

**CONFUCIAN ETHICS AND THE JUVENILE
JUSTICE SYSTEM IN THE THAI INSTITUTIONAL CONTEXT**

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ABSTRACT

Providing education for juvenile offenders is one of the basic policies in the Thai criminal justice system. One of the weak sides of this policy is a lack of effective moral education. Confucianism is not simply a religion. It possesses a wealth of moral ideas that can be utilized in the rehabilitation of Thai youth that committed crime. This paper presents some comparison of Confucianism with Buddhist as well as Christian ideas. In its emphasis on the duty towards family, the state and the humankind, the Confucian ethics is unique and differs not only from the Buddhist moral teaching, which is concerned with the individual salvation from suffering, but also from Christian ethics which deals mostly with the relationship of a human being with his or her Creator. Confucian ethics is different. It is not concerned much with the transcendental God in a Christian meaning, or the personal salvation from suffering in a Buddhist meaning, rather it deals mostly with educating people to perform their daily duties faithfully and in the right manner. This paper outlines the basic features and methods of Confucian ethics when applied to juvenile justice system.

Keywords: Confucianism, Buddhism, Christianity, Thailand, Juvenile justice crime, Education.

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INTRODUCTION

Section 119 of the Thai Statute on the Establishment of Juvenile Court (2010) imposes on Thai juvenile court judges the duty to “take into account the wellbeing and the future of juveniles who should receive training, teaching and assistance to make them come back to be good citizens, more than to punish them.”² In this context, Confucian ethics can be of a great interest in teaching and assisting young offenders to be good citizens. The need for Confucian ethics in the Thai educational system for juvenile offenders is explained by several reasons.

Confucian ethics provides the ethical pattern which is not clearly seen in the procedural mechanisms of the official justice system: the emphasis on relationships.³ The contemporary law emphasizes the rights of the youth caught in the criminal justice system. In contrast, Confucius's main concern is about performing one's duty towards other people, meaning first of all, family, secondly, the state and finally, the rest of humankind. In its emphasis on the duty towards family, the state and the humankind, Confucian ethics is unique and differs not only from Buddhist moral teaching, which is concerned with the individual salvation from suffering,⁴ but also Christian ethics which deals mostly with the relationship of a human being with his or her Creator.⁵ Christian ethics does not deny the importance of doing one's family or public duties, but it is not the family or the state which is in its focus, but God who holds all things together. Confucian ethics is different. It is not concerned much with the transcendental God in a Christian meaning, or the personal salvation from suffering in a Buddhist meaning, rather it deals mostly with educating people to perform their daily duties faithfully and in the right manner.⁶ Since juvenile offenders broke the law of the state, and there is often an underlying family problem behind the delinquent behaviour,⁷ Confucian ethics relates directly to the problems faced by the judges in juvenile courts. In underlining the family and public duties, Confucian ethics has a universal appeal.

Another reason for drawing on the tradition of Confucian ethics is the similarity of the traditional Thai culture and traditional Chinese culture.⁸ Both cultures emphasize the importance of family, the state and the ruler of the people as opposed to the Western emphasis on the individual with his rights and liberties. Both cultures are also based on rituals as the way of education and social control. The Protestant Western culture, unlike the Eastern Orthodox and Roman Catholic traditions, is not ritualistic. It is based on the freedom of choice which can change any time rather than on a set of rituals handed down

² Thai text: พระราชนูญศักดิ์อิริยาบถและครองนรรขฯและวีรชัยพิจารณาดีที่เข้าชั้นและครองนรคห. พ.ศ. 2553 มาตรา 119 : ในการพิจารณาและพิพากษาคดีนี้ห้าหัวใจเดียว หรือเข้าชั้นระดับที่สามความคดีให้ถูกต้องนั้นจึงต้องพิจารณาดีที่เข้าชั้นและครองนรคห. รักภานีเงื่องสวัสดิภาพและอนาคตของเด็กหรือเข้าชั้น ซึ่งควรจะได้รับการฟ้องคดี สั่งสอน และลงโทษให้กับผู้ต้องข้อหาเป็นผลมีผลต่อเด็กที่ต้องรับการพิจารณาและลงโทษให้

³ June Ock Yum, 'The impact of Confucianism on interpersonal relationships and communication patterns in East Asia' (1988) 55.4 *Communications Monographs* 374-388.

⁴ B French, 'On Buddhism and Natural Law,' (2013) 8(2) *J Comp L* 141.

⁵ EB Youngs, 'Foundational Principles of Christian Ethics.' (1981) 2 J Christian Jurisprudence 63.

⁶ BW Van Norden, *Confucius and the Analects: New essays* (Oxford University Press 2003).

⁷ S Glueck, E Glueck, 'Unraveling juvenile delinquency' (1950) 2 Juv. Ct. Judges J. 32.

from the ancestors. Therefore, the educational patterns, which are found prevailing in the Protestant countries, are very different from the countries based on the rituals. So called, “Progressive” education, which emphasizes pupils’ personal choice rather than an imposed curriculum, originated in Switzerland, Protestant Germany, and found its fullest exposition in the United States, which used to be and, to a limited extent, remains the realization of the Protestant social, political, educational and legal ideals.⁹ The Confucian type of education has its own advantages when dealing with educating juvenile delinquents.

FAMILY AND FILIAL PIETY

The main implication of Confucian ethics for educating juvenile delinquents is that the family must be the place where moral reformation of the minor offenders must take place. The Confucian principle related to the moral education of youth involves raising the sense of a juvenile’s fidelity to his family and fraternity. Confucius taught that the one being filial and fraternal does not have a tendency to offend against their superiors, and consequently they do not create disorder in the society.¹⁰ Thus, this filial piety and fraternal submission is the basis for *ren* 仁¹¹ which brings forth all other virtues. *Ren* is a complex concept which takes a similar place to *agape* in Christian ethics and *metta-garuna* in Buddhist thought. Confucius also employs the concept of love – *ai* 爰 towards everyone, and it is often used together with *ren*.¹²

Another key term of Confucian ethics, *li* 礼, designates one of the most important concepts in the whole Confucian moral philosophy. It is difficult to translate. Sometimes it is translated as a ritual, sometimes as propriety, and sometimes as filial piety. It reflects a cosmic understanding of morality as the way of harmony through proper behaviour.¹³ Filial piety is a response to the love and care of parents. Without the love and care of parents the whole culture of filial piety is dead.¹⁴ At the same time, filial piety addresses its requirements to children, or juveniles, rather than to parents. It is much more than providing for material needs of the parents. The key concept of filial piety is reverence 敬.¹⁵ The filial piety consists not only of a feeling of reverence, but also of cheerful acceptance of toil for the benefit of the senior.¹⁶

⁹ It must be noted here that many of the exponents of Progressive education, such as Johan Basedow, Friedrich Froebel and John Dewey, reacted against the orthodox Protestantism. Their views, however, were reflecting the thrust of Protestantism towards individual freedom. See: J Dewey, *Democracy and education* (Courier Corporation 2004)

¹⁰ Analects 1.2

¹¹ In literature on Confucian ethics, this term is sometimes spelled as *jen*.

¹² Analects 1.6.

¹³ Analects 1.12.

¹⁴ Analects 2.6.

¹⁵ Analects 2.7.

¹⁶ Analects 2.8.

In relation to juvenile delinquency particularly, the value of filial piety lies in the habit of obedience.¹⁷ This habit comes through following the propriety *li*, which is commonly understood as different rites performed by children towards their parents when they are alive, being buried, and served by the means of sacrifice after the death.¹⁸ For judges and all those dealing with juvenile delinquents, it has at least one implication. The habit of obedience does not appear immediately. It is brought forth through the life practice of paying respect to one's parents.¹⁹ In other words, treating juvenile delinquents can be accomplished through the Confucian *li* by developing certain penitent practices, and also by imposing those practices on the delinquents. This may appear a strange way to deal with juvenile delinquency to the Western mind. However, a similar penitent practice existed and still exists in the Orthodox and Roman Catholic churches in Europe.

The Confucian approach to moral education is wholesome. It represents the fusion of law and religion. It is interesting to observe that the Chinese characters for *li* 札 and *ji* (祭) (the term for sacrifice so common in Confucian writings) contain (with some change in writing) the same radical *shi* 示 meaning to obtain revelations.²⁰ In other words, the meaning of filial piety as well as the rites of propriety and sacrifices had the same religious root. Without religious beliefs, the Confucian system of law and order cannot stand.

Thus, if one brings the whole tradition of Confucian ethics to draw on the way juvenile delinquents are treated, then serious attention must be paid to the religious state of the mind of the offenders. Rituals and penitent practices can reinforce religious beliefs, yet with an absence of any such beliefs, they appear useless. In other words, an offender who has some religious beliefs can be brought to the practice of obedience on their basis. It does not mean that the Confucian method is useless in cases where the offender does not have any religious beliefs at all, but the effectiveness of treating juveniles by means of Confucian ethics hinges on religious feelings.

A Thai judge in the juvenile cases has to face the reality that the family of the offenders failed to bring up a character trained to show one's fidelity and obedience to the parents. One of the offenders, whom the author met in Chiang Mai Juvenile Correction Institution, was sentenced exactly for the crime of violence against his father, which constitutes a hideous crime in Confucianism. At the same time, it is an interesting fact, that when being asked what Thai juvenile offenders value the most, most of them answered that they value family. In other words, family remains an important element of the lives of the offenders.

There can be a strong objection to the possibility of applying the educational ideal of family found in Confucian thought to the reality of Thai family life. The Confucian family appears much more patriarchal and authoritarian than a family in contemporary Thailand. The most important element of the Thai institution of juvenile justice is

¹⁷ Analects 2.5.

¹⁸ Analects 2.5.

¹⁹ Analects 1.11.

²⁰ Genealogy of Chinese characters is found at: <http://zhongwen.com/zi.htm>

juvenile court. In its procedural framework, there is hardly any place for a Thai judge to perform any role in bringing up the sense of filial piety and fraternal submission.²¹ Many juveniles in Chiang Mai Juvenile Correction Institution told me that they had spent with the judge not more than 30 minutes of time, sometimes 10-15 minutes.²² In contrast, the Confucian ideal of bringing up the virtuous character is a long natural process starting from the birth and slowly growing into a mature age. It would be naïve to expect that in thirty minutes of a trial, a judge can by any miraculous means wake up the sense of filial piety and fraternal submission.

Despite those strong objections there are certain attractive elements in Confucian thought which can and must be used by the judges in juvenile courts. Even though a judge normally does not have much time and opportunity to get to know in a sufficient way the offenders, their lives and personalities, he has something which many contemporary families lack – authority. The way in which this authority is exercised is important for the perception of justice.

At the moment, the existing practices and workloads do not allow judges in Thai juvenile courts to have even an opportunity to spend more time with juveniles by educating them. It seems that there is a need for the whole reform of the Thai juvenile justice system in order to create a lasting relationship between the judge and the offender. The judge needs to become a teacher and, where there is a lack of family control, to play the role of the father for the offender. That cannot be achieved without the closest control of the life of the offender by the judge. It seems that the best solution to the task of creating such a relationship is to appoint each time an ad hoc lay judge supported enough by the public to allow him to spend sufficient time individually with the offender.

VIRTUE

The Confucian ideal for all governance including the exercise of judicial functions is based on the concept of virtue (Pinyin: *de* 德). Virtue in the governance of public affairs is compared with “the north polar star, which keeps its place and all the stars turn towards it.”²³ Governance by virtue is opposed to governance by the means of punishment. The main task of governance according to Confucius is not only to protect people from crime, but also, by the means of virtue, to further the orderly life (Pinyin: *ge* 格).²⁴ Governance by virtue means the use of propriety (*li*). As it has been described above, *li* is a very complex and key concept of Confucian thought. It describes the whole way of living based on the concepts of dignity and shame. Those who have the sense of shame (Pinyin: *chi* 耻) will do their duties much better than those who do not.

²¹ Juvenile and Family Court and Juvenile and Family Case Procedure, Act B.E. 2553 [2010].

²² Alexander Shytov, Boonchoo Na Pomphet, *Thai Juvenile Delinquency Justice and Its Perception by Minor Offenders* (Chiang Mai University 2007) 156

²³ Analects 2.1.

²⁴ Analects 2.3.

If applying this principle of virtue to cases dealing with the juvenile offenders, the task of the judge is not to punish by instilling the sense of fear, but to awake the sense of shame in the offender. That can be accomplished through a certain set of rites or rituals. The choice of an appropriate rite must reflect the sense of dignity and shame of both the offender and the community in which he lives. It is closely identified with religion. It is clear, that the choice of the rite for awakening shame must vary from culture to culture, and must take into account the personality of the offender. In the past, for example in Christian religion, this rite could be expressed in fasting, in prayer, in refusal to sleep, in wearing sackcloth, in putting ashes and dust on the head.²⁵ The fact that those rites are no longer used in the West reflects the decline of not only Christian faith but also the value of shame.

In Confucian ethics, three virtues are particularly important. The first is being faithful (Pinyin term is *zhong* 忠 which can also be translated as being loyal). This virtue reflects the relationship with other people based on promises. The second is truth or trustworthiness (Pinyin term is *xin* 信) applied to friends. The third is practicing (Pinyin term is *xi* 行) what one teaches. An appropriate English word would be *integrity*. Confucian ethics is an ethics of personalism. It always implies a relationship. A judge in a juvenile court enters into a relationship with young offenders, and this fact requires an application of a certain virtue. This relationship is not contractual. Yet there is an underlying promise by the judge to perform his or her duty faithfully as it is required from judges. Their promises are not towards the juveniles but towards the authority which has made them judges. This is what in the Western philosophy is called *fidelity to law*.

There is no any reason to maintain that the virtue of trustworthiness - *xin* - cannot be exercised by the judges in relation to offenders. If an offender trusts in the fairness of the trial, he or she will perceive the fairness of their punishment as the measure of correction. This is a common truth derived from the ideal of natural justice.²⁶ The contribution which Confucian thought can bring to the discussion of the natural justice issue in Western legal thought is the very relational character of trustworthiness, a character which is lacking in the official mechanism of juvenile justice. A judge must appear in the proceedings as a friend to the juveniles, rather than a lord.

The importance of the third virtue - integrity - becomes evident from the fact that all judges interviewed in Thai juvenile courts acknowledged that when passing judgment they also give a moral lesson to the juvenile offenders. Confucian ethics require that the judge must act himself according to the words of the moral instructions given to the juveniles. If a judge teaches them not to visit brothels, give up drinking and to devout free time to study and sports, he must do what he teaches. In other words, judges of juvenile courts must have a high moral character. In order to teach obedience to the

²⁵ See: RH Connolly, editor. *Didascalia apostolorum* (The Clarendon press 1929)

²⁶ Geoffrey Alan Flick, *Natural Justice* (Sydney: Butterworth 1984); Paul Jackson, *Natural Justice* (London: Sweet & Maxwell 1979)

parents, a judge himself must be an obedient child; in order to show respect to the senior, the judge himself must show the same respect in his own life.

The efficiency of judges in affecting juveniles depends not only on the measure of punishment the judges choose, but also on the words they use. Confucius warns against speaking for the sake of making fine appearance. "It is rare, indeed, for a man with skillful words making an appearance to be benevolent."²⁷ In other words, a judge addressing juveniles does not need to care how well he or she speaks. The care must be given to the juveniles not to the words.

Thus, the requirement of high moral character is a necessary element for all judicial appointments. Confucian thought provides clear standards of such a character. Without this character, judges cannot communicate the ideal of righteous living to juvenile defendants. The Confucian ideal of a judge runs against the official standard of a Thai judge. In the Western type of law adopted by Thailand, what matters the most is that a judge applies law correctly. The same perception on the function of the judge is seen among the Thai judges in juvenile courts met by the author. Some of them openly stated that moral teaching is not their business. Judges who are lacking the virtues described above would unlikely be able to awake any sense of virtue in juvenile offenders whom they are supposed to correct. Without virtue, any correction will eventually turn to be instilling the fear of punishment, as the interviews with juvenile offenders have indicated.

In instilling virtue to juvenile offenders Confucian ethics is realistic. It is not familiar with a sudden transformation commonly experienced within the Christian tradition. The way of virtue according to Confucius is long and full of labour. Confucius himself testified that he was able to achieve the state of perfection only at the age of seventy by following the desires of his heart without transgressing what was right.²⁸ A critic may say that the old people of that age do not have too many desires anyway. However, Confucius acknowledged at the same time that he began his way to perfection at fifteen years old by setting his heart on study. Thus, the task of juvenile correction system is not making juveniles perfect citizens but to set their hearts on the goals advocated by Confucius.

IDEAL JUDGE

The ideal judge is what Confucius described by the term *junzi* (君子), one of the key concepts of Confucian ethics. This term is sometimes translated in English as a gentleman, or a scholar. *Jun* itself means a ruler, or a lord, or a nobleman. *Zi* can mean many different things, and in the present usage can be a mere sign of respect. The uniqueness of Confucian ethics is that a political ruler (including judges) is conceived primarily in ethical terms. In Confucian times, judicial functions were a prerogative of

²⁷ Analects 1.3.

²⁸ Analects 2.4.

the rulers, and therefore Confucian ethical standards for a ruler must be applied to the characteristics of a judge as well. Moreover, the concept of *junzi* is applicable to any person independently from their social class and position. It is true that Confucius made a great divide between *junzi* and *xiaoren* (literally small people), but that divide is based on the moral characteristics of a person rather than wealth, birth, position etc.²⁹

The nature of a *junzi* is displayed in action. He must be grave or serious to inspire awe and veneration. He must be firm but not be inflexible. He must possess faithfulness and truthfulness. He must not have friends morally inferior to him. If he makes a mistake he must not be afraid of mending it.³⁰ A *Junzi* teaches by his example. “He acts before he speaks, and afterwards speaks according to his actions.”³¹ It means that what is most important for a judge is not the knowledge of legal rules and procedures, but personal moral integrity. A judge selected to decide juvenile cases must himself be beyond any reproach. That applies not only to judges but also to the officers, particularly probation officers, who mediate between the judge and the offender. In real life, the offender has little chance to observe the life of the judge, unless the judge is selected from someone he knows and respects. Many national laws require that a number of lay judges must be included in the panel deciding serious juvenile cases. Therefore, it would be possible to establish a rule that a respected person, well known to the offender, should be among the lay judges. Further, there is a necessity to follow up, particularly in cases where the offender is released. There must be people who have a high moral standard of living who will oversee the life of the offender. It must be the responsibility of the state to recruit such people to be lay judges and probation officers.

Confucian ethics imply that a judge must not pursue his responsibilities to promote himself. Rather his or her interests must lie in the lives of those he judges. Confucius said: “I will not suffer when men do not know me, but I will suffer when I do not know men.”³² The best judge is one who does not show himself much, who does not speak too much, but one who listens more to those whom he or she judges. Observing visits by the chief judge of a provincial juvenile court to a juvenile correction institution, one can draw the conclusion that a Thai judge is more willing to talk and to address a big crowd of the offenders than to interview each one of them individually. It is understandable. The chief judge has many responsibilities, and there are too many juveniles to speak to. The shortness of time when the offender, individually or in a group of the defendants, faces the judge does not allow the latter to get to know the offenders in the way Confucius suggested.

Many Thai judges in juvenile courts affirmed that one of their tasks is giving moral education to juvenile delinquents. Confucius in this respect noticed that an educator must continue observing his pupils in their private life after giving them lessons.³³ This is where the Thai juvenile correction system has a defect. Even although on paper, the

²⁹ Analects 2.14.

³⁰ Analects 1.8.

³¹ Analects 2.13.

³² Analects 1.16.

³³ Analects 2.9.

judge and juvenile correction officers have got the authority to follow up, in practice they rarely exercise it. A judge needs to keep an eye on delinquents even after they are released from custody, or given any other sentence than a term in a juvenile correction institution. It is not enough to summon the offender to a probation officer once in three or four months and inquire how he or she is. There must be an intelligence service which gathers information on the private life of the offenders after they are released. An ideal judge needs such information to see whether educative measures have been effective. At the moment, the probation mechanism does not provide this.

DECIDING CASES

Confucian ethics is an ethics of manners. "Manners" means more than simply the way to maintain one's dignity and relate to other people. Manners for a judge are as important as procedural rules for the whole law. A judge needs manners not only for maintaining the dignity of his office and for showing respect to the parties of the case. Manners in Confucian ethics are the essential element of the process of judging. They are not mere appearances, but the manifestation of the judge's moral character.

Judging cannot be done well without receiving adequate information. Confucius recommends several things vital for judging: "See what a man does, mark his motives, examine in what things he rests."³⁴ An analysis of the way Thai judges decide juvenile cases shows that judges do actually examine all these things. Confucius, at the same time, offers not only the pattern through which judges must analyse information, he also suggests the essential requirements for the judge who can adequately understand the analysed things. One passage from Analects is noteworthy: "Tsze-ch'in asked Tsze-kung, saying, "When our master comes to any country, he does not fail to learn all about its government. Does he ask his information? Or is it given to him?" Tsze-kung said, "Our master is benign, upright, courteous, temperate, and deferential and thus he gets his information."³⁵ The Chinese character for benign is interesting: 溫 (wen) consists of three radicals. One means water; the second means a prisoner; the third signifies a plate.³⁶ Thus, the deepest meaning for being benign is to show benevolence³⁷ towards people who deserve compassion, like prisoners. Manners in dealing with the accused must be based on benevolence. The duty of being benevolent is based not only on respect to the defendants, but benevolence itself is also the condition of gathering and analyzing evidence presented to the court.

Confucian ethics is an ethics of pragmatism. People who are responsible for running the country, including judges, must combine moderation in the use of means and love for people (爱人: *airen* somehow changed its meaning in the modern Chinese). They must

³⁴ Analects 2.10.

³⁵ Analects 1.10.

³⁶ See: <http://zhongwen.com/>

³⁷ (Thai word ใจ for benevolence also contain the word: water – น้ำ)

equally pay a serious attention to the business or technical side of their profession and to the moral truth. Finally they must not burden people excessively.³⁸ Every judicial decision involves a complex balancing between conflicting evidence, and even when there is no question about the facts, the principles of moderation, proportionality, truth and love remain as important elements of judicial decision making when interpreting and applying law to those facts. These are the essential elements for arriving at a *just* decision. The whole body of procedural rules has value so far as they assist judges in maintaining the presence of those elements in deciding cases.

CONFUCIAN METHODS OF REFORMING JUVENILE DELINQUENTS

Confucian ethics approaches the problem of juvenile delinquency differently from the modern theories of criminology influenced by a sociological approach. Judges, from the court under study, interviewed by the author put emphasis on the importance of giving jobs or labour skills to offenders, as the primary task of the juvenile correction system. Education is understood in the sense of providing the means of living rather than a way to moral perfection. This is a striking difference between Confucian ethics and the contemporary theories of juvenile criminology as well as the theory of education.

All the court's documents on juvenile offenders contain information and a close examination as to whether the young person is from a poor or a well off family. The issue of poverty was also considered by Confucius. However, he emphasized that poverty can be an opportunity for moral perfection. The latter displays itself differently in different social circumstances. Poverty as a way of perfection consists in remaining dignified and cheerful, while wealth as the opportunity of perfection consists in being not proud, and following the rules of propriety (*li*).³⁹ This understanding of poverty and riches helps us grasp better the idea of propriety itself as the way for the rich to remain humble. *Li* is a practice of submission by paying homage to seniors whether they are parents, rulers, elders or immortal beings.

The doctrine of *li*, if applied by juvenile courts, would result in a completely different way of dealing with the young offenders, from the one adopted by the present day judges. It would require a well elaborated ritual through which the offenders have to go. This ritual would have an educational purpose: to develop the sense of submission to the family and the society. There is some similarity between the Buddhist discipline (*vinaya*) and the Confucian *li* when it comes to the practical implications of those concepts for reforming juvenile delinquent behaviour. It appears that many students of Buddha miss the social implications of Buddha's message as well as many students of Confucius do not realize that what Confucius taught was not a mere system of social control and socially accepted patterns of behaviour, but the ideal of a righteous man. *Li* is conceived in Confucian ethics as the method of attaining this ideal. It is true that the Buddhist and

³⁸ Analects 1.5.

³⁹ Analects 1.15. There is a remarkable similarity of the ideas found in the Apostolic Letter of James in the Christian Bible.

Confucian methods, as well as the ideal itself, are expressed differently, but when the time comes to apply it specifically to reforming juvenile delinquents, the similarity appears. First of all, both Buddha and Confucius emphasized self-control. When considering Buddhist educational methods, the importance of controlling one's diet as a technique in building up a moral character has been discussed. Another important technique recommended by Buddha is controlling one's words. Even though Confucius did not speak much about the techniques, he also acknowledged it was important "not to seek satisfaction in food" and "be cautious in words."⁴⁰ It is *li* which is essential for teaching self-control in Confucian ethics. *Li* is a relational practice. Self control is developed in relating to other people.

Apart from practicing *li*, the personalism of Confucian ethics can provide judges with the whole ensemble of instruments for analyzing delinquent behaviour and correcting it. For example, Confucius understood very well the influence which the friends can exercise on the behaviour of a person. Confucius would definitely subscribe to the Christian saying that bad company spoils good morals. One of the judges in Chiang Mai juvenile court expressed the same idea to the author when discussing one of the murder cases, which took place simply because young boys were encouraged by their group behaviour to kill two other boys without any reason. It was murder for the sake of murder. This encouragement came not only from the fact that the boys were drinking alcohol together. Many boys in the group wanted to take part in the evil act because they wanted to show that they were 'tough' boys. In analyzing the reasons for committing crimes, Thai judges look at the relationships and the friends of the offender.

Confucius, however, went further than a simple explanation that bad company can spoil good morals. He also meant that good company can correct bad habits. This is where the weakness of Thai judicial policy lies. The Thai system of juvenile delinquency justice is unable to mobilize people with good moral character to become friends to the convicted young offenders. In most cases, the offenders need relationships with people of a high moral character. At this important point, the juvenile correction systems in many countries fails to provide a network of people with a high moral character willing to deal with former offenders. It is true, however, that some religious and philanthropic organizations do attempt such work, yet it is fragmental and often outside the measures which the court can employ in tackling delinquent behaviour.

Thus, one recommendation which can be drawn from Confucius ethics is to employ a personal measure of correction like putting the offender under the supervision of a mentor with a high moral character willing to spend time and build a friendly relationship with the offender. In choosing such a person one would need to be careful and look at the individual inclinations of both the offender and the mentor. But before doing that, the juvenile courts must have a developed *system of mentorship* at their disposal.

Another type of personal measure which a court could impose on offenders would be to break up certain friendships and even prescribe reading a certain type of literature with

⁴⁰ Analects 1.14.

a strong educative power according to the recommendation of Confucius.⁴¹ The type of literature actively promoted by Confucius was books of poetry which teach one not to have evil thoughts.⁴² In other words, instead of sending juveniles to correctional institutions, a judge could prescribe reading a substantial amount of literature having a strong educational appeal. If there is no way to test whether the offenders comply with such an order, they can be sent to the correctional institutions but with a clear instruction that reading certain books must be accomplished before the offender leaves the institution. Visiting Chiang Mai Correction Institution library brought a sad feeling to the researchers. A great amount of very good books were covered with dust. The library itself was empty, without readers and without librarians. Young convicts at the same time spent their afternoon by sleeping and playing cards, with a few younger juveniles being compelled to clean the area, while the senior juveniles wasted their time and opportunity to be reformed. This is written without intending to criticize the administration of the correctional institution. The administration tried their best to arrange as many activities as possible. Many of the detainees were observed by the author to be sleeping during such activities. The juveniles were evidently not interested in them. As soon as there was an opportunity, they went to sleep, watched TV or played cards away from the sight of busy correction officers. Many detainees expressed their view that staying in the correctional institution was a waste of time.⁴³

Reading certain carefully selected books, as long as the progress in reading is monitored, seems a better way to implant a good conscience into juvenile offenders. Apart from the moral content of the books, the mere habit of reading can but have a positive influence on the intellectual and, indeed, physical wellbeing of the juveniles. At the moment, Chiang Mai Juvenile Correction Institution imposes different schemes to encourage the inmates to earn positive points allowing them to be released earlier. A prescribed reading list could be included in this scheme.

EDUCATION

The main function of the juvenile corrections system in Thailand is to educate the offenders.⁴⁴ In the thoughts ascribed to Confucius there are many which are about an ideal teacher. One interesting characteristic of a teacher is dynamism. A teacher is never satisfied with the knowledge he or she has acquired, but is constantly striving for new knowledge not forsaking the old.⁴⁵ Therefore, a youth worker within a youth justice system must never be satisfied with the stage of his development and always strive for more.

⁴¹ Analects 1.6.

⁴² Analects 2.2.

⁴³ Alexander Shytov, Boonchoo Na Pomphet, *Thai Juvenile Delinquency Justice and Its Perception by Minor Offenders* (Chiang Mai University 2007)

⁴⁴ Juvenile and Family Court and Juvenile and Family Case Procedure Act B.E. 2553 [2010], s 36, s 57ff

⁴⁵ Analects 2.11.

Confucius ethics presents a clear and distinctive theory of education. The meaning and the main purpose of education is expressed in the following words: "Worthy things belong to a worthy man. Appearance matters only to a mean man. If, in serving his parents, a man can exert his utmost strength; if, in serving his prince, he can devote his life; if in his intercourse with his friends, his words are true: - although people say that he has not learned, I must say that he has."⁴⁶ Thus, the main purpose of education is not to stuff the head of pupils with loads of information. Nor is it to make them appear clever and smart. Education must aim at bringing up young people of high moral character able to perform their duties to family, state, and neighbours. The emphasis is here not on the outward expression of respect to parents, devotion to the ruler and being nice to neighbours, but on the inner commitment of their will to serve their parents and society and to be faithful to friends. If juveniles are performing their moral duties by pouring out all their abilities and strength, then they will have neither time, nor willingness, nor strength left to commit criminal offences.

Interviews with the inmates in the correction institutions have shown that what they value the most is family and friends. In Thai culture, there is also a high respect towards the king. It is easier to motivate Thai juveniles to serve their king than to serve an abstract idea of the state or democracy. This is where the personalism of Confucian ethics matches very well the personalism of Thai culture. The remaining issue is how to motivate juveniles to give themselves to the service of their parents and to the king.

It would be a mistake to represent the Confucian ideal of educating juveniles as forming a sort of slave who knows nothing but to serve his parents and the king and to please his friends. Confucius emphasized the importance of awakening the ability of critical thinking, along with accepting the experience taught by others. There must be a balance between critically examining the things being taught and the acceptance of the authority of the teacher.⁴⁷ In the context of educating juvenile delinquents, it means that the task of the educator is to awake the faculty of thought in juveniles and at the same time to make them accept willingly his or her moral authority.

CONCLUSION

Even though Confucianism was formed in China, it has some appealing features which could be employed in dealing with juvenile delinquents in Thailand. Unlike Buddhist ethics, it emphasizes one's duty towards one's family, society and friends. The relational character of Confucian ethics can bring a great change in the way the juvenile offenders are treated by the juvenile justice system. Instead of a complicated mechanism for social institutions handling juvenile delinquents, the Confucian ideal suggests a simple solution. Juvenile delinquents must be treated by people of high moral character who are able to instill their moral attitudes into the offending youth. This is possible only through a personal relationship between the judge or other officer and the offender, a relationship

⁴⁶ Analects 1.7.

⁴⁷ Analects 2.15.

which is lacking in modern systems of law. Such an officer must inspire reverence and respect which comes not so much from the fear of punishment, as from the perception of his or her moral authority and superiority.

Confucian teaching suits very well the educational goals of juvenile delinquency justice systems around the world. The ideas of Confucius on teaching through a meaningful ritual, as well as reading carefully selected books containing high moral values, and providing a personal mentor can already be employed by judges within the existing normative framework. Thailand shares much of its culture with traditional China. Its institutions of juvenile justice would certainly benefit from the application of the Confucian tradition.

After this brief analysis of Confucian ideas, it becomes apparent that they are close, if not the same, in their their significance for juvenile justice to the ideas of John Braithwaite.⁴⁸ The theory of Braithwaite has been hugely influential in the field of restorative justice and 're-integrative shaming'.⁴⁹ In fact, one may wonder whether Braithwaite got the inspiration for his theory from Confucius, since his ideas originated from research he carried out in Japan⁵⁰ where Confucian ideas still carry significant influence. The emphasis that Confucius placed on the family is mirrored in the 'family conferences' and similar mechanisms that Braithwaite recommended.

Thus, we may conclude, that the ideas of Confucius are not outdated, but have a significance for solving the problems of juvenile justice system in Thailand. The implication of his thoughts is that what is required is not a complex and expensive mechanism of juvenile justice but people with a high moral character who can be role-models and educators of the offending youth.

⁴⁸ J Braithwaite, *Crime, shame and reintegration* (Cambridge University Press 1989)

J Braithwaite, 'Repentance rituals and restorative justice' 8(1), (2000) Journal of Political Philosophy 115-131

⁴⁹ For restorative justice see: Gerry Johnstone, *Restorative justice: Ideas, values, debates* (Routledge 2013)

⁵⁰ J Braithwaite, *Crime, shame and reintegration*. 65

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