and attracting customers.⁷⁹

The Confucian defense of revolution has obvious classical liberal parallels, but in applying market principles to competition among political jurisdictions, the Confucians more specifically anticipate the core idea of anarcho-capitalism. Where the Confucian theory falls short of anarchism is in the assumption that each service provider must enjoy a territorial monopoly. Non-territorial providers of protection services in ancient China did exist: the so-called “knights,” who “often acted as local ‘bosses’ in defiance of the government authorities, guaranteeing protection to people who sought their aid or hiring out their services in the conduct of private vendettas.”⁸⁰ Most Confucians, however, looked askance at these wandering freelance vigilantes.

One important exception is Sima Qian, who hails the knights as champions of the defenseless, carefully distinguishing those offering genuine protection from those who were mere thugs.⁸¹ Unfortunately, he does not consider how the Confucian principle of competing jurisdictions might be applied to this type of informal protection service. Confucians also seem not to have recognized that the end result for which most of them hoped—namely, that a single virtuous prince would ultimately win the allegiance of “all under heaven”—might be detrimental to consumer interests, as it would end this salutary competition and establish a monopoly. At any rate, it is never suggested that the empire, once unified, would allow free entry to competing providers of political services.

TAKING RITES SERIOUSLY

Thus far, I have said little or nothing about what is probably the most distinctive feature of the entire Confucian system: the emphasis on *li*, a term variously translated as “ceremony,” “etiquette,” “protocol,” “rites,” and “ritual propriety.” As Confucians use the term, *li* stands for the entire inherited body of customary practices, traditions, and

⁷⁹Mengzi, *Mencius*, trans. Lau, p. 143.

⁸⁰Watson, introduction to Han, *Han Fei Tzu*, p.105 n.

⁸¹Sima, *Han Dynasty II*, pp. 409–12.

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conventions governing early Chinese society. Kongfuzi sees himself above all as a preserver of *li*: “I transmit rather than innovate. I trust in and have a love for antiquity.”⁸²

But what the Confucians mean by transmitting-rather-than-innovating does not involve a slavish adherence to the past. Kongfuzi notes cases in which he is willing to reflect critically on traditional practice, and accept alterations in ceremonial forms:

A cap made of hemp is prescribed by the rites, but nowadays 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 nowadays people bow after ascending. This is arrogant, and—though it goes against the majority—I continue to bow before ascending.⁸³

Mengzi likewise endorses the use of reason and independent judgment in applying the requirements of *li*: although ritual forms prescribe that “in giving and receiving, man and woman should not touch each other,” nevertheless “in stretching out a helping hand to the drowning sister-in-law, one uses one’s discretion.”⁸⁴

What Confucians condemn as “innovation,” then, is not any and all changes in the *li*, but only changes that attempt to construct social practices *de novo* rather than reforming existing practices from within; it is, in effect, the difference between neologism and Esperanto. This, of course, is a point made familiar to libertarians by Hayek.

Confucians sometimes speak as though the *li* are the products of deliberate design, “produced by the conscious activity of the sages.”⁸⁵ At other times, Confucians recognize that the *li* embody the experiences of many different people, rather than being constructed from scratch

⁸²Kongzi, *Analects*, trans. Ivanhoe and Van Norden, p. 19.

⁸³Kongzi, *Analects*, trans. Ivanhoe and Van Norden, p. 24. The *Liji*, by contrast, attributes to Kongfuzi the claim that only one who possesses *both* virtue *and* supreme political authority has a right to introduce innovations in *li*. See Chan, *Source Book in Chinese Philosophy*, pp. 110–11. But the passage in question also has Kongfuzi referring to social conditions that did not arise until the Qin dynasty, a century and a half after Kongfuzi’s era, so it is not authentic. See Fung, *History of Chinese Philosophy*, p. 370. In any case, Kongfuzi clearly doesn’t regard the kind of reform-from-within that he advocates as *innovation*.

⁸⁴Mengzi, *Mencius*, trans. Lau, p. 124; cf. p. 171.

⁸⁵Xunzi, *Hsin Tzu*, p. 160. It’s significant that this passage is from Xunzi, the most constructivist-oriented of the early Confucians.

by a handful of sages.⁸⁶ Kongfuzi accordingly proclaims that the *li* he treasures have been evolved and improved from dynasty to dynasty through a gradual process of incremental reform-from-within.⁸⁷

Modern readers often find it difficult to sympathize with the Confucian emphasis on arcane ceremonial detail, such as Kongfuzi's fussing about whether to bow before or after ascending the stairs;⁸⁸ isn't this just a picky convention of no importance? What difference does it make? Well, it's also a matter of mere convention that the spoken phrase "thank you" differs in meaning from the somewhat similar-sounding phrase "f**k you." But *given* that convention, it's not a matter of indifference which phrase one uses.⁸⁹ Likewise, it may be a matter of convention that bowing before ascending (or bowing at all) is a mark of respect in a particular culture, but given that convention, one cannot do otherwise without being disrespectful.

This analogy may be rejected, however, on the grounds that the person who says "f**k you" rather than "thank you" *intends* to give offense. So long as my bowing after ascending is *meant* respectfully, why should my expression of respect be constrained by conventional forms? Well, suppose I say "Hitler may have won World War II," mistakenly believing (as many do) that this means the same thing as "Hitler might have won World War II." My having *intended* something true doesn't change the fact that, given the established rules of grammar, what I have actually said is false. Since libertarians tend to be more than usually persnickety about precision in language, perhaps they should not find Confucian persnickety about ritual so alien.

Herbert Fingarette offers an interpretation of the operation of *li* that libertarians should find extremely congenial:

In well-learned ceremony, each person does what he is supposed to do according to a pattern. My gestures are coordinated harmoniously with yours—though neither of us has to force, push, demand, compel, or otherwise "make" this happen. . . . Confucius characteristically and sharply

⁸⁶Kongfuzi, *Analects*, trans. Huang, p. 182.

⁸⁷Kongfuzi, *Analects*, trans. Huang, p. 57; and Kongfuzi, *Analects*, trans. Ames and Rosemont, p. 84.

⁸⁸Kongzi, *Analects*, trans. Ivanhoe and Van Norden, p. 24.

⁸⁹Likewise, Xunzi says that although which names go with which objects is a matter of convention and depends on social consensus, the fact that our naming practices are better when they are clear and consistent is *not* a matter of convention. See Xunzi, *Hsin Tzu*, p. 144.

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contrasts the ruler who uses *li* with the ruler who seeks to attain his ends by means of commands, threats, regulations, punishments and force. . . . 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. . . . I see you on the street; I smile, walk toward you, put out my hand to shake yours. And behold—without any command, stratagem, force, special tricks or tools, without any effort on my part to make you do so, you spontaneously turn toward me, return my smile, raise your hand toward mine. We shake hands—not by my pulling your hand up and down or your pulling mine but by spontaneous and perfect cooperative action. . . . It is in just such ways that social activity is coordinated in civilized society, without effort or planning, but simply by spontaneously initiating the appropriate ritual gesture in an appropriate setting. . . . These complex but familiar gestures are characteristic of human relationships at their most human: we are least like anything else in the world when we do not treat each other as physical objects, as animals or even as subhuman creatures to be driven, threatened, forced, maneuvered.⁹⁰

The practice of *shu*, reciprocity, is thus not just one ritual observance among others; rather, reciprocity is the very *form* of ritual observance. Fingarette concludes that the consistent Confucian must be “a kind of anarchist in the respect that he is radically opposed to the use of force, compulsion, coercion, or punishments in government or in human affairs generally.”⁹¹

Henry Rosemont also agrees that Confucianism has affinities with anarchism—*not*, however, both Rosemont and Fingarette are quick to insist, with *individualist* anarchism, God forbid, with its emphasis on “individual choice” at the expense of “rootedness in tradition and

⁹⁰Herbert Fingarette, *Confucius: The Secular as Sacred* (Prospect Heights, Ill.: Waveland Press, 1998), pp. 7–11.

⁹¹Herbert Fingarette, “Response to Professor Rosemont,” *Philosophy East and West* 28, no. 4 (1978), pp. 513–14. Against this interpretation, Benjamin Schwartz has pointed out that, as the Confucians see it, “The order that the *li* ought to bind together is not simply a ceremonial order—it is a sociopolitical order in the full sense of the term, involving hierarchies, authority, and power.” Benjamin Schwartz, *The World of Thought in Ancient China* (Cambridge, Mass.: Harvard University Press, 1985), p. 68. This is true enough, but the interesting question is not whether the early Confucians were conscious and consistent anarchists (clearly they were not) but whether anarchism represents the most coherent development of their understanding of *li*.

ceremony,”⁹² and its distasteful association with the “rugged individualism” of contemporary libertarianism,⁹³ but rather with the *communitarian* anarchism of “Kropotkin, or the participants in the various Christian utopian movements.”⁹⁴ While Confucians and libertarians admittedly both place “a premium on spontaneity,” the libertarian, we are told, sees spontaneity as “the purest expression of individualism,” while the Confucian instead sees spontaneity as “the fruit and flower of having cultivated, assimilated into oneself, and finally achieved creative mastery of supra-individual norms.”⁹⁵

This contrast, however, caricatures both libertarianism and Confucianism. First, if libertarian individualism is truly incompatible with deference to “tradition and ceremony,” then Fingarette and Rosemont will have a hard time explaining how Friedrich Hayek, one of the 20th century’s chief theoreticians of libertarian individualism (and, while not an anarchist himself, a great inspirer of anarchists), can teach that “true individualism” requires the “willingness to submit” to “the traditions and conventions which evolve in a free society and which, without being enforceable, establish flexible but normally observed rules,” conformity to which is both “an essential precondition for the gradual evolution and improvement of rules of social intercourse” and “an indispensable condition if it is to be possible to dispense with compulsion.”⁹⁶ And second, if Confucianism truly has greater affinity with Kropotkin than with capitalism, how are we to explain the fact that Confucian thinkers consistently rejected the Kropotkin-style autarky and collectivist primitivism of the Taoists in favor of a global network of commerce and trade?⁹⁷

CONCEIVED IN LIBERTY

When the Confucians first formulated their radical *laissez faire* policies, they had yet to have an opportunity to see them implemented. (Many Confucians believed, or pretended to believe, that these policies

⁹²Fingarette, “Response to Professor Rosemont,” p. 514.

⁹³Henry Rosemont, Jr., “Reply to Professor Fingarette,” *Philosophy East and West* 28, no. 4 (1978), p. 518.

⁹⁴Rosemont, “Reply to Professor Fingarette,” p. 518.

⁹⁵Fingarette, “Response to Professor Rosemont,” p. 514.

⁹⁶Hayek, *Individualism and Economic Order*, p. 23.

⁹⁷Even Mengzi’s proposal for land reform—his “well-field system,” which is as close to Kropotkin’s collectivist agrarian mini-utopia as Confucianism gets—is 89% private property. See Mengzi, *Mencius*, trans. Lau, pp. 99–100.

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had been in effect during the Western Zhou period, but this was a fantasy.) The fall of the despotic, Legalist-inspired, and short-lived Qin dynasty, and the consequent rise of the Han, gave Confucian theorists an unprecedented opportunity. Widespread revulsion against the excesses of Qin led to an anti-authoritarian backlash against the Legalists. *Laissez faire* theorists like the Confucians and Taoists were in high demand, and many soon found themselves in positions of influence.⁹⁸

That influence shows. Emperor Gaozu (Kao Tsu), whom Sima calls a “great sage,”⁹⁹ founded the Han Dynasty on the basis of the following minimalist program:

I hereby promise you a code of laws consisting of three articles only: He who kills anyone shall suffer death; he who wounds another or steals shall be punished according to the gravity of the offense; for the rest I hereby abolish all the laws of Qin.¹⁰⁰

Of course he didn’t really mean it, and the laws of Han soon outgrew the promised confines. Even so, however, the early years of the Han dynasty were a period of relative liberalization. Sima describes the period as follows:

Formerly, in the time of the Qin, the net of the law was drawn tightly about the empire and yet evil and deceit sprang up on all sides; in the end, men thought of nothing but evading their superiors, and no one could do anything to save the situation. At that time, the law officials worked to bring about order, battling helplessly as though against fire or boiling water. Only the hardest and cruellest of them were able to bear the strain of office and derive any satisfaction from the task; those who cared for justice and virtue were left to rot in insignificant posts. . . . When the Han arose, it lopped off the harsh corners of the Qin code and returned to an easy roundness, whittled away the embellishments and achieved simplicity; the meshes of the law were spread so far apart that a whale could have passed through . . . and the common people were orderly and content.¹⁰¹

⁹⁸The *laissez faire* tendencies of the early Han have led some scholars to assume that the primary influence on its policies must have been Taoist, but, as we have seen, this is an unwarranted assumption. Certainly the overall Han program of legislation looks more Confucian than Taoist.

⁹⁹Sima, *Han Dynasty I*, p. 88.

¹⁰⁰Sima, *Han Dynasty I*, p. 62.

¹⁰¹Sima, *Han Dynasty II*, pp. 379–80.

Sima expands this idea:

After the Han rose to power, the barriers and bridges were opened and the restrictions on the use of the resources of mountains and lakes were relaxed. As a result, the rich traders and great merchants travelled all around the empire distributing their wares to every corner so that everyone could buy what he wanted.¹⁰²

Emperor Wen, one of Gaozu's early successors, abolished the practice of punishing an entire family for the transgressions of an individual, abolished mutilation as a category of punishment, and abolished taxes on agriculture. He also abolished the laws defining a "category of offences known as 'criticism and evil talk'" on the grounds that when officials "do not dare to express their feelings in full," then the emperor "has no way to learn of his errors" and cannot hope to "attract worthy men from distant regions." This is one of the earliest instances of the epistemological argument for free speech.¹⁰³

The heyday of Confucianism's influence was short-lived, however; its radicalism soon became inconvenient to those in authority. The Confucian theory of revolution, in particular, was a double-edged sword; it had been used to justify the overthrow of the Qin dynasty and the ascendancy of the Han, but now that the Han rulers were consolidating their hard-won hegemony, they found the doctrine less appealing. Wen's successor, Emperor Jing (Ching)—a ruler under whom many things began to take a turn for the worse—advised scholars that further discussion of that particular doctrine could be perilous to health and longevity.¹⁰⁴ Legalists began to return to positions of power and influence; they were so much better than Confucians at saying things that rulers wanted to hear. Confucians who stuck to their principles found themselves fighting a rearguard action and becoming increasingly irrelevant. Those who were more flexible could join the privileged class of Confucian bureaucrats created by Jing's

¹⁰²Sima, *Han Dynasty II*, p. 440.

¹⁰³Sima, *Han Dynasty I*, pp. 290, 301, and 296. Sima sometimes makes it sound as though Wen embraced all these measures spontaneously, out of virtue, but at other times he makes clear that Wen often had to be prodded and shamed by his Confucian advisor Zhang Shizhi (Chang Shih-chih) into adopting them. Still, Han Emperors were proddable and shameable, which is more than can be said for their Qin predecessors. See Sima, *Han Dynasty I*, pp. 290–301, and 470–71.

¹⁰⁴Sima, *Han Dynasty II*, pp. 363–64.

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successor, Emperor Wu (2nd c. BCE)—a ruler notable for having ordered the castration of the irrepressible Sima Qian. (Sima’s crime was “deceiving the Emperor,” that is, giving him advice he didn’t want to hear.) Before long, Confucianism had been tamed, and largely fused with its old rival, Legalism. The Confucianism that became the official state philosophy for most of China’s subsequent history was a new Confucianism, friendlier to state power and more hostile to the market.

The *laissez faire* policies of the Han’s early years did not last. In the 1st-century BCE “Discourses on Salt and Iron,” we learn what was beginning to take their place:

In antiquity, to accomplish things by virtue was the honored way, while employing military means was despised. Confucius said: “If remoter people are not submissive, all the influences of civil culture and virtue are to be cultivated to attract them. . . .” Now we are abandoning ethics and relying on military force, raising up armies to attack them, placing garrison forces on the borders to defend against them. We expose our soldiers to dangers, station armies off in the wilds, and maintain these for long periods. The transport of provisions for them will be unending. Without, we make our soldiers on the frontiers endure hunger and cold, while within the country the common people must toil and suffer. We have established salt and iron monopolies that have now enlarged the profit [to the state], and the offices of government use that to sustain [the military]; that is not a good policy.¹⁰⁵

The “Discourses” continue this idea:

When laws and commands are many, the people become uncertain about which [forbidden action] they should be avoiding. . . . The laws of Ch’in [= Qin] were as profuse as autumn tendrils and their network was as thick as congealed tallow. Yet higher and lower were alike in evading them, so treachery and deceit burgeoned. . . . Now, today, the regulations and commands run to over a hundred articles; their text is voluminous, and the crimes they define carry heavy penalties. The way the provinces and constituent states apply them gives rise to doubt and uncertainty; whether transgressions shall be considered slight or serious is up to the officials. Even those versed in their meanings do not know how to apply them, all the less so do the simple people. The texts of the regulations and commands lie gathering dust and being eaten by bookworms on the office

¹⁰⁵Quoted in Hsiao, *From the Beginnings to the Sixth Century A.D.*, pp. 458–59.

shelves. The officials cannot read them all, and all the less can the simple people do so. This is why law suits grow ever more numerous and why infractions committed by the multitude are ever more manifold.¹⁰⁶

In these words of protest, an embattled cadre of 1st-century BCE Confucians bore witness to the accelerating pestilence of a swollen imperial state that had been conceived in liberty two centuries earlier. They speak for us.

APPENDIX: TRANSLITERATIONS

<u>Wade-Giles</u>	<u>Pinyin</u>	<u>Latin</u>
K'ung-fu-tzu	Kongfuzi, Kongzi	Confucius
Meng-tzu	Mengzi	Mencius
Chang Shih-chih	Zhang Shizhi	
Chia I	Jia Yi	
Ch'in	Qin	
Ching	Jing	
Chou	Zhou	
Chuang-tzu	Zhuangzi	
Han Fei-tzu	Han Feizi	
Hsü-tzu	Xuzi	
Hsün-tzu	Xunzi	
Kao Tsu	Gaozu	
Lao Tan	Lao Dan	
Lao-tzu	Laozi	
<i>Li Chi</i>	<i>Liji</i>	
Mo-tzu	Mozi	
Pao Ching-yen	Bao Jingyan	
Ssu-ma Ch'ien	Sima Qian	
<i>Tao Te Ching</i>	<i>Daodejing</i>	
Yen T'ieh Lun	Yantielun	

¹⁰⁶Quoted in Hsiao, *From the Beginnings to the Sixth Century A.D.*, p. 466.

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