

THE EFFECT OF CONFUCIANISM ON EAST ASIAN LEGAL SYSTEMS

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Abstract

Many will believe that the formal legal systems of all states around the world have a common jurisprudence in Western philosophy and are formed for the same purposes. But an exploration into the practices, regulations, and case law of certain East Asian nations will show a significant disparity between legal systems in the West and those in countries that have been influenced by Confucianism. Through a firm understanding of Confucian history, its principles, and the theories that have challenged it throughout history, we can examine the legal systems of East Asian states. For this analysis, we will look at the legal systems of China, Korea, and Japan in an attempt to see how differences in jurisprudence and cultural influences have affected their legal systems.

Introduction

Many will believe that the formal legal systems of all States around the world have a common jurisprudence in Western philosophy and are formed for the

same purposes. But an exploration into the practices, regulations, and case law of certain East Asian nations will show a significant disparity between legal systems in the West and those in countries that have been influenced by Confucianism. Through a firm understanding of Confucian history, its principles, and the theories that have challenged it throughout history, we can take an educated examination into the legal systems of East Asian states. For this analysis, we will look at the legal systems of China, Korea, and Japan in an attempt to see how differences in jurisprudence and cultural influences have affected their legal systems.

What is Confucianism?

Very few people today will have not heard of Confucius and his teachings, but even fewer have a requisite understanding of the disposition of its effect on the societies of numerous Asian countries. Confucius was a Chinese philosopher and official who lived in the 6th Century BCE and whose teachings became immensely popular.¹ While we do not know everything about his life, it is known that he held several positions and became extremely influential, but he never attained an official position of the type he sought before his death.² It is also worth noting that after Confucius' death, several other philosophers developed Confucianism further into what we see today.³ Notable among these are Mencius and Xunzi.⁴

¹ Vu Hong Van, *Overview of Confucianism and the Basic Content of Confucianism*, 2 South Asian Research Journal of Humanities and Social Sciences 285, (2020), https://www.researchgate.net/publication/343065458_Overview_of_Confucianism_and_the_Basic_Content_of_Confucianism, (last visited April 7, 2021.)

² Id.

³ Chongko Choi, *Ancient Foundations of East Asian Jurisprudence*, 43 Seoul National University Law School Journal 141, (2002), https://space.snu.ac.kr/bitstream/10371/9114/1/law_v43n3_141.pdf (last visited April 7, 2021.)

⁴ Id.

Confucianism provides an all-encompassing social philosophy that tells people how they should live based on the roles that they play in society.⁵ At the base of the Confucian philosophy are the five virtues: benevolence, righteousness, observance of rites, moral wisdom, and faith.⁶ Confucian teachings also saw itself divided into three sections.⁷ The first of these is the *Jen*, or moral teachings of Confucianism, that made up the basis of all other teachings.⁸ The second set of teachings are the *Li*, which describes the righteous actions one should take.⁹ These also include the five relationships of Confucianism: father and son; elder brother and younger brother; husband and wife; an older friend and younger friend; and ruler and subject.¹⁰ This section also includes the principle of respect for age as well as many other guiding principles which form the basis of legality in East Asia.¹¹ Finally, there is the principle of *Yi*, which accounts for the ritualistic behavior used in ceremonies, to the wearing of clothing, and to greetings and behaviors.¹²

Confucianism has always represented an opposite approach to the systemic approach of written law.¹³ While Confucianism accounts for informal rules and principles that fall in line with many legal principles, such as respect for other people and trust in rulers, it seems compelling for people to do this in such a way that rewards and punishments are counterintuitive.¹⁴ The theory calls on internal motivation to compel proper behavior instead of rewards and punishment.¹⁵

⁵ Van, *supra* note 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Choi, *supra* note 3.

¹¹ *Id.*

¹² *Id.*

¹³ Elton Chan, *Reconciling Confucianism with Rule of Law: Confucianisation Or Self-Restraint?* 30 *Asian Philosophy* 275, 2020,

<https://doi.org/10.1080/09552367.2020.1844935>, (last visited April 7, 2021.)

¹⁴ *Id.*

¹⁵ *Id.*

This does not come close to fully explaining the depth of Confucianism, its history and development, or its intricacies in each country and region where it has been influential. But a brief analysis of the influence of Confucianism on East Asian legal systems serves to provide an adequate basis for understanding East Asian jurisprudence. The importance of filial piety, social relationships, and social harmony are necessary for legal applications and will become more apparent in further reading.

The Development and Spread of Chinese Legal Culture

While the Confucian system accounted for much of the social control in early China, further philosophies and religions accounted for what became the full system of law seen in the various Chinese empires.¹⁶ (and)¹⁷ Chinese law resulted from a coexistence of Confucian, Legalist, Taoist, and Buddhist principles, as well as the various mythological influences.¹⁸

The notable and influential counter to Confucianism was Legalism.¹⁹ Legalism is the antithesis of Confucianism in many ways.²⁰ Whereas Confucianism sees people as generally morally good, legalism sees them as bad.²¹ Whereas Confucianism advocates for benevolence from leaders and an absence of formal laws and punishments, Legalism advocates for written law and severe punishments for any violation of the rules.²² The balance of these two systems

¹⁶ Luke T. Lee & Whalen W. Lai, *The Chinese Conceptions of Law: Confucian, Legalist, and Buddhist*, 29 *Hastings Law Journal*, 1978, https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2562&context=hastings_law_journal, (last visited April 7, 2021.)

¹⁷ Weng Li, *Philosophical Influences on Contemporary Chinese Law*, 6 *Indiana International & Comparative Law Review* 327, 1996, <https://doi.org/10.18060/17643>, (last visited April 7, 2021.)

¹⁸ *Id.*

¹⁹ Lee, *supra* note 16.

²⁰ *Id.*

²¹ *Id.*

²² Li, *supra* note 17.

made up Chinese imperial law and makes up much of what we see in East Asian legal systems today.²³

In addition to Confucianism and Legalism, early Chinese law and government saw extensive influence from Taoism and Buddhism.²⁴ These religions had an additional restraining influence on Legalism and Confucianism.²⁵ For instance, whereas Legalism promotes equality before the law, and Confucianism promotes societal roles, Taoism promotes the importance of the individual.²⁶

Buddhism introduced several rational religious philosophies to China.²⁷ Chief among them is the concept of *karma*.²⁸ Karma is a reactionary belief that all actions (and inaction) generate either reward or punishment in some form.²⁹ Buddhism also introduced the concept of society's responsibility for the conditions that lead to bad behavior in people.³⁰

While most of the Chinese empires established and retained great influence over surrounding areas, the Tang Dynasty is known for its immense impact on surrounding and distant societies.³¹ Under the Tang rule, Chinese influence and control spread over much of Asia and Eurasia.³² Tang China was the superpower of its day and for this reason, even the nations of Korea and Japan yielded to its leadership.³³ With Chinese control and the spread of Chinese

²³ Id.

²⁴ Lee *supra* note 16, Li *supra* note 17.

²⁵ Id.

²⁶ Li, *supra* note 17.

²⁷ Lee, *supra* note 16.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Craig Lockard, *Tang Civilization and the Chinese Centuries*, Microsoft Encarta Encyclopedia Anonymous, 2000, https://ccnmtl.columbia.edu/services/dropoff/china_civ_temp/week06/pdfs/tangci.pdf, (last visited April 7, 2021.)

³² Id.

³³ Id.

culture, inevitably came its legal system and the influence of Confucian philosophy.³⁴

Confucianism, in contrast to and in combination with other philosophical influences, shaped the Chinese legal system of the time.³⁵ The balance of ideas from Confucianism, Legalism, Taoism, and Buddhism shaped the philosophical and legal thought of the time.³⁶ The various Chinese empires, most notably the Tang Dynasty, gained enormous strength and regional influence.³⁷ As they grew, they began to influence and control the surrounding nations culturally, religiously, and politically.³⁸

Modern Chinese Law

The country of China has faced immense change since the revolution and as well as change to Communist leadership. While it may have adopted a system that is of Western origin, China did not hesitate to infuse Confucian values into all areas of its political system, including its legal system.

It must also be noted that several Confucian values match well with Communist values.³⁹ Notably, both see little need for formal legal systems and elaborate written law.⁴⁰ For this reason, when the Communist party took power, they initially rid the country of legal professions entirely.⁴¹ The party itself would take care of administering a Socialist form of law and ensuring that people did not fall outside the lines of what was right and proper for

³⁴ Id.

³⁵ Lee *supra* note 16, Li *supra* note 17.

³⁶ Id.

³⁷ Lockard, *supra* note 31.

³⁸ Id.

³⁹ Dana Zartner, *East Asian Legal Tradition: Confucius, Communism, and Community in China and Japan*, 2014,

<https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199362103.001.0001/acprof-9780199362103-chapter-7>, (last visited April 7, 2021.)

⁴⁰ Id.

⁴¹ Id.

society.⁴² It was not until China sought to reenter the international community more largely that it developed a more formal system with written law, judges, and attorneys.⁴³

Like many countries, China cannot administer formal litigation for all conflicts that arise, particularly civil conflicts between individuals or small businesses.⁴⁴ A method of conflict resolution that arose early in Chinese history and which falls squarely in line with Confucian ideals, is that of mediation, which is often used for this reason.⁴⁵ Mediation can come in various forms and be practiced in different ways, but the end goal is the same: to ensure all parties are as happy as possible. Because of the community nature of the culture, this also includes the direct and indirect families of those involved.⁴⁶ This method of conflict resolution works directly into the Confucian ideal of social harmony and ensures that the somewhat new legal system is not overtaxed.⁴⁷

Another area of Chinese law worth discussing is its system of international law. Because of the Chinese State's historical apprehension towards and distrust of international law, it has always been standoffish in the adoption of international law and treaties.⁴⁸ This behavior has its origins in both Confucian and Communist ideals which dismiss intricate formal laws, but also in China's historical distrust of Western intrusion.⁴⁹ This comes largely because of early

⁴² Id.

⁴³ Id.

⁴⁴ Vicki Waye & Ping Xiong, *The Relationship between Mediation and Judicial Proceedings in China*, 6 *Asian Journal of Comparative Law* (2011), https://www.researchgate.net/publication/277538974_The_Relationship_Between_Mediation_and_Judicial_Proceedings_in_China, (last visited April 7, 2021.)

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Zartner, *supra* note 39.

⁴⁹ Id.

negative experiences the nation had when it opened itself to Western nations, particularly Britain.⁵⁰

While China has experienced drastic changes and influence from very different governance systems in recent years, the underlying Confucian ideas persist and are even adopted by the new rulers.⁵¹ Like many East Asian nations, the need and effort to participate in global systems has forced them to adopt a more formalized legal system, but this does not change the reality of the influence and reverence of Confucian values that have thrived in China for thousands of years.⁵²

Modern Korean Law

South Korea, until the end of World War II, was controlled by Japan for much of its recent history.⁵³ After this time, it faced a brutal civil war over ideologies and is still technically in a state of war.⁵⁴ Despite this, the country has managed to develop a highly advanced democratic society.⁵⁵ South Korea is a country of paradoxes where technology and tradition meet. This same concept bleeds over into its legal system and the inclusion of Confucian and other traditional values.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ Young Ick Lew, *Brief History Of Korea—A Bird's-EyeView*, The Korea Society, 2000,

https://www.koreasociety.org/images/pdf/KoreanStudies/Monographs_GeneralReading/BRIEF%20HISTORY%20OF%20KOREA.pdf, (last visited April 7, 2021.)

⁵⁴ Id.

⁵⁵ Young, *supra* note 53.

Korea during and directly after the Korean war did not have the fully codified legal system that one would normally expect.⁵⁶ Certain events in the 1980s in Korea led to an immense push to codify and formalize the freedoms and rights of the people.⁵⁷ With this came a system of law and Constitutional Court that was modeled after Germany.⁵⁸ Of course, this system came with a heavy influence from the United States as well, which had and still has a large presence in the small country of South Korea.⁵⁹

While Korea may have modeled its system after Western states in a decidedly non-Confucian approach, the influence of Confucianism on its legal system is undeniable. It has been preserved in case law. The landmark case of *Kara Bos* (or her Korean name *Kang Mi-sook*) is a classic example of Confucian influences on court decisions.⁶⁰ Mrs. Bos was found abandoned in a parking lot in Korea at a very young age and adopted and brought to the U.S. through an adoption agency.⁶¹ She later returned to Korea to fight for her right to know who her biological parents are.⁶² The court's famous and controversial decision was that she has the right to know her family origins and that this right outweighs the parents' right to privacy.⁶³ This decision counters the consensus within the U.S., and most Western states, in these situations.⁶⁴ The

⁵⁶ Kang Kook Lee, *The Past and Future of Constitutional Adjudication in Korea*, Studies in Comparative Legal History, <https://www.law.berkeley.edu/files/koreanlaw.pdf>, (last visited April 7, 2021.)

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Sang-Hun Choe, *Korean Adoptee Wins Landmark Case in Search for Birth Parents*, New York Times, June 12, 2020, <https://www.nytimes.com/2020/06/12/world/asia/south-korea-adoption-Kara-Bos.html>, (last visited April 7, 2021.)

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ *Adopted Child's Right to Information as to Biological Parents*, Stimmel, Stimmel & Roeser, <https://www.stimmel-law.com/en/articles/adopted-childs-right-information-biological-parents>, (last visited April 7, 2021.)

importance of knowing one's family origins, a hallmark of Confucian ideals, no doubt played a part in this decision.

Evidence of Confucian influence in Korean courts does not stop at the individual level. It has been seen in the very highest courts of the land. Korean legislation states that "A complaint shall not be lodged against a lineal ascendant of the principal himself or his spouse."⁶⁵ With this legislation, it was reinforced that a person may not submit a complaint against their parents regardless of whether or not their parents committed a crime against them. This legislation falls directly in line with the Confucian values discussed earlier.

Confucius was not Korean, but it is obvious that his influence on this nation is still strong to this day. From the development of a legal system to the application of provisions and court decisions that fully consider the importance of Confucianism to Korean society, these important ideals have shaped the system of law. While Korea, like most countries, is continuously modernizing its legal system to fall in line with international systems, Confucianism still plays a unique role.

Modern Japanese Law

Japan has a unique culture that likely developed as a result of its separation as an island nation.⁶⁶ It has many of its own cultural influences and even a religion that is specific to the country.⁶⁷ But that has not hindered the progress of Confucian influence in Japan, its culture, and its legal system Japan has inevitably had continuous contact with China, good and bad, throughout history.⁶⁸ The two nations are separated only by a small waterway, and trade,

⁶⁵ *Article 224 Limitation of Complaint, Korea Legislation Research Institute*, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=22535&lang=ENG, (last visited April 7, 2021.)

⁶⁶ Zartner, *supra* note 39.

⁶⁷ *Id.*

⁶⁸ *Id.*

cultural exchange, and warfare were bound to occur. Through this variety of exchanges, Japan adopted a portion of its writing system from China, but also adopted Confucianism to a great extent.⁶⁹

In 1995 Japan attempted to promote equality as the fundamental part of its political and legal systems.⁷⁰ In doing so, it attempted to remove laws and provisions that explicitly favor Confucian ideals at the expense of personal freedom.⁷¹ Before these reforms were enacted, there was a landmark case in Japan, *Aizawa v. Japan*, in which a woman killed her father, who had been sexually abusing her for over fifteen years.⁷² She argued against a provision of Japanese law that placed greater severity of punishments for the crime of patricide than homicide.⁷³ The court famously ruled against her, saying that filial piety was a central part of society and that murdering one's parents was a worse crime than murdering somebody else.⁷⁴

While the system of law in Japan may have experienced some dramatic change in an attempt to remove Confucian ideals, those ideals continue to be a societal and jurisprudential influence. Japan is still a Confucian society, and these ideals still influence the decisions made at all levels of the legal system. While an attempt at equality may hamper the ability of certain Confucian sentiments to express themselves, the central ideas remain.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Jun-Ichi Satoh, *Judicial Review in Japan: An Overview of the CaseLaw and an Examination of Trends in the Japanese Supreme Court's Constitutional Oversight*, 41 *Loyola of Los Angeles Law Review* 603, 2008,

<https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2618&context=llr>, (last visited April 7, 2021.)

⁷³ Id.

⁷⁴ Id.

Conclusion

A study into the effects that Confucianist ideas have had on the legal systems of East Asian countries requires an understanding of Confucianism foremost. Once one understands what Confucianism is and what its basic principles are, it becomes easier to see evidence of its effects in various legal situations.

Further analysis into the legal systems of China, South Korea, and Japan would yield more examples of Confucian influence. It is also worth mentioning that personal and societal habits are heavily influenced by Confucianism in all of these countries.⁷⁵ People act in Confucian ways and make decisions in line with these principles without even knowing it. It is important to understand that not all legal jurisprudence has the same origins, and it is especially important to understand how this can affect decisions made at all levels in the legal systems of East Asian countries.

⁷⁵ Elton, *supra* note 13.