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Genealogies of the “rule of virtue” in Chinese law

Some linguistic remarks on the character 德 (*dé*)

Gianmatteo Sabatino *

ABSTRACT: This article examines the historical and contemporary meanings of the character 德 (*dé*) in Chinese legal and political thought, focusing on its role in the idea of 德治 (*dézhì*), or “rule of virtue.” Through linguistic, palaeographic, and conceptual analysis, it reconstructs the genealogy of 德 from its early appearances in Western Zhou bronze inscriptions to its development in classical Chinese philosophy and modern Chinese law. The article argues that 德 originally combined public, political, ritual, and moral dimensions, functioning as both a source of sovereign legitimacy and a practical standard of governance. In Confucian thought, 德 became a comprehensive ethical and pedagogical paradigm, closely linked to ritual order and social harmony. The article then explores how contemporary Chinese law, especially under Xi Jinping, has revived and transformed the rule of virtue by integrating moral standards into legal governance, Party supervision, civil law, company law, and oversight mechanisms. It suggests that this revival reflects both continuity with Chinese legal tradition and a politically oriented attempt to place morality under the interpretive authority of the Communist Party. Ultimately, the article shows how contemporary Chinese law challenges Western assumptions about the autonomy of law from morality and politics.

KEYWORDS: 德 (*dé*); rule of virtue; Chinese law; Confucianism; morality and governance.

SUMMARY: 1. Introduction; 2. Palaeography and etymology of 德; 3. 德 and classical Chinese political thought; 4. The revival of the rule by virtue and the mentions of 德 in contemporary Chinese law; 5. Conclusion.

1. Introduction

Since the rise to power of current CPC General Secretary Xi Jinping, Chinese law has been undergoing a profound moral turn¹. This trend is exemplified by the decisive emphasis placed by the Chinese political leadership on the combination of the “rule of law” (法治 – *fǎzhì*) with another concept seemingly derived from the earliest history of Chinese political thought: the concept of 德治 (*dézhì*), generally translated as the “rule of virtue”². The connection, when not the conflict, between law and virtue is certainly one of the most fascinating and unresolved issues in the history of Western legal thought.

As law emerged as an allegedly independent field of human knowledge – with the Roman *ius*³ – its link with virtue has always been at once desirable and connoted by an inevitable separateness. Such ambivalence is well portrayed by the famous definition of Celsus: *ius est ars boni et aequi*. Therefore, the “good” may very well be the object or the purpose of the “ars” of law⁴; however, it cannot be its functional equivalent.

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¹ ZHAO CHUANHAI, 习近平法治思想的道德底蕴 (*The moral connotation of Xi Jinping's thought on the rule of law*), in *Henan caijing zhengfa daxue xuebao*, 6, 2021, 1 ff.; DU YANLIN, HU XI, 现代法律德性转向及其中国启示 (*The moral turn of modern law and its revelation in China*), in *faxue*, 10, 2018, 65 ff.

² WU GUOPING, ZHANG SHUTONG, 习近平以德治国与依法治国思想相结合之实施路径研究 (*Research on the implementation path of Xi Jinping's thought about the integration of governing the country through law and through virtue*), in *Haixia faxue*, 2020, 27 ff.

³ A. SCHIAVONE, *Ius. L'invenzione del diritto in occidente*, Turin, 2017.

⁴ L.B. SOLUM, *Virtue as the End of Law: An Aretaic Theory of Legislation*, in *Jurisprudence*, 9, 2018, 6 ff.

Moral evaluations about law then deal essentially with the way the latter pursues virtuous aims. The idea that virtue itself can function as an autonomous (albeit complementary) standard of governance, in principle capable of enabling governance even in absence of the law, eschews, for the most part, the Western idea of legal science.

Eastern legal traditions developed different approaches, which reflect upon current narratives. Indeed, the simultaneous application of law and virtue as instruments of governance has been at the core of Chinese legal-ideological discourse both in its embryonal stage and in recent years. Multiple perspectives may be fruitfully employed to assess this phenomenon.

Undoubtedly, the incorporation of the “rule of virtue” into the official narrative of the CPC implies an appropriation, by the Party leadership, of ethical paradigms belonging to traditional Chinese culture, in order to shape their contemporary application by filtering them through the values and norms upheld by the Party itself⁵. It is, indeed, no surprise that one of the earliest uses of the character 德 in modern Chinese legislation appears in Article 11 of the Oversight Law, which empowers oversight commissions to evaluate the conduct of public officials on the basis of standards of moral integrity (道德操守 – *dàodé cāoshǒu*), in addition to standards related to compliance with laws and regulations.

On the other hand, “virtue” and the “rule of virtue” are also concepts traditionally associated with flexible approaches to governance, thus partially contradicting the appeal to certainty inherent in the strengthening of legalisation and codification trends in modern China⁶. The combination of *fǎzhì* and *dézhì* therefore constitutes an operation which, while ideologically appealing, displays several potential contradictions.

In light of the plurality of interpretative dimensions associated with this notion, one research perspective appears particularly suitable for attempting a comprehensive reconstruction of the overall meaning of 德 in the historical trajectory of Chinese law, namely that of linguistic analysis.

Indeed, 德 (*dé*) as a character has been associated with vastly different meanings belonging to distinct semantic fields, ranging from that of political legitimacy to that of individual self-cultivation and social governance. While analyses of historical sources, as well as reconstructions by Western scholars, have over the decades consolidated a conceptual image of traditional Chinese law as revolving around the opposition between “law” (*fǎ*, 法) and “rite” (*lǐ*, 礼), the dichotomy between *fǎ* and *dé* may be even more salient, especially given that rituality essentially functioned as the form through which virtue was expressed, thereby ensuring cosmic order.

Nowadays, the attempt to adapt the “rule of virtue” to the ideology of the CPC constitutes a powerful operation which, however, is deeply rooted in the cultural significance of the concept—and of its corresponding character—for the formation of the Chinese legal tradition. The purpose of this brief paper is to provide some general remarks on the role of *dézhì* in Chinese law by taking the analysis of the character 德 as a starting point, thereby reconnecting modern and ancient conceptions of rule through virtue.

2. Palaeography and etymology of 德

In modern Chinese, the character 德 is composed of three elements. The first is the radical 彳 (*chì*), indicating movement, specifically a step with the left foot. The second element, located at the top right of the character, is 直 (*zhí*), meaning “upright” or “straight”, thus conveying an idea of rectitude. The third element, at the bottom right, is the character 心 (*xīn*), representing the heart⁷.

Notably, some authors, including the Han dynasty philologist Xu Shen (58–148 CE), identified a slightly more ancient equivalent of 德 in the character 惠 (with the same pronunciation and meaning), the latter lacking the radical 彳. However, this thesis has been disputed by scholars who emphasise that while 惠 appears in several sources from the Warring States period (c. 475–221 BCE), 德 (with the

⁵ R. CREEMERS, S. TREVASKES (eds), *Law and the Party in China*, Cambridge, 2020.

⁶ On the notion of rule of law in China and its evolution see I. CASTELLUCCI, *Rule of Law and Legal Complexity in the People's Republic of China*, Trento, 2012.

⁷ S.A. BARNWELL, *The Evolution of the Concept of De 德 in Early China*, in *Sino-Platonic Papers*, 235, 2013.

radical 彳) has been attested in earlier sources from the Western Zhou dynasty (c. 1046–771 BCE). Therefore, 惠 cannot be regarded as a primordial form of 德⁸.

The meaning of 德 is consistently associated with moral goodness, indicating virtue, kindness, or morality. It appears in a relatively limited number of compound words, most of which belong to the same semantic field, such as 德育 (*déyù*, moral education), 德行 (*déxíng*, moral conduct), 道德 (*dàodé*, morality or ethics), 品德 (*pǐndé*, moral character), and 美德 (*měidé*, virtue or fine quality).

A notable exception is the word 德国 (*Déguó*, Germany), in which 德 is employed for purely phonetic reasons; it also forms part of a broader set of words containing 德 and relating to Germany or the German language.

From a historical perspective, and focusing on the alternative form 惠, it appears that the original meaning of *dé* derived from a combination of a proactive notion expressed by 直 (“being straight” or “setting things straight”) and a psychological motus represented by 心, which conveys the “inner” quality of such straightness. On this basis, Boodberg proposed the neologism “arrective” (and the corresponding nouns “arrectivity” and “arrectitude”) to convey the meaning of 直 within the notion of 德/惠, while the neologism “enrective” would express the combination of 直 and 心, with the sense of “possessing the inner capacity or quality to be straight”⁹.

As the same author further notes, an additional layer of complexity is introduced by the internal structure of 直, which consists of a cross — 十 (*shí*, indicating the number ten, but also connoting “perfection” or “completeness”) — and the character 目 (*mù*), meaning “eye”¹⁰. The earliest forms of 直, in fact, consisted of an eye surmounted by a straight line. Accordingly, 直 could also convey the meaning of “seeing straight”. From this perspective, the etymological background of 德/惠 may include references to acts of “direct inspection”, in the sense of “looking straight” at something¹¹.

This observation opens the way to interpretations that connect the earliest notions of “virtue” not only—or not primarily—with ethical or moral dispositions, but rather with a capacity for incisive discernment. Some scholars have attempted to trace a conceptual link between 德 and certain oracle-bone inscriptions from the Shang dynasty (c. 1200 BCE) depicting the pictograph of the eye. The proposed common semantic field is thus that of “seeing” or “observing”, as these primitive characters may have referred to military activities of reconnaissance or inspection¹². On the other hand, similar characters have also been associated with different semantic domains, including religious practices such as sacrifice¹³.

Furthermore, the character 直, which—through its association with the pictograph of the eye—would establish the link between 德 and the semantic field of “seeing”, is relatively uncommon in early sources such as oracle bones and bronze inscriptions. Where it does appear, it tends to refer more to straightness and moral rectitude than to the act of discernment.

The difficulties encountered by scholars in reconstructing ancient patterns of pictographic evolution are partly due to the fact that Shang dynasty materials—especially oracle-bone inscriptions—do not appear to contain the character 德. The earliest attestations of the character date to the Western Zhou dynasty (c. 1046–771 BCE) and are found in inscriptions on bronze ritual vessels¹⁴.

Scholars have emphasised that these inscriptions demonstrate the relevance of a notion of 德 in pre-Confucian times¹⁵. However, determining the precise meaning of this notion remains a particularly challenging task. The proximity of 德 to other characters associated with “seeing” or “brightness” has

⁸ *Ibid.*

⁹ P.A. BOODBERG, *The Semasiology of Some Primary Confucian Concepts*, in *Philosophy East and West*, 2, 1953, 317-332.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² S.A. BARNWELL, *op. cit.*

¹³ *Ibid.*

¹⁴ A.K. LEUNG CHAN, *Interpretations of virtue (de) in early China*, in *Journal of Chinese Philosophy*, 38, 2011, 134-150.

¹⁵ *Ibid.*

led some scholars to hypothesise a connection with the supervision of people's conduct, as well as with a sense of "enlightenment" enabling rulers to enforce virtue effectively within society¹⁶.

It has also been suggested that a primordial form of the character may have consisted solely of the "eye" signfic, combined with two crossing lines above it, together with a movement signfic (which later developed into the radical 攴). During the Western Zhou dynasty, the "heart" signfic (心) may have been added, although it is also possible that different forms of the character 德 coexisted¹⁷.

Interestingly enough, in Indo-European languages we do not seem to find, in terms indicating virtue, an etymology associated with the act of "seeing" or "discerning". The Greek word ἀρετή (*arete*), frequently employed in a wide array of literary sources and commonly translated as "virtue", originally indicated only a specific quality of things, that is the capability of fulfilling one thing's function or one's duties¹⁸.

The semantic field of the word was later expanded to include moral attitudes which we commonly associate with virtue, and it was through its association with ἀρετή that the Latin word *virtus* (deriving from *vir* – man) acquired its most common meaning.

Regardless of its specific etymology, the Chinese character displays a prominent relational significance, addressing both the inner disposition of men and their relation with the outer world.

The presence of both the "heart" and "movement" significs, even in early sources, appears to indicate that 德 already conveyed both a proactive dimension and an inner, psychological aspect.

Notwithstanding the extreme scarcity of information concerning these primordial uses of 德, the analysis of the inscriptions seems to highlight two relevant conceptual points: in the first place, 德 is a notion which has to do, first and foremost, with the public sphere. It is an attribute of sovereigns; an outstanding ability connected with the exercise of power¹⁹.

Secondly, 德 displays an exemplary meaning: it is not something theoretical, it is always functional to the enforcement of certain standards of conduct²⁰. "Virtue" therefore comes to represent both a concept and its application in the concrete reality.

3. 德 and classical Chinese political thought

According to Chinese leading scholar of political thought Liu Zehua, 德 originally expressed a religious concept which very soon, already during the Shang dynasty, also came to exert influence upon human affairs²¹. It thus turned into a mixed, hybrid concept combining instances of religious, political and social governance²².

Indeed, the materials we have at our disposal are solely ritual and religious ones. Both oracle bones and bronze vessels were employed in ritual ceremonies reserved to nobility. The ancient Chinese language that scholars study is therefore inherently connected with both a religious dimension and an aristocratic one. We are not able to know whether 德 possessed spiritual or secular meanings depending on the context in which it was employed.

¹⁶ *Ibid.*

¹⁷ S.A. BARNWELL, *op. cit.*

¹⁸ M. FINKELBERG, *Virtue and Circumstances: On the City-State Concept of Arete*, in *The American Journal of Philology*, 123, 2002, 35-49.

¹⁹ LIU ZEHUA, *中国政治思想史 (History of Chinese Political Thought)*, Hangzhou, 2020, 12 ff.

²⁰ A.K. LEUNG CHAN, *op. cit.*

²¹ LIU ZEHUA, *op. cit.*, 12.

²² *Id.*, 12 ff. and 22 ff.

On the other hand, it is widely known that rituality was a constitutive component of political governance in ancient China²³. The concept of “rite” (礼 – *lǐ*) has been regarded by some as a “constitutional” structure of Chinese polities, especially starting with the Zhou dynasty²⁴.

德 is deeply connected with a ritual dimension already in the Shang Dynasty²⁵. It is a quality of a proper rite (e.g. towards the ancestors); on the other hand, it is also a quality of those who properly perform rites²⁶. 德 seems to function, to a certain extent, as a criterion to affirm the nobility of a member of the society, as an indicator of a social status. From this perspective, 德 can be intended as a moral but also civic “virtue”.

The crystallisation of the equivalence between 德 and a comprehensive notion of virtue occurs with the Zhou Dynasty, when “virtue” is ingrained in the mechanism of legitimisation of royal power and becomes part of the doctrine of the Heavenly Mandate (天命 – *Tiānmìng*). That who is virtuous can be king; those who lack virtue are lost to the heaven. Subjects can lawfully revolt against a non-virtuous ruler.

As virtue becomes a key component in the process of legitimisation of rulers, 德 comes to signify not only a moral attitude, but also an approach to administration, which is reflected in the concepts of 保民 (*bǎo mǐn* – protecting the people) and 慎罰 (*shèn fá* – being cautious with penalties)²⁷. Both concepts are considered to be epiphanies of 德: the first one expresses the necessity of taking into account people’s sentiments when governing them, implying the capability of the ruler to restrain himself from taking actions which could hinder welfare and stability. The concept of 慎罰 mirrors a similar attitude, but focusing on the rationality in the governance of punishments (刑 – *xíng*): indeed, virtue demands that punishments are adjusted not merely according to the severity of the crime committed but also to the psychological attitude of the author: severe crimes committed without intention and without persevering can be punished more leniently than small crimes committed with intention and perseverance²⁸.

Overall, both these manifestations of virtue in the technique of administration represent, according to authors, a decisive change in the passage from the Shang to the Zhou dynasty. While it is recognized that 德 played a political function already under the Shang, it is also acknowledged that a notion of unrestrained royal power led Shang rulers to impose unfair and impious punishments, thus provoking instability and resentment among the people²⁹.

Virtue, in the Zhou dynasty, becomes a complex and comprehensive paradigm of governance: it keeps its ideal connection with light as far as it becomes 明德 (*míngdé* – “bright virtue”)³⁰ but at the same time and probably more interestingly, acquires a decisive psychological dimension which establishes a logical connection between public governance and individual moral and ethical stances.

This is the “virtue” that Confucian thought looks upon and takes as main criterion of social order.

In Confucianism, the notion of 德, while not wholly losing its original semantic roots, makes a leap forward toward the establishment of a comprehensive moral framework to give order to the society. “Virtue” and “rituality” become conceptually inseparable. In the Confucian texts, as well as in their commentaries and then in modern books and papers, the notion of 德治 (rule by virtue) is overshadowed, from a historical perspective, by the concept of 礼³¹.

²³ MA XIAOHONG, 中国古代法文明的模式 (*The Model of Ancient Chinese Legal Civilization*), Beijing, 2023, 89 ff. and 137 ff. On the same topic, and on the relation between rituality and law in ancient China see, among many, W. MENSKI, *Comparative Law in a Global Context*, Cambridge, 2006, 505 ff.; U. KISCHEL, *Comparative Law*, Oxford, 2019, 678 ff.; P. GLENN, *Legal Traditions of the World*, Oxford, 2014, 320 ff.

²⁴ MA XIAOHONG, *op. cit.* 142.

²⁵ LIU ZEHUA, *op. cit.*, 12.

²⁶ LI LANFEN, 当代中国德治研究 (*Research on the Rule of Virtue in Contemporary China*), Beijing, 2008, 28-29.

²⁷ LIU ZEHUA, *op. cit.*, 23 ff.

²⁸ *Id.*, 25.

²⁹ *Id.*, 24.

³⁰ *Ibid.*

³¹ YU RONGGEN, 儒家法思想通论 (*Introduction to Confucian Legal Thought*), Beijing, 2018.

On the other hand, with Confucius, 德 also undergoes a partial “democratisation”, in the sense that it becomes an ethical paradigm applicable not only and not necessarily to nobles, but potentially to everyone. The extensive and comprehensive nature of Confucian social designs – proceeding from the individuals to small social units like families to bigger ones up to the kingdom – makes 德 more universal than it had previously been. At the same time, its exemplary and pedagogical function is strengthened³². Acting according to virtue equals to carrying out acts of governance: this holds value for familial communities as well as for big polities.

In Confucianism, 德 reaches the apex of its theoretical and philosophical development. It brings together secularization and moralization of human conduct. 德 is generated by the supernatural force of heaven (天 – *tian*), the same force which confers the mandate to rule the world. On the other hand, however, 德, when embedded in humans, is a force to be developed, fostered through learning, practice, exemplary behaviour. Different degrees of 德 can apply to different groups of people, thus reflecting a moral dimension of social stratification³³.

Confucian 德, thus, becomes a doctrine of governance, filtered through rites as formal paradigms of social order, but also possessing a distinctive inward and pedagogical projection. The “rule of virtue” is what ultimately gives men the conceptual tools to “rectify the names” (正名 – *zhèngmíng*)³⁴, i.e. to recognize everyone’s place in society and to act accordingly, thus ensuring harmony and prosperity for the whole world.

It is clear how, from such perspective, the role of 德 in Confucianism is much more akin to a legal paradigm than it occurs with other cornerstones of traditional Chinese thought, such as with Taoism. In the Daodejing (道德经), i.e. one of the fundamental texts of Taoism, the use of 德, and the pursuit of virtue, are related with a psychological abstention from secular affairs.

Indeed, one of the most famous passages of the Daodejing (i.e. the beginning of Chapter 38) states that «[the person of] superior virtue does not act virtuously, therefore he/she/it is virtuous; [the person of] inferior virtue acts or tries not to lose virtue, therefore he/she/it has no virtue»³⁵. As it has been noted, the structure of such sentence expresses an apparent paradox which serves the function of putting into question the Confucian uses of 德. Here, the conscious pursuit of virtue (“acts of tries not to lose virtue”) may lead to a lack of virtue, whereas the apparent indifference to virtue is a manifestation of virtue itself.

Ultimately, after the establishment of the Imperial rule in 221 BCE and a brief stint with hardline legalism during the Qin dynasty (i.e. the dynasty that established the empire), Confucianism and the notion of ruling “by virtue” ascended to the status of official doctrine, already with the Han dynasty (206 BCE – 220 CE)³⁶.

However, with such development also came a decisive functionalization of 德 to necessity of consolidating imperial power. Virtue became part of official narratives which often cherry-picked selected concepts and paradigms of the Confucian tradition in order to uphold despotic rule³⁷.

“Virtue” was thus combined with “Law” (法 – *fǎ*) in the meaning developed by the Legalist school³⁸. Indeed, it is now acquired knowledge that the Chinese imperial legal system was far from the picturesque ritual-based Confucian landscape imagined by Western scholars in the 19th and early 20th century. Imperial law was often connoted by a process of codification and “juridification” of rituals.

³² YANG CHEN, 古典德治的依宪治国功能——有关“德法合治”论的补充性说明 (*The Constitutional Function of Classical Virtue-Based Governance—A Supplementary Explanation about the Theory of “Combined Rule of Virtue and Law”*), in *Zhongwai faxue*, 1, 2023, 106 ff.

³³ XINZHONG YAO, *De and Virtue in Early Confucian Texts: Introduction*, in *Journal of Chinese Philosophy*, 48, 2021, 5-12.

³⁴ CONFUCIUS, *Analects*, Book XIII Ch. 3.

³⁵ The translation used is that of H.K.T. YAN in *A Paradox of Virtue: The Daodejing on Virtue and Moral Philosophy*, in *Philosophy East and West*, 59, 2009, 173-187. The original passage written in simplified Chinese is as follows: 上德不德，是以有德；下德不失德，是以无德。

³⁶ LI RUOHUI, 久旷大仪——汉代儒学政制研究 (*Long-Abandoned Ceremonies – Research on the Confucian Political System in the Han Era*), Beijing, 2018.

³⁷ *Id.*, 214-218.

³⁸ YANG CHEN, *op. cit.*

Imperial bureaucracy – increasingly selected through exams based on Confucian classics – often acted without being bound by the will of the monarch, directly drawing its legitimacy from its selection processes³⁹; nevertheless, it was still part of the Imperial machine, and its virtue-based governance was balanced by the presence of Imperial codes which local magistrates, when adjudicating disputed, constantly applied.

Furthermore, it should be argued, ritual-based social institutions and orders were inevitably, anthropologically speaking, self-preserving, therefore using references to virtue and to rites to ensure their perpetuation throughout history and their power *vis-à-vis* the other components of the complex imperial society.

From such perspective, therefore, “virtue” in Chinese imperial law was not fully meritocratic, nor did it represent an absolutely coherent governance system⁴⁰.

The 德治 (rule by virtue) eventually underwent, in the last centuries of the Chinese empire, the same process of “crystallization” which led imperial institutions to be perceived, outside China, as backward, inherently conservative, inefficient and slow. Chinese legal reforms, for more than a century, were thought, attempted and construed on the basis of an implicit rejection of 德 as a formal criterion of social ordering. It surely survived, in both Nationalist and then Communist China, as a silent legal formant, a peculiar cryptotype too ingrained in the Chinese thought to be discarded. Its external manifestations, however, were often *contra legem*: for instance, “virtue” was assumed to govern relational networks able to operate decision-making processes and business on the basis of personal and moral hierarchies competing with the authority of the ruling party or at the very least forcing it to decentralize or “sub-contract” governance powers⁴¹.

4. *The revival of the rule by virtue and the mentions of 德 in contemporary Chinese law*

The ethics of government have become a key topic in the ideological discourse of Xi Jinping⁴². If, especially during his first term as general secretary of the Party, moral attitudes to law were mostly meant to support the anti-corruption campaign, starting from the constitutional reform of 2018 (when Oversight Commissions were established) the scope of moral governance has rapidly expanded.

The combination between rule of law and rule of virtue signifies the existence of an ideological scheme which, in principle, interprets Socialism with Chinese Characteristics not only (or not mainly) through a purely Marxist and “materialist” perspective, but rather through an ethics-driven one⁴³. Such ethics, fit for the “new era” stem from a mixture of nationalism and historical revisionism aiming at presenting moral paradigms of governance as typical of the Chinese tradition, and, at the same time, entrusting the Communist Party with the power of interpreting them⁴⁴.

The old trend of “legalization” of virtue thus enters into a new stage, supported by the theoretical tools of Leninism – i.e. the Party as the vanguard of the people – and by the operative instruments derived from the adjustments of foreign legal models.

So, references to morality (道德 – *dàodé*), direct and indirect, are found scattered in the civil code. In the general principles, morality underlies the construction of some general principles such as

³⁹ ZHANG XINGJIU, 儒家‘无为’思想的政治内涵与生产机制——兼论‘儒家自由主义’问题 (*The political connotation and production mechanism of Confucian “non-action” thought – also reflecting on the problem of “Confucian liberalism”*), in *Zhengzhixue yanjiu*, 2, 2002, 74 ff.

⁴⁰ YANG CHEN, *op. cit.*

⁴¹ LI-AN ZHOU, *Incentives and Governance: China's Local Governments*, Singapore, 2010; XUEGUANG ZHOU, HONG LIAN, *Modes of Governance in the Chinese Bureaucracy: A “Control Rights” Theory*, in *The China Journal*, 84, 2020, 51-75.

⁴² CHUANHAI ZHAO, *op. cit.*

⁴³ See, for instance, the Resolution of the CPC Central Committee on the Major Achievements and Historical Experience of the Party over the Past Century of 2021, on which see G. SABATINO, *Comparare (con) la Cina. Prospettive e spunti a partire dalla nuova Risoluzione storica del Partito Comunista Cinese*, in *Nomos*, 2, 2022.

⁴⁴ GUO ZHONG, 道德势能与德治秩序的生成机制 (*Moral potential and the generation mechanism of order through rule by virtue*), in *Ha'erbin gongye daxue xuebao*, 5, 2024, 24 ff.

that of good faith (诚信 – *chéngxìn*) and honesty (诚实 – *chéngshí*) in Article 7, where the use of 诚 can be, from a diachronic perspective, put in connection with the idea of unity among thought, word and action emphasized by Confucianism as the realization of the moral potential of men⁴⁵.

Furthermore, Article 9 of the Civil Code, outlining the so-called “green principle” (绿色原则 – *lǜsè yuánzé*) established a conceptual link between the saving of resources, the protection of the ecology and a pedagogical and moral attitude of the law⁴⁶.

Another notable example is Article 1131 of the code, which allows, in case of intestate succession, for the assignment of a part of the inheritance to a non-heir who has supported or has been supported by the deceased. When judges have applied this rule, they have sometimes qualified the behaviour of the non-heir supporting the deceased as morally sound and compliant with the “Socialist Core Values”, mentioned in Article 1 of the Civil Code⁴⁷.

The examples of ethical interferences in positive law are not limited to the civil code. Article 19 of the Company Law, after the last revision in 2023, provides that companies abide by social morality (社会公德 – *shèhuì gōngdé*) and business morality (工业道德 – *gōngyè dàodé*). The use of 德 in the text of this provision is political rather than cultural: the virtuous morality the law is referring to is the ensemble of values and principles that the political leadership selects and deems suitable to act as governance tools. Indeed, the same Article 19, after outlining the aforementioned clauses, states that companies are also required to accept supervision from the government and the public.

This legislative innovation is perfectly in line with recent developments of Chinese company and enterprise law, now deeply affected by the effort of the Chinese Communist Party to ensure coordination mechanisms with private economic operators, not limited to the presence of Party branches in companies (as mandated by Article 18 of the Company Law) but also including the establishment of a pedagogical environment seeking to reward entrepreneurs and businessmen that align with the priorities of the Party in terms of development⁴⁸.

The morality of the Chinese company law, ultimately, perfectly aligns with the “moral integrity” (道德操守) mentioned in Article 11 of the Oversight Law, where 德 also plays an essentially political role. The “rule of virtue” is still, culturally speaking, a connoting trait of traditional Chinese legal culture; yet, at the same time, it is now a politically-oriented paradigm of governance.

Indeed, the legitimacy of the Party itself partially rests upon its capability of developing its own inner legal system on the basis of both Party regulations and moral standards, which correspond to socially accepted values⁴⁹. However, the mechanism linking Party’s inner laws with the political use of virtue seems to be circular. The socially accepted values to which the Party submits itself, in absence of an external review, are those which the very same Party decides to uphold as acceptable standards.

What is significant, indeed, is the fact that oversight and supervisory functions have been devised, with the Oversight Law, as state functions separated both from the government and the judicial apparatus. Some Chinese scholars have tried to trace some historical connections between the

⁴⁵ *Id.*

⁴⁶ G. SABATINO, *Environmental sustainability and civil law in the “new era” of Chinese legal culture. The “green clauses” of the Chinese Civil Code*, in S. LANNI (ed), *Sostenibilità globale e culture giuridiche comparate. Atti del Convegno SIRD – Milano, 22 aprile 2022*, Torino, 2022, 157-170.

⁴⁷ See, for instance, People’s Court of the Zhen‘An District, Dandong (Liaoning Province), decision no. 504 of 31 May 2021.

⁴⁸ See, for instance, the Opinions on Strengthening the United Front Work in the Private Economy in the New Era (关于加强新时代民营经济统战工作意见), issued in 2020. See also G. SABATINO, *The Legal Dimension of the Relation Between the Chinese Communist Party and the Private Economy. A Perspective of the Article 19 of the Company Law*, in *Global Jurist*, 22, 2021, 351-373. Before the last revision in 2023, Article 19 of the Company Law corresponded to the current version of Article 18, thus regulating the presence of Party branches within companies. The current Article 19 is an addition of the latest revision of the law.

⁴⁹ WU XIAOCHUAN, 再论作为政党自治规范的党内法规——以自治、法治、德治关系为视角 (*Further Discussion on Party Regulations as Norms of Political Party Autonomy—From the Perspective of the Relationship between Autonomy, Rule of Law, and Rule of Virtue*), in *Dangnei fagui yanjiu*, 2, 2023, 47 ff.

supervisory function in contemporary China and past experiences and theories of “moral power”, including the *censura* in ancient Roman law and the *poder moral* in Bolivarian constitutional thought⁵⁰.

However, what ensures the logic coherence of oversight work within the framework of the Chinese constitutional system is, once again, the submission to the guiding role of the Party and of its ideology. Therefore, the “moral supervision” of the oversight commission inevitably reflects the narrative of governance upheld by the party leadership. Its operative effect is thus that of at least attempting to limit the procedural and bureaucratic autonomy of the other state structures and functions by setting up a distinct mechanism of control. Virtue, in this context, becomes a tool for the legalisation and codification of political supervision⁵¹.

5. Conclusion

The uses of 德 in contemporary Chinese law have apparently sought a balance between the “public/royal” and “private/human” epiphanies of such concept. Notwithstanding this, the public dimension of the “rule of virtue” has inevitably taken hold, as the moralization of private conduct has become part of an ideological manifesto.

Two different kinds of 德 may therefore coexist and clash with each other: on the one hand, the public 德, the rule of virtue which is functional to the legitimization of the ruling power; on the other hand, a private or quasi-private 德, embedded in relational networks and intermediate social bodies typical of the Chinese tradition, which today exist within the official bureaucratic and party structures, as well as in enterprises (both state-owned and private), in rural villages, in different social groups. This private 德 is not necessarily aligned with its public counterpart and, as such, becomes a liability for the official law. It is, in other words, an expression of bundles of relations (关系 – *guanxi*) capable of existing and operating in the shadow of official law, expressing autonomous poles of “morality”, which, from the perspective of positive law, are necessarily perceived as either corruption or faithlessness.

For centuries, if not millennia, Chinese legal tradition has hosted both elements, both lines of morality. The early development of the concept of 德 was maybe nothing more than a decisive attempt to make the public “rule of virtue” prevail. Today, once again, we are able to witness a historical phase where positive law, deploying all the technical instruments of modernity, explicitly seeks to incorporate 德, so to place it under its control and influence.

By reshaping and rejuvenating the connection between law and virtue the contemporary Chinese legal tradition essentially develops a fully original notion of “rule” in advanced and complex societal settings. The Western paradigm of the rule of law is challenged. At the same time, the logical autonomy of law from morality, politics and, in a broader sense, culture is decisively denied.

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⁵⁰ HUANG MEILING, 监察模式及其权力本质的历史解释 (*Historical explanation of the nature of the power of the models of supervision*), in *Peking University Law Journal*, 31, 2019, 984-1003.

⁵¹ G. SABATINO, *Gouverner selon la loi et gouverner selon la vertu dans le droit chinois contemporain*, in *Opinio Iuris in Comparatione*, 1, 2023, 317-338.

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