

Post-Print version of:

L. Yang & M.R. Rutgers (2018). Against the Rule of Man: The Confucian and Western Traditions of Good Administration. *International Review of Administrative Sciences*, 84(1). Doi: 10.1177/0020852315596213

Against the Rule of Man: The Confucian and Western Traditions of Good Administration

Lijing Yang

Department of Political Science, University of Amsterdam, Amsterdam, the Netherlands

Mark R Rutgers

Department of Political Science, University of Amsterdam, Amsterdam, the Netherlands

Abstract

This study investigates the Confucian and Western tradition specifically with regard to the relation between morality, law and good administration. It is argued that the common opposition between the rule of man and the rule of law as reflecting the basic difference between the two traditions is inadequate. Confucianism can be better characterized positively as the rule of morality. It should also be noticed that 'the rule of law' is increasingly being introduced in the Chinese administration. Similarly, even though the Western tradition can be captured in terms of the rule of law, it is acknowledged that 'the rule of man' cannot be avoided, and that morality is important. Both traditions oppose the rule of man, in as far as it refers to someone acting out his selfish preferences. It is concluded that, good administration requires officials of both good morality and who are respectful of the law, whether this is a kind of convergence is a matter of debate.

Points for practitioners

This article studies Confucian and Western administrative traditions in relation to the notion of good administration. It is argued that the common characterizing and understanding of the Confucian tradition in terms of the Western reviled 'rule of man' is misguided. Rather than understanding the positive moral connotations of the Confucian

good administrator it associates it with a specific negative notion, whilst at the same time overstressing the Western 'rule of law' may obscure the need for moral persons for good administration.

Keywords

Confucianism, governance, law, morality, rule of law, Western tradition

Introduction

To oppose Chinese and Western¹ thought in terms of the rule of man versus the rule of law is common, however, it has not received attention within the increasing literature on administrative traditions (e.g. Boyer, 1990; Smelser and Baltes, 2001; Bevir, Rhodes and Weller, 2003). This article focuses on the different normative starting points of these two traditions in relation to their ideas of good administration. It is concluded that the characterization of the two traditions in terms of the (Western) conceptualization of rule of law versus rule of man hampers understanding of differences and similarities. Rather, both traditions oppose a positive image of good administration to a disdained notion of the rule of man.

In the context of this article, we cannot do justice to the wide variety and complexity of the two vast traditions, nor can we make in depth, broad comparisons. The aim is to focus specifically on the fundamental differences primarily in relation to the idea of good administration. Before doing so, some remarks on the nature of translation and tradition are required.

A specific problem is that we have to deal with concepts in many different languages when comparing the two traditions. This can result in similarities and differences that are a construct of translation into English. For instance, are the terms 'civil servant', 'Verwaltungsbeamte' and 公务员 simply cognitive equivalents denoting similar social (legal, political) phenomena? The more complex and culturally specific a concept is, the more likely it is to be problematic as Collier and Mahon (1993:848) illustrate when discussing the meanings of 'political participation'. Translating Chinese concepts into English, and vice versa, is never straightforward.²

Cultural differences are often captured in terms of traditions (Painter and Peters, 2010:4). There are many definitions of 'tradition',³ but for the purpose of this article we regard it as a normative orientation that can be expressed by means of a fairly stable basic set of ideas and values, which is relied upon both implicitly and consciously, is (at least

partly) handed down actively and consciously, is protected, and brings with it moral and intellectual prestige.

In the literature, different administrative traditions have been identified (cf. Painter and Peters, 2010; Schwartz, 1999; Yesilkagit, 2010). In this article, the focus is on the two 'great traditions' that encompass a large cultural and historical area: the Eastern or Confucian tradition, and the Western or 'Socratic' tradition. What is more, the focus is limited to Chinese and European thought for there are major differences within both traditions that have to be ignored in the context of this article.

In the next sections we will first characterize the Chinese tradition, followed by the Western tradition. In both cases the notion of law is used to highlight similarities and differences. Finally, we will discuss the characterization of either tradition in terms of their rejection of the rule of man.

Law in the Chinese Tradition

The dominant influence of Confucianism on traditional Chinese administration is generally recognized. It focuses on "teaching and moral guidance (rather than penal law) as instrument for the government of the people" (MacCormack, 1996:6). In order to highlight the starting points of Confucianism we can oppose it to Legalism. In the Confucian ideal, morality is supposed to be the highest warranty to secure social order, whilst the role of law in China was, unlike in the West, not "above the quarrels of the day" (Michael, 1962:125). Legalism insists on law as a prime tool for government ('rule by law': "in rule by law, ... law is amoral and an instrument of power" (Winston, 2005:313). Whether morality and law are conceptualized as mutually exclusive, or whether they are both characterized in terms of law, i.e. natural versus positive law (cf. Orts, 2001:51), in either case law is "regarded as something vital to the existence of a moral order, something which—though created by man—stands and is regarded as a force in itself" (Michael, 1962:125). Winston (2005) points at a core issue: the difference between the rule *by* law in Chinese tradition and the Western rule *of* law is a matter of how the relationship between law and morality is conceived.

To start with, in Confucianism, law has but a marginal function. Morality and the moral code *li* (rites) "took over much of the function filled by law in [the] Western tradition" (127). Nevertheless, Confucian ideology "provides the fundamentals for the substance of traditional law" (Ren, 1997:19). The Confucian conception of law shares many traits with the Western idea of 'natural law' (e.g. Greer and Lim, 1998; Orts, 2001). A main difference

is that law is “inextricably intertwined” with personal and political morality in Confucianism (Greer and Lim, 1998: 81). Furthermore, Western natural rights theories do “regard society and the state as outcomes of a contract between rational individuals” (p.85), Confucian good government relies on ethical persons to maintain a social hierarchy and harmony to ensure the ‘natural order’. The social relationships and rules to govern are prescribed in the *li*, which are a matter of ‘moral codes’ rather than of formal laws and regulations. Confucianism regards regulation through laws essentially a matter of moral performance and makes no sharp distinction between morality and law in terms of *li* (rites) and *fa* (laws). This pair reflects the different values of Confucianism and Legalism regarding government: Confucianism is founded on the moral qualities of the political elites, while Legalism is founded primarily on law or *fa*.

Legalism: Fa

The main origin of Chinese legal administration is Legalism, also called the school of *fa* (law), and it provided “the important framework of the traditional legal system” (Ren, 1997:19), with the central idea that a ruler should rely on standard rules and severe penal codes to maintain social order.

Linguistically, the word *fa* in Chinese does not relate to fairness or justice (Liang, 1989:59), but is more close to *fá* (笞),⁴ which means penal punishment, and *lü* (律), which means written laws. The earliest Chinese Legalist author Guanzi (c. 720-645 BC) defined laws as standards for measurement (Guanzi, 1985:128); government should rely on laws to manage the state by balancing punishment and reward without bias. However, Guanzi did not ignore morality and asserted the Four Principles (*siwei* 四维) with which to run the state: *li* (rites), *yi* (justice), *lian* (incorruptibility) and *chi* (sense of shame). Morality here refers to socially shared morals rather than personal virtue, and it exists within the framework of law. Guanzi points to a link between law and morality in general: “Legal statutes, regulations, and procedures must be patterned on the moral way, the orders must be publicized and made clear, and the rewards and punishments must be made reliable and absolute” (Guanzi, 1985:256). Although law comes prior to morality, the latter is still important for society and its ruler.

Perhaps the most famous legalist is Han Fei⁵ (ca. 280–233 BC). He argued that “moral considerations should be rigorously excluded in the conduct of government” (MacCormack, 1996:4). Han Fei began from the conviction that human beings are self-interested (Cao, 1948:33), and therefore a ruler should not expect people to automatically

act in a good way: acceptable behavior needs to be enforced by means of laws and severe punishments. Han Fei objected to the Confucian ideal of the moral sage governing the state: “men with literary learning should not be employed in the government, for employing them means throwing the laws in confusion” (Han Fei, cited by Denecke, 2010:304). Han Fei’s political thought can be captured by three complementary concepts—*fa* (laws), *shu* (tact) and *shi* (position)—which constitute the core of Legalist thought (cf. Jiang, 2000:55-56).

Fa is “the law as codified in books, kept in governmental offices, and promulgated among the hundred surnames [of the masses]” (Han Fei, 1959:188). This is in line with the Western notion of positive law, and does not include moral principles, codes or customs. *Shu* refers to statecraft: the skill or techniques to rule in order to ensure that the king’s authority is maintained. Finally, *shi* denotes the ruler’s authority, i.e. the power status he should maintain in order to avoid being weakened or usurped by his ministers and officials.

The Legalist notion of *fazhi* is commonly translated as the rule of law, although this is not quite accurate as the concept exclusively applies to ruling a state (Liang, 1989:80-81). There are also some aspects of the Western (formal) notion of the rule of law that are included in Legalism, such as the demand that law cannot be made in hindsight, that it should be open, clear and stable, and should be applied regardless of social status (cf. Raz, 2009:183). However, regarding the latter, the ruler is exempted as the ultimate authority of the law.

Morality and law are linked in Legalism to the extent that punishment and reward are employed to stop wickedness and encourage merit. Legalism therefore tries to codify rites into law and aims to arrive at government by laws and not by persons, even though the “authority of the law comes from the authority of the king” (Liang, 1989:83). What is more, legalists realize that the law has to be executed by people, requiring that they do the right thing. It therefore appears, as we shall see, that Legalism objects to the rule of man, but requires a rule of morality. This brings us to Confucianism.

Confucianism: Li

Confucianism was the core teaching for all bureaucrats over two millennia of Chinese imperial bureaucracy (Ren, 1997:3). Confucianism was, however, not static, and came to incorporate ideas originating in, for instance, Taoism and Buddhism. From the very beginning, public administration was a major concern; many of Confucianism’s major scholars, were themselves officials. Contrary to legalism, law is not regarded as a major

concern, but rather *li* or rites. These could perhaps acquire “the force of law” (Lee and Lai, 1977:1326). Orts (2001:77) points at similarities between the concept of *li* and the Western law. However, a major difference is that (positive) law concerns human, social norms, while *li* is considered part of the natural order (Zhang, 2002:44-45). Xunzi therefore combines the concepts of law and rites into ‘law-rule’, which guides both administration and social life according to Confucianism:

“[Kings and lords should be] Sincere about justice in their intentions, encapsulating justice in their laws, rules, standards and measures, and practicing it in their administration of affairs” (Xunzi, see Zhang, 2002:45).

The previous shows that in classic Chinese texts, *fa* (laws) and *li* (rites) have no simple equivalent in the Western concept of law (or morality, for that matter). A fundamental difference with the Western idea of the rule of law is that Confucianism (and Legalism) primarily refer to law as a tool for political control. As Peerenboom (2002:33) suggests, “it is better understood as rule *by* law”. Furthermore, the enforcement of laws relies on “man’s, especially the ruler’s, capability in administering law” (Ren, 1997:3): this is where the ‘rule of morality’ comes into the picture.

Only during the early and brief Ch’in dynasty (221-206 BC) Legalism was the dominant administrative philosophy. Thereafter it was rejected, and , with Confucianism, *li* became dominant over *fa* (cf. Lee and Lai, 1977:1325). As noted, *li* has the regulatory power of law, but it is not law:⁶ “[It] is supposed to be the basis for an orderly society and the ideal basis of government” (Shun, 1993:457-458); providing “a unified moral code” for the cultivation of virtues (Cheung, 2010:32). Rites and moral virtue are thus intrinsically linked, which is absent in Western ethics.

Confucianism also includes a close connection between personal morality and state government, in the form of the rule of morality. The ideal ruler is a sage-king (内圣外王); and good government requires “the Confucian intelligentsia” (Cheung, 2010:39), i.e. a circle of persons of complete virtue: the *Junzi*. This constitutes the moral basis of Confucian political thought (cf. Tu, 2000; Shun, 1993; Hwang, 1999). The prime Confucian classic *The Great Learning*, states the moral cultivation of rulers: “Wishing to order well their states(.....) they first rectified their hearts” (Confucius, 2009:357). Yao captures this as “the fundamental Confucian belief that the peace and harmony of the world cannot be achieved by force of arms, nor by power of law, but only by moral virtues and moral influence” (2003:xiii).

The link between personal morals and good administration constitutes an integrated moral system linking individuals and society, as well as society and government. The rule of morality amounts to an interconnected set of ideas for self-cultivation, dealing with interpersonal relationships according to rites (*li*), providing moral education for the common people to become *junzi*, and engaging in government with humanity (*ren*) in order to enable self-cultivation, thus completing the circle. The focus is entirely on morality and learning: “Confucian learning therefore lays emphasis on self-cultivation, rather than the building of institutions” (Yao, 2003:xiv).

Modern China⁸: Western Influences

The revolution led by Sun Yat-sen and the foundation of the Republic of China in 1911 ends the millennia old imperial era, which brings Western ideas and values. Pioneers⁹ had already argued for constitutional monarchy and new interpretations of Confucianism and Western political ideals, including Communism. Yuan Shikai (1859-1961) was arguably the first to infuse Confucian ideals of government with Western political notions (Jenco, 2010:185). Ideas on constitutions and democracy were influential among young Chinese students and scholars, and resulted in “the final dissolution of old Chinese tradition and the birth of a true Chinese nation” (Chen, 1971:6).

Scholars and politicians such as Zhang Shizhao (1881-1973) advocated for impartial laws and emphasized the responsibility of citizens instead of sages (Jenco, 2010:198). Nevertheless, the period from 1911 to 1949 was comprised of “foreign invasions, native uprisings (such as the Christian-inspired Taiping and anti-Western Boxer rebellions), and the effects of global and internecine warfare” (Orts, 2001:56-57), all of which hampered legal development. After the Communist Party took over in 1949, Marxist and Soviet models of law as instruments for party rule were applied to establish a Socialist legal system. In the first years of new People’s Republic of China, there was a vast improvement in the legal system: Civil Law, Penal Law, Marriage Law and the Constitution became effective (Liang, 2011:24). This did not, however, imply a rejection of tradition for, as Zhang and Schwartz (1997) argue, Communist China needed the “Confucian tradition of deference and hierarchy” to legitimate government policies (195). Confucian philosophy was even emphasized by Mao and other communist leaders in the early phase. However, legal developments stalled during the Cultural Revolution (1966-1976), when Communist Party actively tried to eliminate traditional Confucian ideas (Zhang and Schwartz,

1997:200), and disrupted, as Orts (2001) puts it, “any ordinary concept of law in China” (57), making it “virtually a lawless nation” (58).

After this episode, the development of law once again enjoyed a rapid growth (Chen, 2007:692), and in the light of economic development significantly improved in the 1990s. Amongst the major improvements was that citizens, as well as party members and government officials, became principally equal before the law. Nevertheless, the legal system is still far from the ideal as legislation and judiciary are under direct rule of the Communist Party. Furthermore, a major deficiency is embedded in the Constitution itself, which declares everyone as being subject to the law, while at the same time privileging Maoist-Leninist political theory and Communist Party leadership (Orts, 2001:68).

A restoration of Confucian *li* and virtues was begun during Deng Xiaoping’s regime (1977-1997¹⁰). There was no desire to legitimate the regime as a pre-Cultural Revolution state, but “to dignify and stabilize a backward society seeking a place in the modern world”, whereby Confucian thought was used to reinforce a new moral order (Zhang and Schwartz, 1997:202-203). This revival of the rule of morality seems to imply a remedy: Party members and administrators should morally self-regulate, and the people should advocate for leadership of a moral Party for a harmonious society. The revival also embraced the elevation of law as providing external, legal constraints on the abuse of power in cases morality fails. Jiang Zemin, the president of China from 1993-2003, explicitly called for the complement of law and morality, uniting them with the rule of morality as statecraft for the purpose of “ruling the country according to law” (Chen, 2007:724).

Law seems a dominant theme, rather than morality, to Chinese governance lately. It has announced in the fourth plenary session of the 18th CPC Central Committee to make effort on “comprehensively advancing the rule of law”, a “socialist rule of law with Chinese characteristics” (The State Council of the People’s Republic of China, 2014). The latter implies, on the one hand, strengthening law-abiding government, and, on the other hand, keeping the leadership of CPC as the first principle. As Shen puts it, laws and institutions in China “would strengthen, rather than limit, party leadership” (2000: 25). A Confucian focus on the moral individual is also present: where laws do not constrain Party members, their personal morals should do so. The traditional Confucian ideal of moral officials, combined with a Western notion of legality legitimates CPC’s authority. This might be considered distinct ‘Asian values’; a term often used in the context of authoritarian government in the East Asian region (cf. De Berry, 1998; Cheung, 2000;

Rozman, 2014). In many Asian countries, Confucian administrative ideas are a profound cultural force distinct from a “Western-style democracy” (Cheung, 2000: 4), and the rule of law tradition.

The Rule of Law (*Rechtsstaat*)

The Western tradition also originates around 2500 years ago, and despite vast variations and disjointedness, it can be regarded as a continuous tradition (cf. Tamanaha, 2004:3). Personal morality and virtue are also at the heart of Western thought. However, morals and politics are treated as much less unified, and the role of rites is (almost) absent: in its place there is a strong reliance on “settling disputes in a regular manner according to rules [that] have already been laid down” (Lyons, 1984:194), i.e. a tradition focusing on law.

The Foundations of Morality and Law

The importance of law in thinking about society, politics and morality, surfaces in the earliest philosophical treatises. Thus Plato, in his work *Crito*, narrates how Socrates, although sentenced to death, refuses to escape as that betrays his agreement with the law as the stable basis of the state (cf. Licht e.a., 2007:660). In *The Republic*, Plato (1980a) is concerned with the ideal state and laws are regarded as the heart of good government. Where Confucianism has the sage-king, Plato argues for a wise philosopher-king (1980b: 1509) who is described as lawgiver and rules by just laws. In *The Laws* it reads: “The first-best society, then, [is] that with the best constitution and code of law” (Plato, 1980a, 739b/c:1324). The other founding philosopher, Aristotle, asks in his *Politics*, “whether it is more advantageous to be ruled by the best man or by the best law” (2000:136/1286a.III.15). A virtuous monarch is perhaps superior, but, “the rule of law is preferable to that of any individual” (139/1287a.III.16.3). What is more, contrary to the good man, “the law has compulsive power” (1980:272/1180a15). Aristotle closely links politics, ethics and law: “The true student of politics ...is thought to have studied virtue above all things; for he wishes to make his fellow citizens good and obedient to the laws” (1980:24/1102a13). By means of laws, the state brings people to virtue and happiness. Aristotle even argues that moral training should be regulated by law so as to ensure that it is accomplished.

Compared to Confucianism, Plato and Aristotle take a fundamentally different stance towards law and regard it of prime relevance for the state, as well as, for personal morality.

Law is the means to link personal virtue and the state, and the state as the encompassing moral sphere is primarily a legal entity. An important argument for the reliance on laws is that they are based on reason and wisdom, and not dependent on personal desires. A contemporary of Plato, Democritus, already formulated the notion of the subjugation of all government and administration under the law (Owens, 1959:143-4). The rule of law was established as a moral guide, albeit in a very broad sense. A specific issue was, whether the monarch was subject to his own laws; a topic also discussed in Chinese Legalism. In medieval practice, the monarch's rule, became regarded as restrained by natural or divine law, and customary law (cf. Tamanaha, 2012:237). The thirteenth century philosopher Thomas Aquinas' argued, for instance, that it is logical for a monarch to adhere to his own good laws, as well as wise to do so in light of God's final judgement (Aquinas, 1274/1978:50). However, it also illustrates that in the Western tradition moral thought became primarily a matter of the Christian religion. Also in the Middle Ages, the first steps towards the protection of subjects against state power by means of law were taken: in particular the English *Magna Carta* of 1215 is the (symbolic) founding step in this development.

Constitutions and the Reliance on Law

Since the Renaissance (i.e. 1500 AD onwards), political theory, constitutional thought and the development of legal theory have gone hand in hand. In the practice of government, the importance of law increased, and legal knowledge and skill became a requirement for civil servants (Raadschelders and Rutgers, 1999). The pervasive importance of law is reflected in Grotius' influential *The Law of War and Peace*, in which he discusses lawful war: "Law here signifies nothing but what is just ... a lawful thing is what is not unjust" (Grotius, 1625/1949:18).

In political thought, the relationship between social order, law and morality remained central. Avoiding strife and discord was, for instance, Thomas Hobbes' (1651/1979) main reason to argue for an absolute monarch. However, John Locke, as the founder of liberalism, stressed that all laws require the "consent of the society" (1698/1988:356), and that "Where-ever Law ends, Tyranny begins" (p.400).

An important development was the rise of moral and political pluralism. The belief in Christian moral monism started to waver. Machiavelli's treatise *The Prince* can be regarded as a major starting point (e.g. Berlin, 1998). He argued there are different moralities in existence; one for the people and one for those in government (p.324). Over

time, “many philosophers turned away from the classical search for the ultimate good, rejecting the view that any such single good exists” (Tamanaha, 2004:41). Nevertheless, from the early nineteenth century onwards, the search for a rationally founded morality remained strong, be it in terms of Kantianism, Utilitarianism or a renewed interest in (Aristotelian) virtue ethics.

Another important development concerns ‘constitutional principles’, in particular the separation of powers. Montesquieu, its famous founding author, in *De L’esprit des Lois* (The Spirit of the Law) refers to “political virtue” (1748/1994:728) and regards laws as present everywhere in the universe and a necessity for social life (p.234).

The previous anecdotic overview illustrates the long roots of what is nowadays referred to as ‘the rule of law’ as a core concept in Western thought. Especially since the rise of constitutionalism and codification in the eighteenth century, law became regarded as the source of freedom and justice.

The Rule of Law in recent debate

Although the rule of law can characterize Western thought, it is also a confusing term. A brief reflection on the contemporary debates can illustrate this.

To start with, there has been increasing effort to promote the rule of law in international praxis (cf. Mooney e.a., 2010:838,840). It has been put forward to create ‘administrative justice’, to enable a transition to a market economy and democracy (842-4), and positively promote economic prosperity (cf. Haggard e.a., 2008:205). It is regarded as closely linked with the notion of ‘good governance’, as promoted by the World Bank and other international institutions for all governments (Licht e.a., 2007:660). Others argue that the rule of law cannot be introduced into any culture (cf. Grindle, 2007:571; Mooney e.a., 2010). The problem is that the notion of the rule of law itself has ideological and cultural connotations (cf. Kairyst, 2003:309), and the characteristics attributed to it is extensive (cf. Mooney e.a., 2010:838) if not all-inclusive (see the definition by the United Nations).¹¹ This, as Tamanaha (2012:236) points out, confines the concept’s meaning virtually to liberal democracies. It becomes even too specific to characterize Western thought. Tamanaha therefore propose a limited and inclusive definition: “the sovereign, the state and its officials, are limited by the law” (2012:236; cf. Kairyst, 2003:318).

Even then, there are demands linked to the achievement of the rule of law; for instance, that laws should be stated in general terms, must be generally known, and the like, and

“(t)here must be mechanisms or institutions that enforce the legal rules when they are breached” (Tamanaha, 2012:233); in other words, there has to be a functioning administration and legal system.

Contrary to a broad concept, arguably, the most strict appearance of the rule of law is the Continental-European idea of the ‘Rechtsstaat’ (Morlino and Palombella, 2010:7). Its core is that government relies on “a very strong and all-encompassing body of public law governing every administrative sphere” (Painter and Peters, 2010:22) and “the legality of administrative actions” (Schram, 1971:33). Administrative action is thus ideally limited to the execution of law, i.e. the application of general rules to particular cases. It represents the ultimate attempt to eradicate any personal factors (the rule of man) in administration. This brings us to what Tamanaha (2012:236) refers to as the third command of the rule of law (next to government limited by law and formal legality): ‘rule of law, not man’.

The social scientific turn

The traditional image of a good ruler is that he or she is rational and able to control passions and emotions. The opposition between law as reason and personal rule as arbitrary and subjective has appeared in many guises over time. Essentially, the ideology is that the rule of law can protect against human weaknesses (prejudice, malice, ignorance) of monarchs, judges, bureaucrats, and fellow citizens alike. However, this would imply that personal influences can be annihilated by the rule of law.

To ensure such objectivity there formal criteria, such as the demand that laws are neutral with respect to specific individuals. The laws should also be considered legitimate by the people. This concerns the legitimacy of the administrative-political system making and executing the laws. Constitutional principles,¹² such as the separation of powers, safeguard against misuse of political power. However, the demand for neutral administration is troublesome, for it suggests that we can get rid of personal influences. Traditionally, this concerned the requirement for judges to be unbiased and unpartisan. The issue of ‘man’ being involved in executing law became more prominent with the growth of state activity. More and more governmental social tasks and responsibilities could not be regulated by law in every detail, with the inevitable result that there was more room for discretion by civil servants in the execution of the law. Around 1900 it was argued that there was a decline in the rule of law due to the call for distributive justice (cf. Tamanaha, 2004:68). Clearly the law is not simply neutral and self-executing, as it is impossible to annihilate “the human element in decision-making” (Kairyst, 2003:319). The

extent to which public functionaries can be regarded neutral (or partisan to the public interest) is a major debate within public administration. The ideal, nonetheless, has been a guiding principle throughout the history of Western thought: from Plato's guardians, to Hegel's objective class, and Weber's ideal-type¹³ bureaucrat. However, the rise of the social sciences in particular in the second half of the twentieth century resulted in an increasing empirically, rather than legal-normative, arguments. A vast literature developed on the realities of discretionary power and the conjured nature of neutrality. In particular in the study of public administration this turn from law toward a social scientific stance is preeminent; the idea that administration is just the execution of law has long gone. Exemplary is the ongoing debate on the politics-administration dichotomy (Overeem, 2012). As with Western thought in general, within the study of public administration there are vast differences with regard to the importance adhered to law (especially in the USA the call to (re)incorporate law into the study of public administration is ongoing, cf. Beckett, 2007). Empirically a strict dichotomy of rule of law and rule of man seems untenable, for, as Kairyst states, "the rule of law is not self-executing" (2003:327). Cerase (2002:148) points at the debates in the study of public administration starting in the late 1960's, rejecting administration as just instrumental, with efficiency as its value, and calling to incorporate justice and social equity as values. The tension between normative starting points and empirical reality is nowadays hardly disputed: however, it remains a core issue in the study (cf. Frederickson & Smith, 2003:16). More surprising, , it hardly seems to impacts on the ideal of the rule of law. By the turn of the twenty first century, there is kind of a constant fight against an instrumental approach to public administration in legal or managerial terms (cf. Jun (2002, xiv), and there is a booming interest in public ethics and public values (cf. Beck Jørgensen & Rutgers, 2015).

To conclude this very brief exposé of the Western tradition: the rule of law, in the end is not just a legal issue, but it is an ethical and political ideal¹⁴ concerning the behaviour of public functionaries and citizens alike.

Discussion: Man, Morality and Law

At the beginning of this article, the question was raised as to whether the Chinese and Western traditions can be adequately captured in terms of rule of law and rule of man, as is common both in the West and East (cf. Jenco, 2010:181). It can be concluded that this is not the case: both traditions oppose the rule individuals unreflected desires and emotions. The differences concern how to best avoid this. Confucianism relies primarily

on moral officials (the exemplary person; cf. Frederickson, 2002; Yang, 2014), whereas the Western tradition resorts to objective laws and institutions.

The traditions of the rule of morality and the rule of law are in this sense unified in their rejection of the 'rule of man' as possibly resulting in the corrupt and arbitrary use of power. The Confucian ideal starts with individual morality, but this does not, and never has, excluded an actual reliance on laws and regulations in practice: rule by law. Similarly, the Western tradition does not discard morality. The increased attention for civil servants ethics underlines this. The need to have responsible administrators is not new either, as exemplified by the so-called Friedrich-Finer debate mid-20th century on the need to trust professional administrators, versus the reliance on institutions and neutral execution (cf. Stillman, 2010: 438 e.v.).

So, whereas the rule of morality refers to an instrumental conceptualization of law in a context where morality is supposed to be anchored in the rule of morality; the rule of law starts from the perspective of institutional warranties, and in that context requires officials to have prudence and moral consideration. Both traditions can be captured by positive concepts: Rule of man, understood as a person aligning his or her behaviour as a public functionary with private, selfish, as such, unreflected, (morally) uninformed, un-enlightened and subjective preference and urges is, and always has been, rejected in both traditions.

There are nevertheless fundamental differences, especially regarding the intricate links between concepts and values. This does not imply that there are no good reasons why, for instance, a kind of rule of law is relevant to China (cf. Kairyst, 2003:307), just as moral and professional administrators are relevant to the West. At the same time, authors such as Rajkovic (2012) understandably challenge the optimism (naïveté) of applying the rule of law within global governance, in particular a single all-encompassing form. There are two kinds of warning: first, that the very notion of the rule of law lacks adequate reflection, resulting in a lack of awareness of its political and practical meaning; and second, that the rule of law is embedded in culture and tradition, and presupposes a "robust legal tradition" (Tamanaha, 2004:58) whereby "people must believe in and be committed to the rule of Law" (246). In other words, it is or requires a specific morality (a tradition) to begin with. This explains why Grindle (2007:571) wondered whether the rule of law is a precondition for good governance, or if it is the outcome (cf. Haggard e.a., 2008; Mooney e.a., 2010). These authors show that the rule of law is not just a technical, legal issue, but that "complex systems of historical, social, political, and economic factors

directly impact all rule of law reform efforts” (Mooney e.a., 2010:849). China is actually regarded as an anomaly due to the fact that it has a growing economy but no strong rule of law (Allen, Qian and Qian, 2005:58; cf. Tucker, 2011). Finally, Licht e.a. (2007) conclude that some cultures are more easily suited to the rule of law than others, as they have different kinds of social institutions. One may wonder whether this also applies to a culture’s openness to the rule of morality. Despite the need for caution when it comes to the transferability of ideas, there is possibly a universal, pretty abstract ideal to be identified: good administration requires people of good morality, as well as a shared, objective¹⁵ and respected set of laws and regulations. It thus seems problematic to require either the rule of law or the rule of morality to stand alone to ensure justice; both traditions have a one-sidedness that must be compensated for, both in the theory and praxis of government. The two traditions are at the same time complementary and fundamentally different.

Notes

1. ‘Eastern’ and ‘Western’, ‘Chinese’ and ‘Western’, or ‘the East’ and ‘the West’ are used as terms to indicate general distinctions in the geographical, historical and cultural sense (cf. Painter and Peters, 2010).
2. There are different translations of this core Confucian text available, by Pinyin or Wade-Giles.
3. See for instance Shils, 2006; Bevir, Rhodes and Weller, 2003; Boyer, 1990.
4. All Chinese text in this article is noted in Mandarin Pinyin.
5. Also known as Han Feizi.
6. On the contrary, Mencius argued that “coercive laws, or *fa*, should reflect a proper and correct understanding of rites, or *li*” (Orts, 2001:55).
7. The examination system was founded in 605 and lasted until 1911.
8. The era since 1912 is comprised of two phases: The Republic of China (1912-1949) and The People’s Republic of China (1949-present).
9. Such as Kang Youwei (or K’ang Yu-wei, 1858-1927) and Liang Qichao (or Liang Ch’i-ch’ao, 1873-1929).
10. The regime of Deng was complex, but the most influential period is from 1977 till he passed away in 1997.
11. Please see <http://www.unrol.org/files/2004%20report.pdf>, p.4.

12. Such as the separation of powers, and arguably also the distinction between politics and administration (Overeem, 2012).
13. It should be noted that an ideal-type is not a political ideal to be strived for.
14. As claimed by Hayek (Tamanaha, 2004:58).
15. Not apolitical but generally available, equally applicable to all, and so on.

Reference

- Allen F, Qian J and Qian M (2005) Law, finance, and economic growth in China. *Journal of Financial Economics* 77 (1): 57-116.
- Aquinas T (1274/1978) *On Kingship. To the king of Cyprus* (Phelan GB transl.). Toronto: Pontifical Institute of Mediaeval Studies.
- Aristotle (1980) *The Nicomachean Ethics*. Oxford: OUP.
- Aristotle (2000) *Politics* (translated by B Jowett. With Introduction, Analysis, and Index by HWC Davis). New York: Dover Publications.
- Beck Jørgensen T and Rutgers MR (2015) Public Values Core or Confusion? Introduction to the Centrality and Puzzlement of Public Values Research. *The American Review of Public Administration* 45(1): 3-12.
- Becket J (2007) Five Great Issues in Public Law and Public Administration. In: Rabin JB, Hildreth B and Miller G (eds) *Handbook of Public Administration*. 3rd ed.. Boca Raton etc: Taylor & Francis, pp. 697-719.
- Berlin I (1998) The originality of Machiavell. In: idem, *The proper study of mankind. An anthology of essays*. New York: Farrar, Straus and Giroux, pp. 269-325.
- Bevir M, Rhodes RAW and Weller P (2003) Traditions of governance: interpreting the changing role of the public sector. *Public Administration* 81 (1): 1-17.
- Boyer P (1990) *Tradition as truth and communication: a cognitive description of traditional discourse*. Cambridge [etc]: Cambridge University Press.
- Cao Q (1948) *Han Fei Fazhi Lun [Han Fei's thought of the rule of law]*. Shanghai: Chung Hwa Book (Zhonghua Shuju).
- Cerese FP (2002) The Demise and Foreseeable Comeback of Public Administration. In: Jun J (ed) *Rethinking Administrative Theory. The challenge of the New Century*. Westport & London: Praeger, pp. 143-158.
- Chen J (2007) Transformation of Chinese Law-From Formal to Substantial. *Hong Kong Law Journal* 37: 689-740.
- Chen JT (1971) *The May fourth movement in Shanghai* (Vol. 9). Leiden: Brill Archive.

- Cheung AB (2000) Globalization versus Asian values: alternative paradigms in understanding governance and administration. *Asian Journal of Political Science* 8(2): 1-15.
- Cheung ABL (2010) Checks and balance in China's administrative traditions: a preliminary assessment. In: Painter M and Peters BG (eds) *Tradition and Public Administration*. Basingstoke: Palgrave Macmillan, pp. 31-43.
- Collier D and Mahon JE (1993) Conceptual "Stretching" Revisited: Adapting Categories in Comparative Analysis. *American Political Science Review* 87(04):845-855.
- Confucius (2009) *The Confucian analects, the great learning and the doctrine of the mean* (Legge J transl.). New York: Cosimo Inc.
- De Bary WT (1998) *Asian values and human rights: A Confucian communitarian perspective*. Cambridge, MA: Harvard University Press.
- Denecke W (2010) *The dynamics of masters literature: early Chinese thought from Confucius to Han Fei*. Cambridge, Mass. [etc.]: Harvard University Asia Center for the Harvard-Yenching Institute.
- Frederickson HG (2002) Confucius and the Moral Basis of Bureaucracy. *Administration and Society* 33(4): 610-228.
- Frederickson, H.G. & Smith, K.B. (2003). *The Public Administration Theory Primer*. Cambridge Ma.: Westview.
- Greer S and Lim TP (1998) Confucianism: Natural Law Chinese Style? *Ratio Juris* 11(1): 80-89.
- Grindle MS (2007) Good enough governance revisited. *Development Policy Review* 25(5): 553-574.
- Grotius H (1625/1949) *The Law of War and Peace (De Jure Belli ac Pacis)*. New York: W.J.Black.
- Guanzi (1985) *Guanzi: political, economic, and philosophical essays from early China; a study and translation by W. Allyn Rickett*. Princeton: Princeton University Press.
- Haggard S, MacIntyre A. and Tiede L (2008) The Rule of Law and Economic Development. *Annual Review of Political Science* 11: 205-234.
- Han Fei (1959) *The complete works of Han Fei-tzu: a classic of Chinese political science. Translated from the Chinese with introduction, notes and Index by WK Liao*. London: Arthur Probsthain.
- Hobbes Thomas (1651/1979) *Leviathan*. London: Dent.

- Hwang KK (1999) Filial Piety and Loyalty: Two Types of Social Identification in Confucianism. *Asian Journal of Social Psychology* 2(1): 163-183.
- Jenco LK (2010) "Rule by Man" and "Rule by Law" in Early Republican China: Contributions to a Theoretical Debate. *The Journal of Asian Studies* 69(1): 181-203.
- Jun J (2002) Introduction: Administrative Theory in the New Century. In: Jun J (ed) *Rethinking Administrative Theory. The challenge of the New Century..* Westport & London: Praeger, pp.xi-xxiv.
- Kairyst D (2003) Searching for the rule of law. *Suffolk University Law Review* XXXVI(2): 307-329.
- Kang Y (2009) The origin and development of Confucian political philosophy. *Theory and Modernization* January: 80-84.
- Lee LT and Lai WW (1977) Chinese Conceptions of Law: Confucian, Legalist, and Buddhist, The. *Hastings Law Journal* 29 (6):1307-1930.
- Liang Y (2011) Xinhai Geming Yilai de Zhongguo Fazhi Xiandaihua [China's Legal Modernization since Revolution of 1911-Historical evolution and practical logic]. *Hebei Law Science* 29(9): 22-28.
- Liang Z (1989) Explicating Law: A Comparative Perspective of Chinese and Western Legal Culture. *Journal of Chinese Law* 3: 55-82.
- Licht AN, Godtschmidt C and Schwarts SH (2007) Culture rules: The foundations of the rule of law and other norms of governance. *Journal of Comparative Economics* 35: 659-688.
- Locke J (1698/1988) *Two Treatises of Government*. Cambridge: Cambridge University Press.
- Lyons DB (1984) *Ethics and the rule of law*. Cambridge: Cambridge University Press.
- MacCormack G (1996) *The spirit of traditional Chinese law*. Athens, Georgia: University of Georgia Press.
- Michael F (1962) The role of law in traditional, nationalist and communist China. *The China Quarterly* 9(1) : 124-148.
- Montesquieu (1748/1994) *De l'Esprit des Lois. Oeuvres complètes I*. Paris: Gallimard.
- Mooney L, Schönteich M, Windsor J and Rausch C (2010) Promoting the Rule of Law Abroad: A Conversation on its Evolution, Setbacks and Future Challenges. *The International Lawyer* Summer 244 (2): 837-856.
- Morlino L and Palombella G (eds) (2010) *Rule of law and democracy: inquiries into internal and external issues*. Leiden [etc.]: Brill.
- Orts EW (2001) The Rule of Law in China. *Vanderbilt Journal of Transnational Law* 34 (1): 43-116.

- Overeem P (2012) *The Politics-Administration Dichotomy. Toward a constitutional perspective*. Boca Raton [etc.]: CRC Press.
- Owens J (1959) *A history of ancient Western philosophy*. Englewood Cliffs: Prentice Hall.
- Painter M and Peters BG (eds) (2010) *Tradition and Public Administration*. New York [etc.]: Palgrave Macmillan.
- Peerenboom RP (2002) *China's long march toward rule of law*. Cambridge [etc.]: Cambridge University Press.
- Plato (1980a) Laws. In: Hamilton E and Cairns H (eds) *Plato. The collected dialogues, including the letters*. 10th ed. Princeton: Princeton university press, pp. 1225-1516.
- Plato (1980b) Republic. In: Hamilton E and Cairns H (eds) *Plato. The collected dialogues, including the letters*. 10th ed. Princeton: Princeton university press, pp. 575-844.
- Raadschelders JC and Rutgers MR (1999). The waxing and waning of the state and its study: changes and challenges in the study of Public Administration. In: Kickert WJM and Stillman RJ II (eds) *The Modern State and its Study. New Administrative Sciences in a Changing Europe and United States*. Cheltenham: Edward Elgar, pp. 17–35.
- Rajkovic NM (2012) 'Global Law' and governmentality: Reconceptualizing the 'rule of law' as rule 'through' law. *European Journal of International Relations* 18 (1): 29-52.
- Raz J (1977) The rule of law and its virtue. In: Kavanagh A and Oberdiek J (eds) *Arguing about law*. London etc.: Routledge, pp.181-192.
- Ren X (1997) *Tradition of the law and law of the tradition: Law, state, and social control in China*. Westport, CT: Greenwood Publishing Group.
- Rozman G (ed) (2014) *The East Asian region: Confucian heritage and its modern adaptation*. Oxford: Princeton University Press.
- Schram G (1971) Ideology and politics: the Rechtsstaat idea in West Germany. *The Journal of Politics* 33(01): 133-157.
- Schwartz SH (1999) A theory of cultural values and some implications for work. *Applied Psychology: An International Review* 48 (1): 23-47.
- Shen Y (2000) Conceptions and Receptions of Legality: Understanding the Complexity of Law Reform in Modern China." In: Turner K, Feinerman JV and Guy RK (eds) *The Limits of the Rule of Law in China*. Seattle: University of Washington Press, pp. 20-44.
- Shils E (2006) *Tradition*. Chicago: University of Chicago Press.
- Shun KL (1993) Jen and Li in the "Analects". *Philosophy East and West* 43(3): 457-479.
- Smelser NJ and Baltes PB (2001) *International encyclopedia of the social & behavioral sciences*. Oxford: Elsevier.

- Stillman II, R.J. (2010). *public administration ; concepts & cases*, 9th ed./International edition, Boston, Houghton Mifflin.
- Tamanaha BZ (2004) *On the Rule of Law. History, Politics, Theory*. Cambridge: Cambridge University Press.
- Tamanaha BZ (2012) The history and elements of the rule of law. *Singapore Journal of Legal Studies* December: 232-247.
- The State Council of the People's Republic of China (2014) Highlights of communique of 4th plenary session of CPC Central Committee. Available at: http://english.gov.cn/news/top_news/2014/10/24/content_281475000839813.htm (access 22 December 2014).
- Tu WM (2000) Implications of the Rise of "Confucian" East Asia. *Daedalus* 129(1): 195-218.
- Tucker M (2011) 'Guanxi!' - 'Gesundheit!' An alternative view on 'the rule of law' panacea in China. *Vermont Law Review* 35: 689-715
- United Nations (2004) *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, UN SC, UN Doc. S/2004/616.
- Weber M (1985) *Wirtschaft und Gesellschaft* [Society and Economy], 5th ed. Tübingen: J.C.B. Mohr.
- Winston K (2005) The internal morality of Chinese legalism. *Singapore Journal of Legal Studies* December: 313-347.
- Yang L (2014) *Confucian Sage: The 'good official' in traditional Chinese admonitions and their contemporary relevance*. Manuscript submitted for publication.
- Yao X (2003) Preface. In: *Ta Hsüeh and Chung Yung* (The Highest Order of Cultivation and On the Practice of the Mean) (Plaks A transl.). London: Penguin Books, pp vii-xxi.
- Yesilkagit K (2010) The future of administrative tradition: tradition as ideas and structure. In: Painter and Peters BG (eds) *Tradition and Public Administration*. Basingstoke: Palgrave Macmillan, pp. 145-157.
- Zhang D (2002) *Key concepts in Chinese philosophy* (Ryden E transl.). New Haven: Yale University Press.
- Zhang T and Schwartz B (1997) Confucius and the Cultural Revolution: a study in collective memory. *International Journal of Politics, Culture, and Society* 11(2): 189-212.

Biographies

Lijing Yang, MSc., is a PhD candidate at the Department of Political Science, University of Amsterdam. Her dissertation compares civil service values in China and the Netherlands, focusing on public values, administrative traditions and good government. Yang has published an article in *Public Integrity*, and has a forthcoming article in *International Public Management Journal*.

Mark R. Rutgers is professor of the Philosophy of Public Administration and dean of the Graduate School of Social Sciences at the University of Amsterdam. His main interests include the nature of the study of public administration, public values, the oath of office and the history of administrative thought. He has published articles in *Administration and Society*, *Administrative Theory and Praxis*, and *International Review of Administrative Sciences*, among others.