Zhengxu Wang
Editor

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The Premodern State and Its Contemporary Impacts

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Editor
Zhengxu Wang
Department of Political Science
Zhejiang University
Hangzhou, Zhejiang, China

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CHAPTER 9

Legalist Confucianism: What's Living and What's Dead

Daniel A. Bell

Confucianism and Legalism are the two most influential political traditions in Chinese history. They are diverse and complex traditions with different interpretations in different times (especially in the case of Confucianism), but there are continuities and commonalities and ongoing themes in each tradition. Although the two traditions contrast with each other at the level of philosophy, they were combined in different ways in Chinese imperial history and some form of Legalist Confucianism continues to be influential in the twenty-first century. In this essay, I will identify the main traits of the Confucian and Legalist traditions and show how they were combined in Chinese history. I hope the reader will forgive the broad brushstrokes that simplify a complex history. My aim here is to set the stage for the normative question: Which aspects of Legalist Confucianism should be promoted in the future and which parts should

D. A. Bell (✉)
Faculty of Law, University of Hong Kong, Pok Fu Lam, Hong Kong
e-mail: dabell@hku.hk

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be consigned to the dustbin of history? I will illustrate my response with examples from contemporary China to suggest it is both possible and desirable to promote a form of Legalist Confucianism today and in the foreseeable future.

Confucianism and Legalism: The Main Ideas

In terms of ideas, the two traditions radically contrast with each other. Such differences help to explain why Han Feizi was unrelentingly hostile to Confucianism, to the point of advocating the killing of Confucian "vermin." Again, both traditions are diverse and complex. But let me draw out the main points of contrast. In the case of the Confucian tradition, I will draw mainly on the ideas of its most influential interpreters in pre-imperial China—Kongzi, Mengzi, and Xunzi. In the case of the Legalist tradition, I will rely mainly on the ideas of Han Feizi, who systematized the Legalist tradition.

Conceptions of Human Nature

In the case of Confucian thinkers, humans can be improved whatever the starting point. Kongzi thought exemplary persons (君子 *junzi*) can set a good model of how to practice other-regarding morality. Mengzi specified that we learn other-regarding morality the family which can then be extended to the political community. He thought we have a tendency to goodness that needs to be nourished by society. Xunzi argued that we have a tendency to badness but that humans can be improved by means of reading the classics and rituals that make us more sociable.

In the case of Legalist thinkers, they thought we are born selfish, base, and untrustworthy. The family is not the sphere of love and care. In politics, the rulers need to be especially wary of family members who have an interest in taking over our positions. Humans cannot be improved by means of education or rituals or moral exhortation but if material resources are plentiful it is possible to reduce competition and friction in society.

The Ends of Politics

For Confucians, the purpose of politics is to promote the well-being of the people.

The humane ruler should be motivated by the desire to serve the people and should implement policies that serve that aim. If the ruler harms or exploits the people, he is not a legitimate ruler.

For Legalists, the purpose of politics is to maintain and expand state power even if it goes against the interests of the people. Even the ruler may not benefit from the political system because he should not act on his desires for fear of showing his preferences and being manipulated by his ministers.

The Means of Politics

For Kongzi, the humane ruler rules by virtue. The ruler looks to the past for inspiration and should set a good model for others to follow. Mengzi argued that the ruler should also promote land reform that ensures people are well-fed and develop caring relations among themselves. Xunzi argued that the ruler should rely first and foremost on informal rituals that benefit the people, with laws as a last resort.

For Legalists, the means are amoral: Whatever works to maintain and increase state power is acceptable. The country needs a strong military and farmers that grow food, with no room for activities that undermine the strength of the state. Virtue at the top is ineffective. The ruler should rely first and foremost on harsh laws to secure social order. Only fear of punishment works, especially in times of warfare and material scarcity. The ruler should look to the present situation for guidance of how to strengthen the state.

The Family and the State

For Confucians, especially Kongzi and Mengzi, the first obligation is to the family. The state should strengthen and promote family relations, especially the virtue of filial piety. In cases of conflict, family ties should often have priority over ties to the state.

For Legalists, the first obligation is to the state. The state should weaken family relations if they interfere with service to the state. In war time, the soldiers owe their obligation to the state, even if they have needy family members at home.

Foreign Policy

For Confucians, the humane ruler should rely on moral example and ritual when dealing with other state. Foreign policy should benefit both the people in one's state and the people in other states. Warfare and violence should be used only as a last resort and must be morally justified.

For Legalists, the international arena is amoral. Each state pursues its self-interest and seeks to maximize its power at the expense of other states. International relations are a zero-sum game and aggressive warfare is fine if it works at strengthening the state.

Notwithstanding these philosophical differences, the contrast between Confucianism and Legalism was not so stark in Chinese history. In imperial China, were often combined and Legalist Confucianism worked in different ways in different times.

Legalist Confucianism in History

Pre-imperial China was characterized by fierce military competition between small warring states. After the late fifth-century BCE, however, "a synergism of the necessities of war, the power of the state, and Legalist ideology held sway: increasingly the power of ferocious warfare favored those states that were more instrumental in organization and action; the warfare of ordinances imposed by the Legalists enhanced state capacity to harness aristocratic power and exact resources from the population; and the states that were more able to act instrumentally by more thoroughly implementing Legalist regulations were likely to triumph in the fierce military competition."[1] The Qin state proved to be the most efficient at centralizing power and promoting a ruthlessly efficient military meritocracy (soldiers were promoted based on the number of decapitated heads of enemy soldiers),[2] and the Qin successfully unified China under the one-man rule of Qin Shi Huang, the self-proclaimed First Emperor of Qin. Qin Shi Huang, however, rejected the Confucian ideal that the purpose of

[1] Zhao Dingxin, *The Confucian-Legalist State: A New Theory of Chinese History* (Oxford: Oxford University Press), p. 13.

[2] Yuri Pines, "Between Merit and Pedigree: Evolution of the Concept of 'Elevating the Worthy' in Pre-imperial China," in *The East Asian Challenge for Democracy: Political Meritocracy in a Comparative Contex*t, ed. Daniel A. Bell and Chenyang Li (New York: Cambridge University Press, 2013), pp. 161–202.

the state is to serve the people.[3] In line with Legalist thinking, Emperor Qin Shi Huang aimed to increase state power and employed ruthlessly efficient means for that end.[4] He developed the world's first sophisticated bureaucracy, unified the Chinese script, and built an advanced transportation and communication system, but still went down in history as a cruel dictator. The Qin empire lasted for only fifteen years—the shortest-lived major dynasty in Chinese history—at least partly because it lost sight of the state's moral mission.

The next dynasty—the Han—found the normative solution that lasted for nearly two thousand years. The Han dynasty was still willing to use ruthless officials: The Book of Han even had a chapter titled "Biography of Cruel Officials."[5] But the Han adopted the political thought of Confucianism as the governing ideology. Emperor Wu Di adopted Dong Zhongshu's (179–104 BCE) interpretation of Confucian thought to educate the people and train officials with a unified Confucian ideology. Emperor Wu Di did not forsake the use of Legalist-style severe laws and punishments—five out of fourteen ministers during his fifty-year reign were executed—but he used Confucian thought to provide legitimacy for his rule, setting the dynamic for subsequent imperial political history. As Zhao Dingxin explains,

> In the Confucian-Legalist state, the emperors accepted Confucianism as the ruling ideology and subjected themselves to the control of a Confucian bureaucracy, while Confucian scholars both in and out of the bureaucracy supported the regime and supplied meritocratically selected officials who administered the country using an amalgam of Confucian ethics and Legalist regulations and techniques. This symbiotic relationship between the ruling house and Confucian scholars gave birth to what is by premodern standards a powerful political system – a system so resilient

[3] Contrary to popular legend, however, Qin Shi Huang did not bury Confucian scholars alive. Recent research suggests that the First Emperor ordered the killing of alchemists after having found out they had fooled him (http://ulrichneininger.de/?p=461).

[4] To be fair to Legalist thinking, Qin Shi Huang went beyond the dictates of Legalism by constructing tombs of mock soldiers known today as the terracotta warriors in an effort to secure his own immortality. Legalists would regard such expenditures (not to mention the brutal means employed) as a waste of state expenditure.

[5] Wang Pei, "Debates on Political Meritocracy in China: A Historical Perspective," *Philosophy and Public Issues* (new series) 7, no. 1 (2007), pp. 63–71.

> and adaptive that it survived numerous challenges and persisted up until the Republican Revolution in 1911.[6]

The Legalist legacy is less evident because Legalism largely disappeared from official discourse for nearly two thousand years—there were no card-carrying Legalists from the Han dynasty until Mao's invocation of Legalism in the Cultural Revolution.[7] But Legalist ideas were employed to improve the state's capacity and ensure administrative efficiency. Whatever the official rhetoric, the political system often relied on a Legalist standard for the selection of competent public officials, namely the selection of officials with the ability to carry out strong and effective execution and the willingness to use brute power to solve problems for the emperor. But the Legalists were not overly concerned with the question of whether the aim itself was just or moral. So Confucianism set the aim of politics—to persuade the emperor to "Rule for All" (天下为公). Confucians favored the selection and promotion of public officials who could grasp the moral Way (道), implement benevolent policies that benefit the people, and protect civilians from cruel policies. The Chinese term for political meritocracy—the selection and promotion of public officials with above-average (Confucian-style) virtue and (Legalist-style) ability (贤能政治 *xianneng zhengzhi*)—well captures the ideal of the public official with an ability to grasp practical issues with the aim of efficiently implementing the principle of "Rule for All" well. In reality, however, Legalism and Confucianism often pulled in different directions. From a Legalist perspective, Confucians often selected exemplary men who lacked the ability to deal with practical politics and efficient administration. From a Confucian perspective, Legalists often selected capable villains with no desire for justice or morality. Legalists deferred to the emperor's wishes as the final court of appeal, whereas Confucians relied on the moral Way to evaluate the status quo and, if needed, to admonish the emperor who implemented immoral policies. Legalists cynically dismissed the possibility of morality and criticized Confucians as hypocrites who sowed political chaos, whereas Confucians doubted

[6] Zhao, *The Confucian-Legalist State*, p. 14.

[7] Mao's invocation of Legalism was invoked to criticize Confucianism, but a genuine commitment to Legalism would have translated into a commitment to political meritocracy based on ability rather than virtue (yet, the opposite was true in the Cultural Revolution that valued "red over expert").

that a political system could survive for long without a moral foundation. This kind of dynamic between Confucianism and Legalism, as we will see, continues to influence Chinese politics today.

Whatever its internal tensions, the Legalist Confucian ideal of political meritocracy not only informed Chinese politics for over 2000 years, surprisingly, it has also inspired political reform in China over the last four decades or so. A typical trope in the Western media is that there has been substantial economic reform in China, but no political reform. But that's because electoral democracy at the top is viewed as the only standard for what counts as political reform. If we set aside this dogma, it's obvious that the Chinese political system has undergone substantial political reform over the last few decades and the main differences that there has been a serious effort to (re)establish political meritocracy. Again, political meritocracy is the ideal that the political system should aim to select and promote public officials with superior ability and virtue. And the best way to realize this ideal is a complex bureaucratic system that puts public officials through a decades-long process of political education, with the result that only public officials with a proven track record of superior ability and commitment to serving the political community reach the highest level of government. Political meritocracy was largely abandoned, as well as fiercely criticized, in the Maoist period, culminating in the Cultural Revolution that favored "red over expert." In practice, it meant downgrading the importance of ability and experience for public officials and destroying the bureaucratic system that was supposed to select and promote officials with experience and ability.[8] But the ideal of

[8] The Maoist ideal was to select and promote officials almost exclusively according to virtue, as measured by revolutionary energy and commitment to Mao himself. If one defines political meritocracy solely as the ideal that the political system should aim to select virtuous public officials, the Maoist ideal can be seen as a form of political meritocracy. In most of Chinese history, however, political meritocracy meant that public officials need to be selected according to both ability and virtue along with the institutional implication that a complex bureaucratic system should be put in place that increases the likelihood such officials make it through the system. Given that the Maoist ideal lacked two out of these three elements of political meritocracy, I do not think the Maoist ideal should be regarded as a species of the ideal of political meritocracy. Another key difference is that traditional Confucians emphasized that public officials should be committed to the moral Way rather than the status quo or the preferences of rulers, hence, virtuous public officials should express and exercise their own moral judgment when it comes to how best to serve the people. So even if we limit the definition of political meritocracy to rule by virtuous public officials, the Maoist ideal should be seen as a perversion of the ideal.

political meritocracy, along with its institutional manifestation in the form of a complex bureaucratic system, has been revived since the late 1970s. The country was primed for rule at the top by meritocratically selected officials following a disastrous experience with radical populism and arbitrary dictatorship in the Cultural Revolution, and China's leaders could reestablish elements of its meritocratic tradition, such as the selection of leaders based on examination and promotion based on performance evaluations at lower levels of government—almost the same system, in form (but not content) that shaped the political system in much of Chinese imperial history—without much controversy. And since then, political meritocracy has inspired political reform at higher levels of government, with more emphasis on education, examinations, and political experience at lower levels of government. There remains a large gap between the ideal and the practice, but the underlying motivation for political reform is still the ideal of political meritocracy.[9]

What's Living and What's Dead in Legalist Confucianism

I am generally sympathetic with the effort to revive Confucianism.[10] But I think Legalism is not completely dead from a normative standpoint. Parts of the tradition can and should be incorporated with the Confucian tradition. Let me first discuss what's dead about Legalism and then I will discuss which parts are living and compatible with the Confucian

[9] In my book *The China Model*: *Political Meritocracy and the Limits of Democracy* (Princeton: Princeton University Press, 2015), chapter 3, I discuss in detail what political merit means in China's post-reform era: Ability refers to both IQ and EQ and virtue refers to the motivation to serve the political community (the opposite of virtue is corruption, i.e., using public resources for one's own private interests). I discuss and evaluate various ways of assessing these three standards of political merit designed to minimize the gap between the ideal and the reality. I also argue that EQ, IQ, and virtue are all important, but they should be valued differently in different times in a large, relatively undeveloped country like China that seeks to modernize: Ability in the sense of EQ should matter more in the early days of reform when the emphasis is mainly on poverty alleviation and public officials need lots of good connections to get things done, virtue should be prioritized when corruption poses an existential threat to the political system, and ability in the sense of IQ should matter more once the country confronts many problems that require scientifically-informed solutions.

[10] See my book *China's New Confucianism: Politics and Everyday Life in a Changing Society* (Princeton: Princeton University Press, 2008).

ideal that the purpose of the state is to serve the people. I will end with some examples of manifestations of Legalist Confucianism in contemporary China to suggest that the ideal is both feasible and desirable today and for the foreseeable future.

What's Dead

The Legalist idea that people are permanently selfish. This idea has been soundly debunked by social science studies that show that most people, except for a tiny minority of sociopaths (like Han Feizi?), have a moral conscience and an innate capacity to empathize with the suffering of others.[11] Things can go wrong in cases of extreme material scarcity and harmful forms of education, but the tendency to goodness can and should be nourished by appropriate social institutions.

The Legalist idea that the end of politics is to build a strong state. The purpose of politics is to serve the people: A principle endorsed not just by Confucians but by most of the world's great ethical and political traditions. If the state does not serve the people—e.g., a strong totalitarian state that brainwashes the people and leaves no room for freedom—it should be resisted. And Confucian language should not be used to justify Legalist-inspired policies that oppress the people.

The Legalist idea that states should pursue ruthlessly self-interested foreign policies, including aggressive warfare. Unjust war needs to be opposed, even if it is (temporarily?) successful. Today, we face common global challenges such as climate change and pandemics and the need to regulate weapons of mass destruction that Han Feizi could not have imagined in his own day. States should work together to overcome these challenges, even if it imposes a certain cost on political communities today.

What's Living

The Legalist idea that we should not rely too much on the good will and altruism of public officials. Even, if they are partly motivated by the desire to serve the people, the power of public officials needs to be checked by such Legalist-style practices as assigning public officials outside of their

[11] For evidence from neuroscience in favor of Mencius's view of human nature, see Edward Slingerland, *Trying Not To Try: The Art and Science of Spontaneity* (New York: Crown, 2004), p. 117.

home towns to reduce the likelihood of nepotism and corruption. In special circumstances such as morally justified warfare, the public interest needs to have priority of Confucian-style commitments to the family.

The Legalist idea that laws should treat everyone equally regardless of social status or family background, as well as the Legalist idea that laws need to be publicly disseminated and easy to understand by ordinary people. Confucian-style rituals can have an educative function, but so can laws, especially in modern societies. If laws are too complicated or vague they will not be effective.[12]

The Legalist idea that harsh punishments and constraints on freedom may be necessary to deal with social chaos (such as civil war) or emergencies (such as pandemics). But the government (and the people) need to be clear that harsh measures are only short term and should be repealed once normal (less chaotic) times resume again.

The point of normative political theorizing is to provide a standard to evaluate the status quo and to provide guidance for improvements. Still, we need to recognize that utopian political theorizing can be useless or even counter-productive if it can't be realized in practice. So let me point to three examples of morally desirable forms of Legalist Confucianism in contemporary China. The examples may be somewhat idealized, but they are sufficiently embedded in social reality to alleviate the worry that Legalist Confucianism cannot be realized in any morally desirable form in modern-day society.

Examples of Legalist Confucianism in Contemporary China

I regret to report that there are plenty of examples of perverse forms of Legalist Confucianism in contemporary China. The treatment of some minority groups, for example, often relies on harsh Legalist-style repression that is difficult to justify even as policies meant to maximize the long-term good of those people affected. But I'd like to point to three examples of Legalist Confucianism that come close to realizing the morally desirable form of this ideal in contemporary society.

[12] See Kenneth Winston, "The Internal Morality of Chinese Legalism," *Singapore Journal of Legal Studies* (December 2005), pp. 313–347.

The Problem of Drunk Driving[13]

About fifteen years ago, nobody in China openly defended the practice of drunk driving. At some level, people knew it was bad. But it was still common to drive after a few drinks. It would have been almost rude not to serve fiery white liquor (白酒 *bai jiu*) to guests in Chinese restaurants; and the stronger the better, with 53% alcohol percentage preferred to the measly 38%. Drunk drivers would head back home, with predictably disastrous consequences. Alarmed by data that showed at least 20% of serious road crashes were alcohol related, the Chinese government decided to crack down on drunk driving. Educational campaigns meant to change people's selfish habits clearly had no effect. Almost overnight, the authorities set up frequent random sobriety checks. At first, the penalties were not so harsh: Drivers were fined and not permitted to drive for three months. That didn't work much either. Then punishments were increased to compulsory jail time for first offenders with zero tolerance of any alcohol and an automatic six-month driving ban, followed by a need to retake a driving course and pass practical and written exams for those who planned to drive again. Fear worked. Eventually, things loosened up. Attitudes changed, and drinking and driving became universally frowned upon. Death rates caused by drunk drivers plunged nationwide,[14] and random checks, now few and far between, have become almost superfluous. Gone are the days when drivers would feel pressure to drink alcohol in restaurants; and when they do drink, sober friends offer to drive them home, and if that's not possible, drunk drivers call the services of paid drivers who wait outside restaurants with tiny bicycles that can be folded into car trunks.

In short, the government tried to tame bad behavior by means of Confucian-style education and ritual, and when that didn't work, it tried Legalist-style harsh punishments to enforce norms that people knew, deep down, had social benefits. Eventually, the punishments closed the gap between the norm and the practice and the government could rely mainly on moral self-regulation instead of harsh punishment, but without

[13] This discussion draws on Daniel A. Bell and Wang Pei, *Just Hierarchy: Why Social Hierarchies Matter in China and the Rest of the World* (Princeton: Princeton University Press, 2020), pp. 80–81.

[14] See https://www.sciencedirect.com/science/article/pii/S0033350616304139 and Wang Qian and Zhang Yan, "Drunken Driving Crashes, Injuries Declining," *China Daily*, October 10, 2014.

completely doing away with laws that serve as last resort checks on selfish and dangerous behavior. More or less as Legalist Confucians would have recommended: Best to rely on informal means of regulation that transform bad behavior, and if that doesn't work, use the strong arm of the law.[15]

COVID-19 Control in China[16]

The COVID-19 scare started in Wuhan, China and the local government, to say the least, did not handle matters well. After the initial debacle in Wuhan, there was massive, top-down mobilization of state power to contain the coronavirus epidemic. Once, the central government gave clear directives in late January 2020, the whole country was put under full or semi quarantine; each level of government strictly followed orders to prioritize fighting the disease. The latest technology was put to use, with hardly any concern for privacy or individual autonomy.

Such strong measures helped to contain the spread of the virus in China within a few weeks. But Legalist-inspired draconian means cannot fully explain success. The Confucian tradition also played an important

[15] A similar story of "先礼后兵 *xian li hou bing*" can be told of those who ignored speed limits. The educational efforts in driving schools and elsewhere to make drivers obey rules of the road had little effect. The government then decided to use traffic cameras that fined drivers, with little room for discretion. That eventually worked to change driving practices. Today, the cameras have less effect because almost every car has a GPS (导航) that warns drivers of the presence of cameras, but still, most drivers have internalized the need to obey speed limits without being forced to do so. The point here is not that harsh laws per se can transform attitudes and actions. The fear of harsh punishment in the short term can help to transform inner morality in the long term only if the initial fear of punishment builds on a commonly held social value that is already internalized by means of education and informal rituals (people knew that drunk driving and speeding was bad, but such norms only affected behavior and became viewed as truly bad after they were backed up by harsh punishments for violations). Regarding other rules of the road, there is still need for progress. The government carries out public campaigns to promote civility by means of signs on major roads with the characters "礼让 *li rang*," which can be translated as "ritual and deference." It's still quite rare, however, for drivers to show civility by letting pedestrians proceed first in cases of conflict: The powerful cars usually prevail and pedestrian crossways have little effect. Once the government issues strict fines for incivility, it might help to improve things, and once civility will become second nature, the government will no longer need to rigorously enforce the law.

[16] This section draws on the new preface to the paperback edition of Bell and Wang, *Just Hierarchy*.

role. Dutiful citizens largely complied with the constraints on privacy and freedom because they had Confucian-style faith that the government was acting in their best interests. Most Chinese love nothing better than socializing in restaurants and parks and traveling at home and abroad (in 2019, 169.2 million Chinese traveled overseas, mainly as private tourists). On this basis alone, we can safely assume that they would have been unlikely to comply if they had thought such totalitarian controls on everyday life were supposed to be permanent.

More specific Confucian values also contributed to success. Filial piety, or reverence for the elderly, helps explain why East Asian countries took such strong measures to protect people from a disease that is particularly dangerous for the elderly (within families, adult children often wore masks and asked children to do so to protect elderly relatives). Also, East Asian countries' relatively distant greeting practices such as bowing helped minimize contagion when compared with, for example, the kissing and hugging common in Italy, Spain, and France.

Perhaps most important, Confucian-inspired respect for expertise, which is widely shared in East Asian countries, also increased the effectiveness of scientifically-informed policies. In China's case, when eighty-two-year-old Dr. Zhong Nanshan, famous for leading the fight against SARS, warned of the severity of the coronavirus on January 20, 2020, the country listened and prepared for the worst. Such modern-day *junzi* (exemplary persons) command great authority: They are trusted to use their expertise to serve the common good. In countries like the United States, which have a more anti-elitist ethos, conscientious experts do not exert the same level of social influence. Dr. Fauci is perhaps more admired in China than in the United States.

In short, Legalist top-down mobilization of state power, combined by Confucian-inspired values such as trust in conscientious experts, respect for the elderly, and distant greeting practices, help to explain China's success for two years after the debacle in Wuhan. That said, the government failed to contain the more contagious Omicron variant in 2022 and eventually it was forced to exit somewhat chaotically from zero-Covid, which may undermine trust in experts and govermental policies in the future. Still, if the rest of the world had followed China's approach,

we would be dealing with an epidemic that killed thousands rather than millions.[17]

The Anti-Corruption Drive[18]

The anti-corruption drive is a more controversial example and it remains to be seen if it will be successful in the long term. The means employed owe much to the Legalist tradition. In conversation with public officials, including high-ranking leaders, the language of Legalism is frequently invoked to justify the anti-corruption drive. It has worked, at least in the short term. When Xi Jinping assumed the presidency in 2012, corruption had reached a tipping point and Xi made combating corruption the government's top priority. The government launched what has turned out to be the longest and most systematic anti-corruption campaign in Communist Party history. As of 2018, more than one million officials have been punished for corruption, including a dozen high-ranking military officers, several senior executives of state-owned companies, and five national leaders. Cynical observers claim that the whole thing is a means of going after political enemies, but what distinguishes this anti-corruption drive from previous ones is that it also creates many political enemies, which seems irrational from the point of view of political self-preservation.

Whatever the motivation, the effect is clear: The anti-corruption drive has worked. Anybody who has dealt with public officials has noticed the changes. Corruption practices are now almost universally frowned upon. The profits of companies are up because there's no longer a need to pay extras to public officials. Ordinary citizens perceive the system as less unfair because it's now possible to access public services without paying bribes and gifts to bureaucrats. Most surprising, the anti-corruption drive has been successful without the mechanisms designed to limit abuses of power in liberal democracies: competitive elections, a free press, and independent anti-corruption agencies. China's Leninist-inspired political system rules out such mechanisms and allows for abuses such as indefinite detention without trial.

[17] In the case of Hong Kong, the COVID-19 calamity in early 2022 can be explained at least partly because the city did not have the resources to mount a Legalist-style attack on COVID-19 and the people lacked Confucian-style trust in the government.

[18] This section draws on Bell and Wang, *Just Hierarchy*, pp. 81–84.

But the downsides of excessive Legalism are evident. It is not just that public officials think twice before engaging in corrupt practices. They think almost all the time about what can go wrong, to the point that decision-making has become virtually paralyzed. The procedures for using public funds have become bafflingly complex and punitive, and it's safer not to spend money. The costs are huge, and growing. China's success over the past four decades is partly explained by the fact that government officials were encouraged to experiment and innovate, thus helping to propel China's reforms. But ultra-cautious behavior from the government means that innovative officials won't get promoted and problems won't get fixed.[19]

Equally serious, the anti-corruption drive has created huge numbers of political enemies who may be cheering for the downfall of the leaders, if not the whole political system. For every high-level public official brought down by the anti-corruption drive, there may be dozens of allies and subordinates who lose their prospects of mobility in an ultracompetitive, decades-long race to the apex of political power. The "losers" in the anti-corruption drive blame China's rulers for their predicament. These real enemies make the leaders even more paranoid than usual and lead the government to ramp up censorship and further curb civil and political rights. So it isn't just the political outcasts who feel estranged from the system but also intellectuals and artists, who object to curbs on what they do, as well as business people who worry about political stability and flee abroad with their assets.

With yet more social dissatisfaction among elites, leaders further clamp down on real and potential dissent. Knowing that their enemies are waiting to pounce, the current leaders are even less likely to give up power (elderly leaders may not worry so much about their own fate because they will soon "visit Karl Marx," but they worry about children and family members). So it's a vicious circle of Legalist means and political repression. Ironically, the most efficient and effective drive to limit abuses of power in recent Chinese history (in the form of the anti-corruption campaign) may also have led the leaders of the campaign to remove the

[19] For an empirically informed argument that the anti-corruption drive has a deterrence effect that lowers the average ability of newly recruited bureaucrats, see https://www.cambridge.org/core/journals/british-journal-of-political-science/article/price-of-probity-anticorruption-and-adverse-selection-in-the-chinese-bureaucracy/5CF35E3428FEE88814270F861360D3B8.

most important constraint on their own power (in the form of term and age limits).

In retrospect, it may have been a mistake to rely almost exclusively on Legalist means to combat corruption. Legalism can bring short-term political success, but it can also lead to long-term doom, similar to the fate of the Qin dynasty. Chinese history does point to other possibilities, including amnesties for corrupt officials. As the current anti-corruption drive was getting under way, reformers argued that a general amnesty be granted to all corrupt officials, with serious policing of the boundaries between private and public, and resources provided to allow them to start afresh. To deal with the买官 *mai guan* [buying of government posts] problem, public posts could have been distributed by lot once officials pass a certain level of qualification, as was done under Emperor Wanli. But it's too late to start over.

What can be done is to wind down the anti-corruption drive. Wang Qishan—who led the anti-corruption drive—said that the anti-corruption drive will need to move from an initial deterrent stage to a point where the idea of acting corruptly would not even occur to officials as they went about their business. The next stage can't rely first and foremost on fear of punishment. It must rely on measures that reduce the incentive for corruption, including higher salaries for public officials and more clear separation of economic and political power. It also matters what officials do when nobody is looking: Moral education in the Confucian classics can help to change mindsets in the long term. The central authorities should put more trust in talented public officials with good track records of serving the public. At the end of the day, however, the best long-term solution for corrupt behavior is Confucian-style moral self-regulation on the part of public officials.

Concluding Thought

The reader may be left wondering if Legalist Confucianism is distinctive to China or if it can be exported to other contexts. There may be some lessons for other East Asian countries such as South Korea that have a long history of Legalist Confucianism and its institutional manifestation in the form of a complex bureaucratic system designed to select and

promote public officials.[20] But countries that lack this history and political culture will not be inspired by the tradition of Legalist Confucianism and its contemporary manifestations. If people outside of East Asia do not rank Confucian values such as respect for conscientious public officials very highly or if the judicial system does not allow for the possibility that civil liberties can be curbed even in short term responses to emergencies, then we just need to accept that different countries and societies will rely on different means to resolve urgent problems.

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[20] See Hahm Chaibong and Paik Wooyeal, "Legalistic Confucianism and Economic Development in East Asia," *Journal of East Asian Studies* 3, no. 3 (Sept–Dec 2003), pp. 461–492.

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