

China, Natural Law and Economics:
The *Discourses on Salt and Iron*

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[Note: To the extent possible I have used the pinyin romanization that is now standard in China.

Where quoted authors have used the earlier Wade-Giles or other systems, I have simply substituted the pinyin in brackets for their original rendering. Standard characters are used throughout, except when rendering titles of books published in China since 1949 and the names of their authors, which are given in simplified characters.]

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天則 *tian ze* or “rule of heaven” is probably the closest classical Chinese equivalent to the western “natural law.” The first character, *Tian*, represents the sky or the sky-deity or the highest authority, while *ze* consists of two components: the graph on the left 貝 originally represented a bronze cauldron (although it evolved into a cowrie shell) while the two vertical lines on the right represent the knife 刀 with which, ceremonially, “rules” or “laws” would be incised into the metal (the character can also mean “pattern”). Derk Bodde (1909-2003) prepared two lists of occurrences of this and similar formulations from ancient Chinese that strongly suggest that the Chinese tradition contains the concept of natural law. Other phrases having similar import include *chang ze* 常則 or “regular pattern” used to refer to “the number of degrees passed through by constellations in a given time, their risings and settings, etc.” Furthermore a connection is repeatedly asserted between these Heavenly rules and human law, e.g. by Lu Zhi 陸贄 (754-805) “When laws are to be proclaimed they should always be verified/according to the rules of Heaven.”¹ For Bodde these are sufficient evidence of concepts of natural law and of laws of nature.

Against this Joseph Needham (1900-1995) argued that although the Chinese tradition contained an idea of natural law applied to human affairs, the concept of a “law of nature” such as those discovered by Isaac Newton (1642-1727) was missing. The reason, Needham, a Christian, suspected from the late 1930s on, as he developed and wrote his life work *Science and Civilisation in China*² was that China lacked the idea of a serious creator-deity, an Author of Nature, the laws of Whose universe were present for Man to decipher. This fact, along with the existence of

¹ Derk Bodde Evidence for “Laws of Nature” in Chinese Thought Harvard Journal of Asiatic Studies 20 3/4 (December 1957) pp. 709-727; “Chinese ‘Laws of Nature’: A Reconsideration. Harvard Journal of Asiatic Studies 39 1 (June 1979) pp. 139-155. See also Derk Bodde “The Attitude toward Science and Scientific Method in Ancient China” *Tien Hsia Monthly* II.2 (1936): 139-160

² Cambridge: Cambridge University Press, 1954-- Hereafter SCC

“bureaucratic feudalism” explain for Needham why China, though technically advanced, never developed comprehensive scientific theory as was done in the West.³ Not science, however, but economics is our concern here. Remarkably, China developed economic terms and concepts millennia before the West and in a way that strongly suggests a form of natural law thinking.

Note that the debate between Bodde and Needham, though the most extensive airing of the question in the literature, is not therefore directly relevant to the question addressed here. Both scholars approached the issue from two directions. One was by asking whether the Chinese have a concept of laws of nature, such as astronomical laws, about which Bodde, Needham, and many others, disagree. The other inquires about the existence of natural law for human societies. On this near unanimity exists not only that China had such a concept, but also that it was far more important, relatively speaking, than the rather weak Chinese counterparts to Western positive law. These arguments are already present in the canonical philosophical works of China, dating from the fifth century BC and after. They cover a wide range of human behaviors and beyond that, astronomy in particular. They continue to be a recurrent focus of thought and dispute.

Here our chief evidence will be the *Yantielun* 鹽鐵論 or *Discourses on Salt and Iron* by the Han 漢 dynasty (206 BC-220 AD) scholar Huan Kuan 桓寬 (1st century BC), perhaps the most important classic of economic thought in the entire Chinese tradition. Huan gives a dramatized rendering, written many years after the fact, of a court debate in 81 B.C. that that pitted the ideas of the “Modernists” who wanted to use monopolies, price regulation, and so forth to increase the power of the state for war, and the “Reformists” (the terms are Michael Loewe’s) who wished to restore a more humane system in which society and enterprise were permitted to develop themselves spontaneously, as envisioned in the classics. Such oppositions have been found historically in many times and places. In China the debate has been going on for more than two millennia. During the Great Proletarian Cultural Revolution our text was used in the violent pilinpihong 批林批孔

³ SSC VII.2

campaign to “criticize Lin Biao 林彪 (1907-1921) and criticize Confucius” as will be seen. Nor are the issues resolved today.

The *Discourses* brings together in debate two distinct strands in early Chinese economic thought. The basic question was always how social, political and economic order came into being. The school of thought named for Confucius 孔子 (ca. 551-479) maintained that such order was possible only if human beings conformed themselves to the ways of Heaven, which could be known by introspection, meditation, and “the investigation of things” 格物. Among his followers Mencius 孟子 (ca. 372-279) presented with particular explicitness the sorts of administrative measures that would permit an economy to flourish “on its own” in the manner of self-actualization, or achievement of a result not through positive means but through inaction 無為 wuwei. This approach was rejected by contemporaries such as Shang Yang 商鞅 (ca. 390-338 B.C.) author of the treatise that bears his name and a follower of Guanzi 管子 (or Guan Zhong 管仲 725-645 BC--probably not the author of the much later text that bears his name) who stressed the need, if the kingdom was to be strong, for discipline of the people and the structuring of the economy by the state using 法 fa--a term usually translated as “law” that has given to this group the name “legalists.”

During the period of independent states, before the entire Chinese cultural realm was conquered by the kingdom of Qin 秦 (221-206 BC) these schools of thought contended in the various scattered courts, but with unification came the need for uniformity. The Qin adopted harsh legalist methods that, according to traditional history, brought revolts and its overthrow. The succeeding Han 漢 dynasty (206 B.C.-220 A.D.) brought the question to its crisis, however, through the ambitious military campaigns of Han Wudi 漢武帝 “the martial emperor” (r. 141-87 BC) against the horse nomads called 匈奴 Xiongnu and elsewhere. Wudi paid for his campaigns in legalist fashion, imposing monopolies, controlling prices, and so forth, but by the end of his rule not only

had his military position collapsed, but also--and this was the occasion for the Discourses--the kingdom was utterly bankrupt. Was the basic problem a failure to conform human policies to *tianze* 天則 or natural laws?

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The sixty chapters of the Discourses on Salt and Iron have existed in various Chinese editions, copiously annotated, since ancient times. ⁴Although arguably the key text for the whole of Chinese economic history, as well as one of profound relevance to numerous other issues, the *Discourses* have never received the sort of sustained attention from many scholars that they deserve. The academic literature dealing with them is little more than what is found in the bibliography of this article. No reader can fail to be impressed by the numerous parallels between the issues discussed in the text and problems facing China's economy and society today. But for Chinese of a certain age, the text is known if at all because of the use made of it in the violent 1972 campaign to "criticize Lin Biao 林彪 and Confucius" or pilinpikeong 批林批孔--aimed ultimately at Prime Minister Zhou Enlai 周恩來 (1898-1976) then already ill with cancer. Mao Zedong 毛澤東 (1893-1976) loosely identified himself with the legalists or statist, or "modernists" in Loewe's terms. He accused his former military commander, who had perished in a plane crash as he attempted to flee to the USSR after trying to kill the Chairman in the previous year, of having been a secret Confucianist or humanist or Reformist--which was absurd. The *Discourses* provided an ideal script, however. They were invoked by the left-wing Maoist writing group having a series of pen-

⁴ Chinese text used here 盐铁论 电子书 from Chinese internet provided by my colleague, Danqing Yu. Complete translation into Russian: Ju. L. Kroll, *Huan Kuan: Spor o Soli i Zheleze (Yan Te Lun)* vol 1: St. Petersburg, Russian Academy of Sciences, Institute of Oriental Studies, St. Petersburg Branch, 1997 and vol 2 Moscow, Russian Academy of Sciences, Institute of Oriental Studies, 2001. Reviewed by Derk Bodde, *Journal of the American Oriental Society*, volume 122.3 (July-September 2002) pp. 652-53. Partial translation by Esson M. Gale ch. 1-19 *Discourses on Salt and Iron: A Debate on Commerce and Industry in Ancient China* (Leyden: E. J. Brill, 1931) and in collaboration with Peter A. Boodberg and T.C. Lin of chapters 20-28 in *Journal of the North China Branch of the Royal Asiatic Society* 65 (1934) 73-110. See also: Esson M. Gale *Salt for the Dragon: A Personal History of China from the Last of the Emperors to World War II* (The Michigan State College Press, 1953)

names -- Liang Xiao 梁效, Luo Siding 羅思鼎 and Tang Xiaowen 唐曉文--and widely studied.⁵ But this is a digression, albeit an important one given the relevance of the issues to contemporary China.

The main lines of the argument in the *Discourses* are clear enough. The detail, however: how exactly the state institutions at issue functioned, the precise meanings of various passages, and so forth, is only beginning to be explored. What follows, therefore, does not pretend to deal with the philological and historical complexities of the text. The purpose is to demonstrate that an implicit natural law argument is assumed by one set of protagonists, while their opponents believe that without positive human law nature and economy can only be chaotic.

The debate was between advocates of what is translated as the school of law or legalism *fajia* 法家 though as will become clear, the word “law” is a poor English translation of their views, and the school of the Confucians or *rujia* 儒家. Michael Loewe (b. 1922) former University Lecturer in Chinese Studies at the University of Cambridge, put the issues into modern English as successfully as anyone has in this passage from *Crisis and Conflict in Han China 104 BC to AD 96* in which he renders the legalists as “Modernists” and the Confucians as “Reformers.”

“The Modernists were concerned with directing the efforts of statesmen to the problems of the contemporary world; the Reformists wished to eliminate the political and social abuses of the day by a return to conditions which they believed to have existed in the remote past. The Modernists derived their tradition from [Qin] and its unification of the world under a single rule, and the occult forces which they worshipped had been served by the kings and then the emperors of [Qin]. The Reformists harked back to a tradition which they traced to the kings and ethical ideas of [Zhou]; and they worshipped Heaven, as kings of Zhou had done before them. The Modernists tried to shape imperial policies so that they could control human endeavour, utilise human strength and exploit natural resources in order to enrich and strengthen the state. The Reformists found it repugnant to exercise more controls on the / population than was absolutely necessary, and in place of the obedience to official orders which the Modernists demanded, the Reformists looked to the people

⁵ In 1973 Luo Siding published an essay 汉代的 一场 儒法 大 论战——读 盐铁论 札记 学习与批判 No. 4. December 16, and another in 红旗杂志 November 1. A thesis by 王宝 国 盐铁论的经济伦理思想及其历史影响 中国优秀波硕士论文数据库硕士 2005.5 See also Zhu Zhongbo and Wang Ning, Discourses on Salt and Iron and China's Ancient Strategic Culture *Chinese Journal of International Politics* 2 (2008): 263-286.

⁶ (London: George Allen & Unwin, Ltd 1974)

of China to follow the example and moral lead given by the Emperor. The Modernists saw useful purposes being served by lavish expenditure designed to display the strength, wealth and dignity of the throne. The Reformists preferred to eliminate unnecessary extravagance in the interests of devoting public resources to the benefit of the people of China.” [pp. 11-12]

Such were the differences in the general approaches of the Modernists and the Reformists. They also disagreed about policy: in particular about the foreign policy of 漢武帝 This emperor sought expansion of his realms or, to put the most favorable interpretation upon it, he sought to guarantee security by conquering the 匈奴 nomads to the North and West. The Xiongnu were unlike the “barbarians” described in the classics who, in theory and often in practice, were attracted by Chinese ways of life to the extent of Sinifying themselves. In such things the true Inner Asian horse nomads had no interest; they raided and conquered, quite indifferent to the achievements of China. In Chinese they came to be designated by the term 胡 which character, significantly, does not occur in any of the foundational classics of Chinese civilization (they came into being very roughly circa 500 BC; the hu turned up a bit more than two hundred years later). Those classics had taught that all barbarians could be acculturated. The 胡 brought a challenge that the Chinese never solved: how to deal with groups who were unwilling to defer to them (the Chinese viewed themselves as the capstone of the human hierarchy and refused horizontal dealings) and also militarily more powerful. The problem was still alive nearly two millennia after the events described here, in questions of how to deal with the Mongols in the Ming dynasty (1368-1644) and a variety of Europeans in the Qing (1644-1912). Arguably it is not completely resolved even today.⁷

Returning to Loewe:

[After 139 BC] Han took the initiative and the numerous campaigns fought against the [Xiongnu] culminated in the Han victories of 119. These were followed by the penetration of Chinese officials and soldiers in the south, south-east, and south-west and into the Korean peninsula (112-108); and diplomatic ventures in the northwest were followed by military expeditions (from 104) which were intended to complete the expulsion of the Xiongnu or to provide a line of communication with Central Asia. . . . In these ventures it is to be observed that Han statesmen were capable of taking

⁷ See Arthur Waldron *The Great Wall of China: From History to Myth* (Cambridge: Cambridge University Press, 1990) p. 32 and *passim*.

strategic considerations into mind and trying to avoid dissipation of their resources. Unfortunately the tactical implementation of these plans did not always avoid such errors, with the result that from 99 onwards Han resources had been spent, and we hear of Han reverses on the field and of large scale military losses. Sustained efforts of this sort cost the Han treasury large sums.” [p. 63]

To finance these military campaigns the Han instituted extensive state control of the economy. Both salt manufacture and the iron industry had already developed in China at this time.⁸ To follow

Loewe again:

State monopolies for salt and iron were introduced in c. 119 BC; within the next five years attempts were made to regulate the transport of staple goods and to standardise prices; and from 112 the State eventually established a firm control over the minting of coins to the government’s specification.[p. 62]

By 81, with the military campaigns lost and the economy in ruins, the debate with which we are concerned got under way.

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Much of what ensued will seem uncannily familiar to a modern reader, who may be tempted to assimilate this argument of two thousand years ago into contemporary debates between advocates of free markets and economic planning. That would be misleading. A full reading of the text discloses that the opposition is more like that between physiocrats and mercantilists. The Reformers stress agriculture as the basis of all genuine wealth and the welfare of the ordinary people as the true strength of the state. The Modernists see the state as the indispensable actor both for creating any social order at all, and for its own strength, which is taken as, in the end, being to the benefit of the people. My quotation is selective, however, concentrating on points that may have bearing on natural law. They do not do justice to the full breadth of the argument or to its complexity.

The initial point by the Reformists is that the system of government control of the economy has undermined the health of the state.

⁸ For iron, see Donald B. Wagner, *The state and the iron industry in Han China* (Copenhagen: Nordic Institute of Asian Studies, 2001).

[W]ith the system of salt and iron monopolies, the liquor excise, and equable marketing established . . . the Government has entered into financial competition with the people . . . As a result, few among our people take up the fundamental pursuits of life, while many flock to the non-essential. Now sturdy natural qualities decay as artificiality thrives, and rural values decline when industrialism flourishes. When industrialism is cultivated, the people become frivolous; when the values of rural life are developed, the people are simple and unsophisticated. The people being unsophisticated, wealth will abound; when the people are extravagant, cold and hunger will follow.”pp 2-3⁹

The Grand Secretary 桑弘羊 Sang Honyang (152-80 B.C.) responded that, in effect, prosperity had always been a result of positive government policy:

The ancient founders of the Commonwealth made open the ways for both fundamental and branch industries and facilitated equitable distribution of goods. Markets and courts were provided to harmonize various demands; there people of all classes gathered together and all goods collected, so that farmer, merchant, and worker could each obtain what he desired; the exchange completed, everyone went back to his occupation. Facilitate exchange so that the people will be unflagging in industry says the Book of Changes. Thus without artisans, the farmers will be deprived of the use of implements; without merchants, all prized commodities will be cut off. The former would lead to stoppage of grain production, the latter to exhaustion of wealth. It is clear that the salt and iron monopoly and equable marketing are really intended for the circulation of amassed wealth and the regulation of the consumption to the urgency of the need. It is inexpedient to abolish them.” (p. 6)

Both parties profess to be concerned with the well-being of the farmers. This has of course been a theme of Chinese politics for a century: the Communist seizure of power in 1949 was widely (but incorrectly) thought to have been a rural uprising, while the policies of the new government were (equally incorrectly) thought to have benefited the rural poor. In fact the imbalance between rural and urban incomes in China today is at least a factor of three.

⁹ equable marketing junshu 均輸 has also been rendered as “equalized transportation,” “adjusted taxation,” No one knows exactly what it was. (2 note 3) A special office or guanfu 官府 was established within the treasury danong 大農 literally “great [office] of agriculture” to administer the monopolies p. 2 note 1.

The Reformists are also concerned with inattention to agriculture, a result as they see it of concentration of power in the state, rulers and officials will become corrupt.

When the princes take delight in profit, the ministers become mean; when ministers become mean, the minor officials become greedy; when the minor officials become greedy, the people become thieves.” (9)

The Modernists make a stout defense of their policies as benefiting all and necessary to the well-being of the countryside. The Reformists dismiss them.

“Far-sighted and far-reaching in intent is your policy but contiguous with profit for powerful families. The aim of your prohibitory laws is profound indeed but manifestly leading you into the path of wild extravagance. Since the establishment of the Profit-and-Loss System [Whereby the state evened markets by buying when prices were low and selling when high--ANW see Gale p. 10 note 4] and the initiation of the Three Enterprises, the privilege families throng the streets like drifting clouds, the hubs of their chariots knocking against one another on the road. Violating all public laws they promote but their own interests; sitting astride mountains and marshes and monopolizing all offices and markets, they present a far greater problem than the feudal possessors of fisheries and salt-beds. They hold the state authority . . . The result is that we see the farmer abandoning his plough and toiling no more; the people becoming vagabonds, or growing idle . . .” (56)

The Modernists argue that the supply of goods to the state (for palace construction, the waging of wars, and so forth) was unpredictable under the freer regime that the Reformists advocate:

Formerly the Princes in the provinces and the demesnes sent in their respective products as tribute. The transportation was vexatious and disorganized; the goods were usually of distressingly bad quality, often failing to repay their transport costs. Therefore Transportation Officers have been provided in every province to assist in the delivery and transportation and for the speeding of the tribute from distant parts. So the system came to be known as equable marketing. A receiving bureau has been established in the capital to monopolize all the commodities, buying when prices are low, and selling when prices are high, with the result that the Government suffers no loss and the merchants cannot speculate for profit. With the balancing standard people are safeguarded from unemployment; with the equable marketing people have evenly distributed labor. Both these measures are intended to equilibrate all goods and convenience the people, and not to open the way to profit and provide a ladder for popular misdemeanor” (9-10)

“The prince’s kitchen stuffed with rotting meat . . . while people hunger in the provinces; the prince’s stable full of sleek horses, while starvelings walk the highways” (an adage, 82)

“[Pian Qiao 扁鵲 c. 6 B.C.] diagnosed the cause of a disease by merely feeling the pulse of the patient. Where the positive fluid was over-developed, he would lessen it to harmonize with the negative. When the cold fluid was predominant, he would subdue it to harmonize the positive.

Consequently the vital fluid and the pulse were harmonized and balanced, and evil influences were unable to remain. The inferior physician does not know the lines of artery and vein, or the difference between the blood and the vital fluid. He stabs in his needle blindly without any effect on the disease and only injures the skin and flesh. Now [the Government] desires to subtract from the superabundant to add to the needy. And yet the rich grow richer and the poor grow poorer. Severe laws and penalties are intended to curb the tyrannical and suppress malefactors. Yet the wicked still persist. Possibly these measures differ from the way [Pian Qiao] used his acupuncture and probing and hence the multitude have not felt their salutary effect.” (88)

Here we find the embryo of the still-debated concept of “general equilibrium” in economics, which is to say the situation in which supply and demand for all goods are in balance. This is theoretically possible between two goods, but what happens when demands for a multiplicity of goods criss-cross is still unclear. Not only is this fact noteworthy. Many Chinese believed that such an equilibrium could only be brought about by government, this two thousand years before input-output theories and attempts at planning. The ideal for the modernists was a completely state-owned and administered economy in which every transaction would be managed to as to maintain complete balance. The Reformists saw equilibrium as self-actualizing and inherent in the structure of nature.

Another economic concept clearly present in the *Discourses* is that of comparative advantage:

This was stressed by the Reformists:

The Ancients in levying upon and taxing the people would look for what the latter were skilled in, and not look for those things at which they were not adept. Thus the farmers contributed the fruits of their labor, the weaving women, their products. Now the Government leaves alone what the people have and exacts what they have not, with the result that the people sell their products at a cheap price to satisfy demands from above. . . We have not yet seen that your marketing is “equable.” (10?)

Now in [Qin, Qu, Yan and Qi] the quality of the soil differs. There is variety in the methods of cultivation of heavy and light soils. The use of large or small, the suitability of straight or curved ploughs are different according to districts and customs. Each has its convenient use. But when the magistrates establish monopolies and standardize, then iron implements lose their suitability, and the farming population loses their convenient use. When the tools are not suited to their use, the farmer is exhausted in the fields. . . (33)

When natural equilibrating and adjusting processes were disturbed, the Reformists argued that the result was what today would be called “black markets.”

[T]he government officers swarm out to close the door, gain control of the market and corner all commodities. With commodities cornered, prices soar; with prices rising, the merchants make private deals by way of speculation. Thus the officers are lenient to the cunning capitalists, and the merchants store up goods and accumulate commodities waiting for a time of need. Nimble traders and unscrupulous officials buy in cheap to get high returns. We have not yet seen that your system is “balanced.” (10-11)

Likewise they were concerned about government control of money:

In former times there were many currencies, wealth circulated and the people were happy. But afterwards, as the old currency was gradually replaced by the white metal of the tortoise and the dragon issue, they became wary of the new. As coinage changed frequently, the questionings of the people increased. Then all the coinage in the empire was demonetised, and the authority to re-issue new was lodged with the three officers of the [Shuiheng 水衡 the office that eventually took control of the monopolies] Recently it seems a profit has been made and the coins are not up to standard; they are thin or thick, light or heavy. The farmers are not experienced in comparing the relative trustworthiness of such tokens. They suspect the new issue, not knowing the false from the true. The dealers and shopkeepers for the bad barter the good . . . If there were proper laws about coining bad money, the presence of privately made coins with official issues would neither aid nor harm the government. But if money is discriminated against, goods will stagnate. (29)

The Modernists argued that the state should own common goods and resources:

“[T]he profit of the mountains and sea and the produce of the broad marshes are the stored up wealth of the Empire and by rights belong to the privy coffers of the Crown. . .” (34)

The Reformists disagreed:

“Let the Prince on the one hand, for the sake of the people’s needs, not restrict the use of the seas and the marshes, and on the other, for the sake of their benefit, not shut down on the privately made coinage” (29)

[T]o give the people free rein to strive after power and profit and to end the salt and iron monopoly would be to give the advantage to the overbearing and the aggressive in the pursuit of their covetous practices. All the evil-minded would come together, cliques would become parties -- for the aggressive if not constantly curbed are ungovernable --and combinations of disorderly persons would take form. (31)

A difficult question to judge is exactly what the Reformists thought of commerce and heavy industry. Clearly they considered them secondary to agriculture. Some passages make clear, however, they see as fundamentally innocuous the existence e.g. of iron works and believe in private ownership and free movement and hiring of labor.

“The business of the workmen and the merchants, the duties of the iron smelters--what evil could grow out of these?” (31)

Because the places where salt is crystallized and iron smelted are in most cases in mountains and on rivers near to iron and coal, their operation is all remote and their working is laborious. The shifts of the laboreres are assembled in the demesnes without any investigation of their liability.” (33) I.e. without regard to legal obligations to work.

Utilizing conscripted labor, the county and city magistrates sometimes cheapen the equalized price and make per capita levies [through forced sales]. People of good families are forced in their turn to work on the roads. The transport of salt and iron cause trouble and expense; cities are in doubt as to their population; the people suffer bitterly. As I see it, a single magistrate damages a thousand hamlets” (33)

In the end, the argument of the Modernists comes down to military and social necessity:

The Sage Ruler gives much thought to the fact that the Middle Kingdom is not yet tranquilized and the northern frontier not yet pacified” (76)

To which the Reformists respond in classic, pacifistic Confucian fashion (see note 7 above):

If one desired to find the Way to pacify the people and enrich the country, one would find it in a return to the fundamental; for when the fundamental is established the Way comes of itself. Follow

the principles of Heaven and utilize the wealth of the Earth, and you will accomplish deeds without laborious effort (77)

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Most specialists would agree that a variety of natural law thought lies behind the arguments of the Reformists in the debate summarized above. They believed that the best government was the least government because left to itself human society would order itself spontaneously. “Inaction” *wuwei* 無為 was better than action; *ziran* 自燃 often mistranslated as nature but meaning properly “of itself becoming thus” was a powerful force. [“Natural Law” is often translated into Chinese as 自燃法] Joseph Needham and Derk Bodde, among the most distinguished Sinologues of the last generation, agreed that a concept of human self-ordering was basic to Chinese thought. More recently, Professor Karen Turner of Holy Cross, has insisted on presence of natural law in texts related to those we are discussing.¹⁰

Note also that the Modernists, or Legalists, about whom we are saying little, seem to have believed that both nature and human nature were chaotic therefore requiring positive ordering (in the human case) by often brutal means. It is often said that China fears disorder or chaos *luan* 亂, which explains everything from the complete lack of freedom in contemporary China to the Tiananmen massacre. Not so: the mainstream of Chinese thought, both Daoist and Confucianist, trust both nature to abide by her laws and mankind without government to live in harmony, provided only that virtue is present.

With confidence we can trace the fundamental confidence in self-actualizing economic order found in the *Discourses* at least to Mencius. In a well-known passage he wrote:

¹⁰ See “The Theory of Law in the Ching-fa “Early China 14 (1989): 55-76; more generally R. P. Peerenboom, *Law and Morality in Ancient China: The Silk Manuscripts of Huang-Lao* (Albany, NY: State University of New York Press, 1993) pp. 19-26, 300, and passim. On *wuwei* see Edward Slingerland, *Effortless Action: Wu-wei As Conceptual Metaphor and Spiritual Ideal in Early China* (Oxford University Press, 2007)

孟子曰：“尊賢使能，俊傑在位，則天下之士皆悅而願立於其朝矣。市廛而不征，法而不廛，則天下之商皆悅而願藏於其市矣。關譏而不征，則天下之旅皆悅而願出於其路矣。耕者助而不稅，則天下之農皆悅而願耕於其野矣。廛無夫里之布，則天下之民皆悅而願為之氓矣。信能行此五者，則鄰國之民仰之若父母矣。率其子弟，攻其父母，自生民以來，未有能濟者也。如此，則無敵於天下。無敵於天下者，天吏也。然而不王者，未之有也。”

'If a ruler give honour to men of talents and virtue and employ the able, so that offices shall all be filled by individuals of distinction and mark - then all the scholars of the kingdom will be pleased, and wish to stand in his court. If, in the market-place of his capital, he levy a ground-rent on the shops but do not tax the goods, or enforce the proper regulations without levying a ground-rent - then all the traders of the kingdom will be pleased, and wish to store their goods in his market-place. If, at his frontier-passes, there be an inspection of persons, but no taxes charged on goods or other articles, then all the travellers of the kingdom will be pleased, and wish to make their tours on his roads. If he require that the husbandmen give their mutual aid to cultivate the public feld, and exact no other taxes from them - then all the husbandmen of the kingdom will be pleased, and wish to plough in his fields. If from the occupiers of the shops in his market-place he do not exact the fine of the individual idler, or of the hamlet's quota of cloth, then all the people of the kingdom will be pleased, and wish to come and be his people. If a ruler can truly practise these five things, then the people in the neighbouring kingdoms will look up to him as a parent. From the first birth of mankind till now, never has any one led children to attack their parent, and succeeded in his design. Thus, such a ruler will not have an enemy in all the kingdom, and he who has no enemy in the kingdom is the minister of Heaven. Never has there been a ruler in such a case who did not attain to the royal dignity.¹¹

Here we find a remarkably forthright statement, in its economic prescriptions, of concepts that were not made explicit in Western thought for another two thousand years. Economics, however--such matters as ground rents and transit taxes--however are of relatively little concern to Mencius. This is the only place where he mentions them. Nor are they even the primary concern of the Discourses which are fundamentally a debate over what constitutes a moral relationship between the state and the people. The contemporary-sounding arguments against state ownership and monopoly, in favor of free trade and low taxes, and so forth, that we find here are simply applications of broader principles. It is by looking at them that we can assess the status of natural law in ancient Chinese thought.

¹¹ See James Legge tr. Mencius 2.i.v, p. 199 (reprint ed. Taipei Wen-shih-che, 1971)

The idea of self-ordering in economics is a sub-set of a the general idea of self ordering that we have already mentioned. It pervades the Confucian classics and the writings of all that follow, to the present.

We find it most famously in a utopian passage from the Book of Rites or Li Ji 禮記 that is among the most widely quoted of anything in Chinese:

大道之行也，天下為公；選賢與能講信修睦。故人不獨親其親，不獨子其子；使老有所終，壯有所用，幼有所長，矜、寡、孤、獨、廢疾者皆有所養。男有分，女有歸。貨惡其棄於地也，不必藏於己；力惡其不出於身也，不必為己。是故謀閉而不興，盜竊亂賊而不作；故外戶而不閉。是謂大同。

When the Great Principle prevails, the world is a Commonwealth in which rulers are selected according to their wisdom and ability. Mutual confidence is promoted and good neighborliness cultivated. Hence, men do not regard as parents only their own parents, nor do they treat as children only their own children. Provision is secured for the aged till death, employment for the able-bodied, and the mean of growing up for the young. Helpless widows and widowers, orphans and the lonely, as well as the sick and the disable, are well cared for. Men have their respective occupations and women their homes. They do not like to see wealth lying idle, yet they do not keep it for their own gratification. They despise indolence, yet they do not use their energies for energies for their own benefit. In this way, selfish scheming are repressed, and robbers, thieves and other lawless men no longer exist, and there is no need for people to shut their gates. This is called the Great Harmony.

In the Great Learning or Daxue 大學 we find one of the most eloquent of the ancient statements of how, given virtue, human society will constitute itself:

大學之道：在明明德，在親民，在止於至善。知止而后有定，定而后能靜，靜而后能安，安而后能慮，慮而后能得。物有本末，事有終始，知所先後，則近道矣。
古之欲明明德於天下者，先治其國；欲治其國者，先齊其家；欲齊其家者，先脩其身；欲脩其身者，先正其心；欲正其心者，先誠其意；欲誠其意者，先致其知；致知在格物。物格而后知至，知至而后意誠，意誠而后心正，心正而后身脩，身脩而后家齊，家齊而后國治，國治而后天下平。天。子以至於庶人，壹是皆以脩身為本。其本亂而未治者否矣；其所厚者薄，而其所薄者厚，未之有也

What the Great Learning teaches, is to illustrate illustrious virtue; to renovate the people; and to rest in the highest excellence.

The point where to rest being known, the object of pursuit is then determined; and, that being determined, a calm unperturbedness may

be attained to. To that calmness there will succeed a tranquil repose. In that repose there may be careful deliberation, and that deliberation will be followed by the attainment of the desired end.

Things have their root and their branches. Affairs have their end and their beginning. To know what is first and what is last will lead near to what is taught in the Great Learning.

The ancients who wished to illustrate illustrious virtue throughout the kingdom, first ordered well their own states. Wishing to order well their states, they first regulated their families. Wishing to regulate their families, they first cultivated their persons. Wishing to cultivate their persons, they first rectified their hearts. Wishing to rectify their hearts, they first sought to be sincere in their thoughts. Wishing to be sincere in their thoughts, they first extended to the utmost their knowledge. Such extension of knowledge lay in the investigation of things.

Things being investigated, knowledge became complete. Their knowledge being complete, their thoughts were sincere. Their thoughts being sincere, their hearts were then rectified. Their hearts being rectified, their persons were cultivated. Their persons being cultivated, their families were regulated. Their families being regulated, their states were rightly governed. Their states being rightly governed, the whole kingdom was made tranquil and happy.

From the Son of Heaven down to the mass of the people, all must consider the cultivation of the person the root of everything besides.

It cannot be, when the root is neglected, that what should spring from it will be well ordered. It never has been the case that what was of great importance has been slightly cared for, and, at the same time, that what was of slight importance has been greatly cared for.¹²

Do not miss what this passage says: summed up it is, if he wishes to have all-under-heaven well ordered and at peace then the only thing an individual need do is rectify his heart 正其心.

So sublimely smooth does the whole process seem that we are jarred near the end by the phrase:

天子以至於庶人，壹是皆以脩身為本。其本亂而未治者否矣

From the Son of Heaven down to the mass of the people, all must consider the cultivation of the person the root of everything besides.

¹² Legge pp. 356-359.

Who is the *tianzi* 天子 and where has he come from? This is the first mention in the text, un-introduced. The meaning is the “Son of Heaven” which is to say the Chinese emperor. According to the classic, however, his task is properly limited to the cultivation of virtue. For with virtue, things become harmonious of themselves.

Thus the *Shujing* 書經 or *Classic of History* describes how the King of Zhou (r. 1046-1043 B.C.) restored order after peacefully displacing the Shang (1766-1050 B.C.).

列爵惟五，分土惟三。建官惟賢，位事惟能。重民五教，惟食、喪、祭。惇信明義，崇德報功。垂拱而天下治。

He arranged the nobles in five orders, assigning the territories to them according to a threefold scale. He gave offices only to the worthy, and employments only to the able. He attached great importance to the people's being taught the duties of the five relations of society, and to measures for ensuring a sufficient supply of food, attention to the rites of mourning, and to sacrifices. He showed the reality of his truthfulness, and proved clearly his righteousness. He honoured virtue, and rewarded merit. Then he had only to let his robes fall down, and fold his hands, and the kingdom was orderly ruled.¹³

*

Not only then does traditional Chinese thought, not only economic thought but thought about statecraft in general, rest intellectually on a concept of natural law; that concept of natural law is a very strong one, in which the inherent ordering powers of the universe and of morality properly diffused among Mankind are so strong as to trump, in the honest opinion of Confucian literati, both the police power of the state and even its military power. Numerous texts could be adduced.

(Whether this very strong confidence in natural law is justified is of course another question. This

¹³ Legge, vol. 3 p. 316

author vividly remembers his late colleague, the great Princeton Sinologist Frederick W, Mote (1922-2005) who attempted to follow Confucian methods of virtue and inaction in University affairs. He had no success.) The question arises of why he should have expected otherwise.

Scholars have disentangled rather satisfactorily the various elements that are thought to interact bringing about the results described.

“The concept of nature is very much older than [the highly specific expression for “freedom”: namely, *ziyou* 自由 literally ‘self-initiating’ and therefore narrower than and distinct to the more general notion of freedom found in the West even at that time] and yet it is connected with it in a very conspicuous matter, The old concept of [xing 性] which we encountered while considering the ideas of ‘life’ in China, had designated only the nature of a creature, a tree, an animal, a human being or a group such as humanity, but not nature in its totality. To the extent people were aware of it at all, they, and especially the [Daoists] called it “Dao” [道 (Way)]. But this made it impossible to contrast nature and civilization [since Dao included everything, even civilization].¹⁴

In the west free will has been seen as an origin of evil; free will for everyone, carried to its utmost, no matter with what good intention, would lead to chaos. Thus nearly every Western utopia is in one way or another authoritarian, from the Republic to Hugh Lofting’s (1886-1947) World War I inspired *Doctor Dolittle in the Moon*¹⁵ which describes a perfect society there, under the beneficent dictatorship of the Man in the Moon.

Note therefore that for the Confucian philosophers of China, the freeing of the will was simultaneously a process of self-conforming to the way. Thus Confucius summed up the stages of his life:

子曰：「吾十有（1）五而志於學，三十而立，四十而不惑（2），五十而知天命（3），六十而耳順，七十而從心所欲，不逾矩。」

¹⁴ p. 141 Wolfgang Bauer translated from the German by Michael Shaw *China and the Search for Happiness: Recurring Themes in Four Thousand Years of Chinese Cultural History* (New York: The Seabury Press, 1976)

¹⁵ Philadelphia and New York: J. B. Lippincott, 1928. Like Sir Arthur Conan Doyle (1859-1930) Lofting was trying to get rid of his overly popular character by sending him to the Moon. But public outcry soon led to his return, carried by an enormous moth. The book is fascinating as an illustration of the inability of utopian thinkers, even those writing for children, to escape the necessity of a benign despot.

The Master said: When I was fifteen I set my heart on learning. At thirty I took my stand. At forty I was without confusion. At fifty I knew the command of Tian. At sixty I heard it with a compliant ear. At seventy I follow the desires of my heart and do not overstep the bounds.¹⁶

In other words, to learn and to develop is to require less and less law and restriction, and naturally become more conforming to the natural order--very unlike the western ideas of Prometheus, Satan, Adam, and others, who affirm their independence and autonomy precisely by overstepping the bounds. But how could such a situation exist? Only if the Universe were governed by powerful laws? And how could the Universe have such a character?

*

Natural Law thought is by no means mainstream today, in either the West or China. The philosophical study of ethics is probably the most fragmented and least satisfactory aspect of that discipline today, relying as it does chiefly on the elaboration of apodictic statements by individual authorities as to what is good, thus begging the fundamental question.¹⁷ In China today, not even positive, human law exists: administration is simply arbitrary. As for individuals, they are caught in a widely-recognized post-Marxist moral vacuum.¹⁸

As for the West, as Roger Scruton (b. 1944) puts it:

¹⁶ Legge vol. 1 pp. 146-47.

¹⁷ I owe this observation to Professor Parrick Burke of Temple University.

¹⁸ See e.g. "Rule of Law" title of a special issue of China Rights Forum No. 1, 2009. Published by Human Rights in China, 350 5th Avenue, Suite 3311, New York, N.Y. 10118 <http://www.hrchina.org>

Locke [1632-1704] had a less bleak vision of the state of nature than Hobbes [1588-1679]. Even in a state of nature, he argued, there is a law which all people recognise, and which they would uphold if their interests did not conflict with it. This law is implanted in us by reason (which is in turn the medium through which God's will is manifest to us). This "law of nature" generates the 'natural rights' which are commonly recognised by all rational beings, whatever the particular political constitution which might have been imposed upon them. In subscribing to the existence of these 'rights' Locke showed the influence of the ecclesiastical philosopher Richard Hooker (1553-1600), who in his turn had reworked the mediaeval idea of 'natural law' in order to endow the Church with an authority which could transcend, regulate, and also take part in the practice of government. The theory of 'natural rights'--variously stated and defended--still has its following. It is characterised by its 'international' character; it specifies rights which are supposed to be independent of, and antecedent to, the rights generated by any particular political arrangement."¹⁹

The player without which this argument becomes difficult is God, Who is at the basis, by most accounts, of Natural Law. According to St. Thomas Aquinas (1225-1274):

[T]he natural law is 'nothing else than the rational creature's participation in the eternal law . . . The eternal law is God's wisdom, inasmuch as it is the directive norm of all movement and action,'²⁰

Lack of belief in God has proved a substantial if not absolutely insurmountable obstacle to the acceptance of Natural Law concepts in the West. What of China where, proverbially, no idea in a creator-god has ever existed?

Thus Joseph Needham: "One of the oldest notions of western civilisation was that just as earthly imperial lawgivers enacted codes of positive law, to be obeyed by men, so also the celestial and supreme rational creator deity had laid down a series of laws that must be obeyed by minerals, crystals, plants, animals and the stars in their courses"²¹ Needham, who was a Christian, believed that the Chinese approach was completely different:

The development of the concept of precisely formulated abstract laws capable, because of the rationality of an Author of Nature, of being deciphered and restated, did not . . . occur. The

¹⁹ Roger Scruton, *A short history of modern philosophy from Descartes to Wittgenstein* 2nd edition (London: Routledge, 1995), p. 198.

²⁰ *The Catholic Encyclopedia* (New York: The Encyclopedia Press, 1913) IX, pp. 76-77

²¹ SCC II 518

Chinese world-view depended upon a totally different line of thought. The harmonious cooperation of beings arose, not from the orders of a superior authority external to themselves, but rather from the fact that they were all parts in a hierarchy of wholes forming a cosmic pattern, and what they obeyed were the internal dictates of their own natures.”²²

Needham stressed these points because he believed they bore on his particular concern: Chinese science, therefore, although rich in innovation and practical discovery, never developed nor (Needham argued) sought the sort of bold and simplifying insights of, for example, an Isaac Newton “(1643-1727). But clearly they also have implications for the theory of Natural Law.

“[Chinese civilization] did not have any well-developed theology of a creator deity. . . Chinese thinkers thought rather in terms of an impersonal force (*Tian*) meaning ‘heaven’ or ‘the heavens’ indeed here better translated as ‘the cosmic order.’ . . Similarly , the Tao (or *Tiandao*) was the ‘order of Nature.’”

Mankind had a place in this, as part of a triad also comprising heaven and earth.

“Thus, for the Chinese the natural world was . . . something much more like the greatest of all living organisms, the governing principles of which had to be understood so that life could be lived in harmony with it.”²³

But surely we need to understand what those rules are, and why, in particular, they are not contradictory, if knowing is by introspection, why does introspection lead to identical and harmonious results? This does not explain why there is no science in any logical way. It simply says that the Chinese intellectuals chose not to investigate these laws, perhaps because individual religion was not at stake. Religion is often seen as an enemy of science. Needham seems to argue that belief in a personal god is close to a pre-requisite for science. Not easily reconciled with his sociology of knowledge, taken almost directly from Engels.

Needham deals with this objection. “

²² SCC II 582

²³ SCC VII.91

Before any theory of evolution had arisen, there were only two possible answers—either that someone in His wisdom had made the creatures that way, or if, as in China, there was no known creator, then because the materials composing each body were different or because their proportions varied. But why should they vary? Thinkers in China could scarcely avoid trying to discover what it was that apparently influenced the proportionate mixtures in different bodies. But in attempting to answer this question, it was necessary to enquire how exactly such influencing was done. In modern parlance, where Heaven and Earth meet, what happens at the interface?²⁴

In the West this problem of interface was dealt with for a time by the linguistic device of personification. If the Creator wishes something to be done, he sends a message . . . In China, on the other hand, as there was no Creator there could be no messenger. Activity at the interface was therefore explained in terms of Wu Hsing 五行 of Five Avenues or passage-ways up and down between Heaven and Earth, the five ways in which Heaven influences things on Earth, by descending and soaking (water), by ascending and burning (fire), by submitting to cutting and accepting form (wood), by moulding or remoulding (metal) or by growth and the production of vegetation (earth).²⁵

So for Needham, without a personal creator-deity China can have no laws of nature. As for natural law governing human society, he and Bodde agree that the concept of *li* 禮 or ritual propriety comes close to supplying it.

Li 禮 propriety is difficult to sustain as a final moral category. It refers to acting in accordance with the laws of the way Dao 道 which are objective and real, though Chinese discussion often treats them as if they were unexplainedly immanent rather than having originated somewhere. Viewed this way, the argument about li is rather like the argument about conscience: you do the right because you know it is right. But how do you know? And how is it that everyone who properly examines his own conscience will come to congruent understandings that, cumulated, lead to utopia, as is quite clearly assumed in the passages cited above?

The possibility of an external source for Natural Law is not in fact excluded in China by the putative lack of a creation myth or creator-deity the assertion of which has since at least the nineteenth century been a perennial error in discussions of China. In fact not only does China have several creation myths; those myths are at least as explicitly about a god and the bringing of the

²⁴ SCC VII.131

²⁵ SCC VII.129

Universe into being *ex nihilo* as any found in the West.²⁶ Nor is it fair to say that the Chinese gods somehow lack the personal or creative attributes possessed by those of other religions that permit them to create a law-abiding Universe. We have two candidates for supreme god in China: namely shangdi 上帝, “Lord on High” probably the more ancient, and tian 天 Heaven.

The concept of *tian* 天 is one of the most difficult in traditional Chinese philosophy. Historically some believe it to be the Chinese version of a Eurasian sky god called Tenggri. Whether the character is found in oracle bones or is an introduction of the Zhou dynasty is much debated and an important issue. Whatever one thinks about that, however, *tian* 天 does not behave like most other gods: unlike those of the Greeks and Romans he intervenes only rarely in human affairs; unlike Yawheh/Ba’al he does not walk upon the wings of the clouds, intervening in battle on behalf of his favored people, and so forth. Indeed, in China Tian does much less than Tenggri does two thousand years later for the Mongols.

Tian is not conceived of as having consciousness or thinking, which is baffling given that Tian does intervene in history from time to time. Tian’s actions take the form of orders or 命 which affirm or remove legitimacy, bring seasonal rain or drought, and govern human life and its vicissitudes. Regularly 命 is translated as “fate” or “lot”--and it is inscrutable, like the threads of life woven by the western fates beyond the power even of Zeus. Most commonly Tian is associated with the phrase that brings it together with this second character, 天命 the “mandate of heaven” or license to rule, granted a person or a house on the proviso of accordance with the way and subject to removal failing that.

Nevertheless, Tian is sometimes personified. Dong Zhongshu 董仲舒 (179?-104?) “attributed personality to Heaven and conceived of it as giving commands to men [but] he did not, as Needham makes clear, go to the length of saying that it likewise commands non-human things--

²⁶ Paul R. Goldin, “The Myth that China Has No Creation Myth,” *Monumenta Serica* 56 (2008):1-22

for example, the stars--to behave in the way they do.²⁷ We find the phrase Laotianye 老天爺 “old grandfather Heaven” in novels of the Qing (1644-1912). This is certainly personal. The idea of a personal god, even a creator-deity, may therefore be present in the Chinese tradition. What is certainly not present, however, is the sort of prolonged and exacting elite philosophical discussion of the problems of creation and the status of morality that is found in the West. The tradition may not, therefore, be sufficient to support a fully articulated concept of Natural Law comparable to that found in the West.

In conclusion, then, we can say that Chinese and Western discussions of Natural Law are structurally rather similar. Certainly the alterity that is so often incorrectly imputed to things Chinese is as absent in this case as in most of the others. Furthermore, when we speak of a lack of prolonged and elite philosophical discussion e.g. of issues associated with morality, this is best understood as not specifically involving morals, but rather the result of a general absence of genuine parallels in the Chinese world to the academic philosophy and the philosophically grounded religion of the West--a much contested point, but I believe clear enough.

²⁷ Cf. SCC pp. 548, 722.