

The Parent King; Any Offspring? On the Progress and Limits of Classical Constitutionalism in Pre-Qin Confucianism(Part II)

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Abstract

From the Qin Dynasty to the Han Dynasty, an unwritten, or uncodified, *li* slowly emerged, and can be taken as a set of higher laws that seemingly restrained rulers from using martial force to subjugate the people and required rulers to deploy their resources for the welfare of their people.

However, during the Han Dynasty, the uncodified *li*, which governed the relationship between the state and its subjects, was invoked only nominally to justify the sovereignty of the emperor. In dire times, whenever China was invaded and in the grip of foreign rule, Confucianists would look to the teachings of the pre-Qin era, especially those of Mencius, to parse the fatal flaws of the monarchy system. This type of reflection and analysis was observed as the curtain fell on the Song Dynasty, Ming Dynasty, and Ch'ing Dynasty, during the last of which the Chinese parent-king institution came face to face with Western constitutionalism.

Certainly, there are still some differences between contemporary egalitarian, liberal constitutionalism and the paradigm that forbade a parent king to command man-eating beasts. The first is that monarchy is not democracy, which serves the people; the latter parent kings had

elevated the status of their subjects but cannot be credited with creating the political ideology that it is the people that the government should serve. The second difference is that in a democracy every individual is treated equally; though the parent kings took pains to look after the welfare of their subjects, they did not do so thoroughly while considering the principles of equality. The third difference is that the parent king institution stressed community, a collective entity, and did not recognize the entity that is an individual. The fourth difference is that the parent kings understood the importance of popular support but continued to draw their legitimacy from the heavenly mandate instead of the moral righteousness inherent in having popular support; that is, the parent king's state was not governed by the people or of the people. The fifth difference is that the parent kings recognized their obligations to their subjects but not the individuals' rights, which otherwise coexist with a democratic government's obligations; at most, the parent-king institution recognized that the ruler and the subjects both have obligations, but it fell short of realizing that the people's rights are what ensures justice for all. The sixth and final difference is that while the uncodified *li* represented a set of rules that guided the emperor's conduct, it does not compare to a codified constitution that keeps the government powers in check. These differences may be taken as the limits of the primitive form of constitutionalism in the pre-Qin era.

Keywords: the parent king, slavery, *li* between the state and its individual subjects, equality, right