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The Chinese corporation: representation of Confucian communitarian values in the relation between government and corporation in China.

Master Thesis in Applied Ethics

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Abstract

This thesis seeks to analyze to what extent Confucian communitarian values are reflected in the relationship between government and corporation in China. In order to do so, it will first explain what Confucian communitarian values are. The values that are relevant specifically for our purpose are found in and described here according to the discourse that compares Confucian communitarian and liberalist political ideas. After that, how the corporation and government relate to each other will be described from an historical perspective. What defines this relationship is that on the one hand, corporations developed as privately controlled collectives that organized themselves by a logic of kinship, while on the other hand, government tries to control corporations to the extent that their interests are in line with government goals. Closer analysis will point out that the values at play are the liberalist notion that rights need protection against public interference, and the Confucian communitarian notion of the state as father or benevolent ruler of the people. This thesis will point out that historically speaking, government is struggling to institutionalize both of these elements.

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I. Introduction

It is not a new phenomenon that economists point out that China is on the verge of becoming the next global economic leader. Gregory C. Chow, economist at Princeton University and adviser for the Chinese State Commission for Restructuring the Economic System (Chow 2010), points out several factors of the Chinese developing economy indicating that China will become the next leader. Such factors are that “its GDP as measured in purchasing power parity terms will exceed that of the US in this decade, [...] in technology it has the fastest supercomputer, [it files] more patents than the US, [...] in terms of the production of alternative energy, it is the world’s largest producer of wind energy, nuclear energy and solar panels, consumer goods produced in China flood the world market, [and] from mostly receiving investment from other countries China has increased its investment abroad rapidly, in a process to catch up with the former” (Chow 2011, 4-5). What is more is that Trump’s policies make the US less attractive as trade partner. He initiated a possible trade war when he imposed trade tariffs on China and threatened to do so on Europe as well, upon which the EU started preparations to take countermeasures (Stone 2018). All these factors together indicate that the balance will tip towards China becoming the next global economic leader sooner rather than later.

If this is true, then Europe should be prepared for the changes this new global order will bring along. Looking at the United States and how they fulfilled their role as leader, we know that a lot of effort is put into promoting political values such as democracy and human rights globally. Although this does not necessarily mean that China will adopt a similar attitude, it is pointed out by Ian Bremmer in *Time* (2017) that “leaders of other emerging powers [...] are following China’s lead in building systems where government embraces commerce while tightening control over domestic politics, economic competition and control of information.” Moreover, the often publicly cited statement from Singapore official Lee Kuan Yew about politics in Asia suggests that political values are indeed much different in China than in Europe. Under the guise of Asian values, he claimed that “Asians have little doubt that a society with communitarian values where the interests of society take precedence over that of the individual suits them better than the individualism of America” (Bauer and Daniel 1999, 6). In that case, it is important to come to an understanding of these communitarian values in order to be well prepared.

The goal of this thesis is to show to what extent Chinese economic policy indeed reflects communitarian political values. In order to do so, it will take a closer look at the corporation as a form of business, and how it has manifested itself in China over the course of history. Corporations play a central role in economic relations in China just as much as in Europe. Much of the content of economic policy is therefore often aimed directly at the treatment of corporations. So how a corporation has manifested itself within a certain community will reflect the political values of that community. For instance, as Rutger Claassen points out (2017), corporations in Europe are treated as legal persons with rights that should be protected against public interference. As such it reflects that a private sphere of self-interested individuals that are to be protected against public interference is valued there. What a corporation is and how it operates economically is related to how people relate to each other within a community, and this in turn defines and is defined by how a community

is governed. As such, economic structures are not separated from political ideas. So in order to see how corporations are treated and which political values are reflected in that, we should have a closer look at what kind of entity the corporation is in China.

This brings me to the central question of this thesis: to what extent are Confucian communitarian values represented in how the corporation developed in China? In order to answer this question, I will first explain what Confucian communitarianism entails, after which I will describe how the corporation developed historically in China. It will be easier to read into the historical development of the corporation which political and social values lie at its foundation when it is read against the background of an existing political theory. Consider what Stephen C. Angle says (2017) in the *Stanford Encyclopedia of Philosophy* on social and political thought in Chinese philosophy. He says that

several questions are central to the teachings and debates that make up Chinese social and political thought, among which the issue of how to sustain “order (*zhi*)”—often understood more particularly as “harmony (*hé*)”—is the most basic. To what degree should we rely on institutions (and of what kinds?), and to what degree is human leadership crucial? What sorts of roles, relationships, or hierarchies should structure our societies, and how are they justified? Can they be challenged or changed? Insofar as society is divided into rulers and ruled, what are the responsibilities that each owes to the other, and why?

In order to see how the development of the corporation reflects Confucian communitarian values, we need to have a clear vision at how it answers the questions posed by Angle. Chapter II will therefore describe in more detail the elements of Confucian communitarian political ideology that are relevant for recognizing the corporation as a legitimate form of business. Chapter III will then describe in more detail the development of the corporation in China over the course of history. It will explain how some of the first corporations in China were structured, and how the development towards a socialist government and its attitude towards the corporation shaped it. Chapter IV will then analyze which political values are represented in the Chinese corporation. The conclusion in chapter V will summarize and reflect on why it is relevant for dealing with China as the next global economic leader.

II. Confucian political ideology

In order to understand how Confucian political ideals are represented in the treatment and manifestation of the corporation in China, this chapter will explain what these ideals entail. It will do so by borrowing from the discourse that compares Confucian political theory, here often called Confucian communitarianism, with liberalist theory, for several reasons. The first reason is that, according to Rutger Claassen (2017, 2-3), the way the corporation has manifested itself in The Netherlands and other European countries resembles a political theory of democratic rule of law. This theory divides society in a private sphere, in which individuals are free to live their lives as they please, and a public sphere of (semi-)public institutions that protect the public good. A corporation is then typically seen as a private institution that is free to pursue profit or any other goal whatsoever. It will become clear in this chapter that the liberalist theory found in the discourse comparing it to Confucian communitarianism resembles the democratic rule of law we are familiar with in The Netherlands. Moreover, as will be pointed out in the analysis later on in this thesis, there are

features of the Chinese corporation that resemble a corporation as private institution, but there are also features that resemble the Confucian communitarian view. For that reason, it is useful to point out where liberalist and Confucian communitarian views are different. Note that I say the two are different, which does not mean the two are mutually exclusive. Although they are often either implicitly or explicitly displayed in an oppositional narrative – meaning they are held to be inconsistent with one another – Dascha K. Düring (2018) concludes that upon closer scrutiny it is questionable whether this is indeed fundamentally the case. The follow-up reason has to do with where, according to this discourse, the two theories differ exactly. As it turns out, this is in exactly those areas that are relevant for determining how a corporation as an institution relates to the rest of society. The main two areas are the extent to which the corporation is allowed freedom of choice, and the importance of the common good that is reflected in the harmony of interests of all in society, both of which will be dealt with in subsequent sections. The focus of this chapter will be on explaining the Confucian communitarian view. Explanations of the liberalist view will only be elaborate to the extent that it will accommodate our understanding of the former. After all, the purpose of this thesis is to find out to what extent Confucian communitarian values are represented in the treatment of the corporation, and how we are to prepare for that if China becomes the next global economic leader. That said, let us now turn to the most important institution in Confucian communitarianism: the family.

The family as model for communal organization

Confucian communitarianism refers to the family and familial relationships as a model for society. In philosopher Bai Tongdong's words (2014, 342), "for Confucians, communal and political relations are analogous to, and should be modeled after, familial relations", which he illustrates by the following quote from the *Analects*, the recollections of Confucius' words.

It is a rare thing for someone who is filial to his parents and respectful to his older brothers to defy superiors. And it is unheard of for those who do not defy superiors to be keen on initiating rebellion. Exemplary persons [*jūnzi*] concentrate their efforts on the root, for the root having taken hold, the Way will grow therefrom. Being filial to one's parents and being respectful to one's older brothers is the root of humanity! (*Analects* 1.2)

Before I will describe in more detail what this model entails exactly, let me point out in more detail how authors on the subject show that the model of the family is not limited to how people relate to their kin, but is actually a model for the nature and organization of relationships that reaches into all realms of society, all the way up to the level of the state. Professor of philosophy Lee Seung-hwan (1991, 42-3) explains that there are five basic human relationships recognized by Confucianism: relationships between ruler/minister, father/son, husband/wife, elder/younger brother, and friend/friend. He emphasizes that although two of these do not indicate a familial relationship directly, in a sense they actually do (Lee 1991, 106). Both ruler/minister and friend/friend relationships pertain to realms outside of the family understood as those who are kin. Although they do not indicate kinship, they are often conceived as such, i.e. ruler/ruled relations are conceived in terms of

father/son, and friend/friend relations are much like brotherhood. Bai Tongdong argues (2014, 340-1, 347-8) that the family is conceived of as one unified body, and that love and care for each other within the family is seen as the stepping stone from one's self and self-love towards the other. This, according to Confucians, is the best way to cultivate compassion and humanity, which define the bond between people and are the foundation of *li*, a central feature which will be explained in more detail below. Like that, all realms of society, with varying degrees of hierarchy, can and should be modelled after familial relationships. At the level of the state, the analogy is being made of the ruler's benevolence for the people to the father's benevolence for his children. To rule the state is deemed as an extension of to rule the family (Lee 1991, 57). Confucian ideology is meritocratic in this sense.

Defining features of the family

So the family is the model for organizing a society or community, and it defines how people within a community should relate to each other. Our next task is then to grasp what this model entails in more detail. In the above, the relations characteristic for the family are identified, it is shown that these relations are hierarchical in nature, and it requires all parties of a relationship to stick to certain rules (*li*) to fulfil their part of the relationship. These are the defining features of the family, and will be worked out in more detail here.

At first sight, these features may not immediately strike us as entirely unfamiliar. Speaking on behalf of families in The Netherlands, children, at least until they reach a certain age, have to obey their parents as well, and the same goes for many other countries that adhere to liberalist views. Such relations are ones of love and care towards the young, and of obedience and respect towards the elderly. In that sense, these relationships are hierarchical as well, and require each party to abide by certain rules that pertain to their role within the relationship. But there are certain crucial differences as well. In Confucian ideology, the role of the family is not to raise children to become independent individual beings with a strong sense of self-determination. The family determines the roles that people live throughout their lives, on all levels of interaction in a society.

The roles that people live depend on how they relate to others. For instance, as a son, you fulfill a certain role vis-à-vis your father, and as a father, you fulfil a certain role vis-à-vis your son. As pointed out above after Lee Seung-hwan, the five basic human relationships recognized by Confucianism are those between ruler/minister, father/son, husband/wife, elder/younger brother, and friend/friend. He further elaborates that these roles come with rights and responsibilities, but also with disabilities (1991, 57). Someone with the role of the father, for instance, has the right to manage the family property, whereas someone with the role of son has not (which is a disability). This relation is hierarchical in the sense that the father enjoys more powers, privileges, and immunities, whereas the son holds more duties, disabilities, and no rights. Each person should to the best of his ability perform the role in which he is situated, and to do that, he should follow the rules, or rites (*li*) that his role prescribes (Lee 1991, 52-3). Only by living up to these rules can someone become virtuous

(*dé*). For example, an excellent father is benevolent (*rén*) and charitable (*cí*) towards his son, whereas an excellent son is filial (*xiào*) and obedient (*gōng*) towards his father.

In order to see how central the idea of roles and the corresponding rites are in Confucianism, we should have a look at what they entail for what it means to be human. In order to improve our understanding thereof, I will gratefully make use of Dascha K. Düring's explicit comparison of liberalist views to Confucian views on this matter (2018, 39-45). She captures the liberalist view on what a human person is in the following quote (Düring 2018, 40):

[The Western tradition] essentially distinguishes between those features that human beings universally share and those that contingently pertain to them, where the former are included, and the latter excluded, in the understanding of the human person. [...] [The human being is perceived] as constituted by abstract features that can be timelessly and universally attributed, and precede – normatively, if not historically – the actual, concrete, and particular ways in which personality is filled in or fleshed out.

She then proceeds to ask what features precede the fleshed out personality, and therefore define a being as a human person, and which features are contingent. She concludes that on this view, social features such as the roles we play count as contingent features, and therefore do not define beings as human. I am human for the fact that I am born in the body of a human being. Contingencies such as how I fulfil my role as a father or a son therefore do not determine whether I qualify as a human person.

This is radically different in Confucianism, where roles are actually the defining feature for a being to qualify as a human person. No distinction is made between universal and contingent features. In fact, there is nothing preceding the role one lives that defines a being as a human person. A human person is not something you are, but something you become, that is, by performing your role to the best of your ability. In Herbert Fingarette's (1972, 7) words, "men become truly human as their raw impulse is shaped by *lí*. [...] *Lǐ* is the specifically humanizing form of the dynamic relation of man-to-man." Your role determines who you are, and since your role determines how you relate to other people, human beings are therefore conceived of purely as relational beings. In Bai Tongdong's words (2014, 353), "the Confucian understanding of the self is different from the understanding of an autonomous self that can exist independent of social conditions, [which does not mean that Confucians did not acknowledge] the self as an entity."

We now know roughly what the Confucian idea of the family is, and to what extent it determines the organization of any community all the way up to the state level. At this point, we should turn to the elements of this model that are determinant for our purpose. As mentioned, two areas come forward within the discourse that are relevant for determining how a corporation relates to the rest of society. These are the role of the common good, and room for freedom of choice. Subsequent sections will describe these elements in more detail respectively.

Common good

The focus on the common good in Confucian communitarianism is seen in its presupposition that within the family, all interests are harmonized, and as such, there are no individual

interests prior to those of the collective. In order to achieve the common good as benefiting all in the community, every person should live up to his role to the best of his ability. Consider the following quote from Lee Seung-hwan (1991, 52).

Individuals who occupy [a certain role] are expected to cooperate in the relationship which as a whole confers benefits on people – on the members of the community as a whole. Excellent conformity to the role-expectation constitutes to the working of the system. The members of each role are expected to know how the system works and what their expected contribution is. The end of man's behavior should not be to acquire self-interested satisfactions or self-directed ends, but to be a *model man* or an *exemplary man* [*jūnzi*] who excellently performs his assigned roles and lives harmoniously with other members in a given relational context.

Here, the whole model of the family and its roles which determine the interrelationships between people is referred to as a system, the working of which is optimal – i.e. benefiting the members of the community as a whole – when everybody within it conforms to his or her role excellently. This is not merely an instrumental consequence, but the core purpose of the system.

The importance of the common good as a Confucian communitarian value is emphasized by several authors. Joseph Chan recalls that in order to promote the common good, people should act in a public and common spirit (2007, 183-4). People should not only take care of their own family members, but of others as well. Provision for the elderly should be secured, and kindness and compassion should be shown to widows, orphans, childless men, and those disabled by disease. This notion goes so far as to invoke impartiality – in extending love and care, no one should be given preferential treatment, not to family or even to oneself. Lee Seung-hwan mentions (1991, 65) that Confucian ideology emphasizes the benevolent concern for the people's well-being, which means that a community's affairs should be arranged so that they benefit everyone. The importance of the common good and how it is manifested in Confucian ideology is also seen from Bai Tongdong's discussion of public and private (2014, 347). He shows that on a liberalist view, the relation between private and public is one of conflict. Liberalists protest against the suppression of private interests that supposedly protects the public good. Instead, they try to protect the private from public or government intrusion. In Confucianism, however, the model of the family that extends to the community as a whole, makes it very easy for people to open up to others, to the public. As mentioned, the family is seen as a unified body, in which people take care of and love each other, and this applies to the whole community. Familial relationships are stable, and extending this model to the public at large acknowledges the desirability of stability in public arrangements as well.

The ubiquity of the focus on the common good is also seen in how officials should be selected to run the affairs of a community. Unlike the roles that pertain to those that actually relate to each other as kin, such as those of actual fathers or brothers, the role of an official who runs a community's affairs is not one you are born into. It is rather a role that requires a person to be talented and virtuous, which again invokes impartiality on the part of the system (Chan 2007, 184). It is presupposed that in principle everyone has the same opportunity to become virtuous through education and by adopting a reflective attitude. Only those who are best educated in how one becomes a virtuous person can make it to the

position of official, which is expressed by a perfect understanding of the *lǐ*. To actually understand the *lǐ* requires one to have a reflective attitude (Chan 2002), and since this is something that in principle everyone can attain, the roles of officials are equally accessible to everyone (Bai 2014, 348). In the end, “the legitimacy of the sovereign lies in satisfying people’s basic interests. [...] The Confucian ideal government is for the people, and by the competent and virtuous people (with regard to political decisions)” (Bai 2014, 351).

Freedom of choice

In this last section we will be looking at the extent to which Confucian ideology allows freedom of choice. The short answer to that is that there is roughly an agreement within the discourse that on the classical reading, there is only little room for free choice. But we want to understand why, off course. In order to come to an understanding of what freedom of choice means, let me introduce two opposites. On the one hand, imagine a person being entirely free to determine his path of life, without being coerced into anything, or being interfered with by any external party. The only thing that limits his choices are his personal preferences. Now imagine, on the other hand, a person whose life is determined entirely by forces that lie outside of him. There is no option to choose a different life, and personal preferences are irrelevant. Neither one of these extremes would be ideal, for reasons I believe are quite obvious. That is why we find nuanced versions of these in the ideologies described in the discourse.

When it is said that Confucianism allows only little room for freedom of choice, this is said in comparison to freedom of choice on the liberalist view. To improve our understanding, I will therefore once again refer to the liberalist view on freedom of choice. Within the discourse, reference is often made to the liberalist notion of personal autonomy. Personal autonomy means that a person can determine his life without interference from external parties. The only justifiable ground for interference with someone’s personal affairs is in order to avoid harm being done (Chan 2002, 301, after Joel Feinberg 1986). All other grounds for interference, for instance to make people happier, or because it would be wise or even right, are illegitimate, and are deemed as blamable paternalism (Lee 1991, 66-7, after John Stuart Mill 1975). So the personal autonomy of people is sacred and should be respected at all times, unless by doing so harm will be inflicted upon others. Only then can a person’s autonomy be constrained.

In Confucianism, the array of available choices are determined by the roles that people live. These roles are modelled after the family, and this model extends to the whole community up to the level of the state. As we saw, this means that the state takes on the role of father figure, whereas its citizens take on the role of sons. It fits the role of the father to determine the life options for his sons, and it fits the role of the son to obey his father. It is therefore not surprising that on this view, the state is permitted paternalistic interferences that reach much further into the lives of citizens than on the liberalist view. The next question is then, how far reaching paternalistic interferences are permitted exactly? The answer to that is that the state does not decide on every detail of its citizen’s lives exactly, but it does limit the array of possible life choices to only those that are morally right. As we saw, the ones that

make it to state officials are the ones that are best educated and therefore the most virtuous. They therefore know best what is right for the people. Eventually, this leads to Confucianism being “perfectionist in the sense that a major aim of the state is to help people pursue a moral life by means of law, education, the provision of resources, and the coordination of social groups and their activities. [...] Confucianism would not categorically reject moralistic or paternalistic state interference in people’s lives.” (Chan 2002, 301). This could amount to a strict legal moralism, under which “only few things [are] left to choice; almost everything – food, clothing, house, sex, marriage – [are] controlled within the very narrow limits set by the *lǐ* and law of the land” (Lee 1991, 74).

Understood correctly, the array of possibilities to make life choices is determined by *lǐ*. So we know that the possibility to determine your life path is at least limited. In order to know how your possibilities in life are determined, we must know what it is that determines the content of *lǐ*. Although there is a lack of space here for a detailed explanation of its underlying foundation, a few important notes are in order about the role of official rulers and about the role of tradition. It seems to be implicit in the above that officials may determine the content of *lǐ*. Those who are best educated are the ones that know what will lead a person to become virtuous. They can become the rulers who make the laws of the land by which its citizens must live. The aim of these laws is to help people live a morally good life – they will lead citizens toward becoming virtuous persons themselves. Since the content is moralizing, and since the rulers know what is morally right, it seems logical that they can legitimately determine the content of *lǐ*. However, as far as I know, it is not mentioned explicitly how much leeway officials have to determine this content.

What is mentioned explicitly, though, for instance by Herbert Fingarette (1972, 64), is that *lǐ* cannot be enforced by command or coercion. It is shaped by tradition or the reasonable conventions of a society:

Two great insights fused in Confucius’s thought. Confucius, the political man, conceived that the social crisis required cultural unity as an essential ground of a civilized political-social unity. And Confucius, the philosophical anthropologist, affirmed life lived in the image of the authentic ceremonial act as the necessary and sufficient condition of authentic humanity. The implications of these themes taken jointly call for political-social unity to be ceremonial. And this in turn calls for a tradition-oriented culture as essential ground out of which ceremony is nourished.

It is tradition that connects people, and therefore it is tradition we should turn to for determining the rules a community should live by. This does not mean we should blindly follow the traditional way of life. Rather we should turn to tradition to seek inspiration and acquire wisdom about humanizing and harmonizing ways of life in the present (Fingarette 1972, 68). Most importantly, one should adopt a reflective attitude in order to understand the moral reason behind *lǐ* (Chan 2002, 288), and even though everyone should ideally strive for this, such a role is best reserved for the best educated and most virtuous that may become the leaders of a society.

Chapter conclusion

This chapter explained the Confucian communitarian ideal for how people within a

community should relate to each other, and pointed out at places that this is different from the liberalist ideal. Communal relationships should be modelled after familial relationships. It is emphasized that what defines people as persons is how they relate to each other, and the role people live in turn is determined by the model of the family. The roles that define the relationship between government and governed are those of father and son. Perfect role performance contributes to the working of the system that confers benefits on all people. The father/son relationship is hierarchical. Excellent performance of the roles requires the father to be benevolent and charitable, and the son to be filial and obedient. Extending to the community, government officials are competent and virtuous, and as such they know what is good for the people. In its capacity as meritocratic ruler, government should determine the array of life choices that will lead people to live a good life. Government plays a determining role in the life people live. This is different on a liberalist account, where government's role is limited to protecting individuals' rights against public interference.

III. Historical perspective of corporation in China

In order to get a good understanding of how the corporation is looked at and developed in a Chinese context, it is useful to provide an overview of the historical context in which the corporation developed. This is not an easy task, because this development took a few turns over the last century. Public policy may steer the corporation in one direction this decade, and in a quite different direction the next decade. Such a difference is clearly visible for instance between the 1980s and the 1990s (Huang 2008). The 1980s have known a friendly environment for the development of private corporation, while the 1990s showed quite the opposite. As we will see, these changes mainly revolve around the extent to which corporation is controlled by the state. The purpose of this chapter is to provide an historic overview that, on the one hand, points out that a form of business akin to the corporation was in fact present, while on the other hand, Chinese government authorities struggle to acknowledge the corporate form of business. Two periods mark the relevant history for this purpose: 19th century imperial China, ending in 1911, in which the predominant form of business was of a form much like the corporation; and 20th century China, to which the development towards a planned economy, and the nationalization and collectivization of business is most characteristic (Bian 2015). The aim of this chapter is to describe the trend that on the one hand, family businesses had organized themselves in one way, while on the other hand, in trying to set up a legal basis for how business would be conducted in China, government was struggling to rhyme this form of business organization with its goals.

So this chapter will explain in more detail the relationship between government and corporation as it developed itself over the course of history. To do so, it will first explain how ancestral trusts were structured. These were the first forms of corporation, and their organizational structure is telling for how the corporation developed to its current form. After that it will show how the introduction of the Company Law was the first step towards legal recognition of such corporations. But the Company Law had to be revised many times, and the changing provisions of it show that the government was struggling to rhyme the corporation with the ideology they were trying to build, and the role it sees itself to be in.

We will also see that there is a lack of trust between government and corporation, due to which the effects of the Company Law were only limited.

Before we turn to the historical perspective, a remark should be made to improve the readability. A great deal of this chapter considers the laws that were drafted in order to regulate the economy in general, and businesses in particular. It is therefore important to know a little at least about the status of law in China. There is an interdependent relation between how businesses are organized and how they are treated in the eyes of the law. The way certain organizations are structured depends on how the confines of the law permit them room to maneuver. How law is defined in turn depends on the practices, habits, mind-sets, philosophies and what have you within a certain community. Suppose for example that a common practice of structuring organizations after familial relationships is recognized by law *because* it is common practice. What this often entails – and China, as it will turn out, is no exception to this (Faure 2006, 48) – is that a certain practice or social trend often precedes recognition by law. It is then often claimed about law in China, that the Chinese constitution assumes a harmony of interests between state and citizen (see for instance Nathan 1985, 113). This is then contrasted with the liberal tradition of rule of law, where law protects the rights or interests of individuals against public interference. But what we will see in what follows is that actually this harmony of interests does not always occur as smoothly as it is portrayed here, and that, especially in the case of corporations, it is essential as a government to refrain from interference. What I am trying to show here is that there is a difference, or even an inconsistency, between what is claimed about a situation, and what is actually happening in that situation. Upon these claims about law in China, one could ask if there actually is no recognition of individual rights present in there. Indeed, Teemu Ruskola, a professor of law who specializes in comparing Chinese law with for instance American law, especially pertaining to corporations, shows that upon closer historical inspection, Chinese law did in fact recognize some notion of individual rights. As it turns out, law was often used to settle disputes between families or family members about claims of rights to certain property (Ruskola 2013, 91), or even to the extent that sometimes legal rights triumphed over Confucian social hierarchy (Ruskola 2013, 92). Here, the first signs of an inconsistency between what is claimed about China, be it by government officials or by certain scholars, and what is actually the case are already starting to show.

Economy in 19th century imperial China

In the first part of this chapter, I describe the state of affairs of the economy in China before the fall of the Qing-dynasty in 1911, which marks the end of imperial China. This perspective provides the context for the emergence of the ancestral trust, the first form of corporation which will be explained in the next section. Several things are characteristic for this period, and relevant for our purpose, and will therefore be described in more detail below. For one thing, the development of the corporation in this period is up to a point almost equivalent to the development of the corporation as it occurred earlier in Europe. In fact, the Chinese word for company (*gōngsī*) was originally (during the 1830s and 40s) a translation of East India Company, but “by the 1870s [...] incorporated rather precisely the idea of a body of

people coming together for the purpose of trade according to a charter that had been approved by government, as was true for the EIC as well” (Faure 2006, 46). The foundation for the shape of the corporation is laid in this period. That is, off course, to the extent that the corporation finds an officially acknowledged and legitimate basis in times to come. Most importantly, you find in this period the buildup to the introduction of Company Law. In this period, the first attempts are being made at defining the corporation as a legitimate entity before the eyes of the law. Overall, this process unfolds quite similarly to how it did in Europe, but there are certain subtle differences. These have to do with the prevailing political ideology in China, which is described in detail in the previous chapter. It is therefore that we need to understand the essence of these attempts within the context of China.

Let’s start of by describing the landscape in China in this period. Before 1911, the economy was largely dominated by small private household businesses of which the organizational structure was in many aspects like that of the corporation (Ruskola 2000). On the one hand, the Chinese historian David Faure in his book on the history of business in modern China, describes that commercial development was very active. This is seen for instance in “the faith in silver expressed by all and sundry, and the strong awareness that trade brought profit and profit brought land that was written into the biographies of so many merchants that we know of” (2006, 47). Nonetheless, on the other hand, he describes that the few businesses that turned out to be successful were put under state monopoly, meaning that rights to tax these businesses were extended to government officials. In practice, as a consequence of a decentralized government, these rights to tax were used at the local official’s will. Because of the uncertain prospects these policies brought about, many households sought protection. As much as this shows the abuse of power, it also shows the dedication and the first signs of struggle on behalf of entrepreneurs to stick to the corporate form of business. But eventually, all was about to change in favor of the households because imperial examination was abolished, commercial and agricultural associations were recognized and the 1904 Company Law was introduced, the latter of which entailed that, just like in Europe, no imperial charter had to be granted anymore, but instead the state recognized private mercantile initiative in return for tax (Faure 2006, 47). In fact, the 1904 Company Law “was the hybrid of Japanese and English company laws in an abridged form” (Kirby 1995, 47).

So we see that up until this point, there were indeed collectives that cooperated in the pursuit of profit. We also see a change in government’s approach towards these collectives. It would therefore be interesting to see how, if not by government, these collectives were controlled. We will therefore have a closer look at how, on the one hand, household or family businesses were organized and managed their property. On the other hand, we will look at what this entailed for recognition by government. The following part will describe how this manifested itself in more detail.

Family business and lineage trusts

China knows itself a tradition of the corporate holding of property in the form of lineage trusts (Faure 1996) or ancestral trusts (Ruskola 2000), different terms indicating the same

phenomenon. These were made up of different families or households that came together by defining a common ancestor, for the purpose of sacrificing. Sacrificing required for instance the building of an ancestral hall, for which pooling of resources was required. Contracts were drawn up that stated exactly the property each family contributed to the trust (Faure 1996, 86). In reality many such traditional families were also corporations in an economic sense. They did not just stay together out of affection for their kinfolk, but also because this allowed them to accumulate capital and pursue profit more effectively (Ruskola 2000, 1605). Examples of such contracts show that uncles, brothers and nephews from different families with a common ancestor came together to draw up a contract (Faure 1996, 85). How all these families trace back to one ancestor is described with much dedication, indicating that this was a foundational part of the contract. Property was held collectively by the lineage, independently of the members that were its constituents. As such, the purpose of the trust was legitimate in the eyes of the law. For Chinese law, recognizing the legal personality of collectives is a given, since in the Confucian tradition, the collective is seen as morally prior to the individual (Ruskola 2000, 1607). Although the purpose of such collectives was officially to pay respect to a common ancestor, these contracts often describe that resources not spent to this end were spent alternatively, for instance to set up shop somewhere or to invest in 'cultural capital', such as education (Ruskola 2000, 1631).

The individual constituents that made up and contributed to this lineage were family or household businesses. Upon contribution, the family business received a share in the trust, which defined the management responsibilities of the trust holdings. What this amounted to is most accurately reflected in the following quote from David Faure (1996, 87), who explains that "the ability of the lineage to provide a sense of membership gave it the character of a corporation. Inheritance rules gave a structure to its corporate character, and its ability to hold property in a way that did not rest ownership directly on individual members of the lineage gave added meaning to its corporate structure. It is essential to stress that the rights of the different parties in the lineage with regard to its property holdings are always very clear: the managers had the rights, and responsibilities, to manage, but not to dispose of the property, which remained collectively with the lineage segments. Witness the strict adherence to the consultation and agreement by all concerned lineage segments when lineage property was sold. The right to partake in the distributions from the lineage estate was considered a share (*fèn*), and in the cases where the lineage estate was established by monetary contributions from descendants, it is abundantly clear that it was the contribution and not descent that provided the share-holding." This is echoed by William C. Kirby, professor of business administration and China studies, when he says that participation was limited by descent, although contributions, not birth alone gave one a right to a share (1995, 45).

The continuity of the trust was guaranteed by the continuity of shares in the trust. The continuity of the family, guaranteed by continuity of the male line in the family, in turn guaranteed that shares in the trust remained within the family. The property of the household was not the property of one within the household. As Teemu Ruskola explains after the legal historian Shuzo Shiga (2000, 1627-8), "during the father's lifetime the son's personality is absorbed into the father's, while after the latter's death his personality is

extended into that of his son. Father and son are a *continuum of the same personality*, not two beings in mutual rivalry.” This echoes what is described earlier about the family being a unified body. Since ritually speaking the father was under a duty to leave property to his sons, his position is likened to that of manager of the household business, a trustee to his heirs.

From a government perspective, law was modelled on the Confucian ideal of governing the family as well as the larger political and social communities by a logic of kinship. For the family, this logic entails that the dead, the living and the unborn stand in a patrilineal relationship with each other, which guaranteed ritual continuity of the family. They form the unified body within which the members’ duties towards each other are defined in terms of common ancestors (Ruskola 2000, 1624). Within this framework, the family was able to stretch the boundaries of an entity that could collectively hold property legitimately in the eyes of the law. This allowed families to create corporate structures and to enjoy the economic benefits these brought along. Such corporations often extended beyond the domestic family by creating legal fictions of kinship. Non-kin could become a member for instance through marriage, adoption, or the outright creation of a common ancestor (Ruskola 2000, 1631). It is not just the family as a domestic group, but most importantly lineage that form the most fundamental relationships in economic organization. “Lineage consisted of the body of people who traced themselves from some common ancestor. As such, the lineage was backward-looking, its membership being pegged upon historical characters established for real among the people who claimed descent” (Faure 1996, 83). Expansion of such corporations that were successful occurred in terms of lineage – i.e. contracts with newly attracted managers or partnerships were defined in terms of some common ancestor, who may or may not have been invented specifically to this end (Faure 1996).

As such, it is argued by Ruskola that many such corporations were in fact not much different from corporations found in a Western tradition (2000, 1605, 1633-4). In practice, these ancestral trusts 1) often amounted to voluntary associations rather than natural kin groups, 2) had the pursuit of profit as their main goal, rather than satisfying the needs of ancestral spirits, 3) functionally possessed independent legal personality, 4) had centralized management. Furthermore there is evidence that 5) corporations had transferable ownership interests, and 6) they enjoyed limited liability.

What is described until this point shows that there were Chinese entrepreneurs who were willing to trade in order to make a profit. To do so, small-scale household businesses organized in a way that resembled the corporation in many ways. Their organization revolved entirely around familial relationships and common ancestors, which was legitimate in the eyes of the law, and this model would remain influential up until this day. But large and successful such corporations were put under state-monopoly and had to endure the uncertainty of how local authorities interpreted their tax privileges. This was supposed to change with the introduction of the Company Law in 1904.

Company Law

The introduction of the Company Law was not just a consequence of the development of family business. According to William C. Kirby (1995), the first Company Law of 1904 was maybe most importantly the consequence of foreign influences in and on China. An indication of this is found in the fall of the Qing-dynasty in 1911, which marked the end of imperial rule over China. By then the Nationalists had gained power, built up a nationalist ideology and eventually established a new government, the Guomindang. This ideology was motivated by China's suspicion of the foreign, resulting from their experience with foreign aggression, from the start of the Opium War with Great Britain in 1839 until the end of the Sino-Japanese war in 1945. For the economy, this ideology "emphasized state-owned enterprise, heavy industry, and national defense, and the determination to create a planned socialist economic system" (Bian 2015, 202). Hence the Company Law and its subsequent revisions' aim of strengthening central government power and the aim of raising large amounts of capital.

The aim of the 1904 law was threefold (Kirby 1995, 43-4). First, it was aimed at promoting industrial development in order to be able to compete with other countries. This required large investments of which it was believed that small-scale family businesses could not provide it. It would require corporate structures to do business at the scale of foreign competitors. It was an "attempt to move beyond lineage trusts and partnerships to the *gōngsī* [...], or joint-stock company" (Kirby 1995, 47), of which the first example was the China Merchants' Steam Navigation Company, authorized on a privately accumulated starting capital of 1,000,000 taels that competed with foreign shipping companies (Faure 2006, 50-1). Second, it was an attempt to define and regulate change of economic processes in order to strengthen central government power, which required the legal infrastructure for – and limits to – Chinese private enterprise. Most importantly, however, it was an attempt to abolish British extraterritoriality, for which the attainment of Western standards of law was required. China had to endure a long period of extraterritoriality, meaning that in certain regions foreign jurisdiction applied in order to protect foreign companies in China. The Chinese system of law was perceived as barbaric, but the 1902 Sino-British Treaty of Commerce declared the willingness to abandon extraterritorial privileges if Chinese law proved to be able to protect foreign corporations.

Consequences and necessary revisions

These aims had two consequences. One is that businesses were required to register under the law, in order for government to keep control over the economy. The 1929 version of the Company Law, for instance, required a "registration fee [...] based on the firm's capitalization, [submission of] detailed financial statements, lists of stockholders, copies of charters, and all kinds of additional materials" (Kirby 1995, 54). This was supposed to contribute to the collectivization of property and the goal of nation building. In practice, however, not many did register. This was due to distrust in the law, both because the law was badly translated out of Japanese and English company laws, and because it was the Ministry of Commerce that handled commercial disputes regarding corporations. Courts

were not yet prepared for this, and decisions thus had little legal force (Kirby 1995, 48). What is more is that “in keeping with the Nationalist government’s desire to exert strong control on all aspects of social, political, and economic organization, it sought to regulate private capital more tightly” (Ruskola 2000, 1680), which added to the unwillingness to register under the law.

Secondly, what is not so much a consequence of the law as it is something that clear after its implementation, is that China’s capitalists on their part were wary of the public, and did not like the idea that money be put in someone else’s pocket for them to run the business. A good example of this is the Nanyang Brothers’ Tobacco company’s lobby “to protect its position [as a company of which] the board of directors and controllers named were all family members serving fixed terms; new shareholders would have no voice in appointments; and the dominant family partner was declared ‘permanent president’ of the firm. When the Peking bureaucracy rejected these by-laws, the family rewrote them [...], received approval, issued the stock, and continued to run things as they had intended” (Kirby 1995, 50-1). The following quote from David Faure (2006, 53) also illustrates that Chinese capitalists were suspicious of the presumed consequences of publicly held shares to the management of the company.

Traditionbound attitudes were not replaced by shareholding in the modern companies. Rather it was shareholding that was being absorbed into the Chinese business tradition. Quite aside from questions of nepotism, it was built into the shareholding structure that major shareholders might be directly involved in managing branches of the company. China Merchants’ Steam Navigation made it a rule that major shareholders were to be appointed branch managers [...]. Public shareholding did not bring about a division of ownership and control in China as it did in the West, nor did it reduce the impact of the family on ownership.

What was more than this reserved attitude on behalf of Chinese companies, was the fact that China was torn up by war. As is often the case in countries at war, government control on the economy tightens. Towards the end of the Sino-Japanese war in 1945, the Nationalist government controlled most industrial capital, including iron and steel, electricity and cement, and it controlled most major banks and transportation (Naughton 2007, 47-53). In order to fuel these industries to rebuild the country, the need for capital accumulation became most pressing on the economic agenda. It was so pressing that, in spite of the suspicion of the foreign, and after heated debate, the Nationalist government gave in to foreign investors’ demands. It is described by William C. Kirby how foreign companies, backed up by their governments, lobbied for a liberal revision of the Company Law (1995, 54). Originally, the law made no distinction between Chinese and foreign companies. In order to link state interests with those of investors, the revised 1945 Company Law created a new legal category of ‘limited company’ (*yǒuxiàn gōngsī*). The state would hold the majority of shares and be responsible for management, and provincial and local governments as well as selected Chinese and foreign investors were allowed to invest in it. Furthermore, “to encourage investment, the government [lifted] a longstanding [...] regulation that required majority of Chinese ownership in Sino-foreign joint ventures. It also exempted ‘foreign’ corporations from most of the tax requirements of Chinese firms, save for the costs of

registration. However, [this appellation] would be given above all to corporations whose investments might complement Chinese plans” (Kirby 1995, 55).

Maoist era

By 1949, the Chinese Communist Party (CCP) established its ruling power over what was shortly thereafter named the People’s Republic of China, which it maintains until today. This moment marked the official beginning of development towards a command economy. The focus was on a heavy-industry-priority development strategy, or Big Push strategy. All large factories and communication and transportation enterprises were owned by the state, and peasants in agricultural collectives controlled the farm economy and land management. The state set targets for each of these industries, and was responsible for allocating capital and resources. The state controlled the pricing system, and maintained terms of trade that were highly favorable to government controlled industry products as compared to the household sector (Naughton 2007, 56-62). The nationalization and collectivization of all organizations entailed that soon, all business would be owned and controlled by the state (Kirby 1995, 56). “By 1956, ninety-nine percent of private enterprises had been turned into joint operations with the state, and the Cultural Revolution destroyed most of what remained” (Ruskola 2000, 1699). This strict government control over the economy would last for thirty years. This period is a landmark in Chinese history overall, because of its ideological spirit and its influence on peoples’ lives. What is important for our purpose, however, is that at this point the meritocratic role of the state is put at the center of the party ideology. Furthermore it continued the trend of establishing state ownership in all industries. At the end of the Maoist era, the existing communist institutions were blamed for the country’s poverty and food shortage, and experimenting with other economic means was legitimized in order to improve the lives of the people. Economic reforms following up on this period were therefore aimed at legitimizing private corporate initiative on the one hand, and restructuring state-owned enterprises on the other.

Economic reforms

Only after the economic reforms, initiated in 1978 by Deng Xiaoping, was there a move towards recognition of the corporation again. The command economy in its current form failed to meet certain basic demands, such as a stable supply of food. As opposed to other command economies that arrived at this point, for China this did not entail the sudden adaption of free market institutions, or a so-called Big Bang transition. Instead it looked at how it could meet those unmet demands by experimenting with reforms. This experimental phase resulted in policy instability.

Huang Yasheng, professor in Chinese economy and business at the Massachusetts Institute of Technology, did extensive research (2008) on what this entailed for private entrepreneurship in the 1980s and 1990s. During the 80s, food shortage and the abject poverty some regions were living in resulted in the authorities being open to private initiatives, in the hope that successful initiatives would help boost the economy.

Government turned a blind eye on the rebirth of market mechanisms, and thus contributed to the bottom-up revival of the private sector. The right direction for the economy was not determined, and a capitalist approach was legitimized on the grounds that it would benefit the people. Heading towards a system that became to be called a socialist market economy, “rural entrepreneurship was one of the few feasible mechanisms to transition out of low value-added agriculture and to move beyond the abject poverty” (Huang 2008, 83). Eventually, this resulted in the 1988 Enterprise Law which reflected the autonomy goal of this new system in several ways, such as making “each enterprise an independent ‘legal person,’ connoting that the enterprise can independently contract, convey property, and sue and be sued. [It also gives] the enterprise a series of control rights including the rights to make various business decisions on matters of what to make, who to sell to at what price, and how to invest retained earnings, as well as the power to reject the exaction of its manpower, materials and financial resources ... by any state agency” (Simon 1996, 272-3).

The introduction of the first Company Law of the People’s Republic of China had to wait until 1994, “providing a legal basis for two forms of companies: the limited-liability company [which held only a limited amount of limited-liability shareholders], and the company limited by shares [wherein the liability of shareholders and directors was limited to the value of their shares]” (Kirby 1995, 57). This law was aimed at restructuring the state-owned enterprises, and thus contributing to the top-down privatization of the economy. State-ownership was redefined as shareholding in the company, meaning that as a shareholder, the state has the right to appoint members of the board of directors, which in turn gives direction, oversees, and hires and fires managers. As such, “corporatization under the Company Law was designed not only to continue the trend of giving managers more authority, but also to establish a better system of oversight to ensure that managers pursued the same interests as their government owners” (Naughton 2007, 315). Teemu Ruskola describes how despite this measure, the economic organization can still not be seen entirely independently of the Confucian political ideal of hierarchy. He says that “even when state enterprises succeed in gaining a degree of independence from the bureaucratic system, their relationship to the bureaucracy is still colored by familial conceptualizations [...]. Today, every state entity is supervised by an ‘administrative agency in charge’ (*xíngzhèng zhǔguǎn bùmen*), colloquially known as the ‘mother company’ (*mù gōngsī*). In addition, each state entity typically owes a subsidiary duty of loyalty to a number of other administrative units as well. When these other units interfere with enterprise management, the problem is described as having ‘too many mothers-in-law’ (*pópo duō*)” (2000, 1693-4).

Chapter conclusion

The aim of this chapter was to provide a perspective on how the relationship between government and corporation developed historically. Various factors define this relationship. On the one hand, it is defined by the organizational structure of the corporation by a logic of kinship. The legitimacy of such corporations draws on familial relationships: the boundaries are defined by common ancestors, and the purpose by honoring these ancestors. In practice, however, such corporations also pursued commercial interests. Reliance on the family on

part of the corporation continued throughout history. On the other hand, the relationship between government and corporation is defined by the goals that government pursues. These were given in by a nationalist and later on socialist ideology, in which government assumes itself an authoritarian role. In order to build a strong and independent nation, it tries to exert control over the economy and the corporations that make it up. But in doing so, historically speaking it struggles with both the reluctance from existing corporations to cooperate, and the disadvantage of being a developing country which makes it impossible to rule out corporate structures for investment entirely. This struggle is prominently present in the many revisions of the Company Law, the purpose of which is to define the legitimate form of the corporation.

IV. Analysis

This chapter will provide a closer look at the extent to which the manifestation of the corporation in China indeed represents Confucian communitarian values. To do so, it will judge the historical perspective as presented in the previous chapter by what Confucian communitarianism entails according to chapter II. As you may have seen by now, this is not as straightforward as it sounds. Different factors played a role in the development and recognition of the corporation, which caused government to struggle. It is the purpose of this chapter to show what the underlying values of this struggle are. As it turns out, this is not an either or case, and to show why, I will try to explain what is happening in China by use of a statement from Zhu Rongji in 2003, who as Premier of the PRC said that “we continued to combine rule of law with rule by virtue” (Solé-Farràs 2008, 18). The statement shows that China tries to reconcile strict rule of law with non-coercive rule by virtue from the Confucian tradition. This is an interesting statement, considering what we saw Lee Kuan Yew say in the introduction about the status of communitarian values in politics in Asia. That statement not only reflects that Confucian communitarianism and “Western-style” civil and political freedoms are different, but also that the latter is justifiably perceived as inferior. But Zhu Rongji’s statement does not corroborate this view. Under the guise of socialism with Chinese characteristics, the CCP permits itself to add new concepts to its arsenal. This chapter will try to show to what extent the execution of this approach actually represents values of either one, or whether it merely amounts to naked pragmatism.

Considering this, we can be certain that the manifestation of the corporation in China does not reflect pure Confucian communitarianism. Judging by the statement of Zhu Rongji, it will reflect features from both liberalist views as well as Confucian views. It would be interesting to see how this reconciliation has worked out so far, especially for understanding how the corporation has manifested itself. There is a reason for saying that rule of law and rule by virtue need to be reconciled. Rule of law is a concept that is typically found in liberalist ideology, while rule by virtue is a concept more common in Confucian ideology. Although the two are not necessarily opposites, they are different. We need to know how they are different in order to see how these two are resembled in the treatment of corporation in China. We will proceed as follows. First I will show that historically speaking, what troubles China is a lack of trust, and that both rule of law and rule by virtue are suitable instruments

to remedy this. Then I will shortly explain what institutionalized rule of law typically amounts to in the treatment of corporations. After that, I will in the following order show to what extent the relationship between corporation and government in China resembles rule of law and/or rule by virtue.

Trust and corporation in China

In trying to explain the relation between government and corporation in China, I will make use of the concept of trust. The above description of what rule of law can amount to, if fully institutionalized, requires a small amount of trust. The only trust needed is trust that the system is functioning well, meaning that it indeed protects the rights it says it does. As such, rule of law is a concept or instrument which, to a certain degree, makes sure that people will respect that others have rights as well, and act accordingly. People can rely on the working of this instrument, and as such, it enables people to sort of anticipate each other's behavior. As such, it works as a substitute for trust (Yu, Beugelsdijk and de Haan 2015). This is essential for a person, or a corporation, that wants to see his interests protected against interference from others. In Confucian ideology, rites (*li*) fulfil a similar role. Let me refer once more to the contribution of roles to the workings of the system. Every entity within a community fulfils a certain role, whether it is a citizen or an organizational body or any other member of a community we can think of. Whatever role you live defines how you behave in relation to others and how others behave in relation to you. If everyone sticks to the behavior that his or her role prescribes, defined in *li*, and does this to the extent that his or her behavior perfectly matches what the role prescribes, the community as a whole would reach the Confucian ideal of harmony. At the same time, what this entails is that as long as the roles are clear, everybody within the community would be able to anticipate each other's behavior. Recall Lee Seung-hwan's quote, saying that "the members of each role are expected to know how the system works and what their expected contribution is" (1991, 52). Herbert Fingarette illustrates that "each person does as he is supposed to do according to a pattern. My gestures are coordinated harmoniously with yours [...]. Our gestures are in turn smoothly followed by those of the other participants, all effortlessly" (1972, 7-8). In order to make sure that people understand what their role requires of them, "the moral elite are in power to enforce the Way through rectification of names, education, and legislation" (Chan 2002, 292). So if the function of rule of law would be to guarantee corporations that they can expect certain behavior from government organizations, because both have to abide by a law that secures certain rights, then the *li* that define familial roles in Confucianism could fulfil a similar role, albeit through rites that prescribe the behavior of a role, and everybody trying to the best of his ability to live up to his role.

If both rule of law and rule by virtue fulfil a similar purpose as an instrument that substitutes trust, then both are similarly suitable for defining the relationship between government and corporation. So, up until here, Zhu Rongji's statement could go either way as far as defining the relation between government and corporation goes. What is more is that we must acknowledge that in fact, there is a lack of trust between government and corporation in China, and that government is trying to force trust between the two by drafting laws.

Speculating on why it is difficult for the corporate form of business to find stable ground in China, William C. Kirby says the following (1995, 58).

Given the convulsive events of twentieth-century Chinese history, it is not illogical for firms to be obsessed with the safety of assets and the maintenance of personal/ family control. More generally, perhaps underneath differences in degrees of acceptance of the corporate form in different countries, there are degrees of trust: by firms, that the government is not essentially an enemy, that laws will be enforced in a predictable fashion, that society as a whole-beyond one's kinship or native place group-is reasonably stable; by the government, that firms will (mostly) obey laws and pay taxes when due.

If this is indeed the case, then what this reflects is that the relationship between government and corporation is in fact not one of harmony, but one of conflict. The objective here should be to highlight how this situation is dealt with, and then to determine to what extent this resembles rule of law or rule by virtue. The tension here is that on the one hand, government tries to attain the role of father of the people, whereas on the other hand, the behavior of corporations expresses the desire of recognition of rights. How this tension plays out varies from time to time, making it more difficult to judge the situation overall. Huang Yasheng affirms this view when he says that “the successes of the Chinese economy are a function of conventional [liberalist] sources – private sector development, financial liberalization, and property rights security. [When economic growth faltered] it has been the result of governmental interventions, illiberal financial policies and practices, and property rights insecurity” (2008, 30). Firms were only expanding and moving beyond reliable kinship bonds when they were able to shield of their privately held assets from others and felt protected against government interference. This is not in line with opening up to the community as a whole because all within the community conceive of each other as family members. As such, their behavior implicates that they do not recognize themselves as part of a community with only common interests, in which the government should be acknowledged as father figure that knows what these common interests are. In order to determine which political values are represented in the relationship between government and corporation, subsequent sections will work out in more detail which elements of this relationship resemble rule of law, and which ones resemble rule by virtue. But first, I will show what fully institutionalized rule of law typically amounts to as far as corporations are concerned.

Institutionalized rule of law and corporation

For our point of reference, I will describe what rule of law amounts to in the treatment of corporations in liberalist countries. Since rule of law is typically found in liberalist ideology, this will help us get a better understanding of the concept. Again, without going into too much detail, but for the sake of clarification, let me point out some features that are important. The corporation understood as a group of individuals that came together and pooled resources in order to collectively pursue certain interests, requires acknowledgement in terms of the existing paradigm of a community. Where rule of law is fully institutionalized, corporations are recognized as a person with certain rights or privileges before law. It is not an actual person, but it is perceived as such in order to fit the paradigm. In this light, the corporation is therefore accurately called a legal fiction (Ciepley 2013). Within the liberalist

framework, it is the interests of the individual that are most important, and these interests should be protected against interference from the public. In order to protect individual interests, all individuals have certain rights, and these rights are incorporated in and protected by law. The law is here an instrument to protect an individual from interference by others. Within this sphere, it is not difficult to conceive of individuals competing with each other in order to pursue their interests, just as long as they can be certain that protection of their rights is guaranteed. More specifically, the following privileges are protected by law (Claassen 2017, 5-6). It is secured by law that the assets of investors in a corporation are shielded from that corporation's creditors; vice versa, that corporations enjoy limited liability, since their assets are protected against creditors of their investors; that investors can at no point withdraw their investment, but they can transfer their investment to others as shares to regain their assets; and that investors enjoy the right to choose management. These are aptly called privileges because even though just like rights they are protected by law, they do not enjoy the same status of sacredness as certain human rights such as freedom of speech.

Rule of law and corporation in China

As stated by Zhu Rongji, what we see in China does indeed, at least superficially, resemble features from both rule of law and rule by virtue. If rule of law is a concept typically seen in a society in which individual rights are protected against public interference, then we must look for traces of protection of individual rights in China. On the one hand, there are. It is pointed out that already in imperial China, disputes about rights to property were settled through rule of law (Ruskola 2013, 91). But back then, rights to property were not yet included in the law. This had to wait until the 1944 revision of the Company Law, which required the recognition before law of property rights of foreign corporations in order to attract foreign investment in Chinese companies (Kirby 1995, 54). But the extension of this recognition to Chinese indigenous corporations held off a little longer. As Huang Yasheng points out, "the explicit and strong legal protection of private property was not promulgated until the 2004 Constitutional amendment and the 2007 Law of Physical Property" (2008, 94).

What this development shows is that at least in how the laws are drafted, the rights of corporations to act on their own interests, separate of those of government or even the community at large, gain more recognition. The 1944 revision resulted in the recognition of such rights for foreign corporations, and with a few hurdles in the way such rights were recognized more widely to Chinese corporations over the past decades. But it is one thing to draft laws suggesting a separation of interests, and another to enforce them. If this were to resemble strict rule of law, then what enforcement of these laws has to amount to is that the possibilities for government to trump these rights are limited to the extent that its sole responsibility is to settle rights disputes and to prevent harm. So for instance, what it should mean to actually guarantee property rights, is that only the holder of property can determine how to put that property to use, unless in doing so harm is inflicted upon others or others' rights are interfered with. Other grounds for interference are impermissible. But Chinese government permits itself to interfere on other grounds that reach much farther.

And as such, we cannot speak of any relevant institutionalization of rule of law for corporations.

Rule by virtue and corporation in China

What is more is that on the other hand, we see that government is struggling to establish a legitimate basis for interference with corporations. The authority of government as father would be legitimate from the hierarchical perspective of Confucian rule by virtue. Legitimate grounds for interference extend much further in Confucian ideology than they do in liberalist ideology. This was explained in the earlier discussion on room for freedom of choice in Confucian ideology. Rule of law as described from the liberalist perspective contains a lot of elements that we already encountered there, such as personal autonomy and how this should be protected against public interference, except on the grounds of preventing harm. But Confucian communitarianism permits more room for interference in the lives of individuals because of the function that familial roles fulfil. The Confucian concept of rule by virtue means that every person or every organization, body, or other entity should live up to his role to the best of his ability. Only when your behavior perfectly reflects your role can you become virtuous, and if all within the community achieve this, all will live together harmoniously. On this view, the state is allowed to penetrate much deeper into the lives of its citizens.

It is also the case that on the Confucian view, this entails that the state is to perform the role of the father, and is therefore not only allowed, but even virtuous when it interferes into the lives of the people (his sons) in order to make sure that they live a good and healthy life. After all, his ultimate goal is to be benevolent. Put this way, there is an opening for interpreting the government's attempts at drafting rules that permit more interference, as attempts at trying to fulfil their role as a father. An important note to this interpretation is that saying that more interference reflects the role of a virtuous father is to speculate of course on why government wants to permit itself to interfere more. Government may say that interference will benefit the people, which in the case of China is expressed for instance in the claim that it is a necessary means to strengthen China's position in relation to other countries and to build a stronger nation. Upon such claims, it is important to preclude that there are ulterior motives for interference. However, it is beyond the abilities of this thesis to examine whether these claims are true.

That said, it is clear from an historical perspective that government is struggling in its attempts to establish a legitimate basis for interference. The exact point of contention between government and corporation in these different attempts is the amount of government interference that is permitted, which resulted in the many revisions of the Company Law. Government pushes for more permission, while corporations push for less. Registration under the law required businesses to hand over detailed information, in order to make sure that businesses did not interfere with public interests defined by government. Take again for example the 1929 version's requirement of paying a registration fee and handing over detailed financial statements, which were supposedly contributing to the collectivization of property and the goal of nation building (Kirby 1995, 54). It only fits the

role of the government as father of the people to determine what is good for them and what not, and to interfere with corporations based on this knowledge is what the government as a father should do. Keeping in mind that we are uncertain if government in fact acts on these grounds, it is possible to interpret the many versions of the Company Law as legitimate attempts at trying to create a basis for interference. It is the privately run businesses that demand less interference, forcing government to do concessions. Although there is no denying that privately run foreign businesses also made a considerable contribution to this force, many Chinese indigenous companies refused to register under the Company Law as well (Kirby 1995, 48, 50; Ruskola 2000, 1680, 1685), indicating that they too were unhappy about these regulations.

This is where the shoe pinches. Can we speak of institutionalized rule by virtue if not both parties in the relationship fulfil their part to the best of their ability? If a father expresses role-conforming behavior, then his son must accept this behavior, and reciprocate by also expressing role-conforming behavior. A government as a father figure can only be benevolent if the corporation as his son is willing to be obedient. Otherwise the behavior does not have the desirable effect. It is difficult to judge this situation. On the one hand, the development in Company Law reveals that government is clearly struggling to establish a legitimate basis for government interference. Corporations have shown to be reluctant to accept the provisions of this law that permit government interference. Instead, Chinese family businesses are trying to keep the head members of the family in control, because they are wary of both the public and government. There is a lack of trust between the two parties that should not be there if their relationship were to resemble an harmonious family. On the other hand, however, there are examples of situations even today where corporations can be seen as an extension of government. Take for example the recent experimenting with the social credit system in China. This system uses “real-name registration systems and big data management to create records of [people’s] digital conduct”, and as such “social credit is best understood as part of China’s growing surveillance apparatus. [It] adds something to the security at the expense of privacy” (Daum 2017). Yet elsewhere it is described as a “state-sponsored effort to score Chinese citizens based on their financial and behavioral data, yielding numbers that are meant to represent both how financially responsible and how ‘trustworthy’ people are” (anminda 2017). For our purpose, it is not necessary to deliberate too much on whether this is indeed a legitimate political goal. What is relevant about this situation, however, is that corporations such as Alibaba and Tencent are experimenting with this system as well, and that government is making use of data collected by corporations that run such pilots. It is pointed out by Samuel Wade (2018), for instance, that “as law enforcement access to WeChat messages and other advanced new surveillance technologies demonstrate, the lines between corporations and government are profoundly blurred.” In spite of this, government regulations around privacy seem to reflect that government and corporation are two separate entities. Chin and Yap point out (2018) that “the national personal information security standards, for example, offer privacy protections on par with the U.S., requiring companies to inform users when they are collecting personal data and to keep data collection to a minimum. Yet China’s cybersecurity law allows broad government access to user data in the name of public security.” What can be said about this

situation at best is that, although corporations do in effect express government interests in situations like this, this is not to say that corporations believe it to be their responsibility to do so. Since it is difficult to say what the motives of these corporations are, we cannot conclude whether they accept the authority of government as a father or not.

The grey area in between

Actually, what both previous sections describe is that the relationship between corporation and government neither describes fully institutionalized rule of law, nor does it describe fully institutionalized rule by virtue. All examples we have encountered so far show that the relationship in practice plays out somewhere in the grey area in between. There are numerous other examples of all varieties. Take for instance this example described by Huang Yasheng (2008) that was successful in securing the rights of private entrepreneurs, but does not resemble rule of law, as you would expect. Instead, all it shows is the expression of consistent behavior. During the Cultural Revolution, going into private commerce would result into being arrested. So, in order to establish trust that private property rights were secured, trust in the security of proprietors had to be established. Where private entrepreneurship was much needed, reform policies of the 80s were aimed at making sure private entrepreneurs trusted that they no longer feared the fate of being arrested, and that their private property was secure. In Qinhe county of Hebei province, “the first policy act [to that end] by the county government was to rehabilitate more than 100 individuals who had been prosecuted during the ‘anti-capitalist tail’ campaign of the Cultural Revolution. The county government also awarded the title of ‘model worker’ to individuals who grew rich. [By] the late 1980s, Qinhe had developed a sizeable cluster of industries (all based on household business), and it was a large supplier of motorcycle components” (Huang 2008, 95). Moreover, policy setbacks were resolved by local officials publicly and proactively reversing their mistakes.

This case does not resemble rule of law, since even though the aim of this policy was to establish property rights security, ultimately there was no legal institution to fall back on in case these rights were violated nonetheless. If anything, I would say it resembles rule by virtue, but not based on the Confucian communitarian model of familial roles and their corresponding behavior. Consistent behavior as a mechanism or system for organizing communal affairs is something you would expect from rule by virtue, but what lacks in this specific case is the hierarchy in the relationship. What is exemplary about this case for describing the relationship between government and corporation in China is the fact that government values aspects from both rule of law and rule by virtue, but it is struggling to institutionalize these elements simultaneously.

V. Conclusion

In this concluding chapter, I will both summarize the main findings of this thesis, as well as reflect upon what these findings entail for The EU and The Netherlands with regards to China becoming the next global economic leader. The main objective of this thesis was to

explore to what extent the relationship between government and corporation in China reflected Confucian communitarian values. It is often stated about Asia in general, and about China more specifically, that the way their society is arranged reflects communitarian values rather than liberalist – or in Lee Kuan Yew’s words, individualist – values. However, this thesis has pointed out that this is not a straightforward case. What defines the relationship between corporation and government in China reflects elements found in both Confucian communitarian as well as liberalist views on politics. The historical development of the Company Law shows that government is trying to establish a legal basis for property rights, while at the same time government maintains control over the economy in general and corporations in particular. This can be interpreted as reflecting both the recognition from a liberalist point of view that rights need protection against public interference, as well as the Confucian communitarian notion of the state as father or benevolent ruler of the people. However, without committing to any position on the fundamental possibility of reconciling these two, it is clear from an historical perspective that reconciliation is not achieved easily. Neither of both values seems to have been fully institutionalized, not property rights protection nor legitimate government interference. Be that as it may, I think it is safe to say that in the direction that government is going, it is not trying to preclude the one or the other. When government comes around fully institutionalizing their goals, this will therefore presumably contain both a legitimate basis for government interference, as well as the legal protection of rights for corporations.

Which brings me to how this is relevant for the changing global economic order. What is the relevance of knowing which political values are represented in the relationship between government and corporation in China for the EU? First of all, the one thing that the Chinese government is struggling with is how it should deal with corporations that act on interests that not necessarily accord with government interests. In other words, it has difficulties in dealing with corporations that act on their own interests alone, irrespective of whether these complement government goals. That includes many of the numerous private corporations in Europe. Historically speaking, this is not a new phenomenon, but what is different now is that the Chinese government has the upper hand. As such, it will be a larger disadvantage to corporations of which the interests do not complement the goals of the Chinese government than it was before. This is a difficult situation to deal with, but it will surely help corporations in preparing when they know how government and corporation relate to each other.

What is more is that Chinese corporations are spreading across the globe rapidly. When I look around me, I see more and more people using multimedia devices from Lenovo or Huawei, indicating that the corporations behind them are firmly establishing their position in global trade. As is the case with any product you purchase as consumer, it is important to be aware of which parties you are getting involved with. But more importantly, as a political establishment, we should be aware that these corporations gaining more ground are not the same sort of entity that we are familiar with. The Chinese government plays a different role in relation to these corporations than we are used to, which begs the question of how these entities should be dealt with. Do we have an appropriate framework at our disposal for

dealing with an entity of this kind? This would be an interesting question for further research.

Another interesting topic for further research would be what the changing global economic order would entail for the discussion on the social responsibility of corporations. As Rutger Claassen points out (2017, 2-3), the corporation is often perceived as a private institution, within a paradigm of a public and a private sphere. Both within the philosophical discourse about what the social responsibility of corporations should be, as well as in the universal guidelines determined by the WTO, the corporation is assumed to be just that. But it would be interesting to see what a changing paradigm would entail for this responsibility. It is pointed out that currently, China is trying to achieve standards set by the WTO (Lu 2009, 454). But a different institutionalized paradigm combined with a new global economic order might just as well pose a challenge for these existing standards.

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