RECONSTRUCTIONIST CONFUCIANISM
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**A Note on Chinese Sources and Characters**

Unless otherwise indicated, the translations from classical Confucian texts are usually adapted from the translations of James Legge. Other translations, especially the *Analects* and *Mencius* by D.C. Lau and *Xunzi* by John Knoblock, were consulted. I have used pinyin romanization and standard Chinese characters to indicate Chinese key words and concepts in each chapter. But I do not attempt to maintain the same English words for Confucian key concepts, especially *ren* (仁), in different chapters. Rather, I select different words to suit particular contexts.
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Introduction

This volume has a number of points of departure. First, it is a response to the character of contemporary China: China is regaining its position as a major economic and political power. This development raises the question of the moral resources on which China can draw in order to meet its own challenges and the common challenges of humankind. Another point of departure is the moral crisis of the contemporary West. This crisis is in part socio-economic: the population basis and moral commitment needed to sustain the social welfare state are weakening, a point made by the current Roman pontiff, Benedict XVI in his book with Marcello Pera, *Without Roots* (2007). There has been a radical separation of contemporary Western European culture from its traditional roots, as well as an unwillingness to produce sufficient children for the future. As China is regaining its power, the question is whether it can escape the moral malaise of the West. This volume offers a contribution from Chinese cultural resources to this task. It is written in the conviction that the moral insights of Confucian thought are precisely those needed to fill the moral vacuum developing in post-communist China and to address similar problems in the West.

The term *Reconstructionist Confucianism* identifies the project of reclaiming and articulating moral resources from the Confucian tradition so as to meet contemporary moral and public policy challenges. This term is chosen to indicate a view reconstructed from Confucian cultural resources that have been put in disarray by a number of dramatic events in the 20th century, ranging from the collapse of the last Chinese dynasty (1911) through the May Fourth movement (1919) to the Cultural Revolution (1966). After a period during which traditional Chinese cultural and moral resources were radically marginalized from the public life of China, there is now a critical need to recover these resources.

The term *Reconstructionist Confucianism* is also used to distinguish this account of Confucian thought from Neo-Confucian attempts to recast the Confucian heritage in light of modern Western values. Contemporary Neo-Confucian scholars read back into the Confucian tradition modern Western moral and political concerns so as to bring Confucian thought in line with dominant modern Western conceptions. In this way, Confucian heritage is in great measure colonized by modern Western notions, such as justice, human rights, and egalitarianism. This retrospective colonization of Confucian thought effects by translating key Chinese moral and political concepts...
in the light of Western moral and political assumptions, and thereby takes from Confucian resources the opportunity to deal with the problems that face the contemporary West as well as China. Accordingly, Neo-Confucian approaches are not only untrue to the Confucian tradition itself, but also disable the capacities of Confucian wisdom to address the problems of our times. As China enters into a period when it can again contribute in its own way to world culture, it must authentically draw on its own resources.

The reader will find that the problems facing the West will look different when seen from a Confucian perspective. This is the case because Confucian thought invites one to step outside of the individualistic moral discourse of the West with its accent on individual rights, equality, autonomy, and social justice, and instead to approach moral challenges within a moral vision that gives accent to a life of virtue (de, 德), the autonomy of the family (jia, 家), and the cardinal role of rituals (li, 礼), the social rites that define and sustain social interactions. The Confucian moral paradigm is not that of the contemporary liberal individualist West.

The first chapter of the first section of this volume develops the claim that Confucian moral thought is embedded in a set of moral-epistemological, axiological, and metaphysical premises quite different from those of dominant Western culture. To begin with, Confucianism affirms that virtue is learned first and foremost in the family, and within the bonds of obligations that structure family relationships. As a consequence, kinship love, the priority of family love over love for others outside the family, is central to Confucian moral epistemology. It is in the family that one first and foundationally learns the life of virtue. Secondly, rules for action gain their significance and force within a fabric of social relations, in particular, family relations. Accordingly, Confucian moral rules, rather than being structured by abstract general principles for right action, indicate ways in which one can achieve virtue. Finally, the family as a whole possesses a moral status and significance independent of its individual members so that the flourishing of the family is more than the flourishing of its individual members. Accordingly, the flourishing of the family cannot be reduced to the flourishing of its members. Within this moral context, favoritism to family members does not ipso facto appear as corrupt until proven otherwise. Instead, when set within a life of Confucian virtue, familial favoritism is itself virtuous. As this chapter argues, a restoration of a Confucian appreciation of virtue in Chinese life will require a restoration of an authentic Confucian familism that can combat corruption not through abstract principles but through the restoration of a lived experience of Confucian virtue. One will need once again to be able to distinguish vicious familism from virtuous familism.

The next chapter critically explores the attempt to read into Confucian moral and political theory liberal social democratic concerns with liberty, equality, and human rights. Not only do such attempts involve a naïve presentism, but they distort the significance of such cardinal Confucian concepts as ren (仁, humanity) and li (ritual) as well as the authenticity of an interdependent family life. The result is that rather than gaining genuine Confucian insights upon which one can draw in confronting contemporary moral challenges, one has only secured shadows of already established Western concepts. A Confucian future is made to
resemble the West’s liberal democratic present. Rather than finding guidance about how to become a *junzi* (君子), an exemplary person of good character and moral integrity, one is instead given Western moral principles with a Chinese flavor. This chapter shows that such rights-based concerns and their focus on moral principles abstracted from a life of virtue distorts what Confucian thought can contribute to a better appreciation of proper moral life and bioethical inquiry.

Given these distinguishing features of Confucian moral and political thought, what kind of civil society would it support? This question is a difficult one from a Western moral and political perspective because the commitments to liberty, equality, and meritocracy that frame the contemporary social democratic, egalitarian ethos of the West have no roots in Confucian thought. As already noted, Confucianism is non-egalitarian in treating persons as relatives, not as anonymous equals. A Confucian civil society will therefore be framed by harmony (*he*, 和), love (*ai*, 愛), and respect (*yi*, 義). As a result, rather than holding that society should promote individual interests by letting each choose the form of life one wishes to live, Confucian familism embeds individual choices within a commitment to the flourishing of the family. Because Confucian morality is built around rituals, civil society will be structured in terms of rituals that, following *ren*, require one first to love one’s family members, then to extend this love to others in proportion to the importance of one’s relationship. Confucian civil society will therefore be characterized by an interaction and interconnection of affective relationships. A Chinese civil society will therefore require both a robust commitment to the rule of law as well as to the nurturing of a familism which sustains virtue for both the flourishing of the individual as well as of the family. Seen in this light, the family is a keystone of virtue rather than a stumbling block in the pursuit of justice.

The second section of this volume is an exploration of the Confucian approach to issues of social justice. The first chapter of this section shows why the Rawlsian attempt to pursue social justice is vicious rather than virtuous. Because John Rawls (1971) is concerned about the proper distribution of resources and social status, not the pursuit of virtue, his concerns contrast foundationally with, and are distinct from, those of a Confucian account of virtue. Where Rawls focuses on equality, Confucian thought is directed to harmony. Rather than affirming liberal democratic values, the Confucian understanding of social interconnectedness affirms an aristocracy grounded in virtue. These differences arise because Rawls offers an account that is intended to bind persons who share a thin theory, but not a thick account of the good. Although Rawls takes his account as comprehensive, it is nevertheless insufficient, from a Confucian perspective, to frame a proper structure of society. It lacks a thick appreciation of virtue and human flourishing to which Confucians invite us all in order to build an appropriate society.

Among the difficulties of the Rawlsian account is that it is incompatible with the Confucian insights regarding *ren* and *li*; namely, that family love should be given a priority in one’s pursuit of universal human love through ritual practice. In virtuously pursuing that which is right and dealing in a sincere and faithful fashion with others, one will need to acknowledge both the importance of assisting society’s weak and poor while at the same time nurturing a family-centered, virtue-oriented,
and non-egalitarian approach to public policy. The point is that a thoroughgoing commitment to fair equality of opportunity would not only require setting aside the family and the favouritism that family-centered virtue nourishes, but it would as well undermine the intimate relations that within the family educate in virtue. Since the development of virtue is always family-centered, it is non-egalitarian and non-individualistic. Confucians cannot accept the liberal individualist conception of human rights. What they can uphold is only a list of rights derived from virtue obligations as a fallback apparatus.

Among the various consequences of this state of affairs is that a Confucian bioethics is not grounded in principles, à la Beauchamp and Childress (2001), but rather in a way of life that nurtures virtue through specific ritual rules. The result is that when Confucians use the term “principle” to summarize a set of moral considerations, they are addressing issues radically different from those engaged by Beauchamp and Childress in their appeal to their so-called middle-level principles. First, unlike Beauchamp and Childress, Confucians recognize that general principles cannot, and should not, dominate over and even substitute for specific ritual rules in directing moral conduct or policy formulation. Secondly, the Confucian principles of ren-yi (仁義, humanity and righteousness) and cheng-xin (誠信, sincerity and fidelity) identify particular groundings of, and ways to, a virtuous mode of life. Rather than being middle-level principles, they sum up important considerations foundational to a virtuous life through ritual practice. They invite one to a life of virtue in which one performs suitable rituals to become a virtuous physician, nurse, patient, or family member of patient. Accordingly, a Confucian bioethics through its appeal to such principles calls on physicians, patients, and families to enter into a virtue-oriented engagement in medicine. It is for this reason that a reform of the contemporary Chinese health care system and its successful integration in the market will need to work, at least in part, from the bottom up, from virtue to policy, not just from the top down, from principle to particular choices.

The final chapter in this section explores a particular instance of the challenge of applying Confucian moral resources to contemporary health care policy: it addresses the question of how Chinese moral values such as de (virtue) and xiao (孝, filial piety), which are embedded in Confucian moral and social philosophy, should guide policy for the long-term care of the elderly. This chapter recognizes that the family has become a puzzle and a challenge in most contemporary societies. Family members are often both geographically and morally distant from each other. Moreover, many family members have lost the appreciation of filial piety, which would bring them to accept the responsibility on the part of children to care for their elderly parents. In fact, in many societies the idea of children having moral duties to their parents has largely fallen into disarray. This can be remedied only by the Confucian bonds of filial piety realized in the rituals that interconnect children to parents and parents to children. Indeed, Confucians regard filial piety as the supreme virtue of the fundamental dao (道), the way in which humans should live. As this chapter argues, the issue of long-term care for the elderly is not simply one among many bioethical questions, but instead a cardinal moral issue central to the life of virtue.
Health care policy in Singapore, Hong Kong, and mainland China is framed by a set of background moral and political commitments foundational different from those in Western Europe and North America. In part, the differences lie in the Confucian commitment to a directed benevolent moral polity rather than to the moral vision underlying liberal social democracies. The first chapter of the third section of this volume develops through the concrete issue of health care financing, a point raised more generally in the first two chapters of the previous section. Confucian moral and political thought does not affirm liberal social-democratic structures, such as those framed in the light of Rawlsian commitments. Nor does it endorse limited democracies that could be justified in the light of classical liberal or libertarian commitments. Rawls states that his account of justice as fairness should be understood as a political, not a metaphysical or moral vision (Rawls, 1985). Indeed, Rawls seeks to draw on intuitions that underlie liberal political constitutions to construct his account, while Robert Nozick attempts to establish his libertarian account in terms of individual rights as side constraints (Nozick, 1974). Such intuitions or assumptions are not those that are at roots of the political arrangements structuring Singapore, Hong Kong, and mainland China as well as their health care institutions. Indeed, the Confucian moral and political theory that drives health care policy in much of the Pacific Rim has its roots in quite distinctive understandings, such as those of “benevolent governance” (ren zheng, 仁政). The Confucian moral and political view is grounded in moral experiences of ren and li (namely, rightly-directed ritual behaviour) that do not easily map onto Western moral concerns with rights, duties, and social justice. As this chapter argues, one will not appreciate the Chinese moral and political situation until one has appreciated the quite distinctive roles of such moral considerations as ren and li. Further, one will not be able to craft appropriate Chinese health care reforms unless these reforms are embedded in these foundational, albeit different, moral considerations. Rebuilding an adequate system for the provision of health care, as this chapter argues, will more naturally draw on family-oriented health care savings accounts (as currently illustrated in Singapore) than on social-democratic social insurance systems (as currently illustrated in Canada and Western Europe).

These differences in moral and political perspectives bear on what counts as an appropriate response to the corrupt practices that have come to characterize a significant dimension of Chinese medical care. First, it must be observed that these corrupt practices, which include the over-prescription of indicated drugs, prescription of more expensive medication than needed, and the requirement of more expensive diagnostic work-ups than indicated, resulted not from the introduction of the market into China, but from a moral and health care policy context that perversely diverts the normal human pursuit for better care and better financial rewards. There has been a loss of a Confucian appreciation of the proper role of financial reward to physicians and hospitals in the provision of health care. If one cannot appreciate why profit and reward for quality service is appropriate, one cannot properly direct such concerns for personal gains. Moreover, misguided governmental policies have established artificially low salaries for physicians while providing bonuses to physicians and profits to hospitals from the excess prescription of drugs and the use of
diagnostic procedures that are expensive but are not clearly indicated. This state of affairs, characterized by perverse incentives, has been made worse by a prohibition against patients paying physicians more for higher-quality care resulting in a practice of illegal cash payments (i.e., “red packages” [hongbao, 紅包]). A way out of this maze of corruption will only be found by recognizing both the appropriate role of remuneration for those providing superior service and a regained appreciation of profit as appropriate within a Confucian life of virtue. One needs both a rule of law that rewards virtue and an appreciation of virtue that acknowledges the goodness of profit.

The next chapter turns to the proper role of honor in a Confucian business ethics. Rather than placing centrally concerns regarding forbearance rights, claim rights, and the contractual responsibilities of employers and employees in corporations, a Confucian business ethics recognizes, first and foremost, the indispensable role played by concerns for honour, disgrace, and shame in a proper management ethos. Instead of attempting to promote moral behaviour through an appeal to a network of rights and obligations within a corporation, Confucian business ethics has an other-regarding character that accentuates honour, disgrace, and shame so as to be community-directed, hierarchy-accepting, supportive of loyalty, evocative of supererogation, and productive of excellence. In contrast with the usual concerns of Western business ethics, a Confucian business ethics invites owners, managers, and employees to enter into a way of life for which rights alone are never sufficient. Confucian morality recognizes that an accent on the rule of law in the absence of the rule of virtue will be incomplete for a proper and prosperous business culture. Absent virtue and given only the rule of law, there will be corruption, despite the presence of apparently well-crafted laws and mission statements concerning rights and obligations.

Confucian moral reflection bears not just on the interrelation of humans in the family, society, the market, and corporations, but it also gives important direction regarding the appropriate relationship of humans to nature. Confucianism affirms an environmental ethic that places the natural order within a human order that reflects cosmic principles. This ethic supports a wise dominion over nature, a dominion guided by the spirit and virtue of sages. The Confucian environmental ethic is not simply anthropocosmic, it is also an anthropocentricism. One could distinguish, for example, among three forms of anthropocentricism regarding their relationship with nature, the differences being illustrated by different sets of obligations to one’s pets. First, a robustly individualistic humanism may claim that humans are in authority over their pets even to the point of being at liberty to torture them. Second, a contractual humanism would hold that different societies are at liberty to establish different rights over pets so that in some societies it would be forbidden and in other societies allowed to serve one’s pets for dinner. Third, a religious humanism would understand one’s obligations to the environment as established by a decree of God (shangdi, 上帝) or Heaven (tien, 天) or one’s general relationships to God or Heaven and the cosmos. The Confucian approach is a special instance of the third understanding. The decree of Heaven is manifested in the anthropocosmic principles of transformation disclosed by the sages. Nature is understood as a
garden to which one must attend and which one must transform in the light of the anthropocosmic principles. Confucians have always affirmed the agricultural role – transformation of nature to feed families and build homes within which families can live. Moreover, because Confucians understand the connection between families and ancestors, there is a commitment to burial rites which establish the continuity among persons, family, and eternity. The transformation of nature through the digging of graves, the burying of bodies, and the building of monuments humanizes the environment, just as does the tilling of soil and the building of houses. Such transformation of nature properly embeds nature in human history and brings it more completely into harmony with Heaven.

This volume closes with a section that explores the centrality of rites in the moral life. The first chapter provides an account of rites as the foundations of human civilization by reflecting on the role of the Confucian li (ritual) in the Confucian tradition. Unlike the Neo-Confucians who have attempted to defend Confucian morality by diluting the role of ritual practices and their specific rules in the tradition, Reconstructionist Confucianism recognizes that the cardinal Confucian virtue, ren (humanity), cannot be comprehended without referring to the Confucian ritual performance. Neither can ren be cultivated and mastered without appeal to the observance of the rituals. Pace the Neo-Confucians, this chapter shows that Confucian morality is not rooted in any Confucian general principles in separation from the Confucian rituals, much less the liberal general principles of liberty, equality, and individual rights. Instead, this chapter argues, the Confucian rituals are best understood as the Confucian community’s universally-employed, closed social practices, with their internal goals created and defined by a series of Confucian constitutive rules, and such internal goals are indispensable to the essential meaning of Confucian culture and morality. Accordingly, the Confucian rituals provide specific content to Confucian ethics. From this Confucian view, if a society merely emphasizes or relies on regulative principles (such as the liberal principle of self-determination) to maintain order, the society cannot be kept in good order for a long term in which individuals can pursue human flourishing. This is because individuals need the guidance of constitutive rules to form a stable character for living a good life, as well as peacefully cooperating in society.

This does not suggest that the Confucian rituals should not be reformed in consideration of Confucian virtue principles. A postscript is added to this chapter to address the logic and legitimacy of Confucian ritual reforms. A crucial issue is what a proper relation is between Confucian general virtue principles and specific ritual rules. Some may want to stress that the general principles of ren, like that of “loving the people” (Analects 12.22), do not refer to the rules of li but provide totally independent guidance. However, just as it is misleading to understand that ren can be cultivated by mechanically observing the rules of li without the need to follow these principles, it is also misleading to understand that ren can be realized by following these principles alone, without the need to observe the rules of li. This postscript argues that a complete Confucian view is not one-sidedly towards either the general principles or the ritual rules, but rather insists that both the principles and the rules are necessary – and together are sufficient – for one to nurture and express Confucian
The ritual rules are necessary because they provide concrete guidance for moral conduct. The general principles are necessary because they provide reasons for the defenses, excuses, and exceptions of the application of a ritual. Accordingly, the Confucian virtue principles are primarily the ritual principles to play their function along with the ritual rules for the Confucian moral life. They hold a dialectical, mutually-affecting relation which may be called a Confucian reflective equilibrium: all things considered, sometimes a principle trumps a rule, and other times a rule trumps a principle. This Confucian “reflective equilibrium” (between Confucian virtue principles and ritual rules) is remarkably different from the reflective equilibrium that Rawls adopts (between principles of justice and considered judgments) in constructing his theory of justice. Rawls’ considered judgments are not specific rules entrenched in practices or rituals, but are rather “new” beliefs resulting from reflections — reflections made under conditions guided by principles, or senses of principles. As a result, from the Confucian view, Rawlsian liberalism fails to give due respect to established practices and rules.

The proper character of the relationship among cultures and societies in an age of globalization is not a matter of little controversy. Social-democratic liberals affirm a globalization grounded in individual liberty and rights, along with an accent on egalitarianism, all without an appeal to any particular conception of the good life or of human flourishing. In liberal social-democratic accounts, a pattern for globalization is rooted in diverse claims regarding human rights, but without any substantive vision of human virtue. Libertarian approaches step back from an affirmation of a web of claim rights and the endorsement of a long list of human rights, but nevertheless affirm the centrality of permission as a universal principle when persons meet as moral strangers within global markets. A Confucian approach to globalization is critical of these visions for interaction across the world because of the Confucian recognition that humans are ritual-centered beings. Even global interactions must be ritual-governed. That is, proper international communication and cooperation must be embodied and fulfilled through human rites (li), no matter how sparse. The view is that one should perform different rites with different people in order correctly to achieve relational love, a love that is by its nature not egalitarian. Because rituals are realized in their fullness in particular families and in particular communities, the Confucian approach to globalization will have an accent on localization. It will not regard the whole world as a community, as would social-democratic liberals. Nor will it regard the world as constituted out of isolated moral communities bound together merely by the market, contracts, and agreements, as would libertarians. Instead, Confucians will recognize that communities are always local and that we can only collaborate virtuously at a global level through appropriate ritual.

The third chapter of this section turns to a ritual-centered personhood. Rather than embedding the status of personhood within a creative act of God (as with Christian accounts), within an abstract understanding of moral law (as with Immanuel Kant), or within a set of moral considerations (as with certain contemporary conceptions), Confucianism appeals to rites as the source of personhood and as the expression of its significance. Persons are ritual-engaging beings so that to be a person is to be able to participate in communal ceremonial rites; that
is, to understand and engage in *li* activities. The Confucian appreciation of ritual is always concretely present in human ceremonies, such as sacrifices, marriages, funerals, and the complex rituals governing the relationships between parents and children, princes and their subjects, husbands and wives, the older and the young, and friends with friends. The complex and rich Confucian notion of humanity (*ren*) can only be parsed by reference to this fabric of rituals. Accordingly, the Confucian conception of personhood is practice-oriented, relation-based, and degree-relevant. It is practice-oriented because the importance of personhood is derived from and embedded in the Confucian rites. It is relation-based because a Confucian cannot be identified independently of one’s roles in the basic human relationships. And it is degree-relevant because one can always become even more of a “true” person through ritual practice.

Contemporary China is characterized by a moral crisis, a moral vacuum. This moral vacuum has been produced by the disconnect between the immense success of China since the market reforms introduced by Deng Xiaoping and by the disarray of many traditional Confucian moral structures. The astonishing transformation of the economic realities of China over the last three decades can only be explained by the presence of vital elements of Confucian morality. Chinese were at once able successfully to enter into the market and transform China into one of the most productive market economies of the world. The operative morality of the economy of China is Confucian, although incomplete and even distorted. Yet the announced morality of the public forum and of the public discourse has remained socialist, if not communist. The result is a moral vacuum, moral disorientation, and corruption. In this last chapter of the book, I argue that the so-called moral vacuum facing current China is not due to the emergence of a new post-communist, social-moral personality, as some contend (Wang, 2002). It is rather in great measure due to a deformation, distortion, or disabling of morally healthy Confucian moral agency, the Confucian personality. This chapter adopts the concept of personality disorder to coin two particular Chinese personality disorders to account for the contemporary Chinese circumstances: “the communist personality disorder” for the Chinese communist nightmare from 1950s to 1970s and “the post-communist personality disorder” for the moral vacuum from the 1980s onward. Accordingly, the problems that face China, and indeed the world, can only be remedied by the restoration of a healthy Confucian moral personality marked by a family-centeredness, an appreciation of the goodness of material wealth within the constraints of virtue, a recognition of the relation-specific character of obligations of altruism, and a relation-skilled attention to harmony and cooperation within families, societies, and markets.

Much of the West is characterized by a similar moral vacuum. This vacuum has been engendered on the one hand by the collapse of traditional Christian understandings of morality and pursuit of virtue, and on the other hand by a successful production of widespread wealth that has nurtured egoistic and hedonistically-directed personalities. It is for this reason that the subtitle of this volume is *Rethinking Morality after the West*. The dominant morality of the West is in disarray and cannot be called on to aid China in this crisis. An appreciation of the threat of this moral vacuum has pushed Russia, for instance, to a de facto re-establishment
of the Orthodox Christian faith. China must make its contribution to addressing and curing this global moral crisis. This volume takes seriously what China can and must contribute to world culture in order to address this global moral disorientation. Most accounts of the human goods and human flourishing within the dominant secular individualist culture of the West are too insubstantial to direct a life of virtue. Help must come from the East.

Appended to this volume is a dialogue between the author of this volume, characterized as “Mr. Con” (i.e., the author as both Confucian and conservative in the sense of affirming the enduring values of Confucian thought) and “Dr. Lib” (i.e., Professor Andrew Brennan) who defends a liberal position. The dialogue explores the question whether the Confucian family-based communitarian ethic can be rendered compatible with liberal individualism. The answer is in the negative. In this dialogue, I advance the position that a tradition develops through reconstructing, not changing, its core values. Reconstruction is needed because a tradition often faces incomplete interpretation, misunderstanding, malpractice, or even distortion of its core values, just as what has happened to the Confucian tradition in the last century. However, reconstructing is not changing – if the core values of a tradition are changed, the tradition is ended. The core Confucian moral and political understandings are rooted in a virtue ethics, structured by unique cardinal notions, such as ren and li, shaped by a non-individualistic appreciation of the centrality of the family as an ontological entity with its own sovereignty and commitments, and sustained by a series of shared ritual practices. They are in tension with those grounding social democratic moral and political principles. Accordingly, an attempt to “modernize” Confucianism by bringing it within the ambit of liberal ethical commitments would be a way of destroying it. The authentic Confucian familist way of life through virtue cultivation and ritual performance cannot, and should not, be changed.
Part I

Beyond Individualism: Familism as the Key to Virtuous Social Structure
Chapter 1
Confucian Morality: Why It Is in Tension with Contemporary Western Moral Commitments

In ways that at first blush seem outrageous to the liberal egalitarian moral sentiments of the west, Confucianism resolutely gives priority to family love over love for anonymous others. The result is that the Confucian approach to abstract universal moral principles and to concrete moral problems such as corruption is quite different from what such a western morality would require. Indeed, a debate has taken place in present China regarding whether the Confucian family-based virtues (such as filial piety, Xiao, 謙) are the roots of morality or the sources of corruption.  

1A series of articles representing the two sides of the debate have appeared in Dao: A Journal of Comparative Philosophy VI.1 (March 2007), VII.1 (March 2008), VII.2 (June 2008), and VII.3 (September 2008). The debate has been made around the three following classical Confucian cases:

A. The Father-Son Mutual Concealment Case from the Analects:

The duke of She (齊公) informed Confucius, saying, ‘among us here there are those who may be styled upright (至, 直) in their conduct. If their father has stolen a sheep, they will bear witness against him.’ Confucius said, ‘among us, in our community, those who are upright are different from this. The father conceals the misconduct of the son, and the son conceals the misconduct of the father. Uprightness is to be found in such mutual concealment’ (Analects 13.18).

B. The Shun’s Brother Case from the Mencius:

Wan Zhang [萬章, Mencius’ student] said, ‘Xiang [象, Shun’s brother] made his daily business to slay Shun [紇, a Confucian sage king]. When Shun was made sovereign, how was it that he only banished him?’ Mencius said, ‘he raised him to be a prince. Some supposed that it was banishing him.’ Wan Zhang said, ‘Shun banished Gong Gong (共工), sent away Huan Dou (驪兇), slew San Miao (三苗), and killed Gun (鯀). On these four culprits having been punished, the people in the empire bowed to his will with admiration in their hearts, for he had punished persons who were destitute of humanity (仁, 仁). However, Xiang was of all the most destitute of humanity, and yet Shun raised him to be the prince of Youbi (有庳). What wrong had the people of Youbi done? Does a man of 仁 really act thus? In the case of other persons, he cut them off; in the case of his brother, he raised him to be a prince.’ Mencius replied, ‘a man of 仁 does not lay up anger, nor cherish resentment against his brother. All he does is to love him. Because he loves his brother, he wishes him to be honorable; because he loves his brother, he wishes him to be rich. To appoint Xiang to be the prince of Youbi was to enrich and ennoble him. If, while Shun himself was emperor, his brother had remained a commoner, could he have been said to love him?’ Wan Zhang said, ‘I venture to ask what you mean by saying that some supposed that it was a banishing of Xiang?’ Mencius replied, ‘Xiang could do nothing in his
For example, Liu Qingping declares that Confucianism involves a “deep paradox” (shen du bei lun, 深度悖論). By this he means that in Confucius, and particularly in Mencius, there are claims about the priority of family love over love for others; and at the same time there are claims about undifferentiated, universal love not based on family love. From this, he further asserts that Confucians are “confronted with an embarrassing paradox: some actions, which are typically corrupt actions in essence [sic], are praiseworthily virtuous in the light of their unique spirit” (Liu, 2007, p. 6). The question that arises from his article is why, if his account is correct, Confucius, Mencius, and other Confucians did not recognize such a paradox. The most plausible explanation, and the one for which I argue in this chapter, is that there is no such paradox at all. Those Confucian actions under Liu’s discussion would constitute forms of corruption only if one, like Liu, attempts to understand Confucian morality within some modern Western European moral perspective that condemns “placing consanguineous affection above universal principles” (p. 7). At the very least, Liu fails to take seriously the task of first accurately portraying the Confucian understanding before he mounts his criticism in the service of the conclusion to which he wants to come; namely, his moral rejection of the mutual familial support required by consanguinism. Instead, Liu takes for granted that Mencius endorses corrupt actions through favoring the benefit of family members. His account assumes that acts of familial favoritism are in essence corrupt. But this is exactly the question that needs to be addressed.

The issue is what sorts of actions, under what circumstances, should be considered corrupt. Before Liu can conclude that “Confucianism encourages a special kind of corruption through its fundamentally consanguineous affection” (p. 1), he must first establish that consanguineous affection can engender sufficient, not merely necessary, conditions for an action to be corrupt. Though favoritism in some circumstances can constitute a necessary condition for some forms of corruption, the description of favoritism as corruption would be false if any sufficient conditions for corruption are defeated by the force of a qualified favoritism in a moral tradition. In fact, in Confucianism, consanguinism is a virtue that carries the virtue-supporting force of familial favoritism in which obligations under consanguinism render certain acts of favoritism virtuous. Liu endorses the view that one has anonymous state. Shun appointed an officer to administrate its government and to collect tributes and taxes. For this reason it was described as banishment. Xiang was certainly not permitted to ill-use the people (Mencius 5A3).

C. The Shun’s Father Case from the Mencius:

Tao Ying [聨應, Mencius’ student] asked, “when Shun was emperor and Gao Yao (高陶) was the judge, if Gusou [Blind Man, 睦瞍, Shun’s father] killed a man, what was to be done?” Mencius replied, ‘the only thing was to do was to apprehend him.’ ‘In that case, would Shun not try to stop it?’ ‘How could Shun stop it? Gao Yao had his authority from which he received from the law.’ ‘Then what would Shun have done?’ ‘Shun looked upon casting the empire as no more than discarding a worn shoe. H would have secretly carried his father on his back and fled to the edge of the Sea and lived there happily, never giving a thought to the empire’ (Mencius 7A35).
universal moral obligations that cannot be defeated by the obligations of consanguinism. It is likely that he comes to this position because he fails to appreciate that Confucianism acknowledges good reasons for rejecting an anonymous universalist account of morality as a system of independently valid norms. Liu does not recognize that Confucians affirm a way of life as a whole within which living up to the claims of virtue consanguinism is essential for human flourishing.

As a result of this difference in moral perspective, Liu wants to impose on Confucius and Mencius a view of morality constituted in terms of independent universal norms, the violation of any of which is essentially wrong. Instead, for Confucius and Mencius, moral norms are specific rules for action that have their plausibility in terms of their identifying the ways in which one can achieve virtue. As a consequence, in many, if not all, circumstances, favoritism to a family member does not constitute a morally improper act, but the very opposite. Given its conduciveness to and manifestation of virtue, familial favoritism can be a morally obligatory act. Confucius’ and Mencius’ position on these matters is determined by their possessing a moral perspective radically at odds with what Liu brings to his interpretation of Confucianism. Rather than regarding morality as structured around a set of absolutely anonymous principles and rules, they recognize morality as realized in a virtuous life where specific moral rules are embedded in ritual practices in which one conduct different activities with different individuals in different circumstances. In short, given the Confucian appreciation of obligations under consanguinism and the contribution made by the bonds of the family to the substance of virtue, the actions Liu describes as corrupt are not corrupt, but are in fact virtuous.

Liu is led to his conclusions by his anonymous universalistic account of moral obligations where each moral norm can be identified independently of social circumstances. For Liu, the status of persons and the governance of moral norms are not given content through particular social relations. In contrast, Confucians recognize that both persons and moral norms gain their content and authority within a fabric of social relations. As a result, the moral obligations of persons are always to be understood first and foremost within a familial context. While Liu wants to specify absolute universalistic principles, it is not clear that one can find such principles even in the most demanding of Western ethics. Kantians (as opposed to Kant) recognize that even things like telling a lie or killing are not absolutely prohibited. Philosophers like Aristotle think almost all moral judgments are particular and context sensitive. Confucians are also particularists, and they see tremendous value in properly fulfilling familial bonds. They value these relations for at least two reasons: (1) these relations are valuable in themselves, part of what makes life worth living; and (2) they are the source and paradigm for more general good acts. Neither of these beliefs means that fulfilling a familial obligation is always and everywhere good; they do mean that such acts always have some moral value and in some cases a great deal of such value. Indeed, Confucians uphold universal love. But they are not the Mohists (墨家) who want to seek undifferentiated, impartial or egalitarian love, without regard to family ties. Instead, the Confucian version of universal love is differentiated, non-egalitarian love that is familial based and centered. When Liu
mentions Mencius’ “four beginnings” and the baby-crawling-into-the-well examples, he seems to misunderstand Mencius as asserting a general moral capacity that requires egalitarian treatment of everyone. The truth of the matter is that Mencius has made it very clear that such capacity is not naturally directed to everyone with equal intensity: your affection for your brother’s baby is not like your affection for a neighbor’s baby, and rightly so (Mencius 3A5). Pace Liu, Confucians do not have two hearts – one possessing anonymous universal love, and the other differentiated universal love. Rather, they hold one unified heart that serves as the effective root of morality for a Confucian way of life (cf. Nivison, 1996, p. 133).

However, the very obligations as well as the flourishing of persons, families, and societies is put in jeopardy by those who like the duke of She affirm the uprightness of a “man who bore witness against his father when he stole a sheep” (Liu, 2007, p. 4). Confucius appropriately remonstrates that “the upright ones in my community are different from this. Fathers conceal the misconduct of their sons and sons conceal the misconduct of their fathers. Uprightness is to be found in such mutual concealment” (Analects 13.18). While some people cite it as an example of corruption, this passage does not advocate breaking the law, unless the law immorally requires one to report about one’s parents. All it says is that one does not report one’s father’s crime; it does not ask one to aid or abet him in stealing. If my father came home one day and showed me a watch he had picked up from a store and left without paying for, I would not pick up the phone and turn him in. I would take the watch back to the store, explain that my father is suffering from dementia, return the watch and offer compensation. My aim would be to avoid anyone having to report the crime. Confucius, unlike Liu or Immanuel Kant, does not affirm (or for that matter consider coherent) an anonymous moral perspective which is articulated primarily through an appeal to what can be universalized in the absence of considerations of particular relations and particular circumstances. Like G.W.F. Hegel, Confucius recognizes a kind of Sittlichkeit with its grounding in the family as well as in particularity as the source of moral content and direction that cannot be derived from appeals to anonymous universal principles.

The difference between Confucianism and the moral stance affirmed by Liu is better appreciated when one notes that Confucianism is committed to a set of moral-epistemological, axiological, and metaphysical premises denied by both Liu and Kant. Confucianism affirms the moral-epistemological insight that virtue is learned first and foremost in the family, through the particular bonds and obligations that arise within familial relationships. Thus, Confucianism denies Liu’s premises that one need not take particular kinship love as an indispensable moral starting point, and that one can instead derive humane love from “some universal principles” (p. 16). Here Liu fails to see that he is rehearsing the debate between Confucians and Mohists in the ancient time: while the differences between Mozi (墨子) and Kant are numerous and substantial, they both appeal to an abstract principle as the basis for moral judgment. Confucius and Mencius recognize that such an anonymous universalism is morally and epistemologically misleading. In addition, Confucianism endorses the metaphysical priority of the family over the individual. Persons live in a rich fabric of concrete familial obligations that guide actions as well as make
possible the moral life and human flourishing. The family as a whole has a moral significance that is more than the sum of its parts. In terms of the metaphysical thesis, one can appreciate the axiological insight; namely, that family flourishing is of richer and greater significance as a good than the good of individual flourishing. This is the case, in part, because individual flourishing regarded apart from flourishing within the family is radically one-sided and incomplete. Unlike Liu, Confucius and Mencius consider a society marked by the discharge of the obligations of consanguinism as morally more complete and noble than one that in an unbalanced attempt to prohibit vicious familial favoritism makes the pursuit of virtuous familial favoritism impossible.

This Confucian family-oriented favoritism does not contradict the rule of law, as Liu might think. Rather, it constitutes the specific content of the Confucian rule of law for a life of virtue. There is no such thing as a universal conception of rule of law that applies to all cultures or societies anonymously. In the case of Shun raising his brother Xiang to be the prince of Youbi, Shun was presumably following the legal and political system established at his time, which allowed an emperor to appoint his unvirtuous brother to an honorary, though not authoritative, position in order to enrich and ennable him. This system is consistent with the Confucian family-oriented favoritism. It aims at avoiding an unvirtuous circumstance; namely, that an emperor would have been said not to love his brother if he had allowed his brother to remain a commoner (Mencius 5A3). While Liu thinks Shun performed a corrupt act by injuring the interests of the people in Youbi in order to benefit his brother, the truth of the matter is that under this wisely designed Confucian rule of law, the interests of the people in Youbi were not harmed because Xiang did not have real power to govern them. Instead, Shun was able to fulfill love to his brother, which Confucianism takes to be essential for Shun’s virtue cultivation and manifestation. Since the virtuous act of the emperor would influence Chinese society as a whole, it would benefit the people of Youbi and beyond.

The imagined case of Shun’s father, Gusou, differs from the above case in that there was not a law yet for Shun to follow. Faced with an unprecedented case, Shun had to take everything into account and make a decision. He should not, according to Mencius, forbid judge Gao Yao from apprehending his father, because Gao Yao had a legal obligation to so act. Neither should Shun fail to act to save his father because such a failure would violate the basic Confucian virtue of filial piety. The best he could do, Mencius argues, was secretly to take “his father on his back and fled to the edge of the Sea and lived there happily, never giving a thought to the empire” (Mencius 7A35). Mencius’ suggestion was the best option under the circumstances and is compatible with the Confucian virtue of family-oriented favoritism. It would be corrupt for Shun to use his position to shield his father. But Mencius was very clear that Shun should not do this. He should not interfere with the law. He should resign and then as a private citizen escape with his father. From my understanding, since this was an unprecedented case faced by Shun, Mencius’ suggestion should be understood as proposing an augmentation of the law; namely, that in a perfected Confucian rule of law, if an emperor’s parent commits a felony, the emperor
should abdicate and the parent should be spared from the usual punishment.\textsuperscript{2} This proposal is consistent with and justifiable by the Confucian consanguine morality which is eventually realized by the privilege of substituted punishment (e.g., where the son could receive the punishment usually due the father) as a part of the traditional Chinese legal system (Fan, Z. 2004). In this system the family is taken as an autonomous moral and legal agent that must first be understood as having a priority within society. It is recognized as prior in the order of knowing (the \textit{ordo cognescendi}) in the sense that the moral appreciation of the family is necessary for the appropriate moral appreciation of society. The family is also prior in the order of being (the \textit{ordo essendi}) in that society can only exist if there are families. The members of a family flourish and suffer altogether as a whole. The absolutist affirmation of isolated individual legal responsibility as espoused in modern Western jurisprudence goes against the grain of the human moral life.

If one would forgive a certain bias in favor of the present, Confucius, Mencius and traditional Confucians generally regard themselves facing a moral threat similar to that ingredient in the anonymous universalist morality of ancient Chinese Mohists or contemporary Western Europeans. That morality focuses on individuals apart from their place in the family. The moral life is construed in anonymous terms, separating the individual from the particular bonds that give the moral life its content. The result is that one is deprived of a familial location, the life of the isolated individual is reduced to a shallow hedonism. This European crisis of the family is the focus of the conversations of Cardinal Ratzinger, now Pope Benedict XVI, with Marcello Pera regarding the circumstance that Europeans are no longer reproducing (Ratzinger and Pera, 2007). Europeans are failing to appreciate the moral values and place of the family, because these values cannot be adequately articulated from an anonymous universalist moral perspective. The view from the family is always a view from a particular somewhere, not the anonymous nowhere of Liu’s proposed morality. Contemporary European morality leads to the death of the family. Over against the atomism and anomie of such a society defined in terms of anonymous universalist moral rules, Confucianism proposes a radically different moral perspective that takes moral particularity seriously.

When one turns to the public policy implications of all these considerations, one must not only recognize the contemporary challenges in Chinese life to a Confucian appreciation of the family, one must also concede that Chinese public and private life is marked by numerous forms of pernicious favoritism that undoubtedly count as instances of corruption. In addressing these problems of corruption, one should not obscure the status and significance of the family in the life of virtue. The corruption that characterizes contemporary Chinese life is not one that derives from the favoritism that Liu criticizes in Confucius or Mencius. The favoritism affirmed by Confucius and Mencius is set within the moral constraints of a life of virtue. Although I am not able to provide a complete list of the moral constraints that Confucianism has set on familial favoritism within the scope of this chapter, the

\textsuperscript{2} For a detailed discussion of this case, see Section 3.5.
three cases we have discussed have suggested illuminating points: one should be prohibited from assisting or joining a family member to commit an immoral act, such as to abet one’s father in stealing; one should be prohibited from using one’s power to appoint a family member to hold a social or political position in charge of affairs that go beyond the command of that family member’s talents and abilities; and one should be prohibited from using one’s power to interfere with legal procedures in order to benefit a family member at stake. Outside of such moral constraints, favoritism becomes corruption. Set within such moral constraints and aimed at a Confucian life of virtue, Liu’s moral concerns with familial favoritism are defeated.3

China will need to restore a notion of the family within a Confucian appreciation of virtue in order to combat corruption. At the very least, given the crisis of the family in Western Europe and elsewhere, Chinese law and public policy should

3 In his “response to critics” (Liu, 2008), Liu argues that all the three Confucian cases under discussion are morally defective because they violate the universal moral principle “harm no one and benefit humans.” I think it is eventually groundless to base his conclusion on “harm” considerations. It is true that if my father stole a sheep from the owner, he had harmed the owner. But I do not inflict any harm to the owner if I simply refrain from reporting the case to the authority. Liu should not forget that it is the latter (my refraining from reporting) rather than the former (my father’s stealing a sheep) that is at stake in the debate. Regarding the case of Shun’s raising his brother as the honorary prince of Youbi, Liu argues that Shun harmed the people of Youbi by this appointment because he made his brother “rich and honorable purely by the wealth created laboriously by Youbi’s subjects” (p. 308). However, honorary appointments are inevitable for any government because such appointees can play some beneficial functions that authoritative positions cannot or should not perform in society. As long as Liu agrees that it is morally justifiable to levy taxation for running a government – on which I take he agrees because he is not an anarchist, he cannot contend that setting up honorary positions would harm the people. Consequently, even if appointing an unqualified person to be an authoritative prince would tend to injure the people because the person will have the power to do so, appointing an unqualified person to be an honorary prince cannot harm the people because he is “certainly not permitted to ill-use the people,” as Mencius points out (Mencius 5A4). In short, the only issue at stake seems to be whether Shun’s brother is qualified for the honorary position, rather than whether appointing him to the position would harm the people of Youbi. Finally, it is true, again, that if one’s father murdered another person, the father certainly harmed that person. But it is too stretching to say that by helping one’s father to escape from punishment, one is also harming that person. Even if it is wrong to help one’s father to escape in this case (though this is a controversial issue; see more discussion in Chapter 3), it is wrong for reasons other than “harming” the person that was murdered by the father. As to the principle of “benefiting humans,” it is indeed naive to believe that an agent-neutral, “impartial” utilitarian view would “objectively” trump other views, such as an agent-relative, family-based Confucian virtue ethical view. From the Confucian view, it is precisely an indication of moral corruption more than intellectual numbness for Liu to claim that in a case in which one’s mother and a stranger are about to drown and one could save only one of them, it is morally fine that “I may first save either my mother out of kinship love or the stranger according to radical altruism” (Liu, 2008, p. 307). Confucians would say that you must save your mother in this case, period! Given the Confucian understanding of human nature, human relatedness, as well as the character of a way of life guided by virtue, saving one’s mother rather than a stranger in this case is not only the only right thing to do, but it is also the only effective way of “benefiting humans.” If one cannot even be nurtured to take an action to save one’s mother, it is hard to believe that one can be successfully educated to take an action to save a stranger.
restore the Confucian recognition of the moral status of the family. Many of the ways in which Guo Qiyong notes that various legal systems exempted family members from testifying against each other should be re-established (Guo, 2007). Such legal reform must distinguish among three levels of intra-familial legal immunity. One step would exempt family members from any duty to testify against other close family members. The second would not allow the admissibility of such testimony in court. Last, the law could fine or otherwise punish those who support a court case against a close family member. Which position the law establishes should depend in part on the legal issues at stake. For example, one might have a quite different view with regard to testimony in tort actions versus testimony in criminal cases. As one moves to remedy the various forms of corruption found in contemporary Chinese society, it would be a great error to follow Liu’s suggestions, which obscure the role of the family in the nurturing and development of a life of virtue.
Chapter 2 
Virtue, Ren, and Familial Roles: Deflating Concerns with Individual Rights and Equality

2.1 Introduction

An impassioned commitment to read into Confucian moral theory a Western affirmation of human rights and human equality is producing a substantial literature. This literature has begun to take the first step to reassess this recasting and translation of Confucianism in terms more acceptable to the Western mind. For example, Po-keung Ip (2003) critically assesses the Confucian virtue-based notion of personhood and contends that it is inadequate for dealing with bioethical issues because it lacks a theory of individual rights. This chapter will address this issue by focusing on two sets of essays selected from contemporary East Asian bioethical literature. These two sets of essays, Julia Tao’s, Edwin Hui’s, and Hyakudai Sakamoto’s on the one hand, and Ip’s on the other, represent two different approaches to the nature of Asian bioethical explorations for the foundation of an Asian bioethics. In the approach of Tao (2003), Hui (2003), and Sakamoto (2003), the foundation must be established based on Asian cultures, religions, and moralities, especially Confucianism, thus providing a bioethical account more adequate in the Asian context than the account offered by modern Western individualist morality. In Ip’s approach, however, a rights-oriented bioethics must shape the core of an Asian bioethics, because, as he sees it, Asian moralities in general and Confucianism in particular fail to take individual rights seriously and are thereby fundamentally defective.

This chapter will first draw on the arguments offered by Tao, Hui, and Sakamoto to show why a rights-based bioethics is not a panacea for solving issues in Asian bioethics. Then, in response to some of Ip’s concerns and arguments, this chapter will lay out the strengths of a virtue-based Confucian account of personhood for bioethical explorations. Furthermore, it will compare the liberal accounts of equal rights and the Confucian account of unequal virtues as well as their respective underpinning principles. Finally, some concluding remarks are in order concerning Reconstructionist Confucian bioethics’ approach to dealing with specific bioethical issues.
2.2 Are Rights Persuasive?

There is rights abuse in contemporary society. Influenced by modern Western individualist rights-based liberal theories, a great number of individual rights have been “created” and appealed to whenever people face social and/or ethical problems. We have found an ever-increasing amount of rights assigned to particular human, and even non-human, individuals, such as “women’s rights,” “children’s rights,” “embryo’s rights,” “animal rights”, etc. We have also witnessed more and more special rights extended to almost every aspect of life, such as the “right to die,” “right to a job,” “right to a vacation,” “right to a meaningful life,” “right to take a nap at noon,” etc. Rights have simply been taken as panaceas for solving any problem. More crucially, some have used rights as the fundamental moral standards to assess all other moral conceptions and ideas for their legitimacy. Following this tendency, Ip argues that “rights arguments are important arguments in many bioethical situations. A viable notion of personhood should enable us in arguments and decision-making to take rights seriously. Any notion of personhood which fails to do this may be defective and inadequate” (Ip, 2003, p. 59).

However, before one takes “rights” as standards to judge other moral notions, one needs at least to describe which rights one is speaking of and why they are qualified as criteria for assessing other things. Unfortunately, like many rights theorists, Ip does not intend to address these underlying issues. It seems that, to many rights upholders, rights are self-evidently clear, and so important that there is no need to offer any serious explanation and/or justification for them. They just follow Robert Nozick (1974), and begin their arguments by assuming that individuals have rights that should not be violated by other individuals or society. In the case of Ip, he immediately turns to an examination of the issue of whether Confucian moral personalism, together with its familial collectivism, suffices to build up a robust rights-based concept of personhood (pp. 54–55), without examining the issue of why an Asian concept of personhood must be “a robust rights-based concept.” His conclusion is that because Confucian familial collectivism is inhibitory to rights and equality and is conceptually incompatible with the concept of a rights-based personhood (p. 56), the Confucian notion of personhood is defective and inadequate (p. 59).

I will address the Confucian notion of personhood in the next section. Here I want to analyze briefly the standing of the rights-based notion of personhood that Ip

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1 There are different notions of personhood in terms of rights consideration. In Section 13.3, I identify five different conceptions of personhood that I term “appeal to rights” conceptions. These conceptions include five different specific standards for measuring personhood: the standards of species, potentiality, sentience, brain or heart functioning, and awareness of self as a continuing entity. For the sake of simplicity, I do not in this chapter mean to engage in the details of these different rights-based or “appeal to rights” conceptions of personhood. I take all these conceptions to be based on a particular moral point of view: a person, whatever he or she is, is a rights-holder. In this sense, I will simply talk about “the rights-based notion of personhood” in my text as Ip does in his.
2.2 Are Rights Persuasive?

takes for granted. This notion of personhood emphasizes that, among other things, a person is a bearer of rights, and must be treated with dignity and as an equal of other rights-bearers, without having his/her rights being violated by others. It takes rights as primary in the context of ethical and bioethical conflicts. However, no matter how “correct” and “important” Ip assumes this notion is, it is nonetheless problematic. Although I cannot offer a systematic assessment of the rights-based notion of personhood, I will draw on some prominent arguments offered in the papers by Tao, Hui and Sakamoto to summarize a few remarkable issues relevant to the notion.

First, as Tao indicates, the language of rights cannot provide the resources for building mutual concerns and cooperative relationships between opposing parties caught in a conflicting situation of competing interests. A typical example is abortion: the fetus’ rights are easily opposed to the pregnant women’s rights to pursue her own life plan. Moreover, the father, the grandparents, and the state may also contest the woman’s right to terminate or to continue her pregnancy. What becomes clear is that the language of rights and the legal system based on it tend often to exaggerate rather than reduce the division between the different parties involved (Tao, 2003, p. 15).

Second, the primacy of rights tends to obscure the appropriate relation between individuals and society. It tends to overemphasize concerns with individual liberty and self interest, seeing the self as essentially separate from others. In this way, it may lead to extreme positions and actions. For instance, in health care allocation, stressing health care rights can lead to an unlimited demand on government provisions to satisfy maximum individual preferences, resulting in escalating costs and the unsustainability of the entire system. Moreover, it can also lead to the gradual erosion of the collective provision of public health care because of increasing demand for freedom of choice and individual responsibility for health care through the market and private insurance. Either way can bring about the gradual disappearance of public health as a common good in society (Tao, p. 16).

Third, while the primacy of rights leads to emphasizing individual autonomy, free choice, and self-determination, a major difficulty of such an emphasis lies in its underlying notion that individuals can be abstracted from relationships, social contexts, and even from qualities of human agency that are vital to human life, namely the capacity and need for connectedness, relationships and mutual care. It tends to reinforce separation and isolation, marginalizing family involvement and shared family-determination. For instance, most discussions of euthanasia and advance directives in the past decades have been framed in terms of protecting the autonomous choice of patients to decide when to die. However, despite this autonomy, we may feel we really have no choice, largely because we are unable to find meaning in death or bring our lives to a meaningful close. We suffer from an inability to give meaning to death because death defined as an individual right and autonomous choice is isolated, disconnected, and dislodged from the web of personal relationships and community bonding that give meaning to life and death (Tao, p. 19).

Finally, as Hui demonstrates, the rights-based notion of personhood is developed from the long-standing Western view of “substance.” One of the most crucial
characteristics of the concept of substance is its aptitude to exist in itself as a concrete individual thing and not as a part of any other being. The philosophical circles of the modern West have largely retained this “substantialist” tradition (Hui, 2003, p. 31). This substantialism, as Sakamoto explains, was fortified in modern times by the idea of “person” and “human dignity.” “Person” is identified and dignified as a rational being, assigned with the so-called “human rights.” In this regard, American bioethics can be taken as an attempt to establish a legal system to deal with bioethical issues from the point of view of individual human rights. A human person is primarily a rational individual substance. This assumption of rational substance contributed to contemporary bioethics the narrowly psychological and individualistic understanding of personhood and the rights-based ethic (Sakamoto, 2003). These are sharply different from the Chinese ethic of personhood that has been developed from the Confucian moral tradition.

This is to say, in the understanding of Tao, Hui and Sakamoto, the rights-based notion of personhood has been developed from particular Western metaphysical and moral traditions and is characteristic of specific Western moral contexts. It is by no means universally acceptable or without need of further discussion. More importantly, as Tao, Hui and Sakamoto see it, this notion, with its emphasis on the primacy of individuals’ rights, often causes more serious confrontations between agents than would attempts persuasively and harmoniously to solve problems. Accordingly, it is inappropriate to take this notion of personhood for granted and as a standard for measuring all other notions of personhood as if it were uniquely perfect and universally justified.

2.3 The Confucian Virtue-Based Personhood

The Confucian notion of personhood is a virtue-based notion. Unlike the contemporary concept of rights, which assumes various individual entitlements based on a faith in universal reason to “intuit” such entitlements, independently of any particular understanding of human nature, a concept of virtue is inherently relevant to a specific view of human nature. Generally, virtue is understood as good character. It is not only a state of affairs, but is also proper human activity. A coherent set of

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2 In Section 13.5, I will define the Confucian conception of personhood as an “appeal to rites” conception in contrast with other conceptions including the Judeo-Christian “appeal to creation” conception. There is no contradiction between that identification and the identification here in this chapter (namely, Confucian personhood as a virtue-based notion), as long as one understands that the Confucian conception of virtue emphasizes the harmonious unity between one’s inner dispositions and outer activities by cultivating oneself in observing the rites or rituals (li, 禮), namely, a series of familial and social behavior patterns endorsed by the Confucian tradition. Moreover, upholding virtue and de-emphasizing rights in Confucian ethics does not imply that Confucian ethics must be incompatible with any notion of individual rights. In fact, a Confucian conception of individual rights could be worked out based on the Confucian virtues, and a list of Confucian rights would be dramatically different from the list of liberal rights frequently cited today (see Section 4.5).
virtues must be a complete series of human traits or qualities that enable humans to do the right thing at the right time in the right way in pursuing the good life suitable for human nature. Hence, a particular theory of virtue cannot be established independent of a specific conception of human nature. For instance, Aristotle’s theory of virtue is based on his understanding that man is by nature a political animal (neither a beast nor a god), possessing the potential to form the (just) polis. In contrast, the Confucian theory of virtue is based on its view that man is by nature a familial animal, possessing the potential to form the (appropriate) family.\(^3\)

The Confucian understanding of the nature of humans as familial animals involves a deep idea of love. It traces back to the original work of the Confucian master, Confucius, especially in his reconstruction of the Chinese rituals (\(li\), 禮) in terms of the fundamental Confucian virtue, ren (仁). Confucius lived in a time of immense social conflict and turmoil in Chinese history. By his time, China already had thousands of years of civilization with the glory of its ritual system. But the glory was declining in his time. The rich and powerful feudal lords, who arose from unprecedented economic growth, wanted to grasp more political power. The states began to wage wars against each other, subjects murdered their princes, and children killed their parents. The ritual system was disintegrating, and the morality of the society was degenerating. Confucius, among a dozen of the most brilliant minds that China had ever produced, reflected on human nature and looked for a comprehensive strategy to reform the society. He was not unique in recognizing that humans must form appropriate behavior patterns and follow proper rules in order to live together peaceably. But it was truly significant for him to vindicate the idea that appropriate behavior patterns and proper rules are exactly illustrated by the traditional Chinese rituals, and that such rituals should be restored and maintained in order to put society back on the right track.

Confucius did not mean to keep intact all behavior patterns or rules implicit in the established rituals, though. Rather, he was to reconstruct the Chinese ritual system in terms of the fundamental human virtue of ren that he teased out through his reflection on human nature. Humans, for Confucius, are not atomistic, discrete, self-serving individuals coming to construct a society through contract. They are first and foremost identified by the familial roles that they take on: husband, wife, father, son, mother, daughter, brother, sister, and so on. Every human must be born and grow in the family. This familist way of human existence is not chosen, but rather is given. The parent–child relation not only becomes the most important human relation, but it also vividly illustrates a most significant and noble aspect of human nature: humans’ ability to sympathize with each other (that is, one cannot bear the suffering of the other, from Mencius’ point of view). This natural sympathy constitutes the human disposition of love. For Confucius, the love between parent and child sets down the root of the fundamental human virtue, ren (Analects 1: 2), and this virtue must be

\(^3\) In the Confucian view, the family is the foundational unit of society, and society is a collection of the families, a family of different families. For the different understandings of the family and human relations between Aristotelianism and Confucianism, see Fan (2002).
cultivated and promoted in order to build a good society. Thus, ren, among a number of the traditional Chinese virtues, was understood by Confucius as the fundamental human virtue to reconstruct the ritual system.

Indeed, Confucius clearly articulated ren as loving humans in the Analects (12: 12). In this general meaning, it seems that ren, upheld by Confucius as the fundamental human virtue, has no essential difference from the word ren that had already been used in the pre-Confucian literatures, such as the Classic of Songs (Shi Jing, 詩經) and the Classic of Doctrines (Shu Jing, 書經). However, what is special about this virtue is the foundation that Confucius set down for it so as to reinterpret it as a profound and complete human virtue. Evidently, love needs an impetus. In other words, love must have a foundation to empower itself. The foundation of Christian love is a creative tie between God and man; the foundation of Buddhist love is a causal connection among all beings; and the foundation of Ancient Greek love is a romantic union between man and woman (or man and man). Unlike any of these, the foundation of Confucian love is a blood-tie between parent and child. Confucius must have been extremely impressed by the power of this parent-child love when he used it to account for the root of the fundamental human virtue, ren (Analects 1: 2). Parent-child love is not romantic love. It engages a deep affection towards and selfless care of each other, having nothing to do with mutual sexual attraction or impulses. It is not even reciprocal – the parental love of one’s children or the children’s love of their parents is not the granting of privileges in return for similar privileges from the other side in the future. It is nonsensical to say that they are making mutual concessions with each other for self-benefit. The meaning of their love transcends any sense of contract. Finally, for Confucians, only through the establishing, nurturing, and developing of the parent-child love in the family and gradually extending it to other people outside of the family can a good society be possible. Hence, love must begin from the parent-child tie inside of the family. If it cannot begin from the family, it will begin from nowhere.

Moreover, the virtue of ren as love should not be taken as only a feeling of affection. Reading the Analects carefully, we can see that ren is foundationally a potential, a power, and a character that humans possess, from which the feeling of love naturally arises. In this regard, Mencius, the Confucian master second only to Confucius, is quite right in insisting that everyone is born to have a seed of ren in their heart/mind – the seed has both the substance and function (feeling) of love. Without the substance, there would be no function. But Mencius might have misleadingly gone beyond Confucius in claiming that human nature is thereby good. This assertion makes some people mistakenly conclude that they can become virtuous without the need to follow any guidance or make an effort. This is certainly not what Mencius really meant. A seed is not a fruit. The fundamental virtue as a good and noble aspect in human nature is only a potential, which needs cultivation, nurture and development to fully realize itself. This is why Confucius emphasized the importance of following the rituals in order to pursue virtue (Analects 7: 1). It turns out that, in Confucianism, ren (as the fundamental human virtue) and li (as the proper human behavior patterns and rules) hold the dialectical relation of mutual contribution and complementation.
In the first place, the purpose of establishing and maintaining li for human society is nothing but contributing to nurturing and promoting the fundamental human virtue; namely, ren. Without this purpose, li is simply pointless (Analects 3: 3). Li should not be understood as something like artificial laws imposed on humans from outside. It is rather a net of indispensable roads directing one to the good life suitable for human nature. Hence, Confucius recognized how important it is to follow li for pursuing virtue. In fact, in his view, the only way for a human to become a human of ren (namely, to realize his/her nature fully) is by subduing his/her improper passions and complying with the established li (Analects 7: 1). He clearly taught that the method of realizing ren is “not to look at what is contrary to li; not to listen to what is contrary to li; not to speak what is contrary to li; and not to make a movement which is contrary to li” (Analects 7: 1).

On the other hand, however, it is not Confucius’ position that every particular li is always appropriate and should never be revised. For him, the li of a new time is unavoidably a reconstruction of the li of the old time. As he stated, “the Yin dynasty built on the li of the Xia. What was added and what was omitted can be known. The Zhou dynasty built on the li of the Yin. What was added and what was omitted can be known” (Analects 2: 23). Importantly, for him, reconstruction must be made according to the fundamental human virtue in consideration of new circumstances. When a disciple asked about the basis of li, Confucius answered: “a noble question indeed! With ceremonies, it is better to err on the side of frugality than on the side of extravagance; in mourning, it is better to err on the side of grief than on the side of formality” (Analects 3: 4). This is to say, the essence of following li lies more in your internal sincerity that embodies love than in your apparent behaviors that conform to the rules without corresponding feelings. Confucius gave an example to show how he would revise a rule of li: “a ceremonial cap of linen is what is prescribed by li. Today black silk is used instead. This is more frugal and I followed the majority” (Analects 9: 3). He also gave an example to show why he would not change a rule of li: “the li prescribe the bowing below the hall, but now the practice is to bow only after ascending it. That is arrogant. I continue to bow below the hall though going against the majority” (Analects 9: 3). That is to say, the majority view may not be the true standard of li. The true standard is in conformity with the conception of ren – the rules and rites that contribute to the substance of love should be established and maintained regardless of contemporary common practices.

In short, for Confucians, the fundamental human virtue is ren. All humans possess the seed of this virtue and it must be nurtured, developed, and perfected in order for each to become an authentic human person and realize human excellence. Confucius reconstructed the Chinese rituals in terms of this fundamental virtue, ren:

1. The rituals (as a system of behavior patterns and rules) are morally meaningful because they are indispensable to the fulfillment of the virtue.
2. Everyone must follow the rituals in order to nurture and develop their virtue.
3. The rituals can be revised according to the central concern of the virtue.4

4 For a detailed exploration of Confucian rites as well as their relationship to ren, see Chapter 11.
These Confucian understandings provide, among other things, a virtue-based conception of the human person. Whatever a human is, he/she is a virtue-holder and pursuer. A human is a virtue-holder because he/she has been invested with the potential of loving his/her parents and relatives and capable of extending this love to other people. A human is also a virtue-pursuer because he/she must nurture and develop this potential in accordance with the requirements of rituals in order to become a virtuous human. In comparison with the rights-based notion of personhood, this Confucian virtue-based notion of personhood is (1) grounded in a natural love between parent and child (rather than on emphasis on universal reason) so that people are naturally driven in practicing this notion of personhood, (2) duty-oriented (rather than claim/entitlement-oriented) so that it carries more mediating power in dealing with human problems and conflicts, and (3) family-oriented (rather than individual-oriented) so that it promises natural human unions and harmonious relationships.

2.4 Reflections on Equal Rights Vs. Unequal Virtues

Ip is right in stating that filial piety (namely, the manifestation of the children’s love of their parents) becomes crucially important in pursuing the fundamental Confucian virtue of ren. Indeed, compared to the parental love of their children, the children’s love of their parents needs more cultivation and promotion for its exercise. This is why Confucians often emphasize more of the children’s care of their parents than the parents’ care of their children. Ip contends that the emphasis on filial piety leads to a hierarchical human family in which equal rights have no place. The hierarchical and paternalistic familial and social structure successfully preempts equality among persons. The emperor, the father, and the husband occupied norm-generating and norm-dictating statuses and positions. All other social relationships and institutions would spin around these unequal and domination-cum-subordination social arrangements (Ip, p. 57). Hence, the Confucian society as well as the Confucian family does not have the idea of treating everyone as an equal. Confucian persons do not have equal rights. This, for Ip, indicates that the Confucian view is defective.

It is true that Confucian familism does not hold the liberal democratic principle that people should be treated as equals. Instead, in my view, the Confucian principle is that people should be treated as relatives. As I indicated in the previous section, from the Confucian understanding of humanity, separate individuals cannot become true humans. It is the relationship of love among humans that produces and identifies the good character of human individuals. The root of this love is foundationally grounded in the parent-child tie and intimate affection. It is this love that brings out the basic human community – namely, the family – and makes possible the creation

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5 For a clear articulation and explanation of this fundamental liberal principle, see, e.g., Dworkin (1978). Substantial liberal moral arguments can be taken as developed from this principle. See, e.g., Kymlicka (2002, pp. 3–4).
of a civilized human society, insofar as this love can be nurtured, promoted, and extended gradually to others outside of the family. Hence, the feature of this love is inconsistent with any basic egalitarian moral sentiment, and the basic structure of the Confucian model of the family (on which all other human relations and social institutions are modeled) is at odds with the liberal principle of treating people as equals.

Although the principle of treating people as equals does not necessarily support the equal distribution of income or wealth, it essentially requires equal respect of everyone and equal consideration of everyone’s interests. It sets down the basic tone of the “equal rights” that liberalism emphasizes to the utmost. However, Confucianism does not accept equal respect of everyone or equal consideration of everyone’s interests. To be sure, Confucians understand that each human, qua human, possesses the seed of the virtue, ren, and is able to cultivate and practice love, first inside of the family and then gradually extended to outside of the family. In this sense every human is able to love and respect others and in turn deserves others’ love and respect. However, Confucians also recognize that human individuals differ from one another in the degree in which they learn and exercise the virtue in respecting and loving others. Because some are more sincere in attitude, put more effort into action, and accomplish more achievements in outcome than others in the practice of the virtue, Confucians hold that they deserve more respect than others in society. This “unequal respect” constitutes one of the fundamental Confucian values: zun-xian (尊賢) (honoring the men of virtue). The Confucian classic Doctrine of the Mean regards zun-xian as one of the most important moral standards in regulating society (20: 13–14). From the view of the Doctrine of the Mean, by honoring men of virtue, society can be preserved from errors of judgment.

Some might want to argue that even if the Confucian principle of treating people as relatives sounds unegalitarian, it still contains an egalitarian thesis that can be dug out. This is because, they might contend, there must be a “threshold” in treating individuals as relatives below which they are no longer being treated as relatives. This is true theoretically. However, there has never been such a threshold that has been established and emphasized by Confucians in order to use it as a general and universal standard for treating all individuals equally or similarly. Instead, with the basic spirit of loving and caring for everyone, Confucianism always gives attention to the different roles, characters and circumstances of different individuals. Importantly, based on the Confucian understanding of human nature, humans are not mutually disinterested and independent individuals as John Rawls (1971) assumes they are in the so-called original position. Rather, they are always familial-ly and socially related to each other, and their relations are bound to be asymmetrical: some are born as intimate family members, some are made close friends, and some are only remote strangers. Although the Confucian virtue of ren requires extending love from one’s family members to all others outside of the family, it does not hold that one should love everyone equally or similarly. To the contrary, Confucianism always requires that there ought to be a clear and definite order, distinction, and differentiation in the application of love (Chan, 1955, pp. 8–9). It is not that one should not love all; it is that one should love all with differentiation and relativity of importance. This
peculiar Confucian discrimination is well reflected in the Confucian slogan of “love with distinction” or “care by gradation” in the process of Confucian self-cultivation. It constitutes another crucial Confucian value: qin-qin (親親) (affection towards relatives) (see, e.g., the Doctrine of the Mean 20: 13–14). It is wrong for one to give equal weight to one’s close family members’ interests and strangers’ interests. It is only appropriate to give more weight to the interests of one’s family members. Importantly, this un-egalitarian moral ethos has to be embodied in public and social policy. For instance, welfare is basically a family responsibility. It is mistaken for the state to offer comprehensive welfare programs in order to equalize everyone’s welfare in society. Such egalitarian attempts are in tension with the basic Confucian familist moral sentiment because they deprive families of their own resources from seeking welfare for their family members as they see best.

As the family is the basic Confucian pattern of normal human existence, equal rights in the family is a non-starter for Confucians. For the healthy growth of children, what is most important is not to respect their liberty, free choice, or self-determination, because these capacities have not yet been developed in children. What is most important, rather, is to instill children with appropriate rules, knowledge, and patterns of behavior in a way that children find interesting to learn so as to cultivate them to become virtuous, normal, human adults. For the care of the elderly in the family, what is most important is not to respect their rights as “equal” to the rights of others. Rather, it is to take care of their special material, emotional, and spiritual needs so as to help them lead a happy elderly life (Wang, 1999). In short, from the Confucian view, “unequal virtues,” rather than “equal rights,” is the more pertinent feature of the family. Rights are not sufficient for proper human concern and care.6

On the other hand, it is misleading to believe that Confucianism supports dictatorship in human relations. It is true that Confucians hold that the father, the husband, and the king should play more active roles in the relations of father-son, husband-wife, and king-subjects so as to maintain the normative and harmonious relations according to Confucian concerns and commitments. But it is a misunderstanding to think that they are in the position of articulating the norms and standards of morality bearing on human relations. The norms and standards are already set down in the Confucian tradition through a shared communitarian understanding of the fundamental human virtue, ren, and formulated by the rules of the ritual system, li. To understand Chinese history, it is crucially important to distinguish what is taught in the Confucian classics and what was realized in the actual politics of the imperial courts. The imperial dictators always managed to distort the Confucian teachings to serve their own interests under despotism. Pace Ip, the true spirit of the Confucian relations, as Tao points out, is not domination-cum-subordination, but rather, reciprocity. Reciprocity is not equality. It is virtue-based interconnectedness,

6 Chapter 3 will further explore the legal and political implications of the Confucian view of treating people as relatives, while the focus of this chapter is the significance of “unequal virtues” rather than “equal rights” to be recognized in society.
interdependency, and interactions (Tao, p. 24). As Hui indicates, the moral development of the individual in the authentic Confucian tradition is not the establishment of the independence or individuation of the individual, but the maintenance and promotion of the harmony of the community (Hui, p. 36). The Confucian social ideal is a harmonious human community based on the virtue-based notion of personhood, in which everyone is taken care of according to his or her particular circumstances.

2.5 Towards a Reconstructionist Confucian Bioethics

From Ip’s point of view, a virtue-based Confucian bioethics may not be very helpful in dealing with complex bioethical issues, such as abortion, euthanasia, organ transplantation, human experimentation, and artificial human procreation. In addition to pointing out that Confucian physicians may not be sensitive and sympathetic to rights, such as women’s rights (Ip, p. 58), he also suggests that Confucian virtue theory may not be able to give unambiguous guidance to all specific bioethical matters, such as what the physician should do with a severely defective newborn (p. 58).

It is not always easy to apply a general ethical theory to a particular ethical case, because different understandings and descriptions of the case may occur even when the theory itself is clearly formulated and interpreted. The substance of the theory may also be explained in different ways by different theorists. In other words, scholars may often hold different interpretations of an ethical theory. I admit that this is the case for the Confucian virtue theory – not all Confucians agree about what the substance of the theory exactly is. Therefore, not all Confucians will come to the same solution to a particular bioethical case or issue. However, this is not unique to the Confucian theory. It is even more so for human rights theory. Rights theorists adopt all sorts of different positions regarding who should have rights, what rights one should have, and what the proper scope of a right is when one has the right. Due to such disagreements, rights theorists can never give a unanimous answer to a bioethical question based on their theory.

Still, the basic differences between the liberal rights theory and the Confucian virtues theory are as fundamental as they appear. We need to engage in a careful comparative philosophy to explore which is more persuasive for bioethical practice in East Asia, without taking one of them for granted before ethical deliberation. In fact, at the beginning of this new century, many East Asian people have acquired a sense of moral deportment, bioethics, and health care policy that are radically different from individualist liberal ethics and politics predominant in the West. No doubt, this difference can be traced to numerous sources. But it is both challenging and significant to restructure properly-understood Confucianism in order to show how this difference can serve as a cultural and moral resource.
Chapter 3
A Family-Oriented Civil Society: Treating People as Unequals

3.1 Introduction: Civil Society, Rule of Law and Conflicting World Views

Chinese society is infamous for the standing it gives to “social networks” (guan-xi, 關係), such as relatives (qin-qi, 親戚), classmates (tong-xue, 同學), and regional mates (lao-xiang, 老鄉). All these networks, in great measure, are modeled after affective familial relationships, involving intimacy, closeness, and informality. They cut across class lines and interest groups and permeate all political, legal, and economic institutions. Although contemporary China has made tremendous progress in industrialization and in developing the market economy, it is not unusual to hear Westerners’ complaints that the Chinese society is not a society that emphasizes cordial, trustful relations between strangers. For some critics, it is due to the influence of affective social networks that China has not established a civil society which cherishes a general, diffuse spirit of fellowship shared by all citizens (Metzer, p. 215).

Nevertheless, there are family resemblances between Chinese affective networks on the one hand and social groups and organizations between the individual and the state that constitute so-called “civil societies” in the Western context on the other hand. As the concept of “civil society” has become the focus of attention in the last decade, there have been extensive sociological and political discussions regarding the ‘civility’ of Chinese society. Typically such discussions employ “standard” Western conceptions of civil society to check, classify, and evaluate Chinese data and judge the extent to which China has a civil society.

This, however, is not the concern of this chapter. By reflecting on the nature and underpinning values of affective networks in Chinese society, I intend to explore a normative question: what type of civil society, if any, ought to be defended in China? Unlike a socio-political approach that assumes a standard notion of civil society for empirical investigation, this normative approach engages in comparative philosophy to examine the different underlying principles and values of different ideas of civil society.

This project in comparative philosophy lays out two contrasting moral/world views: one dominant in contemporary Western culture, the other reflective of...
traditional Confucian commitments. The comparison will engage idealized accounts of both these moral/world views. As idealized accounts, they only imperfectly map onto any actual political and social structure. This idealization is employed in order heuristically to lay out conflicting understandings of appropriate moral, social, and political structures. The principal goal is to offer an account of how Chinese society is influenced by background Confucian commitments. This account of a Confucian understanding of a family-oriented civil society fully recognizes that contemporary China is shaped by a mixture of moral, social, and legal expectations. My idealized, somewhat Platonic account of Confucian commitments is meant to lay out starkly the character of the choices involved in moving either to social structures more in accord with contemporary, dominant, Western, liberal social democratic expectations, or instead toward reinvigorating values and recapturing social structures grounded in traditional Confucian commitments. This account will involve making plausible a civil society marked by the extended family structures and informal associations that characterize East Asian societies, making them often appear hostile to the liberal, social democratic concern of advancing equality of opportunity.

The concept of civil society employed has a heavy indebtedness to G.W.F. Hegel in identifying a social space for interaction intermediate between that of the family and the state. Although the concept in Western history has involved substantially different ideas, it carries a basic meaning cutting across all different forms: a social order grounded in the rule of law and stable social expectations. The latter is heavily influenced in East Asia by the roles played by extended family structures and various informal associations. By the concept “rule of law” I mean to identify a legal structure able reliably to protect life, property, and interest absent the regular and significant influence of particular parties. My use acknowledges that rule of law is an ambiguous term often heavily laden with political-theoretical expectations ranging from requirements for judicial review to particular understandings of procedural and formal justice. It also acknowledges that societies generally held to enjoy a rule of law may incorporate procedures allowing persons to set aside usual legal expectations (e.g., the American practice of jury nullification). In short, my use of rule of law is broad and meant to indicate at least the supremacy of established law as opposed to the influence of arbitrary power. In this sense law is the true sovereign,

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1 For instance, John Ehrenberg identifies three different ideas of civil society in Western history: (1) classical and medieval thought equated civil society with law-governed commonwealths protected by the coercive power of the state; (2) modern thought conceptualized civil society as a civilization made possible by production, individual interest, competition, and need; and, (3) contemporary thought identifies it as intermediate associations that serve individual liberty and limits the power of central institutions. See his 1999, p. xi. This latter sense received its first influential articulation by G.W.F. Hegel in his *Philosophy of Right*. See, for example, Avineri (1973); Engelhardt (1994). Civil society or *bürgerliche Gesellschaft* is for Hegel a social space intermediate between the nuclear family and the state regulated by law and contract, where individuals can enter into the market and other relationships. This social space is not set aside by the state, but finds its full realization when the participants in civil society find their protection as citizens of the state.
governing everyone in society. Accordingly, if a Chinese Confucian understanding of society lacked these conditions, this would bring into question the use of civil society as an element of its tradition. One would also lose a basis for fruitfully exchanging ideas between Chinese and Westerners regarding civil society.\(^2\) My second methodological assumption is that all ideas of civil society need to satisfy this basic sense of the concept – the rule of law. In order to disagree on matters meaningfully, we must agree on the basic sense of this concept in the first place.

This chapter explores the nature of the affective networks shaping Chinese social interactions so as to disclose the plausibility of a Confucian family-oriented, Chinese societal understanding. In particular, the focus is on a Chinese version of civil society structured by an account of rule of law grounded in Confucian commitments expressed in the presence of extended family structures and cooperative associations.\(^3\) This will be done by contrasting Chinese Confucian commitments with those ingredients in the dominant account of Western, individually oriented social structures. This analysis assumes that legal systems diverge due to different understandings of core human values and the significance of cardinal social structures (e.g., families), such as how particular understandings of the rule of law are shaped by underlying values, which may be explicit or implicit. Such values are expressed in social ethos; namely, sets of principles, maxims, or slogans which are generally accepted and applied in everyday practice.\(^4\) This relationship between surrounding ethos and civil society was addressed by Hegel, who located civil society within the category of customary morality (\textit{Sittlichkeit}). Given a different understanding of \textit{Sittlichkeit}, a different concrete understanding of the right, the good, and virtuous conduct will ground moral judgments regarding the appropriate character of a civil society. The dominant, contemporary, Western liberal commitment to individualism, equality, and liberty justifies particular understanding of civil society and the rule of law different from that which is grounded in a Chinese Confucian understanding of familist values. Accordingly, contemporary Western civil society depends on its underlying individualistic values, whereas the possibility of a Confucian family-oriented Chinese civil society will have to depend on its particular familist values.

Section 3.2 offers an account of why the underlying values of the contemporary Western (liberal democratic) notion of civil society are individual-oriented. Section 3.3 lays out how Chinese society is family-oriented in terms of its basic Confucian moral principles as well as its cardinal moral values. Section 3.4 explains why liberal democratic civil society cannot preserve the values of the family and


\(^3\) This chapter assumes a non-foundationalist, though anti-positivist account of the rule of law, recognizing that both contemporary Confucian and liberal accounts consider legal systems as justified in a set of moral commitments that they accept as normative.

\(^4\) I have borrowed Jonathan Wolff’s definition of ethos for the sake of this account, although his concern is with a quite different issue. See his 1998, p. 105.
why this makes it difficult for Confucians to accept that type of civil society. Section 3.5 addresses a particular argument against the possibility of a Confucian family-oriented civil society and explains why it is false. Section 3.6 offers concluding reflections on the possibility for a society ordered by Confucian moral and social understandings.

### 3.2 Liberal Democratic Civil Society: Treating People as Equals

The following offers an idealized presentation of a particular dominant account of contemporary liberal, social democratic, moral and political commitments. These commitments, so I argue, are grounded in a liberal egalitarian ethos that places equal and free individuals at the core of an appropriate moral and political structure. The egalitarian element of this view, following Will Kymlicka (2002), I identify as the principle of treating people as equals.

As Kymlicka points out (2002, pp. 3–4), this principle does not necessarily support an equal distribution of income. Rather, it discloses a more basic idea of equality: the interests of each member of the community matter, and matter equally. In other words, it requires that each citizen is entitled to equal concern and respect; the government must treat its citizens with equal consideration. Under this interpretation, almost all contemporary Western political theories affirm the same cardinal value of equality in this sense. Liberals, libertarians, Marxists, utilitarians, and feminists are all egalitarians in the sense of accepting this underpinning principle, although they defend it in quite different theories, specific terms, and requirements.

Some might argue that this principle of equality is primarily a political principle in that it applies directly to government institutions, not directly to groups or associations between the state and the individual. They might even contend that it is not a basic principle of Western civil society. However, it is a basic principle of Western civil society in that (1) it imposes essential constraints on all social groups and organizations and so shapes as well as guarantees the basic rights and liberties of all their members, and (2), more positively, as core of the West’s social ethos, it extends to and permeates all social groups and organizations in shaping and directing their members’ attitudes toward each other as well as their attitudes towards the state. Even if the West may have once distinguished public and private realms in a clear and sharp way (as in Aristotle’s distinction between the household and the polis), this is no longer the case for contemporary Western civil society. As John Rawls observes, liberal democracy does not regard the political and nonpolitical domains as two separate, disconnected spaces, each governed by its own distinct principles. Rather, both can be taken as regulated by the foundational egalitarian principle of treating all as equals. All humans are equal citizens first, and members of families and other associations second (Rawls, 1999, pp. 158–160).

Given this contemporary liberal tradition with its interpretations of the requirement of social justice within modern democratic states (e.g., as offered by major contemporary liberal theorists such as Rawls and Ronald Dworkin), I take the egalitarian ethos as embodying the three following major values:
1) Liberty: all individuals have freedom to order their lives and actions as they see fit
2) Equality: everyone has equal chance to develop one’s talents and to acquire social positions regardless of one’s class, race, sex, and the like
3) Meritocracy: the evaluation of qualifications for positions should only be based on abilities and skills

Individual liberty has been a major value directing the growth of individualism in modern Europe. Individualism has a long history in Western societies, as a moral force, an institutional fact, and a set of interactional practices (Taylor, 1989). It has a non-economic background in the cultural legacy of Christianity, with its emphasis on the resurrection of the body, conscience, and leaving the family for individual salvation; in Renaissance self-fashioning; in the Reformation’s new emphasis on the individual’s relation to God; in the Enlightenment’s deification of individual reason; in Romanticism’s restoration of expressive individuality (Alexander, 1998, p. 6). The resultant individualism regards human persons are morally independent of each other. They have liberty to be self-determinative about their own lives and independent of others’ interference. That is, they have a right to be left alone. This notion of individual liberty sets the foundation for the social contract theory of civil society: the justification of the state as well as any social institutions must be derived from the contract, as now predominantly hypothetical consent of individuals. Indeed, the very word contract implies a relationship grounded in the voluntary individual consent to the terms of an agreement for any joint adventure. It was for better protecting individual liberties that individuals would agree to establish the state, where individual liberties become civil liberties protected by state institutions.

Contract is as ancient as any legal tradition and was well established in Roman law. However, concerns with contracts were placed within larger framing understandings of appropriate social interaction and did not play the role of the cardinal metaphor for social and political relationships, as is the case for liberal, social democratic societies and polities. When the idea of a fair contract is used as the guiding exemplar for all social institutions and organizations, an interest in establishing an equal and level playing field among all participants becomes central, leading to a critical concern with power imbalances, as exist within families and associations structured according to Confucian values. Individuals in liberal democratic civil society are not primarily defined by their membership in any particular familial, religious, economic, or other social relationship, since they are free to form, question and reject any particular relationship according to their own views and preferences. In this sense they are “autonomous.” Even if freedom of choice is not valued and pursued for its own sake, its enjoyment must not be interfered with by others or the

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5 For instance, American Justice Brandeis wrote in 1928: “The makers of our Constitution ... sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men” (Brandeis, 1928).
state. This constitutes the first basic value of the liberal democratic civil society — the value of liberty.

At the same time, the basic value of equality in the liberal democratic civil society does not require equality of outcome. A fundamental liberal belief is that people’s fate should be determined by their choices (efforts and performance), not by their circumstances (social and natural contingencies). Social and natural contingencies are, for liberals, arbitrary from the moral point of view. Accordingly, equality in liberal democracy requires equal opportunity. Specifically, it requires that everyone have equal rights and chances to develop their own talents and that there be equal rewards for equal performance. In this sense, the dominant liberal view of equality affirms both values of equal opportunity and meritocracy. On the one hand, the state must take affirmative action and institute programs (especially educational programs) to benefit members of economically and culturally disadvantaged groups so as to overcome unfortunate social contingencies (such as an unbeneficial family background) in developing their talents. On the other hand, the evaluation of qualifications for positions should be based only on the ability and skill required by the positions, without discrimination permitted on the basis of race, sex, class, ethnic origin, affective relations, or other similar characteristics. Accent is given to meritocracy.

Commitments to liberty, equality, and meritocracy shape the contemporary social democratic, egalitarian ethos, which justifies its understanding of rule of law in what it affirms to be an appropriate civil society. These commitments shape the content of its understanding of law, as well as appropriate moral deportment. The result is a social space, a civil society, in which persons interact in an individually oriented fashion structured by an account of law aimed at protecting individual liberty, equality of opportunity, and individually based meritocracy. Though there are other competing contemporary understandings of the appropriate nature of rule of law and civil society found in the West (e.g., libertarian), I have chosen this one because of its relative dominance as well as for its service in laying out an important contrast with a Confucian anti-egalitarian account of civil society and the rule of law. This chapter eschews a foundationalist justification of an appropriate legal system, while not affirming a positivist account. Instead, it recognizes that, within different world-views and the ethos they support, there will be disparate guiding moral intuitions supporting different foundational moral premises and rules of moral evidence. The point is not one of supporting a moral relativism, but rather one of recognizing the moral-epistemological challenge of determining moral truth outside of a particular moral perspective (Engelhardt, 1996).

3.3 Confucian Anti-Egalitarian Civil Society: Treating People as Relatives

Like liberals, Confucians also hold that human individuals have intrinsic moral worth. Unlike liberals, however, they do not emphasize that intrinsic moral worth is equal among individuals warranting equal consideration of their interests.
Importantly, Confucians hold a relational, not an individualistic, view of human nature. They regard specific human relationships as characterizing individual personal identity. Since familial relations are in the Confucian understanding the prototypes of all human relations, the underpinning principle of Confucian social ethos can be taken as treating people as relatives.

The requirement of treating people as relatives must include a “threshold” below which people are no longer treated as relatives. In this sense an “egalitarian” level may be dug out in Confucianism. But this is not the emphasis of Confucian familism. Instead, since relative relationships are always asymmetrical, involving differences in generation, order, and distance, Confucians do not regard relatives as equals. Neither do they want to consider their interests equally. In principle, the closer relation I have with another human, the more consideration I should give to his/her interests. In this sense, the Confucian ethos is generally anti-egalitarian. To explain the differences between the egalitarian liberal principle and this anti-egalitarian Confucian principle in specific terms, the easiest way is to compare the basic liberal values with the following Confucian values:

1) *Harmony (he, 和): in ordering their lives and actions, individuals must share their decision-making with their close relatives
2) *Love (ren, 仁): one must first love one’s relatives and gradually extend this love to others
3) *Respect (yi, 義): the virtuous must be respected

The basic value of harmony marks the Confucian ethos as anti-individualist. Although utilitarians, liberals, libertarians, and Marxists disagree on how to show equal concern for individuals’ interests, they are all individualists in affirming self-determination in the individual life. They all believe that we promote individuals’ interests by letting them choose for themselves what sort of life they want to lead. They disagree about what package of rights or resources best enables individuals to pursue their own conceptions of the good life. But they agree that to deny them this self-determination is to fail to treat them as equals (Kymlicka, 2002, p. 212). Confucian individuals do not enjoy this right of self-determination. Confucian familism holds that every family member shares his/her identity and life with other family members, and the family makes a unity as do individuals in Western liberal society. As they share life with their families, individuals must share their decision-making with their family members. In the Confucian ethos, no one is in a position to declare to his family: “this is my own business; please leave me alone.”

While the individualistic understanding of the self emphasizes the separate existence of the self (in the Judeo-Christian view of the embodied person, the Aristotelian account of the rational soul, or the Kantian formulation of personal autonomy), the Confucian relational understanding of the self emphasizes the self as a priori fundamentally interdependent with close relatives. The self derives only from the individual’s relationships with specific others, especially family members. As Henry Rosemont states, Confucians see it as necessary that the self lives in human relations with a variety of roles. It is even insufficient to say that “I perform or play these roles.” Rather, “for Confucians, I am my roles” (1991, p. 72). It would
be a gross exaggeration if this means that I am nothing but my roles. But it is right to emphasize that I am my roles in the sense that my identity cannot be established separate from my relationships with my close relatives. My thoughts, feelings, and actions are made meaningful only in reference to the thoughts, feelings, and actions of my other family members, and consequently they are crucially important in the very definition of myself. In making decisions what is most important is not one’s liberty of self-determination, but is the harmony of shared-determination among family members.

All Chinese know how much they have shared their lives with their families. They need only consider a few crucial decisions in their lives. What subject is one going to study at university? Which person is one going to marry? What medical decision is one going to accept or refuse at hospital? Chinese share all these decisions with their families – “share” in the sense of collective family decision-making. And this family model of shared decision-making extends to other affective social groups in Chinese society.6

Confucian Chinese are ritual (li)-following people. Rituals provide them with rules of propriety to normalize behavior. It is Confucius who first reconstructed rituals in terms of the fundamental human virtue of ren (humanity). It is heuristic that Confucius selected the notion of ren to characterize the fundamental human virtue. Generally, ren means love. In one sense this Confucian teaching is no difference from the teaching of love by other religions, such as Christianity. However, what is special for the Confucian ren is its conviction concerning the root of love: the love between parent and child and among brothers (Analects 1: 2). For Confucians, it is not the love of God, nor love among humans generally, but the familial love that grounds human sentiments and moral obligations in society. Accordingly, ren requires one first to love one’s family members, then to extend this love to others according to the importance of one’s relationships with them. It was the extension of this idea of ren that became the Neo-Confucian doctrine of forming one body with heaven, earth, and a myriad of things, which constitutes a Confucian holism of the unity of human and nature. But “one body with a myriad of things” does not imply that one should love all things equally. Rather, this organic analogy with the universe suggests that one must distinguish among the things and persons one confronts according to a notion of the common good, just as one must distinguish differences in the importance of different parts of one’s own body according to their contribution to one’s survival and welfare. Indeed, this notion indicates that Confucians should

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6 Social psychologists have done a great deal of work in showing the differences between the individualist view of the independent self held by European-Americans and the collectivist view of the interdependent self held by East-Asians (e.g., some recent summaries made in Markus and Kitayama, 1994 and in Singelis, 1994). Regarding decision-making, the former emphasizes (a) internal abilities, thoughts, and feelings, (b) being unique and expressing the self, (c) realizing internal attitudes and promoting one’s own goals, and (d) being direct in communication; whereas the latter emphasizes (a) external, public features such as status, roles, and relationships, (b) belonging and fitting in, (c) occupying one’s proper place and engaging in appropriate action, and (d) being indirect in communication and “reading others’ minds” (Singelis, pp. 580–581).
3.3 Confucian Anti-Egalitarian Civil Society: Treating People as Relatives

Confucian ren requires differentiated love, not equal love. It is love with distinction, and care with gradation.

Since the Confucian ren gives a foundational role to familial love, Confucians do not emphasize individual-based equal opportunity in society. Rather, they take family-based opportunities for granted. First, it belongs to the autonomy of the family to decide a division of labor among its family members. It was not unusual in traditional China that the whole family worked hard to support the education of one “smart” son in order to achieve a social position. Second, it is the obligation of a successful family member to take care of his brothers and sisters and to give them better opportunities in society. In other words, it is quite normal for Confucians to consider affective networks as a factor in evaluating the qualifications of a candidate for a social position.

This leads us to consider the third basic Confucian value, yi (respect). There have been different interpretations of yi as a basic Confucian value. My interpretation, in consideration of its practice in society in relation to ren, follows the Doctrine of the Mean as follows:

Ren is the characteristic element of humanity, and the great exercise of it is in loving relatives. Yi is the accordance of actions with what is appropriate, and the great exercise of it is in honoring the virtuous. The decreasing measure of the love due to relatives, and the steps in the honor due to the worthy, are produced by li (rules of propriety) (20: 5).

This is to say, while the major practical requirement of ren is to love relatives, the major practical requirement of yi is to respect the virtuous. In this sense, yi sets a check on the practice of ren in Chinese society. One should not only love relatives, but also honor the virtuous. Both values of ren and yi are squarely opposed to egalitarian love without distinctions. For Confucians, one should give preferential treatment to the virtuous (this constitutes the core of Confucian elitism) as well as to one’s relatives (this constitutes the core of Confucian familism).

In shaping and regulating social institutions, the Confucian value of yi might be similar to the liberal value of meritocracy in its function. However, there is a significant difference. In evaluating the importance of an opinion or in judging the qualifications for a position, Confucians can generally agree with liberals in focusing on abilities (virtues in the broad sense), regardless of class, race, sex, and the like. But they must insist that affective relationships should also be a factor for consideration. This might be due to the overwhelming influence that the value of ren has in further forming the complex meaning of yi: appropriately performing one’s duty by balancing the call of loving relatives and the call of honoring the virtuous when they do not point in the same direction. This makes individual duties in the Confucian context very nuanced and complicated, easily inviting a critique of Confucians as “unprincipled” (bu jiang yuan ze, 不講原則). Negatively, yi requires one never to abandon one’s relative or friend (good friends are like brothers and sisters for Confucians), in whatever situation the relative or friend may be. More positively, yi requires one to make active efforts to help realize one’s relatives’ or friends’
proposals and life plans. This is usually taken to be the great manifestation of yì (called “yì qì”, 義氣). I will address this issue further in Section 3.5.

Taken together, the Confucian values of ḥè, rèn, and yì set the normative foundation of a Confucian family-oriented society. They advocate family-shared decision-making on individual issues, preserve family-based opportunities for individuals, and support a quasi-meritocracy shaped by affective relations. These Confucian values are in real tension with the liberal democratic values of liberty, equality, and meritocracy. The question then arises whether a Confucian account of basic social values and structures can ground a recognizable account of rule of law and civil society. Before I address this major issue, I want to digress to show why it is so difficult for Confucians to accept liberal democratic values.

3.4 The Family: Stumbling Block for Justice or Keystone of Virtue?

Why not consider exchanging the basic Confucian values for the liberal values? If humans are free in the sense that they can together change and shape a new way of life gradually, even if not suddenly, then the way of life they will shape depends on what values they believe are most important. If different sorts of civil society substantiate and promote different sets of values, people must consider which set of values they cherish most in order to decide which sort of civil society they will attempt to establish. In thinking about accepting liberal democratic values, Confucians will need to consider the implications of contemporary liberal social democratic values for their societies, which are increasingly hybrids of Western and traditional Confucian influences. As I will indicate, the liberal social democratic account of the egalitarian principle (treating persons as equals), set within its commitment to the three basic values of liberty, equality, and meritocracy, would radically recast the character of Confucian moral commitments and social institutions, especially that of the family and its role in civil society, including those associations established on analogy with family relationships.

The traditional institution of the family includes the following commitments: (1) the heterosexual family is the only normal type of family, and (2) parents’ authority in influencing the development of their children should not be interfered with by the state (the autonomy of the family). The basic liberal value of liberty is at odds with (1), and the basic liberal value of equality is at odds with (2).

Liberals do believe that the family or something like the family is needed for the tasks of raising and caring for children. But no particular form of the family (homosexual or heterosexual) is required by a liberal view of social justice for these tasks (see Rawls, 1999, p. 157). In particular, since liberals affirm self-determination and freedom of contract within the constraints of justice, the individual is free to choose which capacities to develop, and which services to buy or sell on the market. Generalizing this sort of liberalism to the family would seem to require, or at least tolerate, the contractualization of sex, marriage, and parenting. Publicly, it is
inconsistent with this fundamental liberal value of liberty to claim that the heterosexual family is the only normal form. Rather, homosexual or other types of “mixed” families must be equally “normal,” as long as they are constituted by individuals through voluntary contracts. True, some liberals do not yet stand ready to accept this conclusion. They have not recognized the full implications of their own values and commitments. As Kymlicka comments, “in the end, those liberals who put brakes on the contractualization of the family are drawing on conceptions of community, or of the good, that they elsewhere disavow as illegitimate grounds for restricting liberty” (1991, p. 96).

Liberals require the state to ensure equal opportunity at least for those equally talented. In particular, everyone should receive equal educational opportunity to develop their talents, regardless of family background. This deep commitment to equality requires restrictions on the autonomy of the family cherished by many traditional societies (see James Fishkin, 1983). Rawls observes,

It seems that even when fair opportunity . . . is satisfied, the family will lead to unequal chances between individuals. Is the family to be abolished then? Taken by itself and given a certain primacy, the idea of equal opportunity inclines in this direction. But within the context of the theory of justice as a whole, there is much less urgency to take this course (1971, p. 511).

Although Rawls in 1971 does not speak of an urgent need to abolish the family, presuming the efficacy of compensatory state action on behalf of equality of opportunity, by 1997 he clearly endorses the state’s role in reshaping and reforming the family on behalf of liberal individualistic ideals. Here Rawls emphasizes collapsing the private into the public requirements of justice. “If the so-called private sphere is alleged to be a space exempt from justice, then there is no such thing. . . . No institution or association in which they [persons] are involved can violate their rights as citizens” (1997, pp. 781, 791). It is for this reason that liberals, taking the value of equal opportunity seriously, have to restrict the autonomy of the family in order to achieve a minimal level of equality for everyone. The advantages families can give their children in education alone are considerable: private schools, private lessons, special tutors, a secure home environment, culture in the home, successful role models, an advantaged peer group, trips abroad. . . . All these can substantially enhance their children’s opportunities for developing their talents and thereby increasing their opportunities for seeking offices and positions in society. Some may think that by using strategies of “leveling up”, rather than “leveling down,” a society can sufficiently increase the developmental opportunities of the lower strata and still leave the autonomy of families intact. However, as Fishkin argues, strategies of leveling up turn out either to be ineffective or to be so prohibitively expensive that cannot be undertaken given any realistic public budget. Hence, if liberals take equal opportunity seriously, they must use some leveling down strategies to restrict the autonomy of the family (Fishkin, 1983) and to abolish the influence of the family, at least insofar as it has not been reformed by the claims of a liberal, individualistic understanding of justice.
Given its accent on reconstructing the structure of the family within the requirements of a liberal understanding of justice, the West is already moving towards a plurality of family forms, marginalizing the centrality of traditional understandings of the family. It should be emphasized that these events are not in conflict with fundamental liberal values – the individualist view of human liberty and the contractual view of social justice.\(^7\) In contrast, a Confucian account places families centrally, locating individuals within the context of familial structures. Confucian values such as harmony, love, and respect are given their substance within family relationships at odds with liberal, individualistic, societal commitments. For Confucians who understand their personal immortality as dependent on their families, which embrace both ancestors and descendants, the threat of the dissolution of the traditional family is tantamount to a threat to their personal identity and value.

3.5 Is a Confucian Family-Oriented Civil Society Possible?

The crucial contention against the possibility of a Confucian civil society marked by a familist orientation expressed in substantial family commitments, extended family relationships, and associations grounded in familial values is that it fails to realize rule of law. First, it is argued that Confucians fail to provide value neutrality in the development and application of law. Confucians, because they favor familist social relations, cannot accept the liberal thesis of value neutrality in law-making, a cardinal liberal demand that the state should act neutrally towards conceptions of the good life and human flourishing, thereby honoring individual rights of self-determination. However, it is not the fact that the liberal, social democratic state requires that no values be imposed, only that no values or understandings of the good life or human flourishing be supported by the state and public culture, other than those compatible with liberal individualism. As already argued, the liberal, social democratic society is bent on transforming family and personal relationships into its own image and likeness. On this score, the Confucian approach to rule of law and public policy is no different from that characterizing the liberal, social democratic ethos, save in the content of the values and the character of the structures supported. Where the social democratic society is oriented towards individual self-determination and flourishing in individual terms, the Confucian society is oriented towards family self-determination and flourishing in familist terms. All societies are

\(^7\) Beginning with a robust distinction between “the public” and “the private”, Western politics hoped to establish an egalitarian political sphere and at the same time leave the family (“the private”) intact. Aristotle was successful with this goal at the cost of excluding women and slaves from the polis. We can still see a trace of this distinction in Rawls’ hypothetical parties in the so-called original position who consider themselves heads of families. But the distinction is destined to collapse, as soon as people begin to bring concern with justice to the sphere of the private (as they have good reason to do). For liberal democratic civil society, it is now a time of justice gone private – the feminist literature and movement are among the best evidence.
marked by particular leading or cardinal values that provide their understanding of the appropriate content of the rule of law.

The second and more substantive objection is that Confucian civil societies marked by a familist commitment fail to realize a rule of law, in that they fail to establish a legal structure that does not favor those individuals who administer the law. One must concede that traditional Chinese dynasties never realized the rule of law. The fact of the matter is that, although attempts were made, Chinese dynasties failed to establish a sufficient content for laws and legal institutions based on the Confucian values. Instead, they left too much discrentional powers to the emperor to bend, change, and create rules for the interests of himself or his family. Over the great expanse of Chinese history, low-ranking officials had no discrentional powers, high officials had vast discrentional powers, and the emperor had almost unfettered discrentional powers. Hence, traditional China generally ended up with a despotism, never realizing the rule of law. As the famous modern Confucian Huang Tsung-his (黃宗羲) (1610–1695) pointed out, “what they called ‘Law’ represented laws for the sake of one family and not laws for the sake of all-under-heaven” (p. 97, translation by W. T. de Bary). If all-under-heaven is a big family of all small families, the law is to the benefits of all small families, not one single family.

In the light of this history, contemporary academic discussions suggest that it is unlikely that one can realize the rule of law in a Confucian family-oriented society without changing basic Confucian values. The problem is not so much with issues in legislation, but in the judicial holdings and executive administration. The strongest argument against the possibility of a Confucian family-oriented civil society is of this sort:

1) There cannot be a civil society without realizing the rule of law.
2) As a necessary condition, the realization of the rule of law depends on people not bending the rules for the benefit of their relatives, and people in societies marked by rule of law consider such rule bending wrong.
3) A Confucian family-oriented society holds an ethos that takes it to be reasonable, indeed appropriate, for people to bend the rules for the benefit of their relatives, and people in such societies do not consider such bending wrong.
4) Therefore, the rule of law is unlikely or very difficult of realizing in a Confucian family-oriented society.
5) Therefore, it is unlikely or very difficult for a Confucian family-oriented society to become a civil society.

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8 The general conclusion drawn here is based on the research of Mainland Chinese legal scholars in recent decades regarding the history of Chinese law as well as its relation to Confucianism and imperial courts. In particular, I have drawn a great deal from Ronggeng Yu’s work (1992). However, although I take this general conclusion to be warranted, two qualifications are needed about the emperor’s discrentional power: (1) there were institutional checks and balances on the emperor’s power in Chinese dynasties, which played very productive function in certain dynasties or periods of history; (2) the situation varied from emperor to emperor and from dynasty to dynasty.
The crucial empirical point in this argument is (3). If (3) is true, and the conceptual account of civil society just offered is accepted, then the whole argument goes through.

Many seem to take something like (3) to be true. Comparing the Western political tradition with the Chinese Confucian tradition, people often get the impression that the Confucian tradition is inadequate or at least insufficient in the so-called “public field.” The Western tradition regards politics as a distinct public sphere differentiated from the sphere of affective personal relations. This culminates in contemporary liberal democratic civil society with its conception of equal citizenship cutting through all personal differences. In contrast, the Confucian tradition appreciates politics on the model of the practice of a “household,” without a clear distinction between the private and public spheres. Although the friend-friend relation seems akin to general citizenship, it is in fact modeled after the brotherhood relationship, with emphasis on the order (elder or younger brother) of the relation. Because of these commitments, the Confucian tradition does not hold or at least does not stress stranger or equal citizen relationship, its politics is inevitably characteristic of a partial and hierarchical ethic which does not emphasize equality before law. In other words, even if China is able to establish the “right” laws and policies in political and economic fields, there cannot be general compliance with them because of the influence of affective networks – in the Confucian ethos the rule of law has to bend to the benefit of relatives and associates. The truth of this observation seems to be proven by the commonly-encountered nepotism, inefficiency, and corruption of current Chinese society.

It must be admitted that familist values carry with them a potential for rule-bending to the benefit of relatives and associates in the areas of judicial function and executive administration. However, the Confucian requirement that legislation, judicial function, executive administration be to the best interests of families and familist structures does not mean that the rule of law should become subservient to the interests of particular families and particular familist associations. The Confucian understanding is opposed to subverting the rule of law to the best interests of particular families, just as the liberal, social democratic understanding is opposed to subverting the rule of law in favor of particular individuals. Just as individualist values carry with them a temptation for legislators, judges, and administrators to favor particular individuals, so too Confucian familist values carry with them a temptation to favor particular families. In each understanding of the rule of law, practices must be in place to thwart such temptations. Each system, or understanding, of the law, whether familist or individualist, possesses its own costs.

Motivations for compliance with rules are complicated. Many factors are involved. Looking at Chinese history, there were both good times (of general compliance with the rules) and bad times (of general violation of the rules), without a single factor exclusively accountable for compliance or noncompliance with laws. The same goes for various areas in the world today.

Whatever is the situation in current Chinese society, thesis (3) is crucially mistaken. The mistake lies in imputing to Confucian familist values abuses that resulted from a failure adequately to guard against particular areas of abuse in legislation, judicial function, and administration, but which failure is not supported by
Confucian moral commitments. Confucian familism does hold an ethos that recognizes that it is appropriate and necessary to make laws to protect the interests of the family. But it never suggests that in the judicial sphere one should bend laws to benefit one’s own particular relatives. Instead, the basic spirit of Confucian familism is to emphasize compliance with laws because of its commitment to li (rules of propriety). In Confucian society, fa (law) is from li (rules of propriety) – part of the system of li becomes fa through imposing the power of the state. For Confucians, as li should be followed without distortion, so should fa.

The three classical examples I addressed in Chapter 1 are often understood to be evidence for Confucian support of bending the law for the benefit of one’s own family. This is a misunderstanding. The genuine concern in these cases is not about whether people should obey the law or not – they certainly should in the normal situation, but about what kind of laws a society should make. In other words, these cases are primarily not about judicial matters, but about legislative matters. In the Analects 13:18, the point that Confucius makes is not that parent and child should disobey laws requiring them to give evidence against each other. It is rather that there should be no such a law. On the Confucian view, it is immoral to demand parents and children to report and bear witness against each other. Socrates would have agreed with Confucius on this point (see Plato’s Euthyphro). In the case discussed in Mencius 5A3, Shun 順 raised his brother Xiang 象 to be the honorary, not authoritative, prince of Youbi 有虞. Presumably Shun was following the legal and political system established at his time. That is, he was actually following a law by appointing his brother. Mencius’ view expressed in the argument in this passage holds that such a law is both proper and necessary for an emperor’s virtue cultivation and manifestation.

The third example, from Mencius 7A:35, deserves a detailed discussion to show that Mencius’ major point here should be understood as legislative, rather than judicial. This is a hypothetical case raised by Mencius’ student Tao Ying (桃應) regarding the sage emperor Shun, Shun’s father Blind Man (瞽瞍), and the model judge Kao Yao (皋陶):

Tao Ying asked, “When Shun was Emperor and Kao Yao was the judge, if the Blind Man killed a man, what was to be done?”

“The only thing to do was to apprehend him.”

“In that case, would Shun not try to stop it?”

“How should Shun stop it? Kao Yao had his authority from which he received the law.”

“Then what would Shun have done?”

“Shun looked upon casting aside the Empire as no more than discarding a worn shoe. He would have secretly carried the old man on his back and fled to the edge of the Sea and lived there happily, never giving a thought to the Empire.” (Mencius 7A: 35; translation by D. C. Law)

If the discussion had stopped with the conclusion that “the only thing to do was to apprehend him” and “Kao Yao had . . . the law,” it would have fit perfectly into the modern Western notion of the rule of law. The law is the law. Mencius is suggesting that everyone be ruled by the law, including the father of the emperor; and that no
one be allowed to interfere with the judicial work, including the emperor. So far, so good. However, Mencius continues to suggest that, although the emperor should not interfere with the judicial work for his father, he should, for the cardinal value of the father-son relationship, abandon his position and secretly carry his father to flee from the state. With this suggestion, Mencius’ respect for the law seems to have entirely collapsed. It appears that, among other things, Mencius is suggesting that one help one’s parent escape from the punishment even when the law is just and the punishment is appropriate. No doubt, Socrates, who willingly accepted an unjust judgment based on an unjust law, would be very surprised at Mencius’ suggestion (see Plato’s *Crito*).

Later Confucians had good reason to disagree with Mencius’ view on this issue. But I think an appropriate reading of the passage suggests that Mencius, like Confucius in the previous case, was making a legislative proposal: a law should be made to require the emperor to resign the position and be exiled with his parent from the city in order to save his parent’s life. This legislative understanding is the only reading that is coherent in light of Mencius’ further view on laws. Just like Confucius, Mencius would not hold that a child should report, or bear witness, against one’s father, even if the father was guilty of having killed another person. However, carrying one’s father on one’s back to flee is more than simply keeping silent about the crime that the father has committed. As a Confucian moralist, Mencius could not encourage people to break a law if the law’s requirements are properly constructed. Indeed, he clearly states, “the only thing to do was to apprehend him [the killer].” However, the question remains what specific rules and regulations the law should contain? Because Confucians cherish family values and the relationship between parents and children, such concerns must be respected and embodied within the law. At the very least, the law should leave room for family members to choose to support family values to the greatest extent possible. In fact, this is exactly transpired in later Confucian dynasties: a privilege was given to the families where a parent committed a crime, and, by this special privilege; the child could receive the punishment usually due the parent in their place (Cf. Fan, Z. 2004). Accordingly, when Mencius argues that Shun should abandon the Empire and carry his father in fleeing, he ought to be understood as proposing a new legal rule: if an emperor’s parent commits a felony, the emperor must be banished and exiled from the capital together with his parent – while the parent would be spared from the usual punishment? In this way, the emperor is kept partially responsible for the crime his parent commits, and his parent is spared from the usual punishment. This legislative proposal takes into account legal accountability, parent-child relatedness, children’s filial piety as well as the nature of the Confucian interdependent familist way of life in which virtue is cultivated. This understanding is equivalent

to emphasizing the important function of legislation in line with the Confucian values in the Confucian way of life, without leaving the whole issue to the sphere of judicial discretion.

What can we say about the current situation of Chinese society regarding the rule of law? To some, it seems that even if Confucian familism theoretically does not hold an ethos that makes it reasonable or appropriate for people to bend the rules for the benefit of their relatives and associates, people actually often do engage in such bending and do not consider such bending wrong. A full portrayal of this pattern of abuses goes beyond the scope of this chapter (or this book, for that matter). At this point, it is enough to advance one cluster of observations. First, the abuses can primarily be accounted for in terms of those temptations within a Confucian familist society to favor families and associations, just as temptations within the Western legal framework towards individually oriented corruption. Secondly, and more significantly, there has been a fundamental confusion within Chinese culture since the early 1900s regarding the appropriate character and goals of Chinese law. From the beginning of the last century, China’s laws, social institutions, and culture have been dramatically influenced by the West, obscuring the goals and appropriate character of a Confucian familist understanding of rule of law. There has been a mixture of modern Western (e.g., liberal and Marxist) principles with traditional Confucian values and commitments, producing a theoretically incoherent system of practices and commitments. China has attempted to combine slogans concerning “the rule of law” with slogans concerning “the rule of virtue” without clearly establishing their respective governance and functional integration. This lack of clarity at the foundation of legislation, juridical function, and executive administration has been an important factor contributing to a moral and juridical vacuum within which the bending of rules to the benefit of families, relatives, and associations has not been met with adequate institutional correctives established within the integrity of Confucian understandings of virtue and appropriate behavior. When the established jurisprudence does not fit well into the social ethos of the people, and indeed incorporates contradictory foundations, the citizens lack a coherent paradigm of appropriate public, that is, legal conduct.

3.6 Concluding Reflections: Towards a Familist Civil Society

It is often argued that Confucian family-based relations lack an appropriate and impersonal character independent of particular affective bonds and that general principles for impersonal relationships should be introduced into Chinese society. At the same time, those who argue that Confucianism already affirms such impersonal relations in its ethical teachings contend that the impersonal character of these relationships should be strengthened in Chinese society. This viewpoint can be critically assessed only in terms of a more ample account of Confucian familism, as well as

10 See Chapter 14 for the relevant discussion.
a more in-depth comparison of its virtues and vices, benefits and costs, with liberal individualism. Over against those who would reshape Chinese society in the image and likeness of liberal individualist assumptions, making their contention on behalf of the requirements for a Western liberal social democratic understanding of civil society, I have argued that Confucianism amply grounds an understanding of civil society, albeit located in an ethos (Sittlichkeit) quite different from that grounding the civil society of the contemporary liberal social democratic West. Each has an understanding of the rule of law that carries with it a heavily value-infected understanding of appropriate deportment. Each involves different risks for failure and prospects for success, providing quite different prospects for virtue and vice. The differences separating these moral visions are grounded in competing understandings of human flourishing.

A full account, not only of these differences, but of the substantive fabric of a Confucian civil society, requires giving attention to the numerous ways in which structures intermediate between the family and the state ought to take on a Confucian, family-oriented character. It would have to be shown how these intermediate structures, guided by a non-individualistically, family-oriented ethos, would not only lack a collision with the rule of law, but importantly give it support. In subsequent chapters, I will begin to sketch such an account. For now, only a promissory note can be given. It can only be indicated that these intermediate structures should be characterized not only by familist commitments, but by (a) avoidance of the social and moral costs of the anomie characterizing the fragmented individualism of the West, while (b) positively nurturing virtues in both families and individuals. Such intermediate structures would need to include (a) extended family relationships reaching beyond the nuclear family of father-mother-children to encompass grandparents, uncles, and aunts within a broad commitment to mutual family support, (b) associations of persons directed to mutual support informed by a common notion of moral value and proper social structure (e.g., a league of Confucian families), and (c) corporations committed to nurturing in their employees familist virtues and social structures (e.g., by providing family-oriented pensions, the funds of which can be transferred to support relatives rather than simply the pensioner), as well as (d) leagues of corporations committed to nurturing Confucian familist values. An account of those social structures compassed under (a) and (b) would have to show how, although they are directed to supporting families in general, they create no more moral costs of partiality than the West’s focus on particular individuals. The same would need to be made out with regard to the social structures under (c) and (d) above, with special attention to how, while protecting competition and rule of law, such structures would provide a substantive contribution to human flourishing.

The challenge is not simply to realize a Renaissance of Confucian family values, but critically to draw on the failures of the past. The pursuit of familist values and social structure must be placed within concrete social commitments to the rule of law that will avoid the subversion of judicial and administrative functions to favor particular families. The issue we face is not simply to stress equal citizenship in Chinese society. Rather, the challenge is to articulate the social structures that can
make possible a Confucian familist civil society in which there is both rule of law and space for robust family loyalties and associations of friendship and collaboration. Chinese culture must develop means for curing the abuses of the past without killing the body of cultural commitments that mark its true character and give it a prospect for a future with more integrity of its own.
Part II

Virtue as a Way of Life: Social Justice Reconsidered
Chapter 4
Virtue as the True Character of Social Obligations: Why Rawlsian Social Justice is Vicious

4.1 Introduction

Rawlsian reflections on social justice have a focus and character foundationally at odds with the ordinary discourse of Confucian moral reflection. Yet it is difficult for Confucians not to respond to the concerns of Rawlsians. This is the case because enormous intellectual energies have been spent guided by Rawlsian commitments in exploring what principles ought to be established to guide the basic structure of society and improve social institutions. As a result, “the basic structure of society” becomes “the primary subject of justice” (Rawls, 1971, p. 7). “Laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust” (p. 3). As a result, some traditionally important subjects, such as what constitutes the appropriate virtue or character of a just human person, no longer attract major academic interests in the area of justice. Moreover, since Rawls assumes that justice primarily concerns “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” (p. 7, italics added), the theme of distributive justice alone comes to the fore of the basic philosophical examination of social justice. In the context of this approach, inquiries into general justice (i.e., the exercise of complete virtue in the Aristotelian sense) appear unnecessary.1

1 Throughout Western intellectual history, philosophers have argued over what justice foundationally means as well as what it particularly requires. The content and scope of justice change dramatically from one theoretical framework to another, such as egalitarianism, utilitarianism, libertarianism, and liberalism. Cf., Buchanan (1981). The application of the concept ranges from the moral character and act of a single individual through the general structure of a large-scale state to specific social and public policies. As is well-known, Aristotle in his Nicomachean Ethics lays out three different subjects of justice: General justice, distributive justice, and rectificative justice. General justice is “complete virtue . . . in relation to another,” or “the complete exercise of complete virtue . . . in relation to another, not only in what concerns himself” (1129b). Distributive justice is “proportionate equality” in distributing honors or wealth (1131a). And rectificative justice is “what is intermediate between loss and profit” (1132a). See Aristotle (1985), Book V, pp. 116–127. Accordingly, for Aristotle, a complete account of social justice includes general, distributive, and rectificative theories. However, by focusing on distributive justice to guide society, Rawls downplays the role of Aristotle’s general and rectificative components in justice consideration.
Tremendous debates have taken place regarding whether Rawls’ two principles of justice are appropriate or sufficient to account for the basic structure of society. However, most seem to have taken for granted one of the major Rawlsian assumptions: social justice primarily concerns how society distributes primary social goods, such as rights and liberties, power and opportunity, and income and wealth. Scholars disagree with Rawls as well as with each other regarding which goods should be distributed and which distribution is just. But few have radically challenged his fundamental starting point that has set the direction of his examination of social justice around the issues of distribution.

How should people in the Confucian tradition come to terms with Rawls’ theory of justice? In particular, compared to Rawls’ view, what is the classical Confucian view of justice? Apparently, the classical Confucian literature, although profound in its social concern and rich in its range of topics, does not have a single concept congruent with the Western notion of justice in the sense of giving everyone his due. However, this should not be an intractable problem when comparing Rawlsian and Confucian views on justice. Given that we can take Rawls to understand social justice as involving the establishment of fundamental moral principles to guide the structure of society, such principles are already implicit in classical Confucianism. In other words, through comparison with Rawls’ view, the intellectual legacy of Confucian views on social justice can be brought to light in contemporary Western terms. Meanwhile, we must not distort the substantive content of the Confucian perspective.

Some might contend that it does not make sense to compare Rawlsian and Confucian views on justice. Confucianism is a particular metaphysical and moral doctrine, while the Rawlsian theory, although there are differences between its early and late versions, is, in the end, a non-metaphysical, political conception. It is the very purpose of the Rawlsian theory to transcend particular metaphysical and moral traditions in order to provide general political guidance in a large-scale pluralist society in which different religious and moral communities find themselves. What is the point, then, of comparing Rawlsian and Confucian views? I would argue that

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2 Some might want to argue that the Confucian notion yi (仁) is similar to the Western notion of justice. However, in the classical Confucian literature, yi is not clearly set as meaning “giving everyone his due.” For instance, in explaining Confucius’ concept of yi in the Analects, D. C. Lau states that “yi is a word which can be used of an act an agent ought to perform in which case it can be rendered as ‘duty’, or it can be used of an agent in which case it can be rendered as ‘righteous’ or ‘dutiful’. When used in a general sense, sometimes the only possible rendering is ‘moral’ or ‘morality’” (Lau, D.C., 1983, p. 26). On the other hand, Roger Ames and Henry Rosemont argue that yi is “one’s sense of appropriateness that enables one to act in a proper and fitting manner, given the specific situation” (cf., Ames and Rosemont, Jr., 1998, p. 54). Finally, Wing-tsit Chan contends that yi was raised by Mencius to the highest level in moral values in order to oppose the Moct doctrine of universal love without distinctions: ren is benevolence necessary to bind people together and yi is righteousness necessary to make distinctions (cf., Chan, W., 1963, , p. 50). This book relies on ren, rather than yi, as a general clue to disclose the classical Confucian view of social justice.
comparing them makes clear their fundamental disagreements regarding social justice. Such disagreements can in turn be used as special tests to explore the extent to which Rawls’ view can be applied in countries and areas in which the Confucian tradition remains dominant in people’s lives.

To begin, Confucians would agree with Rawlsians that there ought to be fundamental principles to direct the institutions, laws, and policies of society. However, I would argue that Confucians could not affirm that such principles primarily concern the distribution of primary social goods. For Confucians, the first subject of fundamental social principles should not be distribution. The particular Confucian understanding of human nature and its implications for human society does not allow a theory of social justice primarily to focus on the allocation of social goods, even if the allocation of some social goods is important and must be involved in the Confucian view of social justice. As I see it, this basic difference between Confucianism and Rawlsianism sets up a broad platform on which a series of particular contrasts and disagreements between the Confucian and Rawlsian views of social justice take place.

### 4.2 The Distribution of Instrumental Goods Vs. The Pursuit of Intrinsic Virtues

As a theory of distributive justice, Rawls’ approach begins with a “thin” theory of the good. As he sees it, the primary social goods, such as rights and liberties, opportunities and powers, income and wealth, and a sense of one’s own worth (1971, p. 92), constitute the universal prerequisites for rational persons to carry out their life plans. Whatever else a rational person wants, Rawls argues, he would prefer a wider to a narrower liberty and opportunity, and a greater rather than a smaller share of wealth and income (pp. 395–398). In this way, Rawls sets these social goods as instrumental – they are tools useful to everyone for their life plans. Individual life plans differ because individual circumstances, abilities, and ends differ. But whatever one’s system of ends, these primary goods are necessary means (p. 93).

Rawls calls these primary goods a “thin” theory of the good in the sense that they are useful, yet neutral, to any full conception of the good life. They simply serve as the basis of expectations for rational persons to establish the principles of social justice to guide their society, but these goods themselves, as universal instruments, need not be under the constraints of any sense of right (or justice) in the first place. In other words, the principles of social justice in Rawls’ theoretical construction must be principles regarding the distribution of these instrumental goods. In this way, he believes his principles of justice are also justified independently of any full conception of the good life (the so-called deontological feature of “the right prior to the good”).

Indeed, it is the intention of being tolerant of, and even neutral to, different and conflicting views of the good life existing in modern Western pluralist societies that drives Rawls to base his theory of justice on a right-independent “thin” theory of
the good. However, this so-called “thin” theory is already “thick” in a significant sense. It assumes, among other things, that it is the way in which right-irrelevant instrumental goods are distributed that constitutes the adequate focus of the principles of social justice. Without this substantive assumption, Rawls could not have successfully directed his theory of social justice to distribution. With this assumption, however, he has excluded important moral concerns from the exploration of social justice.

No doubt, human life involves different types of goods. It is necessary to distinguish instrumental and intrinsic goods. Instrumental goods, such as income and wealth, are the means of the good life; while intrinsic goods, such as moral virtues, are the ends of the good life. For Confucians, a life short of intrinsic goods cannot be good, even if one has obtained a great amount of instrumental goods in the life; on the other hand, a virtuous life without the support of sufficient instrumental goods, although unfortunate, remains good. If the fundamental principles of social justice are meant to “specify a system of cooperation designed to advance the good of those taking part in it” (Rawls, 1971, p. 4, italics added), it would be insufficient to attempt to establish such principles without referring to any intrinsic goods, because “the good” of the people taking part in society should not be understood only as instrumental goods or profits. “What is the point of mentioning the word ‘profit’?” For Confucians, “all that matters is that there should be ren (humanity, 仁) and yi (righteousness, 義)” (Mencius, 1A: 1). If intrinsic goods such as ren and yi are not established in the first place, the concern with instrumental goods such as money or profit would not really do good. Accordingly, rather than focus on the distribution of right-irrelevant instrumental goods, Confucian social justice first concerns the promotion of right-relevant intrinsic goods, because it is such goods that constitute the good of humans in the fundamental sense. A list of such goods may include individual rights and liberties. But it cannot include economic values like money and income.

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3 My quotations of Confucian classics in this chapter are mostly adapted from James Legge’s translation by reference to other more recent translations. The only exception is the Xunzi (荀子), which I refer to John Knoblock’s translation.

4 Given that Rawls claims his theory of justice to be a deontological theory, it is a bit surprising that he treats liberties and rights as purely instrumental goods, combining them with income and wealth to make a group of right-independent prerequisites or means for individual life plans. There is a tension in it. As Habermas points out: “Rights can be ‘enjoyed’ only being exercised.” Basic rights and liberties “in the first instance regulate relations between actors: they cannot be ‘possessed’ like things.” Hence they “cannot be assimilated to distributive goods without forfeiting their deontological meaning” (Habermas, 1995, p. 114).

5 This does not mean that instrumental goods (such as economic values like money or income) should not have any standing in a Confucian theory of social justice. The point is rather that instrumental goods should not be the only data for constructing the principles of social justice. On the traditional Confucian view of the good life, instrumental goods should not be pursued independently of the constraints of intrinsic goods. For instance, Confucius claims: “Riches and honors acquired by unrighteousness are to me as a floating cloud” (Analects, 7:15). He also argues: “When a state is well governed, poverty and a mean condition are things to be ashamed of; when a state is ill-governed, riches and honors are things to be ashamed of” (Analects, 8: 13).
Similar to Aristotelianism, Confucianism holds that a theory of the good for humans cannot be defined without reference to primary human virtues. An account of human virtues must imply a teleological theory of human life in which the virtues are the essential human traits or qualities that enable humans to do the right thing at the right time in the right way in pursuing a telos – the end of the good life. Since it is necessary for individuals to exercise the virtues to achieve the good life, the Confucian theory of justice cannot fail to involve a theory of the virtues, including an account of the way in which humans learn and practice the virtues. In this light, Confucians cannot take seriously a theory of justice, such as Rawls’, that does not touch on the issues of the ends of life. Specifically, while “eudaimonia” is the Greek term for the good life in the Aristotelian corpus, the Confucian classics use “zhi-shan” (“the highest good”) to indicate it (The Great Learning: the text). Zhi-shan, as the end of the good life for Confucians, is being perfect and doing excellently throughout an entire process of life. How can one achieve this great end? In the first place, Confucius, the master of Confucianism, emphasized learning as the most important condition: “to learn with a constant perseverance and application” (Analects, 1:1). This learning, for Confucians, is not for acquiring the knowledge of the physical environment. It is not even necessarily for mastering the Confucian classics (Analects, 1:6). Rather, it is first and foremost for learning the moral virtues for a normal human life.

6 This does not suggest that the Aristotelian and Confucian views on the good life do not have essential differences. For a comparative study of Confucian and Aristotelian virtues, see MacIntyre, 1991, pp. 104–122.

7 Rawls distinguishes two types of theories: teleological and deontological. He follows W. K. Frankena to define teleological theories in the way that “the good is defined independently from the right, and then the right is defined as that which maximizes the good” (Rawls, 1971, p. 24). In contrast, a deontological theory is characterized as “one that either does not specify the good independently from the right, or does not interpret the right as maximizing the good” (ibid., p. 30). He identifies his theory of justice as a deontological theory. However, Rawls fails to distinguish teleology from consequentialism. His definition of teleology fits well into consequentialist theories such as utilitarianism, but not into teleological theories such as Confucianism and Aristotelianism.
What virtues should the individual learn? How should one learn them? And are there any general guidelines for such learning? Significantly, Confucius established a cardinal moral principle to guide the individual in learning and practicing the virtues: the principle of ren. In pre-Confucian ancient classics, ren connotes only a particular virtue for a particular type of person, namely, the kindness of a ruler to his people. It was Confucius who transformed it into the quality of perfect virtue and identified it as the essential trait of humans, and thus made it applicable to all human beings in an undifferentiated manner (Chan, 1955). In this way ren becomes complete virtue and a fundamental moral principle in directing everyone’s life and actions. Although Confucius never provided a precise definition of ren, he clearly told a student that “ren is to love humans” (Analects, 12: 22). Indeed, it is most appropriate to interpret the principle of ren as a principle of love in order to explicate its profound as well as broad moral sense. On the Confucian view, everyone is able to practice love through learning and willing in order to become a human of ren: “If I will to be ren, ren is at hand” (Analects, 7: 29). More specifically, Confucius gave expression to both negative and positive requirements of the principle. Negatively, it requires that one should not “impose upon others what one does not desire for oneself” (Analects, 15: 24). And positively, it states that “the man of ren, wishing to be established himself, seeks also to establish others; wishing to be enlarged himself, he seeks also to enlarge

8 At the time of Confucius (551–479, B.C.) and Mencius (327–289 BC), different classical Chinese schools offered the different dao (ways, 道) of the good life. For those who followed Confucius, the dao was ren (仁). Etymologically, ren is made up of the element “person” (人) and the number “two” (二), meaning that one cannot become a person by oneself. By extension, it also means that the good life consists in forming appropriate human relations and the appropriate structure of society. From the view of Mencius, if humans are not made aware of ren, they would have no sense of right or justice. They would live their lives almost like the beasts, even if they are well fed, warmly clad, and comfortably lodged (Mencius, 3A: 4: 8). On the other hand, everyone is able to follow ren if one wants to. Confucius states, “if one’s will is set on ren, one will be free from wickedness” (Analects, 4: 4). When one has fully realized ren, one has fully realized the moral virtues (for instance, Confucius states that “men of ren are sure to be brave, but those who are brave may not always be men of ren” (Analects, 14: 5)), becoming a sage (Analects, 6: 28; 7: 33). In short, ren is the embodiment of human nature in its perfect state. A human of ren is a perfect human. Ren has been translated into many different English words, such as benevolence, love, altruism, kindness, charity, compassion, magnanimity, perfect virtue, goodness, true manhood, manhood at it best, human-heartedness, humaneness, humanity, etc. I will leave this crucial concept untranslated in the text. To my knowledge, in the tremendous amount of literature dealing with the meaning of ren and its evolution, an essay by Wing-tsit Chan provides the clearest and most cogent account (Chan, 1955). This chapter generally follows Chan’s interpretation of ren to develop its implications for social justice.

9 Love might be taken as a general moral principle for many religions and moral traditions. For instance, Joseph Fletcher argues that Christian morality can be summarized as a principle of love (Fletcher, 1967). However, we must notice that even if “love” is universally accepted, the content of love is different in different traditions. For instance, given that there are fundamental differences between Confucianism and Christianity in their respective religious, metaphysical, and moral assumptions and commitments, the requirements of Confucian love and Christian love cannot be the same.
Accordingly, in the Aristotelian sense of general justice (see *Nicomachean Ethics*, 1130a), the principle of *ren* can be understood as the Confucian principle of general justice because it demands the complete exercise of complete virtue (*ren*) in relation to others, not only what concerns oneself.

Accordingly, the ultimate concern of Confucian general justice is loving humans by pursuing intrinsic goods, rather than distributing instrumental benefits. In other words, unlike Rawls who assumes certain right-irrelevant instrumental goods are the basis for establishing the principles of social justice, Confucians care about promoting intrinsic values as the fundamental matter of general justice. Now, what does this conception of Confucian general justice mean to the Confucian view of social justice? To be sure, to follow Rawls in understanding social justice as involving establishing fundamental moral principles to guide the structure of society, Confucians cannot simply stop at the principle of *ren*; because, this principle, embodying the moral nature of humans and representing the complete virtue of human individuals, is not direct guidelines for the structure of society. Can we then derive, from this general principle, more concrete principles to guide society generally, politically, and economically, so as to lay out a complete picture of Confucian social justice? My answer is yes. Such principles are already implicit in the principle of *ren* as well as other classical Confucian resources.

### 4.3 Equality Vs. Harmony

Rawls’ general idea of social justice involves treating people as equals. He ties this general idea to an equal share of primary social goods, but he adds an important twist: we treat people as equals not by removing all inequalities, but by removing those that disadvantage someone. Thus, he holds a general conception of social justice: “all social primary goods – liberty and opportunity, income and wealth, and the basis of self-respect – are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored” (Rawls, 1971, p. 303). Under this general conception, we can roughly mark Rawls’ theory of social justice as consisting of three requirements: equal (1) liberty, (2) opportunity, and (3) income, unless unequal arrangements are to the benefit of the least advantaged. This section will compare Rawls’ general idea of social justice and his equal opportunity requirement with the Confucian views, leaving his other two requirements to the next sections.

Fair equality of opportunity for offices and positions becomes a basic requirement of Rawlsian social justice. For Rawls, fair equality of opportunity is an improvement of the formal equality of opportunity. The formal equality of opportunity requires eliminating *formal or legal barriers* to persons in seeking jobs and

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10 Evidently, it is misunderstanding to argue that Confucius offered only a negative principle of the Golden Rule (see, for example, Legge, 1971, p. 109).

11 Will Kymlicka has spelled out this nuanced idea (2002, p. 55).
positions, such as race, class, gender, etc. Fair equality of opportunity, however, requires taking further steps (e.g., through the public educational system) to enhance the opportunity of those disadvantaged by social factors such as family background. Such social factors, for Rawls, are arbitrary from a moral point of view, because none of us deserves the advantages conferred by accidents of birth. Therefore, Rawlsian social justice requires the state to step in to maintain equality of opportunity unless inequality is beneficial to the least advantaged (Rawls, 1971, pp. 72–74).

Rawls invites us to adopt a hypothetical original position to arrive at his general idea of social justice as well as his specific principles. He uses this position as a heuristic device to explain his view on social justice. The position is characterized by two major features. First, all persons in this position are equal in the morally relevant sense: they are equally free, rational, and capable of grasping a conception of their good and a sense of justice (Rawls, 1971, p. 505). Second, they are all mutually disinterested individuals: “they are conceived as not taking an interest in one another’s interests” (p. 13). As a result, “there is the symmetry of everyone’s relation to each other” (p. 12, italics added). Accordingly, a conception of human persons as equals is reflected in the features of Rawls’ hypothetical original position. He believes such a position is a fair initial status quo for elaborating the principles of social justice (thus he gives his theory the title “justice as fairness”).

Confucians cannot accept this Rawlsian conception of persons. Neither can they accept his general idea of social justice (namely, treating people as equals). To be sure, Confucians understand that there is an aspect of equality among humans that is morally important and ought to be maintained; namely, every human deserves love. The Confucian principle of ren, as we have shown, requires loving all humans. Because each human, qua human, possesses the capacity of human nature in learning and practicing ren, each human deserves love. However, Confucians also understand that there are two types of inequality among humans which are also morally important. First, human individuals differ from one another in the degree in which they possess and exercise the virtues. Some are more sincere, make more efforts, and accomplish more than others in such learning and practicing. It is the Confucian conviction that, other things being equal, those who are more sincere, make greater efforts, or accomplish more than others in practicing the virtues should receive more love and respect than the others. Second, humans are far from being

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12 This is a summary based on Rawls’ conception of person. He elaborates moral persons as having two moral powers. First, they are capable of having a conception of their good. Second, they are capable of having a sense of justice (Rawls, 1971, p. 505; 1993, pp. 294–324).
13 It is worth noting that, for Confucians, love of humans and care for animals are different in kind and are guided by different rituals. The following story of Confucius is heuristic: the stable being burned down when he was at court, on his return he said, “Were any humans hurt?” He did not ask about the horses (Analects 10: 12). For a detailed exploration of the Confucian view on treatment of animals, see Fan (2010).
14 This brings in one of the crucial Confucian values: zun-xian (尊賢); namely, the honoring of men of virtue. For instance, in The Doctrine of the Mean, zun-xian is considered as one of the most important moral standards. By honoring men of virtue, one is preserved from errors of judgment (20: 13, 14).
mutually disinterested as Rawls assumes they are in the original position. Instead, they are always familially and socially related to one another in human society, and thus their relations are bound to be asymmetric. Some are born as intimate family members. Some are made close friends. And some are only remote strangers. Since Confucians take such inequalities and asymmetries as important moral features of human society, a Confucian conception of social justice must take them into account. Indeed, in exploring social justice, Confucianism offers sufficient space for both human equality and inequality. Although the Confucian principle of ren requires loving all humans, this requirement is not that one should love all humans equally or similarly. To the contrary, Confucianism always requires that there ought to be a clear and definite order, distinction, and differentiation in the application of love (Chan, 1955, pp. 8–9). It is not that one should not love all; it is that one should love all with differentiation and relativity of importance. This peculiar Confucian discrimination is aptly reflected in the Confucian slogan of “love with distinction” or “care by gradation” (ai you cha deng 愛有差等) in the process of Confucian self-cultivation (xiu shen 修身). It is wrong for one to love strangers as one’s close family members. It is inappropriate for one to love a sage as an ordinary man.

As is well noticed, at the heart of the Confucian good life is self-cultivation, the cultivation of the virtues. Self-cultivation is closely related to the forming of appropriate human relations and social institutions – the family, the state, and the whole world (the all-under-Heaven):

Individuals being cultivated, their families can be well regulated. Their families being well regulated, their states can be rightly governed. Their states being rightly governed, the all-under-Heaven can be made peaceable. [Hence], from the king of a state to the mass of the people, all must consider the cultivation of the individual as the root of everything (The Great Learning: the text).

This is certainly not to say that one cannot cultivate oneself in a poorly regulated family, a wrongly governed state, or a non-peaceful world. Rather, it is to insist that the very process of one’s self-cultivation is inevitably related to one’s performance in regulating one’s family, governing one’s state, and making the entire world peaceable. Confucianism holds that different human relations convey different moral significance in the application of the principle of ren. For instance, Mencius set forth five specific principles to guide the five basic human relations: the

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15 Here occurs another crucial Confucian value: qin-qin (親親), namely, affection towards relatives (see, e.g., The Doctrine of the Mean, 20: 13, 14).

16 It is exactly for the practice of differentiated love and respect due to relatives and the worthy that Confucians give enormous weight to the observance of li (禮), namely, a series of familial and social practices that are endorsed and shared within and by the Confucian community. They provide the rules of propriety and give concrete guidance to individuals in specific situations. As The Doctrine of the Mean states: Ren is the characteristic element of humanity, and the great exercise of it is in loving relatives. Yi is the accordance of actions with what is right, and the great exercise of it is in honoring the worthy. The decreasing measure of the love due to relatives, and the steps in the honor due to the worthy, are produced by the rules of propriety (li) (20: 5).
principles of affection (qin 質) between parents and children, of righteousness (yi 義) between sovereign and subjects, of function (bie 別) between husband and wife, of order (xu 序) between older and younger, and of fidelity (xin 信) between friend and friend (Mencius, 3A: 4: 8). These concrete principles, derived from the fundamental principle of ren in light of the distinct nature of these natural relations, constitute the further specific requirements of Confucian social justice. Especially, three of these basic human relations are familial relations, and Confucianism takes human society to be family-based, rather than individual-based. For Confucians, the family is distinguished outstandingly as an autonomous unit from the rest of society.\(^{17}\)

Confucians certainly do not have any quarrel with the requirement of formal equality of opportunity – equals should be treated equally. But the Rawlsian requirement of fair equality of opportunity contradicts with the autonomy of the family that Confucians have to cherish in their social lives. The autonomy of the family is the requirement that consensual relations within a given family governing the development of its children should not be coercively interfered with by the state.\(^ {18}\) Evidently, families can give their children a great amount of advantages: private schools, culture in the home, a secure home environment, trips abroad, private lessons, an advantaged peer group, and successful role models. All of these can substantially enhance the children’s opportunities for seeking offices and positions in society. Given that the existence of such advantageous family opportunities is unlikely to be beneficial to the least-favored children in society, Rawls’ social justice, with its requirement of fair equality of opportunity, would have to restrict them in order to equalize life prospects for every child (or at least for those with similar natural endowments). But these family opportunities are permissible and even encouraged by the Confucian principle of ren. The basic Confucian moral orientation of “love with distinction” and “care by gradation” under the principle of ren requires one to start one’s love with one’s family and give preferential treatment to one’s family members. One is also obliged to work hard to achieve the chance of a better life for one’s children. When the Rawlsian requirement of fair equality of opportunity has to use state-controlled measures to restrict or even prohibit the parents from pursuing better educational opportunities for their children, it violates the fundamental Confucian moral conscience of ren. Confucian social justice wants family-based opportunities autonomously provided by families, rather than the so-called “fair” equality of opportunity imposed by the state. For one thing, Confucians have always required that a government of ren make the taxes and levies light and leave resources to families for pursuing welfare for their family members as they see appropriate (see, e.g., Mencius 1A: 5). They strongly hold that welfare responsibility resides first with the family.

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\(^{17}\) I adopted the term of “family-determination” vis-a-vis “self-determination” to account for the autonomy of the family in the Confucian tradition (Fan, 1997).

\(^{18}\) I adapted this description of the autonomy of the family from James Fishkin’s excellent work (Fishkin, 1983, pp. 35–36), where he discusses the systematic conflicts among fair equality of opportunity, the autonomy of the family, and the principle of merit in the liberal theory.
Indeed, given the moral relevance of both equality and inequality in the real human condition, Confucians do not consider it appropriate to derive the principles of social justice from the hypothetical position of equality, as does Rawls. If people are in fact unequal in the moral sense, the general idea of social justice should not be “treating them as equals.” Rather, unequals should be treated as unequals. For Confucians, what social justice ought to maintain is harmonious relations among unequals. Accordingly, the Confucian general idea of social justice is to treat people harmoniously. It is the function of the principles of ren (as well as its further derived particular principles for specific human relations) to direct naturally unequal humans to live harmoniously among one another. Hence, compared with Rawls’ view of “justice as fairness,” the Confucian view can be noted as “justice as harmony.”

4.4 Liberal Democracy Vs. Confucian Aristocracy

Politically, Rawls’ view of social justice requires that the structure of society assign equal liberty to every citizen. This is reflected in both the context and priority of his first principle of justice:

First Principle: Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

First Priority Rule (the Priority of Liberty): The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty (1971, p. 302).

The basic liberties of citizens are, roughly speaking, political liberty (the rights to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law (p. 61).

For Rawls, “[t]hese liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights” (p. 61). They are also required to hold a priority over other social goods by the first priority rule.

Evidently, Rawls’ principle of equal liberty and its priority naturally leads to as well as defends the political system of liberal democracy. Liberal democracy can be

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19 Indeed, “harmony” (he, 和) is a vital concept in the Confucian view of justice. For instance, Xunzi (c. 310–? B.C.) clearly stresses fairness as balance or harmony rather than equality (Xunzi, 9: 2). As he states: Where the classes of society are equally ranked, there is no proper arrangement of society; where authority is evenly distributed, there is no unity; and where everyone is of like status, none would be willing to serve the other (9: 3). Moreover, harmony also constitutes a good human character. For instance, according to Confucius, “the superior man is harmonious but not adulatory; the mean man is adulatory but not harmonious” (Anelects, 18: 23).

20 In his later work (1993, ibid., p. 291), Rawls gives more accurate expression of his two principles of justice. For the sake of simplicity, I omit addressing any issues related to his different expressions because they don’t affect the argument in this essay.
characterized with three crucial features. First, it protects individual liberal rights in the process of policy formulation, social administration, and elections. Second, it attempts to be neutral to the different conceptions of the good life. Finally, it must hold regular, open and competitive elections whose results can genuinely alter policy and the people who make it. The Confucian view of social justice, with its principle of *ren* as the essential line to direct political system, would stand in disagreement with each of these features of liberal democracy. Evidently, a political system that can be strongly supported by the Confucian view of social justice is a Confucian aristocracy, rather than liberal democracy. The following sections will specifically explore this difference in different dimensions.

### 4.5 Liberal Rights Vs. Confucian Rights

The modern Western liberal tradition understands human rights as inborn entitlements equally held by every individual. That one has a right to something means that one is entitled to it and ought to have it, independently of others’ good will, permission, or benevolence. Others, instead, have an obligation not to prevent one from enjoying a right. Indeed, a liberal human right is an entitlement universally assigned to every individual, irrespective of their virtue, ability, gender, race, class, culture, role, status, or the like. Any assertion of such a right is premised on the view that one is entitled to have one’s legitimate self-interests protected rather than curbed. Obviously, classical Confucianism never affirmed or used such a concept of human rights. The primary Confucian moral language is the language of the virtues, carrying a quite different value orientation from the liberal language of rights. The basic values implicit in the liberal conception of rights are equality, independence, and self-assertion, while the basic values embodied in the Confucian conception of the virtues are harmony, interdependence, and other-regarding. Talking about my rights places emphasis on others’ obligations to do or not to do things to me rather than my obligations to do or not to do things to them (although the latter obligations are also logically entailed in many cases). In contrast, talking about my virtues places emphasis on my obligations towards others, rather than their obligations towards me (although the latter obligations can also be logically inferred in the usual case). On Confucianism, people in close personal relationships should not even think of themselves as subjects possessing rights upon which they make claims against each other. Rather, they should think of themselves as participating in a relationship of reciprocal commitments and mutual caring. To introduce considerations of rights seems to motivate us to see others’ interests as limitations on ours rather than as interests we should promote. Finally, most importantly, Confucian virtue is inevitably intertwined with a vision of human flourishing, while a liberal right is an individual entitlement that is rightfully individual’s irrelevant to any communitarian good.

Due to these differences, it is impossible for Confucians simply to integrate the Rawlsian liberal conception of human rights into their view of social justice. In
fact, there has been a debate regarding whether Confucianism is compatible with any universal human rights. One side contends that it is not, primarily because Confucianism is a pure relation-oriented or role-based morality, which leaves no room for any obligations or rights belonging to human persons simpliciter.\(^{21}\) The other side, to the contrary, argues that Confucianism is not a pure relation-oriented or role-based morality. Instead, the latter side points out, there are nonrelational Confucian occasions when moral actions are required by ren, and therefore, Confucianism is able to accommodate universal human rights.\(^{22}\) Interestingly, both sides seem to accept that rights can serve as “fallback appurtenances” or “fallback rights” as a last resort in Confucian society. This debate, I think, has missed the major issue at stake. The major issue is not whether Confucianism is compatible with any conception of human rights. It is rather whether Confucianism is compatible with the liberal individualist conception of human rights. Although the liberal version of human rights is often claimed as “universal” in Western-country-dominated international declarations, sociologically or epistemologically, there are no such things as universal human rights in this world. Evidently, Confucianism is not compatible with the liberal version of human rights. This is not because Confucianism lacks a general notion of human persons – Confucianism certainly has such a notion.\(^{23}\) It is hard to imagine that Confucianism be an entirely relationalistic morality which does not include any general moral obligation for humankind to follow in the general sense. In fact, Confucianism carries a series of virtue principles which are meant to provide guidance to all human persons. The well-known Confucian requirement of shu (儒) is one of such principles: “do not impose on others what you yourself do not desire” (Analects, 15: 24).

Confucianism is not compatible with the liberal version of human rights because Confucianism cannot accept the absolutist principlism and individualism that characterize the liberal version of human rights. Human rights as general moral principles could, and should, guide human conduct in cooperation with specific practical rules. They should not, as in the case of liberal rights, become absolute, sweeping and exclusive norms or master Rules to substitute for specific rules. For Confucians, what one should properly conduct should also be directed by specific rules in addition to general principles. It is improperly extreme to hold that, for example, one should have a right to individual liberty in the sense that one can do whatever one desires as long as it does not directly harm others.\(^{24}\) Moreover, Confucians cannot accept the dramatic individualistic features of liberal rights which assign such rights an absolute trumping value vis-a-vis communitarian good. For liberals, rights are just worth keeping for themselves, irrelevant of the common

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\(^{21}\) Roger Ames seems to be the first philosopher arguing for such incompatibility (1988). See also Rosemont (1988) and Peerenboom (1993).

\(^{22}\) An original, vigorous argument for this position was made by Joseph Chan (1999).

\(^{23}\) For a detailed exploration of the Confucian conception of personhood, see Chapter 13.

\(^{24}\) For a detailed exploration of the Confucian view of the relation between general principles and specific rules, see the Postscript to Chapter 11.
good of family or community. Confucianism, a virtue-oriented moral system, recognizes that it is outrageous to promote such an individualist self-asserting apparatus without reference to any pursuit of human flourishing.

This does not mean, however, that Confucianism is incompatible with any notion of human rights. A basic notion of human rights does not have to carry the robust principlist and individualist features of the liberal notion. Instead, it can be kept in a minimal sense as follows: if a person has a right to x against another person, then another person has an obligation to provide x to this person or at least not to deprive this person of x in the normal situation. This basic notion does not need to hold that rights must serve as “trumping” principles to dominate or even replace specific rules in directing everyday practices. Rather, they can serve only as fallback apparatuses to prevent things from becoming too bad. Neither would such rights have to be cut away from any view of the common good or communitarian interests. In this case, Confucianism would not only be compatible with, but also be beneficial from, a basic notion of human rights. Establishing Confucian rights would amount to adding a minimal self-asserting, entitlement language to the rich, other-regarding, virtue language of the Confucian framework. To be sure, rights as individual entitlements in this minimal sense should not be considered constitutive of most valuable personal relationships or perfectly ideal for the display of the good life. However, rights as entitlements may be necessary as a fallback apparatus to protect legitimate self-interests when the virtues fail to obtain or people’s personal relationships break down (Chan, J. 1999). Even if rights are not necessary when the virtues prevail in society (because the virtues call for idealistic noble behaviors), they are necessary when the virtues do not prevail. In cases of virtue failure, individuals could bring their rightful interests to the attention of others under the name of “rights.”

Accordingly, it is helpful to set down Confucian rights as moral and even legal requirements to protect Confucian individuals’ basic legitimate interests. What are, then, the basic legitimate human interests according to Confucianism? This question can properly be answered by basing on the Confucian vision of the virtues. In other words, Confucians can, and should, derive a Confucian conception of rights from the Confucian conception of the virtues. In the first place, although a Confucian virtue represents character and can never be totally reduced to a set of specific obligations, it certainly implies a set of obligations that individuals must undertake in order to express the virtue. It is even safe to say that the better one performs such obligations, the more virtuous one is. Moreover, such obligations may not be of

25 In his seminal essay on rights, Joel Feinberg (1970) argues that although rights and duties are usually logically correlative, rights carry a much more profound and fundamental meaning that duties do not possess. “Having rights enables us to ‘stand up like men,’ to look others in the eye, and to feel in some fundamental way the equal of anyone” (p. 249). Confucians need not quarrel with Feinberg about an “extra”, necessary moral meaning that rights must have, more than that of duties. But the problem is what are the foundations of rights? Like some other liberals, Feinberg seems to assume abstract, independent, and autonomous human beings as such have natural rights. Eventually his argument cannot avoid Alasdair MacIntyre’s critique: “there are no such rights, and belief in them is one with belief in witches and unicorns” (MacIntyre, 1984, p. 69). For Confucians, rights are based on, and derived from, the virtues.
equal importance for the exercise of a virtue. Some obligation may be more important than others so that it can be taken as constituting a necessary requirement for exercising the virtue: if one does not perform this obligation, one cannot be taken as exercising the virtue. If such an obligation towards a person is thus identified, then an entitlement of that person entailed by this obligation can be set down as his/her right. Consider the Confucian children’s virtue of filial piety (xiao 孝) as an example. This virtue implies that a filial child must undertake a number of obligations towards his/her parents, such as taking care of the parents’ lives (especially when the parents become elderly), taking care of the parents’ mental needs and making them happy, and taking care of the parents’ spirits after they die. Suppose taking care of one’s elderly parents’ lives can be taken to be a necessary obligation for exercising the virtue of filial piety, then the entitlement of the elderly parents to receive such care can be set down as their right. That is, an elderly should have a right to receive care from their adult children. Thus a Confucian right is set up this way. Accordingly, a system of Confucian rights can be worked out based on the system of the Confucian virtues.

This way of introducing rights into the Confucian view of social justice is a virtues-based, bottom-up strategy, focusing on the particular instances. It differs from the liberal individualist, top-down mechanism, which is prejudiced for general principles and ideals. The Confucian principle of ren, with its internal requirement of “love with distinction” or “care by gradation,” is predicated on the priority of the immediate and concrete over the general or the universal. Although there are general moral requirements and virtues to guide individuals, Confucianism normally teaches us to learn and practice such requirements and virtues in relation-based contexts. As a result, even if we should not preclude the possibility that some general (not role-based or relation-based) human rights should be established based on some general Confucian virtues, a Confucian system of human rights would inevitably give emphasis to specific, agent-relative, context-sensitive, and role-based rights (such as a parent’s right to receive care from the adult children), derived from the specific Confucian virtues. This is because, compared to general liberal rights (such as “right to liberty” or “right to property”), a Confucian system of rights, while attending to protecting essential human interests, is also, at the same time, contributing to preventing the possible “abuse of rights” – the erosion of intimate human relations by over-asserting one’s general rights. At this point I am not able to offer a complete list of Confucian rights because it would need to make a full deliberation of all the major Confucian virtues as well as the related essential human interests. But some obvious examples are available. As mentioned, based on the Confucian virtue of filial piety, elderly parents should have a right to receive care from their adult children. In fact, this special moral right has been established as a

26 For example, in explaining the general requirements of shu (reciprocity, 諏) and zhong (faithfulness, 忠), the Doctrine of the Mean teaches with an emphasis on relation-specific cases: “to serve my father as I would expect my son to serve me... To serve my ruler as I would expect my ministers to serve me... To serve my elder brothers as I would expect my younger brothers to serve me... To be the first to treat friends as I would expect them to treat me...” (Chapter 13).
legal right existing for thousands of years in the traditional Chinese society, although the term of “rights” was not used. It has also been incorporated into the civil law of both the Republic of China (since 1911) and the People’s Republic of China (since 1949). In practice, this means that the parents are entitled to share the personal income of their children through legal coercion if the children refuse to do so.²⁷ For another example, instead of talking about a general right to free speech and expression, Confucians will want to focus on certain specific rights in the field, such as a right to criticizing governmental policies.²⁸ Finally, Confucianism may not want to grant any moral right to saying or doing debased things (such as a right to pornography), even if they cause no direct harm to others (Chan, 1999, p. 232). A right to do the bad or wrong is simply a non-starter in a virtue-based Confucian conception of rights, because the virtues are the qualities for the good life and right acts.

This is to say, a list of Confucian rights established through the Confucian virtues will be quite different from the list of liberal rights. The Confucian virtues and the implicit obligations cannot lead to the liberal version of human rights with an underlying principlism and individualism. The individual under Confucian rights will still be an agent located in interdependent familial relations and embedded in a

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²⁷ There also have been some special rights and obligations among relatives of non-parent-child-relation. For instance, under the traditional Chinese legal system theft among relatives was treated differently from theft among ordinary people. The severity of the punishment varied in inverse ratio to the closeness of relationship. For this issue and other related legal issues in Chinese history, see T’ung-Tsu Ch’u (1961).

²⁸ Some may want to argue that it is doubtful that a list of specific Confucian rights, such as a right to criticizing government policies, can be derived from the Confucian virtues, because it is difficult to know which obligation is a necessary requirement or obligation for a virtue. I don’t think it is so difficult. In the first place, we can set down a general guideline for establishing a necessary obligation under a virtue: if there is an obligation under a virtue which is so important that if we do not take it as a necessary obligation and enforce it by a rule of law, the outcome will be a severe damage to our legitimate interests in the case that the virtue does not prevail, then this obligation must be a necessary obligation for the virtue. For instance, a virtue that government officials must nurture and exercise, as Confucianism always emphasize, is ren (the so-called “government of ren,” or ren-zheng, 仁政). This virtue entails a number of important obligations: taking appropriate measures benefit people, to enrich them, and to educate them (Analects, 13:9); to guide them by virtue and keep them in line with the rites (li) (2:2); not to impose the death penalty on people without having educated them, not to require from them suddenly without having given them warning, not to insist on a time limit when first tardy in issuing orders, and not to be mean when giving pay or rewards to them (20:2); to govern means to rectify oneself (12: 17); to require much from oneself and little from others so that others will not complain (15: 14); to follow the dao so that the common people will not criticize (16:2); to allow people to criticize (“if what [the ruler] says is not good and no one goes against him, then is this not almost a case of a saying leading the state to ruin” [13: 15]); to advance the upright and set them over the crooked so that people will submit (2:19); and so on. I am sure that more than one necessary obligation should be teased out from this virtue. But at least one of them is to allow people to criticize government policies as well as governmental officials. Chinese history has repeatedly proved it necessary to assign such a right to the people so that they would not be worried about being retaliated or persecuted by the government. In order to protect people’s basic interests and avoid social disasters caused by the government when the virtue of ren does not obtain, such a right is important and should be formulated in the law.
balanced pursuit of both self-interest and the common good of community, although his/her legitimate interests will be protected under the entitlement of a right. Liberals may not take such rights as “true” rights. But Confucians, with this “from-virtues-to-rights” strategy to develop rights, can engage in a serious dialogue with liberals (who hold the “from-rights-to-obligations” strategy) in exchanging their agreements and disagreements regarding genuine human rights. Accordingly, when Confucians and Rawlsians agree that social justice requires protecting individual rights, they may mean quite different things by “individual rights.”

Finally, Confucians may also have a problem with the priority Rawls assigns to rights and liberties over other goods. Confucians can agree on a general precedence of rights, but this should not suggest that there should never be any trade-offs between a right and other goods. It is unlikely that every right or liberty carries the same weight and trumps all other values in every particular social context. For instance, Rawls argues that everyone is free to “hold and to have the exclusive use of personal income,” and this liberty, Rawls emphasizes, is “among the basic liberties of the person” (Rawls, 1993, p. 298; 1971, p. 61). Even if Confucians accept such a right, it must be qualified by the family authority for the shared property of the family in many contexts. Moreover, this right, for Confucians, may be restricted on the basis of other goods. As an example, contemporary Singaporeans generally advocate a compulsory saving system under which they are required to save 40% of their personal income in the Central Provident Fund, which can be used for their medical care, purchasing a home, paying college education expenses, etc., but which may not be used for other purposes (Asher, 1995). Obviously, the restriction imposed by this system on one’s liberty to hold and to use one’s personal income is not for the sake of any other liberties. It is required for a good that Rawls does not even explicitly consider in his primary social goods: security – the security of health care, home-owning, higher education for children, etc. Are these Singaporeans mistaken in giving security a priority over one of their basic liberties? From the Confucian understanding, they are not mistaken. However important basic rights and liberties are, they cannot be assigned an absolute priority over other values and goods in all social contexts.

4.6 Neutral Vs. Non-Neutral

As we have shown in the second section, Rawls holds that individual liberal rights and social justice should be justified independently of any particular conception of the good life, because the right (or justice) should be prior to the good. Rawlsian liberalism sees human persons as autonomous and critical choosers among different moralities, religions, or life plans. A liberal democracy must assign the individual a right to free choice, including a right to choose the bad or do the wrong, as long as he does not directly harm others. The common good of society, in this liberal light, should be understood in terms of general instrumental goods, such as Rawls’ primary goods. Accordingly, to be fair to every individual, a liberal democratic state
should be neutral to different conceptions of the good life. Of course, liberals recognize that public policies often have different effects on different ways of life. What they contend by “neutral” is that the government should not intend to use law or other governmental strategies to promote or restrain a particular way of life.

On the other hand, Confucianism sees the individual as a dynamic “making process” (Cf. Li, 1999): birth, childhood, youngness, adulthood, agedness, dying, and death. Although the individual has an original good mind as a root for moral development, she does not have her personhood as a fixed “given.” Confucians do not have a right to do the bad, because learning and practicing the virtues is the basis for leading a good life. How good one is depends on how well one cultivates one’s virtues and develops one’s humanity (ren). Hence, the common good of society consists in the moral virtues realized in the society. Accordingly, the state should use active strategies in assisting individuals to cultivate their virtues and develop their potentials. Of course, Confucians understand that no one can become virtuous by brute force. But there is nothing wrong with offering incentives to the people and manipulating them to do the good. On Confucianism, a crucial thing for the state to do is to help everyone form appropriate human relationships, especially appropriate family relationships, to promote relational virtues. A Confucian government should not intend to be neutral to different ways of life. It must formulate its public policies in ways in which appropriate familial as well as other human relationships are strengthened and promoted.

4.7 Election Vs. Examination

Liberal democrats support “rule by the people.” Liberal democracy exemplifies the virtues of accountability, transparency, and equal political participation through regular, open, and competitive elections for the most powerful officials in a state. In Rawls’ list of equal rights and liberties, there are the equal democratic participatory rights: “the rights to vote and eligibility for public office.”

On the other hand, Confucian societies have a long-standing meritocratic tradition: “rule by the wise.” As we have discussed, Confucians recognize the moral significance of human inequality. From their view, differences in intelligence and virtues characterize human beings all the time and set the stage for the division of labor in society. A fair social order should be achieved through the harmonious operation of these differences. Attempts to equalize what is naturally unequal would destroy the rational division of labor and overthrow the natural order into chaos. Accordingly, Confucians hold that social positions and public offices should be open only to those with appropriate abilities and virtues. A man without virtue should not be honored, a man without ability should not be made an official, and a man without merit should not be rewarded.29 In today’s words, Confucians would

29 These ideas are discussed at length in Xunzi, especially in “On the Regulations of a King,” “On Enriching the State,” “Of Kings and Lords-Protector,” and “On the Way of a Lord” (Xunzi, 9,
argue that qualified officials must be intelligent, adaptable, long-term-minded, and public-spirited. Such officials may not be successfully elected through democratic elections, because voters are often swayed by their current material benefits and politicians have to pander to the short-term interests of the majority in order to win elections. This is the case even in societies where there is the tradition of conferring respect on educated elites. Thus, we need seriously to reconsider the merit of the special examination system for selecting public officials (科举制) adopted in the traditional Confucian societies. Under this system, only those who indicated their abilities in commanding the Confucian classics and virtues by passing a series of examinations could be selected for high governmental positions. Huang Tsung-hsi (黃宗羲) (1610–1695), a brilliant Confucian scholar in the early Qing dynasty, carefully elaborated this examination system. Part of his proposals can be taken as suggesting the establishment of a parliament of scholar-officials (Huang, 1995).

Recently Daniel Bell revived Huang’s original project and made a proposal for a bicameral legislature for a special modern democracy with Confucian characteristics: a lower house of representatives elected democratically by the people and an upper house of scholars selected through examinations. The hope is through this bicameral legislature to take up the merits of both democracy and elitism. A crucial problem, in addition to a number of practical issues regarding how to establish an appropriate house of scholars, is how to resolve gridlock: what if majorities in the house of scholars disagree with majorities in the house of representatives? Confucians would certainly empower the house of scholars with the right to override majorities in the house of representatives, because the Confucian tradition holds that it is those scholarly officials that have the virtues and visions of taking care of the common good of the people in the long run.

To sum up: With Confucian rights developed from the Confucian virtues and non-neutral public policy for promoting the good life together with a bicameral legislature with the privileged power of the upper house of scholars selected by examination, the political system supported by Confucian social justice is a Confucian aristocracy, in contrast with liberal democracy defended by Rawlsian social justice.

10, 11, 12). For Xunzi, if one’s virtue does not correspond to one’s rank, if one’s ability does not correspond to one’s office, and if one’s merit does not correspond to one’s reward, these are great unfairness and misfortunes. An ideal Confucian society must manage to avoid these defects.

30 Daniel Bell first made this proposal in an article (Bell, 1998), where he addressed this proposal as “A Confucian democracy.” When he explored the related issues further in Part III of his book (Bell, 2000), he termed it “democracy with Chinese characteristics.” I think Bell’s proposal deserves serious consideration for application in Confucian societies. For instance, in mainland China, Chinese People’s Political Consultative Conference (which currently consists primarily of scholars from all minor political parties as well as academic circles) can be reformed to shape an upper house of scholars through examination, while the National People’s Congress can be reformed to shape a lower house of representatives by democratic election. Finally, an influential Confucian scholar, Jian Qing, proposed a tricameral legislature in terms of his interpretation of political Confucianism. For a critical discussion of his arguments, see Fan (2008).
4.8 Contractarian Neutrality Vs. Private-Property Economy

Where social justice stands with regard to the justification of an economic system is another crucial issue. Does social justice require a free-market economy based on the institution of private property? Or should it lead to a socialist institution? Or should it remain neutral to private or public economic institutions insofar as they are connected with the market mechanism? It turns out that Rawls holds the last position. He made two major assertions. First, both private-property and publicly owned regimes are bound to adopt the market mechanism as an efficient allocative means. Second, justice must be neutral to the choice between private-property and publicly owned systems. Accordingly, he wants his theory of justice to be consistent with either a privately-owned or a publicly-owned economy (Rawls, 1971, pp. 273–274). However, it is unclear whether this position can be coherently defended in terms of a Rawlsian contractarian strategy for social justice. It is, in any case, at odds with the Confucian view of social justice. Confucian social justice must require a private-property economy because the Confucian basic principle of ren cannot be well satisfied except in the context of a private-property economy.

In the first place, Confucians agree with Rawls that a free market is necessary for the human social life. A classical argument for this claim can be found in Mencius’ discussion on the necessity of a division of labor, the unequal quality of things, and the inevitability of a free market in human society. First, Mencius observes that people naturally work on different things. “Some labor with their minds, and some labor with their strength” (Mencius, 3A: 4: 6). Some sow grain, some weave cloth, and some make tools. Those who sow grain are unable to weave cloth or make tools by themselves without injuring their husbandry, and a similar limitation applies to those who weave cloth or make tools. Hence it is unavoidable that people need to exchange their products (3A: 4: 3–5). Moreover, as Mencius sees it, a natural character of things is that they have different values. He contends:

It is the nature of things to be of unequal quality. Some are twice, some five times, some ten times, some a hundred times, some a thousand times as valuable as others.... If the large shoes and small shoes were of the same price, who would make them (3A: 4: 18)?

He further warns that “[i]f you reduce them all to the same standard, that will throw the whole world into confusion” (3A: 4: 18). Accordingly, for Confucians, there should be the free market in which the exchange prices of things can be voluntarily determined by people themselves through negotiation, since people understand that different things are not of the same value. In short, the free market mechanism is

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31 John Gray observes that “because it entails imposing a productive ideal, the choice of collective ownership is precluded by justice... When ... a culture contains both liberal and non-liberal forms of life, we lack an overlapping consensus that might sustain such an ideal” (Gray 1989, p. 187), and New York: Routledge (p. 187). Thus Gray concludes that the Rawlsian contractarian neutrality is misplaced in the very circumstance of value-pluralism that frames Rawls’ problem. For Gray, the Rawlsian contractarian argument has to lead to the private-property economy.
virtually inevitable because of the natural inequality of things as well as the necessity of a division of labor.

This is all right with Rawls and his followers. The real issue is that the Confucian principle of ren requires not only a free market system, but also a privately-owned economic system. Why, Rawls might ask, cannot the principle of ren be similarly compatible with a publicly-owned market system? I think the answer is that only the private-property economy, not the publicly owned regime, can embody the loving of humans. Mencius puts forward the following particular argument for this proposition:

The way of the common people is this: if they have private property (heng chan 恒產), they will have a fixed heart; if they do not have private property, they will not have a fixed heart. And if they do not have a fixed heart, there is nothing that they will not do in the way of self-abandonment, of moral deflection, of depravity, and of wild license (Mencius, 3A: 3).

A fixed heart is a heart of virtue, a mind inclined to seek the good, and a will to do the right. Here Mencius claims that it is the nature of the common people that they cannot have a fixed heart unless they have some private property on which to live their lives and support their families. Without a certain amount of private property, they would be motivated to act immorally.

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32 Heng-chan (恆產) has generally been translated as “livelihood” or “means of support” rather than “private property.” But heng-chan literally means constant real estates. In traditional China chan mainly referred to land and house, the major assets that people could have. In ancient China, all land nominally belonged to the ruler, the “Son of Heaven.” The Confucian ideal of land distribution is the so-called “well-field” system, a family-based allocation that might have been adopted in the Zhou dynasty (c. 11–8 century, BCE). According to Mencius, the system was designed like this: “a square li (里) covers nine squares of land, which contain nine hundred mu (畝). The central square is the public field, and eight families, each having its private hundred mu as the private field, cultivate in common the public field” (Mencius, 3A: 3: 19). In this ideal system the “public field” and “private field” were clearly distinguished, although all land formally belonged to the ruler and his appointed nobles and could not be arranged for sale and purchase freely. The system was already broken in the time of Mencius, when farmers began to occupy uncultivated land and sold it to each other. The Confucian scholars, like Mencius, thus began to argue for the farmers’ right to own land for their work (“gen zhe you qi tian”, 耕者有其田) as well as a right to maintain their products for their living (without being heavily levied by government taxation). For an explanation of these issues, see Mou (2000). For a discussion of the modern Chinese debate concerning the well-field system, see Levenson (1960). In short, I think translating “heng-chan” into “private property” expresses the meaning of heng-chan more accurately. An important qualification is that, in the Chinese context, major private property (such as land and homes) is primarily family-based joint ownership rather than private individual ownership as in the West. Moreover, it is a significant misunderstanding to suggest that (1) the market economy based on private ownership of property did not occur in China until it was imported from modern Western countries, and (2) that Confucianism traditionally did not support private ownership and the market. In fact, neither is true. As the solid and careful research done by Zhao Gang and Chen Zhongyi demonstrates, the Chinese system of private ownership was already formed during the Warring-Sate Period of China – more than two thousand years ago. Confucians before Mencius may have supported a public-ownership system – the Well-field System of Land – but most of them, since Mencius, have vigorously supported private institutions and market mechanisms. Indeed, as Zhao and Chen indicate, Mencius called for “forming property for the people” (wei min zhi chan, 為民生財) helped to bring about the privatization of land (See Zhao and Chen, 1991, p. 5).
This seems to be an empirical proposition. An empirical proposition requires only empirical confirmation. Some may doubt its correctness: why must a publicly owned economic system expect more immoral and even tragic outcomes than a private-property regime? As long as people can be distributed with sufficient or appropriate welfare, they might argue, people would be satisfied and already have a basis to follow morality, no matter whether they hold private property or not. This argument, however, ignores the issue of production. No welfare can be allocated before it is produced, but production involves a series of sophisticated matters, such as choices, plans, motivations, managements, and efforts. The history of the socialist countries in the last century showed that publicly owned economies had intractable difficulties in handling these matters. The outcome was that the people never obtained appropriate welfare in those countries, just as they had no appropriate production.

The Mencian proposition was clearly confirmed in recent China. The latter half of the 20th century witnessed the enormous sufferings of the people in Communist China, where the people were prohibited from owning land or the means of production. They were even constrained from consuming any “luxury goods.” However, inefficiency, laziness, sabotage, and waste had become the everyday problems in China’s industries. Worse yet, cheating, stealing, and corruption eventually permeated the entire society. The Chinese should never forget what happened behind the apparently glorious mission of the Communist communes in the so-called great leap forward movement in the late 1950s: when the government enforced the absolute collectivization (publicization) of all assets and attempted to equalize the livings of the people in the communes through the “big pot” meals, the outcome was the starvation and death of hundreds and thousands of the people. The tragedy is unbelievable.

For Mencius, a social institution which deprives people of private property and living resources will inevitably deprave their morality. They are thus led to commit immoral and criminal acts. Then, if the government follows them up and punishes them, this is equivalent to entrapping them (3A: 3: 3). Is it plausible, Mencius asks, that such a thing as entrapping the people by the government can be accomplished under the principle of ren (3A: 3: 3)? How can a government induce people to perform evil acts by depriving them of private property and then punish them in the name of ren? Accordingly, the principle of ren would unavoidably require a private-property economy.

It is worth noting that what Mencius offers is not a utilitarian argument for a private-property institution. He is not saying that a private-property economy will maximize social utilities or goods. This may or may not be the case; but that is not his primary concern. His argument, instead, can be considered as a version of the so-called disaster-avoidance reasoning: if private property is deprived or prohibited, moral and social disasters will transpire; in order to avoid such disasters, the private-property economy must be invoked.33 Since the principle of ren requires avoiding

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33 For a detailed discussion of the disaster-avoidance reasoning and its differences from utilitarian principle as well as the Rawlsian rule of maximin, see Kavka, 1986, Section 3, Chapter 5.
such disasters, Confucians must require establishing the private-property institution. Evidently, a strength of this argument consists in the fact that even if the requirement of the principle of ren does not require maximizing social goods or utilities, it cannot fail to require avoiding social and moral disasters.

The Confucian advocacy of privately-owned and privately-run economies is vividly illustrated in a famous book, *The Debate on Salt and Iron*, written in the Former Han Dynasty. This book records a debate that took place in 81 BCE between Confucian scholars and Legalist officials regarding the economic institutions and fiscal measures adopted at the time. It took place six years after the death of the extremely ambitious Emperor Wu (漢武帝) of the Former Han Dynasty. The Legalist officials supported government monopolies in the contemporary vital industries of salt, iron, liquor, coinage, and government trading. They argued that the government control of these industries was necessary to ensure government revenues and to maintain defensive warfare against the xun-nu (匈奴) tribes who threatened the empire. Also, according to these Legalists, by its owning and running these industries directly, the government could protect people from exploitation by private businessmen and corporations. On the other hand, the Confucian scholars argued that China should make peace with other nations and should not grasp the land of its neighbors. Moreover, they pointed to the fact that, contrary to the argument of the Legalists, it was the corruption and maladministration in the government system of monopolies that were forcing people to use the inferior products of salt and iron and at times to do without them entirely. In short, these Confucian scholars argued that the people should have a right to use natural resources to benefit themselves, while government should never make material profit as a motive of its administration so as to compete with people in pursuing profits.34

### 4.9 Conclusion

In fact, Rawls is modest with the application of his theory of justice. In his later works he clearly states that his theory is intended as a political conception of justice only for democratic societies (1985, p. 225). It is meant to allow for “a diversity of doctrines and the plurality of conflicting, and indeed incommensurable, conceptions of the good affirmed by the members of existing democratic societies” (p. 225). Rawls does not deny that “[his theory] tries to draw solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretation” (p. 225). What he offers, he believes, is a conception of political liberalism which makes possible “a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines” (1993, p. xviii).

Obviously, by “modern democratic regimes” Rawls has in mind the contemporary Western social and historical conditions which “have their origin in the Wars of Religion following the Reformation and the subsequent development of the principle of toleration, and in the growth of constitutional government and the institutions of large industrial market economies” (1985, p. 225). The Confucian tradition, as a particular Eastern metaphysical and moral doctrine, though reasonable, stands outside of these social and historical conditions. As it has been and remains enormously influential in East-Asian societies, Confucianism stands in a significant relation to the direction of these countries in their ethical, political, and economic developments. Accordingly, inquiry into the Confucian view of social justice in comparison with the dominant modern Western liberal view is crucially important, both theoretically and practically.

The discussion of this chapter illustrates several basic disagreements and contrasts between Rawls and classical Confucians regarding social justice. With regard to a series of particular assumptions and understandings that Rawls sets forth (i.e., his thin theory of the good for constructing the principles of justice, his special emphasis on the equality of persons and fair equality of opportunity, his statements on individual rights and liberties and their priority, and his attitude toward economic systems), Confucians hold different conceptions and ideals. Based on all these disagreements between Rawls and Confucians, we should be able to conclude that, no matter how anxiously some scholars (Rawls may not be among them) have expected it to be, the Rawlsian theory of social justice is not the appropriate doctrine to direct the development of the countries in which Confucianism is influential. Those countries should reconsider the merit and advantage of establishing an appropriate Confucian social structure that fits well with their traditional Confucian beliefs and values. Given the substantial disagreements and conflicts between Rawlsian social justice and the Confucian understanding of social justice, Rawlsian social justice would become vicious to these countries if it were imposed in order to direct their social and political future.
Chapter 5
Giving Priority to Virtue Over Justice
and Rebuilding Chinese Health Care Principles

5.1 The Challenges of Health Care in Today’s China

The contemporary rapid development in China of modern health care and of the biomedical sciences and technologies is compelling Confucian moral theorists to address the challenge of freeing Chinese health care from the corruption and misunderstandings of the past. To say the very least, China faces enormous cultural, social, and economic problems and difficulties. This chapter focuses on issues in Chinese health care ethics, markets, and policies. Let me begin by summarizing a series of severe challenges that China is confronting in the demand and supply of health care.

1. How should China adequately establish and stabilize a sustainable health care system for a huge population with an ever increasing proportion of retired elderly (demanding high-intensity health care interventions) and an ever decreasing proportion of working people (providing funds to support health care)? This is a crucially important issue for the long-term development of Chinese health care system, being all the more urgent with the “four-two-one” structure of the current Chinese family under the government’s “one child per couple” population-control policy.¹

2. What should be done to set up a basic health care delivery accessible to the Chinese peasants in the countryside? Indeed, between the urban and rural areas of current China, there exists an unfair “one country, two systems” in health care delivery: compared to their fellow citizens in cities, Chinese peasants receive much fewer health care funds, investments and facilities (some rural areas even do not have very basic health care elements, such as clean water and preventive vaccines), and most of them do not have any type of health insurance so that they have to pay out of pocket for every medical visit (Chen, 2005). This challenge is

¹ It seems that many Chinese scholars have been “occupied” by some other “current” issues and have not recognized this “long-term” difficulty facing the Chinese in affording health care. For an excellent discussion of the terrible problems generated by the Chinese population-control policy, see Yi (2007).
both ethically and economically formidable, because the seven hundred million
Chinese still reside in the countryside, comprising about 60% of the country’s
entire population. Even as the process of urbanization in China has been moving
at a rapid pace, provision of decent health care for this huge number of people is
an enormously difficult task.

3. How should various, multi-level insurance plans be developed to cover most cit-
izens in the cities? The urban medical care insurance scheme recently developed
by the government created a new health care model by combining general social
insurance and (Singaporean) provident fund arrangements to support health care
for urban employees. It has significantly reformed China’s past free medical care
system (for government employees) and the labor-protection medical care sys-
tem (for the employees of state-owned enterprises), in which individuals bore
no financial obligation for their healthcare and therefore were not seriously con-
cerned with rising healthcare costs (Gao, 2004). However, the scope of this new
scheme is quite limited – the employees of private companies and self-employed
people are not covered in it. Most unfortunately, it was designed to cover adult
employees only, leaving their dependent family members uncovered. This is
highly ironic in the context of the Confucian family-oriented cultural values that
are still present in China (Fan and Holliday, 2006).

4. What should be done to build a well-ordered health care market? The health care
market is rapidly developing in China in meeting the people’s multiple, various
health needs. But the market is not yet well-ordered (Cao and Wang, 2005). It
suffers from a few serious defects:

1) All state-owned hospitals have been defined as non-profit hospitals, assigned
with special privileges to compete for patients and maintain a monopoly in
the market. As “non-profit”, not only do they not need to pay any tax to the
state, but they continuously receive funds from the state. They are insured
to get patients because the new urban medical care insurance scheme is gen-
erally designed to require its beneficiaries to receive treatments only from
such hospitals in order to reimburse their medical costs. Many such hospi-
tals make a huge profit by providing high-tech medical services, including
prescribing luxury imported medications, which are not always medically
necessary. Consequently, the private sector finds it hard to compete with them
and develop in today’s China (Du, 2005; Chen et al., 2008).

2) The role of the rising private sector is still marginal in most places, although
in a few cities private hospitals have just begun to break the monopoly of
the state-owned hospitals. Over the country, there exist only about 1,500
private hospitals, while there are more than 70,000 state-owned hospitals
(Chen et al., 2005). Those private hospitals have the merits of relatively
low costs, good service attitudes, convenient geographical locations, flexi-
ble open times, various methods of payment, and sound communication with
patients. But they also suffer from small size, unskilled professionals, insuf-
icient facilities and non-qualification for receiving the patients covered by
the urban medical care insurance scheme (Chen et al., 2005).
3) It has not been clearly sorted out what should be an appropriate way for the government to regulate health care markets in general and hospitals in particular. Health care has officially been taken as welfare for the people, and the prices of services have been set low and controlled strictly by the government in the name of adapting people’s affordability. Physicians are only permitted to charge very low fees for their consultations. In order to get payments for their hospitals as well as for themselves, physicians have to “do” something on the patients, such as performing experimental and machinery examinations, procedures, operations, and – most importantly – prescribing drugs to make a profit from the difference between the wholesale prices (at which hospitals purchase drugs from drug companies) and the retail prices (at which hospitals fill the physicians’ prescriptions for their patients). Many hospitals could make as much as 50% of their total income from such “selling” of drugs to their patients. This has generally triggered a series of fraudulent medical phenomena, such as over-treatment, over-prescription, prescribing expensive, luxury or imported drugs that are not clearly medically indicated. It has even seduced some physicians to collude with drug companies to prescribe their drugs to patients in order to get kickbacks from the companies (Du, 2008).

5. What should be done to deal with the crisis of trust in health care area? An attitude of distrust permeates current Chinese society. Patients suspect that physicians’ primary interest is not looking after their health, but to make money; physicians worry that patients would easily find excuses to sue them in order to obtain compensations and thereby engage in protective medicine for their own safety (Li, 2005). Ever-increasing disputes and lawsuits have occurred in the area of health care. Evidently, this atmosphere of distrust is not limited to health care. It is present also in politics, business, education, and in almost every area. It makes the people’s ordinary lives unpleasant, general administration and management difficult, and impedes and obstructs policy and system reforms. With such common distrust, how could the country effectively curb the steady spread of diseases like AIDS, or successfully fight another unexpected epidemic of SARS or Avian Flu? More fundamentally, permeating distrust indicates the corrosion and corruption of the basic moral values and commitments that have been underlying the civil way of Chinese lives. Could China really gain a peaceful rise in the world without seriously reconstructing Chinese moral values and commitments?

The last point leads us to ethical reflections. Like it or not, our conduct and policy are always affected by our ethics. It is crucially important to tackle these grave challenges facing Chinese health care from a right moral direction. Of course, moral reflection does not have to appeal to an ethical principle as a point of departure. It

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2 For a detailed exploration of various forms of Chinese medical corruption as well as their ideological and policy roots, see Chapter 8.
is true that, usually, specific and rich moral commitments, values and rules, rather than general principles, are practiced and embodied in real life and provide concrete moral guidance. However, this does not mean that these general principles have only a theoretical value and make no practical difference. Instead, a complete picture of general ethical principles shows that they illustrate particular ethical practices, coordinate systems of specific ethical rules, and set the general ethical orientations. That is, they have enormous practical significance along with specific rules. If we select wrong ethical principles to direct our actions, practical outcomes could be irreversibly damaging. Accordingly, for the sake of moral reflection presented in this chapter, I do not have to refuse an old cliché in ethics: one cannot appropriately ponder over practical issues without starting from proper ethical principles. What we need to do at this point is to be very careful in selecting a proper set of ethical principles for moral guidance. This does not commit us to ethical determinism – it is not the case that once correct ethical principles are chosen, practical issues will be automatically resolved. In order successfully to apply the principles we have chosen to direct our acts, reshape our systems, and reform our policies, we will still need to work out effective strategies by considering our economic conditions, political realities, institutional facts, and even people’s psychological features. Nevertheless, since different ethical principles point to the very different directions of development, the Chinese must choose a right type of ethical principles to direct their practical agenda in health care.

The next section briefly considers why two influencing ethical perspectives in current China are misleading and improper for guiding policy. It is followed by a section that sets out to reconstruct two traditional Confucian ethical principles, ren-yi (humanity-righteousness, 仁義) and cheng-xin (sincerity and fidelity, 誠信), that ought to be restored to direct Chinese society. This is followed by Section 5.4, which shows how the two Confucian principles shed light on proper ways in which China is able to handle the health care challenges listed in this introduction.

5.2 Two Misleading Ethical Views

It is well-known that a particular modern Western view of morality has been officially adopted in contemporary China. The view remains influential in today’s Chinese ethical discussions in general and medical moral explorations in particular. Essentially, it holds that ethical thought is a type of social consciousness, and social consciousness is ultimately determined by social existence. In particular, this view insists, what ethical principles, values, and virtues are accepted and practiced in a society reflects the level of the economic (productive) forces of the society as well as the economic relations and institutions that the people have formed based on the productive forces. In short, according to this view, it is not that people can choose a set of moral principles and values as they see proper and adopt them to guide their acts and shape their social systems. The opposite is truer: morality is
shaped, and is continuously reshaped, in terms of changing economic and social realities.

This view is mistaken because it disparages the basic status of morality in human lives. It is true that we cannot create a morality with a robustly new content from nowhere, because we are inevitably affected by a culture or tradition in which we live. But it is false to claim that the moral values (such as the moral virtues, principles, etiquettes, protocols, rituals, rules and commitments) that we have learned and absorbed from our parents, relatives, neighbors, teachers, and friends are just determined by the economic forces and productive relations that these people have happened to obtain in their society. The truth is that our moral values have a much stronger and higher spiritual standing than economic factors. For instance, the Confucian moral values of ren (humanity, 仁), yi (appropriateness, 義) and xiao (filial piety, 孝) have been rooted in the Chinese mind for thousands of years, transcending various types of economic forces and institutions. In addition, this “economic determinism” is particularly harmful during a period of social transition and reform that China is undergoing today. It discourages people from reshaping reality according to their deeply held moral concerns and commitments. Rather, it tempts them to surrender to whatever is currently fashionable as a means of encouraging developmental tendencies in society, while such “tendencies” are themselves morally questionable. In short, it encourages ethical laziness and numbness.

In addition, another problem is generated by this view: moral disingenuousness. The view assumes that when each individual is arranged to work for all under a system of public ownership (i.e., all important material assets and properties are stipulated to belong to the public or the state), a perfect, selfless, impartial, and egalitarian morality will come into being. People have to claim that they hold such a selfless morality in order to show that they are not morally “low” in such an “ideal” Communist society, while at the bottom of their hearts they are concerned with themselves, their families, relatives, friends, and their own institutions more than others. This view blurs out a necessary line between reasonable self-interests and unfair or immoral self-benefits. The results are not a group of individuals created out to work for all “wholeheartedly,” but are a great amount of hypocrisy and corruption in the society.

On the other hand, another ethical view has increasingly become fashionable in current China: the liberal social-democratic view. This view engages in an egalitarian ideology and is interested in creating more and more unfounded individual entitlements or rights. Essentially, it claims that every individual has an extensive set of social, political, and economic rights which must be guaranteed by the state. Under the influence of Rawls’ *Theory of Justice*, this view has gained a great deal of support from the rising Chinese liberal scholars. Indeed, at first glance, this view seems appealing because it apparently responds to everyone’s interests, in particular to the interests of the weak and the poor in a society.

However, it should be recognized that this view leads to grave moral, political, and economic hazards. When a welfare entitlement or right is assigned to an individual, society has to take the burden to satisfy him with that right regardless of
Giving Priority to Virtue Over Justice

his moral standing (e.g., whether he is lazy and a voluntary, deserving poor). This usually causes free riders in society and is unfair to hard-working individuals and families. Moreover, as H.T. Engelhardt indicates, once an entitlement (such as a right to health care) is in the hands of a person, the person and his family will tend to use it to the utmost, even when such use may not be either prudent or cost-effective, because this imposes no further costs on themselves (Engelhardt, 2008). Furthermore, this view tempts politicians to promise benefits to people that will have to be funded by future tax payments, causing long-term political and economic damages (Engelhardt, 2008). Finally, this view is foundationally defective in the moral sense. Since resources are from everyone’s work, such unqualified equal entitlements for resources are groundless. Even if it is morally proper or virtuous to help the weak and the poor in society, it does not mean that the justification of the help must be grounded in a system of equal rights or entitlements ensured to everyone by the state. As the previous chapter demonstrates, even if the Chinese people ought to accept and practice a bill of rights, these rights should be derived from the virtues endorsed within the Confucian tradition, rather than from individualist liberal philosophical reflection. If China applies the liberal social-democratic view to reform its health care system, the result would be disastrous.

In short, both views are morally misleading and consequently damaging. Neither should be used for guiding Chinese society and health care practices.

5.3 Reconstructionist Confucian Ethical Principles for Health Care

This section argues that we should reconstruct the Confucian ethical principles to direct our health care system reforms and policy reformulations. Differing from the “economically-deterministic” ethical view, the Reconstructionist Confucianism I am presenting consists of a set of moral principles that are not determined by productive forces, but are mandated by Heaven, rooted in the heart/mind of human beings, articulated by the Confucian sages, practiced within Chinese tradition, and possessing the eternal moral values transcending contemporary society in directing human lives and regulating economic institutions. Unlike the modern Western liberal social-democratic ethical view, Reconstructionist Confucianism is family-oriented rather than individual-centered, harmony-oriented rather than equality-centered, and virtue-oriented rather than rights-centered. It calls for recasting social and economic institutions through reforming public policy in accordance with fundamental Confucian concerns and commitments.

Confucianism should be reconstructed because it has been distorted by various types of anti-Confucian thought and movement in the 20th century. In the first part of the century, all newly introduced fashionable “isms” – such as Darwinism, positivism, pragmatism, anarchism, Nietzscheism, and Marxism – construed Confucianism as a reactionary ideology grounded in China’s feudalistic
past that should be abandoned as a whole. The notorious slogan “down with the Confucian house” expressed in the May Fourth Movement in 1919 continued to have force throughout the century. The anti-Confucian movement reached its peak in the so-called Cultural Revolution in the latter part of the century. The Confucian ethical structures and family commitments as well as the formal Confucian rituals and institutions were ruthlessly insulted and sullied.

Fortunately, since Confucian civilization has been deeply rooted and wide spread for more than two thousand years, its influences cannot be eradicated by anti-Confucian political movements or the hostile attacks of radical modern intellectuals.

The substance of Confucian moral teaching remains at home in the ordinary life of most people in East Asia in general and in China in particular. Deng Xiaoping’s economic reforms awoke up many Chinese from their self-damaging cultural nightmares. As the reforms have furthered and deepened, recent Chinese society has witnessed a slow but steady revival of the Confucian values in mainland China. In attempting to reconstruct Confucian ethical principles into a coherent whole to redirect our lives and society, I confess that I am not able to offer a knock-down philosophical argument to show that Confucian ethics is the only proper ethics among competing ethical accounts. As Engelhardt has convincingly shown, the ability of moral epistemology is inevitably limited. We cannot through rational philosophical argument prove any ethical account as canonical without eventually begging the question, arguing in a circle, or engaging infinite regress (Engelhardt, 1996). What I can do is to attempt to offer the most complete, least one-sided, and most powerful portrayal of the Confucian insights and reflections on human nature, morality, and society, so as to expose its ethical authenticity and beauty. The strength of such a Reconstructionist Confucian account is not only from its internal intellectual coherence, but also from its contrasting differences from the “economically deterministic” ethical view and the liberal social-democratic ethical account, as well as from its practical implications for directing the market, economy, and society in current China.

In particular, I will lay out two fundamental Confucian ethical principles for guiding Chinese health care: the Principle of Ren-Yi (Humanity-Righteousness), and the Principle of Cheng-Xin (Sincerity-Fidelity). Although some modern Western ethical concepts (like “liberty” and “rights”) have become fashionable in current Chinese academic discourse, the moral values of ren-yi and cheng-xin are still at home in the ordinary Chinese lives, and these words, rather than the exported “rights” or “liberty,” are commonly used in the typical native moral language games. In particular, cheng-xin has recently become one of the most frequently used classical terms, because many feel that cheng-xin is absent in the society in general and in health care area in particular. Many have begun to reconstruct the Confucian virtues of cheng-xin for reshaping the Chinese ethical character in the market (Li, 2008; Liang et al., 2005; Yang and Wang, 2005; Xu and Chen, 2005; Chen and Lan, 2005). Evidently, in the Confucian tradition both ren-yi and cheng-xin are fundamental moral concepts and values.
5.3.1 *The Principle of Ren-Yi (Humanity-Righteousness)*

It is generally agreed that Confucian ethics is a type of virtue ethics. Virtue is not entitlement or claim, but is character required for human flourishing. Confucius and Mencius provided a classical Confucian account of virtue based on their understandings of human nature. Humans, according to them, are not atomistic, discrete, self-serving individuals coming to construct a society through contract. Humans are by nature familial animals, possessing the potential to form appropriate families and pursue flourishing in familial relations. Confucius identifies *ren*, the fundamental human virtue, as the quality of “loving humans” (Analects 12:22). *Ren* has become a most important Confucian ethical ideal. How is loving humans possible? Mencius discloses that Heaven (tian, 天) has endowed the sprout (duan, 端) of ren into everyone’s heart/mind: that is, everyone has an innate affection-capacity to love others (Mencius 2A4:3; 2A4:5). However, Mencius also recognizes that one’s emotion of love is not equally present for all people: we naturally love our family members strongly and strangers only weakly. Moreover, even for our relatives, it is often that this feeling of love is able to motivate us only when it is convenient for us to act (Mencius 3A5). Accordingly, in order to fulfill human love, Mencius emphasizes that we must cultivate the sprout of love by extending (tui, ji, da, kuo, 推, 及, 達, 擴) it from one context to another and from one person to another (1A7:12; 7A15; 7B31; 2A6), thus developing the feeling into a stable emotional disposition, trait, character, or virtue.

*Yi* is identified by Confucius as another important virtue that *junzi* (君子), the exemplary person of good character and moral integrity, must possess. First, *yi* is the characteristic ability to do what is right in any context (Analects 4:10; 17:23). In this sense it is correct to say that *yi* means appropriateness (Mean 20:5). Second, in order to do what is right, one must not be tempted by material benefits to violate moral commitments. *Yi* is the characteristic that allows one to focus on the right in the face of opposing benefits (Analects 4:16; 16:10; 19:1). Finally, the best way of practicing *yi* is honoring virtuous persons. It is a general Confucian view that if the virtuous are honored in society, their character for doing what is right can be learned and followed by others so as to build a proper society.

The basic characteristics of these Confucian virtues of *ren* and *yi*, first proposed by Confucius and Mencius, have been accepted and practiced within the Confucian tradition as fundamental moral principles for many centuries. The

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3 As other chapters demonstrate, there are many different English translations of *ren* (仁) and *yi* (義). The same is true for *cheng* (誠) and *xin* (信). For the sake of argument in this chapter, I select translations of these terms so not at least to confuse them with certain familiar modern Western principles. For example, if I follow some and translate *ren* as “benevolence” and *yi* as “justice,” then the Confucian principle becomes the principles of benevolence and justice. This would create confusion. My strategy is to show the original comprehensive meanings of Confucian concepts differs from these modern Western ethical views. This strategy allows me to use different translations of the same Confucian concept in different chapters without distorting the meaning of those concepts.
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The fundamental Confucian virtue of *ren* requires universal love, but not egalitarian love. Love is cultivated and differentiated in performing distinct rituals for different familial and social relationships. In particular, Confucians have advocated transforming such rituals into specific social institutions and policies that are family-oriented and family-friendly. The fundamental Confucian virtue of *yi* requires that moral propriety should regulate the pursuit of profit and other benefits and that the virtuous must be honored in society. By combining *ren* and *yi* in order to create a Confucian ethical principle, it would be one of integrated familism and elitism. The content of this principle may generally be summarized by the following: *loving one’s own family should be prioritized in practicing universal love, the pursuit of profit should be regulated by moral propriety, and the virtuous should be honored within social practices.*

5.3.2 The Principle of *Cheng-Xin* (Sincerity-Fidelity)

Confucius uses the basic meaning of *cheng* (誠) as “true” or “truly.” He claims that it is indeed a *cheng* (true) saying that “if good men were to govern a country for a hundred years, they would be able to transform the violently bad and dispense with capital punishments” (Analects 12:11). Secondly, in the *Great Learning*, *cheng* is emphasized as an attitude of making one’s will sincere: no self-deception is allowed in junzi’s moral life, and one must be watchful over oneself when one is alone (Great Learning 6). Finally, *cheng* acquires a mystical meaning in the *Mean*. It is identified as the way of Heaven, and the attainment of *cheng* identified as the way of men: it is a sage who is absolutely *cheng* and therefore can hit upon what is right without effort and apprehend without thinking (Mean 20: 18). It is also characteristic of absolute *cheng* to be able to foreknow (Mean 24). *Cheng* is the completion of the self (Mean 25:1). Mencius states that there is no greater delight than to be conscious of *cheng* on self-examination (Mencius 7A:4). In short, *cheng* is the deep moral character of the Confucian embodied in the most sincere, serious and complete commitments to the *ren-yi*. In this regard, *cheng* is not only a state of mind, but is also an active spiritual force that can complete humans and draw them and Heaven together into a unity.

The basic meaning of *xin* (信) in the *Analects* is that one is careful about one’s words, not using them to deceive others, and that one must mean what one says and seriously keeps one’s words and promises (Analects 1:5, 1:6, 1:7, 1:8, 1:13, 2:22). Moreover, *xin* carries a more positive sense in that one (especially a leader) must be faithfully dedicated to the wellbeing of those people one is engaging so as to gain their trust (Analects 5:26, 12:7; Mencius 3A4: 8; Great Learning 3, 10; Mean 20:14, 20:17, 29:2, 31:3, 33:3). This is to say, the Confucian virtue of *xin* has two basic meanings in classical Confucianism: the unity of speech and deed, and a leader’s loyalty to the people. Indeed, honesty (in the sense of the unity of one’s speech and one’s deed) and loyalty are taken to be the conditions of trust in Confucian society.

Like *ren* and *yi*, these characters of *cheng* and *xin* lain out in classical Confucianism have been manifested and practiced in Confucian tradition. Taken
together, the Confucian ethical virtues of cheng-xin can generally be summarized as another fundamental Confucian moral principle: moral sincerity should be promoted, the unity of words and acts should be maintained, and everyone and institution should be trustworthy in dealings with others.

Needless to say, these two principles are by no means exhaustive of important Confucian ethical principles. However, if my account is sound, they carry significant moral implications for a proper view of social justice as well as for reforming and reshaping health care institutions and policies.

5.4 Health Care Policy Reforms

This section offers certain basic ideas to approach the five challenges we listed in the first section in accordance with the Confucian principles of ren-yi and cheng-xin.

1. To build a sustainable health care system for the heavily populated Chinese society with an ever increasing portion of the retired elderly, the first important issue is to clarify who bears primary financial responsibility for health care. If the answer is, as the liberal social-democratic view suggests, that the state must through taxation ensure every individual receive basic health care package (according to needs) equal to anyone else in the society regardless of their financial situations, then a Chinese health care system thus established would definitely be unsustainable. The reason is evident. First, the huge public investments required by such a system are infeasible for current China, remaining a poor developing country with regard to its per capita GDP. Second, even if such a system can be set up by imposing high taxation, its ever-souring economic burden will destroy the country’s economic development, which in turn makes the system unsustainable, not to mention the administrative costs, likely corruptions, and other types of moral, political, and social hazards that are involved in running such a system.

   In addition to such economic considerations, the Confucian principle of ren-yi does not advocate such a system on moral grounds. Due to its family-oriented characters, Confucianism views welfare financing (including health care payment) primarily as a family responsibility, rather than a state responsibility. Chinese families must save resources by themselves, rather than rely on the state, to support their family members’ health care. Strategically, China can learn a great deal from the Singaporean family-saving-based Central Provident Fund system for social security in general and its Medisave plan for health care in particular. That is, it is basically every family’s obligation to save resources in order

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4 Obviously, the Confucian account of social justice in terms of the nature and content of these two principles would sharply differ from either “economic determinism” or the liberal, social-democratic account. Chapter 4 provides the Confucian account in contrast with a Rawlsian theory of justice.
to take care of their members’ health care. Of course, families do not have to pay for medical services directly out of their savings accounts. They can use their savings to purchase health insurance plans as they see fit. It is the basic obligation of the government to help create and maintain a well-ordered health care market according to the Confucian principle of *cheng-xin*. Once such a market is developed, it naturally supplies various types of health insurance plans (with distinct quantities and qualities of benefits promised based on different premium and co-payment requirements) for families to select.

No doubt, this family-responsibility-based health care system would involve unequal enjoyments of health care among families. But it should be recognized that no health care system can result in an equal outcome for everyone, because that equality is practically impossible. Even the theoretically strict egalitarian health care system of Canada cannot prevent its rich families from flying to the United States for quicker or better medical services (Iltis, 2008). The family-oriented system that the Confucian principle of *ren-yi* supports has the merit of directing and leaving resources to families for efficient uses in the market, without being taxed heavily by the government. To maintain the vitality of family responsibilities, the government’s health care aid should only be offered to very special groups of people, such as orphans, who do not have families to rely on, or in very special cases in which the families encounter unavoidable difficulties. The government aid offered in the latter cases is better to be short-term rescue methods rather than long-term welfare projects. Public resources, if available, should primarily be spent in promoting general goods for public health, such as providing health education, improving the environment, and offering preventive vaccines.

The success of such a family-oriented health care system will eventually depend on the extent to which Chinese families will flourish and maintain their Confucian ethical features, such as *ren* and *xiao*. It is high time for the Chinese government to reconsider its “one child per couple” policy. The policy is not only culturally damaging, but is also economically disastrous. In the long run, China will not be able to support a large number of the elderly when there are not sufficient youths in the workforce.

2. The health care challenges from the countryside should be heart-breaking to all Chinese, especially those in the government. It is certainly true that the government invests much less health care resources in the countryside than in cities. But the more striking truth is that the government levies much higher tax rates on rural families than on urban families, even though the average income of rural families is significantly lower than that of urban families. It is urgently important for the government to improve and regulate itself by following the Confucian principles of *ren-yi* and *cheng-xin*. Following these principles, the first crucial thing to do is to reform the unfair system of taxation for the countryside and get rid of various unreasonable fees imposed on the peasants (the government has recently rightly cancelled the agricultural tax, but this is far from being enough). It is also crucially important to abolish the government-imposed collective ownership and return the land to the peasants’ families as their private property. How
well these can be done will depend on how well the government return to the Confucian governance in nature. It will also depend on whether the government can genuinely shrink its size – especially at its local levels in the countryside – and improve its management. And all this will eventually depend on how sincere the government officials are willing to follow the Confucian principles of ren-yi and cheng-xin.

The current government trial of setting up a cooperative medical insurance plan for the peasants (especially for those in impoverished places) shows a good intention. But occurring problems indicate how important it is for the government to comply with the principle of cheng-xin in its governance. First, according to the design of this plan for some rural areas, for the total premium of RMB$30 for a peasant family’s annual health insurance, $10 is from the peasant, $10 is from the central government, and $10 is from a local government. But many local governments complain that they do not have the money – or they can afford the money in the first year as a special political obligation but not for following years. Second, many peasants do not want to join the plan because they do not trust its reliability. Finally, some peasants who already joined the plan wanted to withdraw because they encountered difficulties in seeking the benefits (especially reimbursements) as originally promised to them (Chen, 2005). All this shows that this government-initiated and government-run insurance plan, although being a very low-level, minimal insurance (rightly being so), is not very promising to become a stable health plan for most rural areas. It is high time for the government to consider changing its role as a provider to a role of regulator. If the government could help create and maintain a well-ordered market in the countryside, various types of private insurance plans would emerge for peasants to choose.

3. The recently developed urban medical care insurance scheme run by the government should be reformed to make it a family-based scheme – that is, all family members should be covered so as to manifest the Confucian virtue of ren-yi. Moreover, the government should not manage to make this scheme become the only dominant insurance plan in urban areas. A more appropriate job for the government to do is to create an environment in which various reliable insurance plans can be worked out and exist so that families can select according to their particular needs and expectations.

4. Everyone sees a big health care market in China. But the market is not appropriately operated yet. There are two misleading views on the market in today’s China. One view is that it is good to do with away any morality so as to use the market to maximize profits. The other view is that the development of the market must be curbed or limited by the government because profit-making in the market necessarily causes moral problems. Both views overlook the moral values underlying the necessary condition of the market. The necessary condition of the market is trust: if people do not have mutual trust, market transactions would be impossible. It is the very virtues of cheng-xin (sincerity-fidelity) possessed by individuals that make mutual trust possible. So the real issue is not for the
government to curb the development of the market, but is to maintain the order of the market. It is going to be a great task for the Chinese government to learn and become a good order-maintainer, rather than a profit-pursuer, of the market.

(1) I agree with Professor Du Zhizheng that the government should break down the monopolistic position of the state-owned, “non-profit” hospitals by re-identifying them (Du, 2008). Many of them should be privatized and defined as for-profit hospitals so that they would pay profit tax to the government. At the same time they should gain freedom to decide their service prices as well as their preferred targets of patients. The rest of the hospitals, remaining state-owned and non-profit, should receive more funds from the government to support their staff and services. The target of their patients should be those from middle- and low-income families who do not have a first-rate health insurance or have to pay out of pocket, and the prices of their services should be monitored by the government. In this way it is hopeful to form a healthy competitive environment between private and public hospitals and have all people – at least most people – get easy and affordable access to health care in China.

(2) The development of private hospitals should be encouraged rather than curbed (Chen et al., 2008). Private and foreign capitals should all be allowed to invest in Chinese health care. A fair competition between private and public hospitals is an effective way of pushing them to improve their services as well as curbing the unreasonable rising of health care costs, as long as the government could maintain the order of the market. At this point (before various health insurance plans are available in Chinese society), it is a very good suggestion that the government-run urban health insurance scheme should not limit its beneficiaries only to state-owned hospitals. Private hospitals should receive a fair chance for competition (Chen et al., 2008).

(3) Even if the government is in the position of supervising the state-owned, public hospitals and monitoring their service prices, it is not wise for the government to keep very low consultation fees for physicians to charge. Medical professional knowledge and practical wisdom do not have to be manifested in offering machinery examinations or operations, much less in the value of drug selling. A right judgment or wise advice offered to a patient is often crucial to that patient’s health. The time and energy that the physician invests in such consultation should be appropriately respected through a reasonable price. In that case the physician would not have to “embody” his value in prescribing expensive drugs in order to gain an income.  

5 I am not saying that once the government loosens or cancels the restriction on this, over-prescription and other types of physician corruption will automatically disappear. But that restriction is no doubt a significant psychological and economic inducer. Morally, we don’t have any good reason to obliterate the value of physician’s professional training, knowledge, and wisdom that are manifested in their consultations with patients. For more discussion of this issue, see Chapter 8.
(4) Finally, what else can we say and do about the crisis of trust? It is clear that the important task is not simply to call for more trust, but is to build necessary conditions for trust. As Ana Iltis shows, moral integrity is a necessary condition for trust (Iltis, 2008). If we fail to cultivate integrity, we cannot achieve trust in society. The Confucian moral integrity is *cheng-xin* (sincerity-fidelity). This involves a serious reconstruction of the Confucian moral virtues at the levels of the government, institution, and individual. At the level of the government, officials should sincerely hold the virtues of caring for the people and honoring the worthy, honestly recognize that the best way of benefiting the people is creating a well-ordered market rather than carrying out centrally planned and controlled comprehensive plans, and seriously become a regulator (rather a player) of the market. At the institutional level, it is important to establish commitments and determine their implications for organizational life. Will the organization be a secular or belief-based organization? What type of patients will be cared for? What will be the role of profit for the organization? Finally, individual physicians should recognize that the virtues if *ren-yi* and *cheng-xin* are rewarding. Honestly treating others increases one’s trust and respect for oneself. Eventually, sincere, trustworthy, and wise moral conduct is most pleasant in life.

5.5 Concluding Remarks

The health care challenges facing China are enormous. But a more fundamental challenge is for the Chinese to reconstruct their moral and cultural commitments. Chinese people are gradually abandoning the instrumentalist, “economically deterministic” view of morality. The danger of the liberal social-democratic morality looms large. As Engelhardt reminds us, in order to fashion a sustainable health care financing scheme, an entitlement mentality as well as an egalitarian ideology must be avoided (Engelhardt, 2008). This chapter argues that the best we can do is to reconstruct the Confucian virtues of *ren-yi* and *cheng-xin* so as to build a family-based and virtue-oriented Chinese health care system.
Chapter 6
Which Care? Whose Responsibility? And Why
family? Filial Piety and Long Term Care
for the Elderly

6.1 A Shocking Fact: Contemporary Elderly Persons in East
Asia Tend to Commit Suicide

Care for the elderly is not simply one among a number of bioethical issues; it stands out as a crucial issue in the virtuous life. Virtue itself is nurtured in the family through filial piety (Xiao, 孝) towards the elderly. As a consequence, it is a shocking state of affairs that the highest suicide rate occurs in the group of persons aged 65 years and older.¹ Surprisingly, the situation is even worse in East Asia. In Hong Kong, the death rate by suicide of elderly persons in the 1990s was around 30 per 100,000 elderly citizens, compared to the global rate of 15 per 100,000 in the general population.² In Taiwan, the rate of suicide among elderly people reached 32.1 per 100,000 in 1999.³ In South Korea, the elderly suicide rate has increased more than five fold in the past twenty years, with the deaths accounting for 72.5 of every 100,000 among those over 65 in 2003.⁴ Finally, in mainland China, the elderly suicide rates in rural areas are among the highest reported for any country (Phillips, et al., 2002, p. 837). In short, all statistics indicate that elderly suicide rates in East Asia are significantly higher than the elderly suicide rates in Western countries.⁵

This fact should be shocking to East Asian people who are committed to filial piety as a fundamental virtue. They should be concerned that many of the suicides are due to failures of children to support, care, and love their parents. As is well-known, East Asia is the very region where human relations in general and family interactions in particular have been shaped by the Confucian moral values. Young people have been cultivated with the virtue of filial piety through the pervasive social ethos of honoring the elderly, filial ritual practices at home, and relevant

¹ See National Strategy for Suicide Prevention, available at http://mentalhealth.samhsa.gov/suicideprevention/elderly.asp. All the websites cited in this chapter were accessed in March 2009.
³ The figure is available at http://www.tahr.org.tw/site/data/report00/eng00/elderly.htm.
⁵ This conclusion can be supported by the statistics offered from this website: http://csrp.hku.hk/WEB/eng/statistics.asp?id=211.
public policy in society to take care of their elderly parents and make them happy. A high status, both familiarly and socially, has always been accorded to the elderly. It is hardly plausible that the elderly suicide rates in the pre-modern East Asia could be higher than the respective rates in the other parts of the world, although we do not have exact figures in this regard. How could we explain the high rates of elderly suicides in today’s East Asia? To be sure, factors such as physical illnesses, bereavements, societal changes, economic hardships, and insufficient social welfare have often been cited for accounting for elderly suicides. But I want to argue that these factors are inadequate to explain the problem. Even if elderly persons lived in such difficult conditions, they would not have given up their lives if they had been properly looked after by their children. Within a Confucian culture, the expected normal situation is such that, on the one hand, children, following the Confucian virtue of filial piety, take good care of their parents and try to make them happy; and on the other hand, elderly parents, being honored of having filial children, would strive to live meaningful lives along with their children. If they commit suicide, their children would be taken as failures in their care for them. This would lead to their children gaining an undeserved bad reputation of being un-filial to the parents that they would certainly want to avoid for their children. Indeed, as studies in South Korea show, if elderly persons live alone and are uncared for by their children, they are three times as likely to take their lives as those living with their children. Unfortunately, the process of modernization in East Asia has witnessed ever-increasing broken families and caused more and more elderly persons to lose care by their children. Under the modern values of independence and self-reliance, elderly persons are forced to live alone or move to elderly institutions. The high rates of elderly suicides in East Asia could be understood as demonstrating the miserable fate of aged persons in the ill process of modernization: they gave up their lives because they failed to receive the status and care that they had traditionally expected.

In this chapter, I argue for the moral desirability of family care and children’s responsibility for the long term care of elderly persons. It is written against the background of three studies of attitudes conducted in 2006 toward long-term care in Beijing, Hong Kong, and Houston. These studies reflect both moral difference and moral complexity. The background cultural framework and morality in Houston versus Beijing and Hong Kong are different, and so is their bioethics directing long-term care. Also, in each of the loci there is debate regarding how the local traditional morality should be understood and applied. However, in all of these locations, there is a common interest in understanding the central importance of the family for the lives of persons in general and for the long-term care of the elderly in particular. In what follows, I lay out the foundations of the deep Confucian insight into the moral significance and bioethical implications of the family. In part, I attempt to offer a critical re-introduction of the Confucian understandings of the family for those engaged in long-term care and health care policy in Beijing and Hong Kong. I also attempt to provide humans generally the resources of the Confucian cultural

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tradition, which has in a sustained fashion for more than two-and-a-half millennia pursued the social and moral status and implications of the family. Toward these ends, Section 6.2 of this chapter explores various reasons for endorsing family care rather than institution care in light of the interview outcomes obtained from the three sites, Beijing, Hong Kong, and Houston. The declared difficulties and problems involved in family care are analyzed in Section 6.3, indicating that these elements do not constitute convincing reasons against family care and children’s responsibility. In Section 6.4 children’s responsibility for family care is justified in terms of the Confucian moral and intellectual resources concerning the virtue of filial piety. Family care is further defended through a Confucian categorial account of the family in Section 6.5. The final section offers concluding remarks about the uniqueness and importance of Confucian ethics in directing Chinese health care and long term care policy.

6.2 Family Care: Reminiscence or Renaissance?

By “family care” I mean a family-oriented pattern of care for the elderly, including two different models. In the first model, one of the married children and his family remains taking care of the elderly parents by staying in the parents’ home or bringing the parents to his new home. This is the typical way of elderly care in traditional Chinese and other East Asian societies. The second model refers to an arising situation in which married children take care of their aged parents by living nearby their parents’ home (either in a nearby building or in a different flat of the same building). This model is still qualified as family care (rather than non-family-oriented community care) because the children could visit and essentially look after their parents everyday. In both models, elderly persons are allowed to stay in their children’s or their own homes to receive care from their children and grandchildren, which care includes various necessary aspects, such as physical, mental, and spiritual. Importantly, this pattern of family care, in either model, stands in sharp contrast to the pattern of institution care provide by private or public social institutions, such as elderly houses, old age homes and nursing homes. To enter an institution for care, an elderly person is taken away from her familiar living surroundings and arranged to stay with other elderly strangers in a new environment, separated from her family and children.

As elderly houses are speedily built up in East Asian areas, it is necessary to rethink and reflect on the different moral and social characters of institution care versus family care. Some suspect that since young persons have to be busy pursuing careers and become independent in contemporary society, children will not be able

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7 In a previous essay (Fan, 2006a) I term the first model “family care” and the second model “vicinity care.” Now I think vicinity care can also be termed family care because the children in this model provide essential familial care to their parents just as in the first manner, although they do not live under the same roof with their parents.
to provide family care for their frail parents. Whether it is good or bad, family care, from this view, will be bound to shrink and disappear and eventually only exist in people’s memories. On the other hand, however, our research conducted in Beijing, Hong Kong, and Houston discloses that family care is still dominantly preferred by the people of the three cities. If Beijing, Hong Kong, and Houston are representative, it is the shared view of contemporary society that elderly care is much better provided at elderly persons’ own or their children’s homes than at institutions! This view is also supported by the interviewees of different professions and occupations that we have chosen to interview in light of a qualitative research method, including elderly care administrators, physicians, nurses, family members, and elderly persons themselves. For one thing, the interviewees well recognize that institution care can provide certain advantages that family care cannot, such as trained professional care-givers and advanced elderly life facilities. Nevertheless, most interviewees prefer family care. As a Houston nurse points out, “home nursing care is different from nursing home care...if it is home nursing care, the elderly are still in their own homes, and I believe the elderly should be able to remain in their own homes as long as they possibly can without endangering themselves” (Houston, Nurse 1). Even for those elderly persons who need certain intensive care techniques, “home care and having some nursing care come into the home is best” (Houston, Family 3). In short, a Hong Kong family member clearly expresses the dominate view: “elderly institutions should be used only as last resort...because I love my mother, I should take care of her myself whenever it is possible” (HK, family 1).

Is it still possible to take care of my mother by myself in contemporary society? How should we evaluate this dominant view found in Beijing, Hong Kong and Houston? Is it only an emotional response short on supporting reasons? In fact, our interviewees have offered various rich reasons for family care, to which I will turn in a moment. Evidently, some persons from Hong Kong and Beijing suspect that Westerners do not like family care, while Chinese take family care to fit best into human nature. For example, a Hong Kong physician states that

the feeling of being home is the foundation of quality care. You cannot have that feeling at an old age home. It is an inborn human nature. ...It is about genuine human warmth. ...I think people of each and every corner of the world have their doctrine of filial piety. ...[Family care] is like the way of sitting around a Chinese dinner table: all eat the same food from the same container – it is a kind of sharing. I think most elderly persons would choose to stay home if they are given options. [If Western societies choose institution care for the elderly,] I don’t think it is good for Hong Kong to become a Western society (HK, Physician 2).

Interestingly, our interviewees from Houston do not prefer institution care to family care. Instead, almost all of them provide reasons for family care. For example, a Houston physician points out, “the one thing that a person can get at home which is going to be more difficult to come by in any other setting is love” (Houston, physician 1). An old age home is not a real home. A family member in Houston states that in a perfect world, the elderly would not be in an old age home, but be with family members in a real home (Houston, Family 2). Even those who take the choice between family care and institution care as depending on which is the most
economic way to go, agree that “if the elderly person is in a home with their family and the family can take care of the elderly with supplemental help provided by trained personnel, then that might be better” (Houston, Family 1). This is to say, the usually expected cultural differences between the East and the West did not appear among our interviews: both interviewees from Beijing and Hong Kong on one hand and those from Houston on the other prefer family care over institution care. This should be no surprise upon reflection. If it is culturally arrogant to claim that all people are anonymous Confucians in affirming filial piety, it is still safe to say that some basic features of human nature are common to all human beings. Indeed, the interviewees from all three sites are well grounded to prefer family care over institution care. Taken together, their reasons to support the moral desirability of family care over institution care can be classified into the five following types.

First, family care embodies the character of love, intimacy, sincerity, warmth, and security that institution care cannot have in the same nature or to the same degree. It is frequently reported that “many elderly persons prefer living together with at least one of their children. . . . It is about affective need, more than tangible support. . . . Such natural affection and concern can only be provided by one’s children” (HK, administrator 5). When only one of the parents is alive, it would be even more important for the elderly to stay with a child rather than live alone (BJ, family 13, 14). For the elderly, staying home is warm and sincere. They are accompanied by their children and grandchildren, maintaining their normal roles within the family. Indeed, an essential sense of security is maintained for the elderly in family care: they are not forced to leave behind their familiar living surroundings and to face the challenges and conflicts in new environments. In contrast, “in a care facility, the elderly feel removed from the family unit” (Houston, Family 3). They would have to change their roles, and would easily get depressed. They may even feel being abandoned by their children (HK, care givers 3, 4).

Several specific points have been made by our experienced interviewees in this regard. First, a Hong Kong care giver observes that letting elderly persons go into old age homes might be a good thing only from the point of view of care-givers or family members, but definitely not so from the point of view of elderly persons themselves. “They love to stay home. If they have to move to an old age home, they would rather wait for a long time in order to go into one which is nearby, closer to their family members and children” (HK, care giver 3). Second, those who stay in old age homes often feel that they are abandoned by their children. In contrast, those who stay with their children often feel proud of having children around. “No matter how good institution services are, something important is missing – nothing can be used to replay the natural affection for one’s family. . . . Those who are not taken care of by their children often tell that they have a ‘hard life’ ” (HK, care giver 4). Unfortunately, as an elderly institution administrator observes, “once the elderly have stayed at an institution for more than three months, their beds in their own homes would be removed – they will have no way to return. . . . For demented persons, if you don’t see them for 3 days, they wouldn’t be able to recognize you the 4th day” (HK, administrator 4). Third, “staying home is warm and sincere. . . . Elderly persons would be happy to cook the food their children like. When children are happy, the elderly are happy. This is a sense of warmth and sincerity that cannot be provided by government or institution. Elderly persons would be glad to hear grandchildren greeting them after school: ‘grandma, I am home!’ Even if the elderly are not mobile, they are
Second, under family care, elderly persons are more dignified, individualized, autonomous, free, and flexible than under institution care. They could have their privacy protected. “Care in the home is the most dignified way” (Houston, Administrator 2). “It is a feeling about whether you are able to control something; the feelings between being a tenant and being a property owner are different” (HK, Physician 2). On the other hand, they would lose this sense of dignity if they rely on institution care. Even if they used to be vital persons in society, in institution care they will have to convert back to names like their children, called by their first names and yelled at (Houston, Family 5).

Third, living with families the elderly can receive more personal care suitable to their particular personalities and religious convictions. “If the elderly can be at home, they can be in an environment where they are most natural, be it the food they consume, the religion they practice, the music they listen to, or whatever” (Houston, Physician 2). 10

Happy to see grandchildren running around. This is something you cannot get in an institution even if you have a lot of money” (HK, family 9).

9 A Houston nurse claims that her long term care experience shows that “the best possible care would be in the home with professional overseeing. Maybe [an] institution can cook better than a family member, but a family member knows the spices and the things that the elderly have always enjoyed. The elderly can be with their own little dog that they own. And they could have the choices of what they want to do each day – they deserve that” (Houston, nurse 2). Moreover, a family member from Houston argues that “care at home is always the ideal way because the person is being individualized rather than with hundreds of other people at institution. So one can always imagine that home care is going to be more dignified than being institutionalized” (Houston, Family 8). Similarly, an administrator from Houston sees dignity as treating each person as an individual. Elderly persons should not be treated like a mass of people, one after another, in an elderly institution. “They each are very, very unique, and they should be treated as such. They should be treated with respect for their privacy, respect for their culture, and their personal culture” (Houston, administrator 1). A care-giver from Hong Kong claims that “when I become old, I would save up some money in order to employ someone to take care of me by staying with my children, because this is a matter of freedom. You would lose some freedom once you go into an old age home. If I want to eat ‘fish ball’ all of a sudden, they wouldn’t give me – it is not available there; if I want to drink milk tea, I can’t” (HK, care giver 3). Similarly, another care-giver states that “elderly persons wouldn’t like to go into old age homes because they would lose some freedom. . . . I can go to a canteen to have a meal whenever I want. But in an old age home, I would be required to have dinner at 4 or 6 pm. . . . Because elderly persons don’t want to burden their children, they decide to get into old age homes. I know that at the bottom of their heart they are unwilling to stay in old age homes. . . .” (HK, care giver 4). Finally, a Hong Kong family member complains that it is difficult to protect one’s freedom and privacy at an old age home. “There is a big difference between staying one’s home and going into an old age home. People need to have privacy. If one is given sufficient privacy, his emotion would be stable. It is good to meet people, but difficult to live with them. . . . The feelings of staying at one’s own home and staying at an old age home are different” (HK, Family 4).

10 A Hong Kong care giver observes that those elderly persons with religious background, such as Buddhism or Christianity, usually lose their religious networks when they go into old age homes. This makes them quite unhappy (HK, care giver 3). An occupational therapist notices that male elderly persons especially prefer to stay in their original homes and communities because they like hanging out and chatting with their friends, playing chess, card games, talking about horse
Fourth, family care is particularly good for the elderly persons suffering from dementia or Alzheimer’s syndrome. Many elderly persons have some problem of dementia and can hardly adapt to a new environment. They would try to get away from a new place, or their problem would deteriorate when they are placed there. So the best care for the people with dementia is that they can live with their family and stay in the community (HK, Occupational therapist 1). “With children taking care of the elderly person, there will be more personal care, especially if the patient has Alzheimer’s disease or some dementia, it is easier for them to recognize familiar faces” (Houston, Physician 3).11

Finally, family care need not be more expensive than institution care. Rather, it is economically beneficial. This is the case for both family and society. For a family, a proper way of family care can be worked out more cheaply than sending their elderly persons to institutions because at home the actual overhead costs involved in institution care can be cut down (Houston, Physician 2). For a society, public resources can be saved if elderly persons are taken care of at their own homes. This is especially important for those societies (such as Chinese society) which have not become developed, affluent societies, but which have already faced the challenge of taking care of a huge amount of elderly persons.12

6.3 Why has Family Care Become Difficult in Contemporary Society?

These good reasons supporting family care notwithstanding, almost all contemporary societies bear witness to the building up of more and more elderly houses and nursing homes. Increasing numbers of elderly persons are driven away from their own or their children’s homes and are arranged to join in institutions and stay with other elderly strangers for their elderly lives. Accordingly, there must be some elements behind the popularity of institution care. In exploring this issue with our 11 A family member taking care of her father with dementia points out that “although there are facilities and professionals available in old age institutions, natural affection for one’s family is absent there. Elderly persons with dementia often don’t remember or recognize people around them, but they can recognize their ‘own people’ [zi ji ren, ‘own people’]. My father often mentions ‘own people’ . . . Family relations are so important for the Chinese! Even if they can make new friends, friends are not ‘own people’. My father does not regard me only as a friend, but more than a friend” (HK, family 2).

12 A doctor from Beijing summarized the problem clearly. “Institutional care is not suitable for Chinese circumstances. Take the city of Beijing for an example. There are more than one million elderly persons. How many elderly institutions do we need to build for them? Should they be subsidized by the government? If so, there would not be so many public resources to do so. Should they be entirely left to for-profit private companies? In that case the burden on the families would be unbearable if they have to send their elderly to such institutions” (Beijing, doctor 25).
interviewees, the answer appears to be that family care is too difficult to implement in contemporary society, and therefore institution care has come into being as the second best option. In particular, our interviewees have raised several factors to account for why family care has become so difficult in contemporary society.

First, in contemporary society all adult children have to work outside of the family, and they are too busy to take care of their frail parents. Several interviewees from Houston express this problem clearly. First, long term family care is too draining on family members if they have to work outside of the family at the same time (Houston, Physician 3). “It is just strictly not feasible for most of us to undertake family care in today’s society because most of us are living in a household where both husband and wife are working to support the household. And you can’t leave your elderly at home because it is not a safe environment” (Houston, Administrator 2). For many, it seems that if one is willing to make a compromise for taking care of the elderly at home, one will have to give up so much that this becomes undesirable. As a family member articulates, “it just puts a strain on the entire family... It is the people’s lifestyles as they are today, with everybody working and having so many activities outside of the home, it is just not possible” (Houston, Family 4). Another family member echoes this view:

working full time in a busy society, you wouldn’t have enough time to take care of the elderly at home. The best you can do is to arrange them in an institution. Then you do whatever it takes, whether it is rearranging a work schedule for a period of time until they are better, or having an understanding that you may have to leave for an urgent matter (Houston, Family 3).

Moreover, elderly and young persons have different living habits; if they live together, they easily form disagreements, quarrels, and conflicts. “Living together is by no means a simple thing. It is very hard. For example, it is very hard for two women to live together in a family. Each has her own will, and there would be disagreements and conflicts” (HK, Family 6). There is often a generation gap. Elderly persons want to go to bed early and get up early, making a lot of noises and talking a lot (HK, elderly 2). “You can create huge amounts of discomfort and anger and annoyance and conflict by placing too much burden on adult children trying to look after their elders” (Houston, Family 7). “Sometimes family members would accuse elderly persons of being unwilling to help with housework when in fact the elderly persons were incapable of providing assistance. This is especially the case for elderly persons with dementia. For example, the demented elderly might forget to turn off the cooking fire, but family members might suspect that they had intentionally not done so” (HK, care giver 3). “After a while the family members... get aggravated and tired, no matter how much they love the elderly” (Houston, Patient 1). The family becomes stressed (Houston, Administrator 1). Then the elderly will have to try to relieve the stress on their children by moving into an elderly care institution (Houston, Patient 4).

Thirdly, contemporary education has changed its traditional direction – today’s emphasis in child education is no longer on filial piety and family values, but on individual independence, equality, and self-fulfillment, and this makes it difficult
6.3 Why has Family Care Become Difficult in Contemporary Society?

for family care to be maintained in society. A voice is repetitively heard from Hong Kong interviewees that the content of today’s education characteristic of liberal individualist flavors is problematic. From their view, Hong Kong used to conduct education (especially at kindergartens, primary, and secondary schools) in ways in which students are cultivated to love and take care of their parents. But now Hong Kong has become a place where people are always encouraged to fight for individual independence, freedom, and autonomy (HK, Administrator 2). An elderly person complains that while all children were good in the past, nowadays only some children are still good, but other children want to kick their parents out – they don’t even provide sufficient food for them at home (HK, elderly 5). Similarly, a family member claims that “some children don’t really love their parents. They just attempt to push them into old age homes and get rid of the burden - they tend to see elder persons as burden” (HK, Family 8). Thus the elderly is put into a quite vulnerable situation: for example, they are not sure what education their children will receive at school even if they invest a great amount on their education, and they are not sure if their children will take care of them reciprocally when they are old (HK, family 4). By the same token, a Beijing elderly complains, “current governmental policy is biased for the young; it has too little concern with the elderly” (BJ 1, elderly).

Furthermore, the social welfare system induces children to push their elderly to apply for welfare and move to institutions. This occurs at least in Hong Kong as a typical welfare phenomenon. The Hong Kong government offers a welfare program – Comprehensive Social Security Assistance (CSSA) – for which everyone can apply. Although it has asset and income qualifications, elderly persons can easily transfer their money to their children before applying for it. The children need to fill in a form, stating that they are not going to support their parents, and then the parents can take this “bad son letter” (so called by people) to a social worker and apply for CSSA, which will offer about HKD5300 per month to each elderly. “The money will be used by the elderly to pay and stay in a private old age home. Poor quality private old age homes can survive and even increase in number in recent Hong Kong because this is a market in which a lot of elderly persons are not

13 This family member from Hong Kong also argues that “government should put more efforts and resources on promoting better and more harmonious family relations. Regarding long term care, the most important factor is family relationships. . . . In the past we used to have a lot of ads about respects for the elderly as well as the importance of family care and relationships. Nowadays they are all gone. . . . Parents need to go to work before dawn and get back home when their kids are already asleep. This pattern of life has significantly affected the relationship between parents and children. Parents have little time to share with their kids. Instead, it is maids who spend a lot more time with kids” (HK, family 4).

14 Within the Chinese cultural context, Hong Kong elderly persons always like to save and transfer money to their children. A manager at a private old age home told us that 90% of their elderly persons are on CSSA. Under the present law, as long as the bank account of an elderly person is empty, he or she is eligible for CSSA, while the income and assets of her family members are not subject to assessments. This manager thinks that the law has an obvious loophole. He came across a case in which an elderly person decided to give his $3 million cash to his children and then applied for CSSA afterwards (HK, administrator 4).
looking for quality care; they are instead looking for money saving – by using their CSSA fund to pay for a private old age home an elderly person may get a kickback of $1,000 from the home” (HK, Physician 3).

Consequently, elderly persons would just apply for CSSA in order to alleviate their children’s financial burden. “When one elderly does it, another will soon follow. Today they no longer see applying for CSSA as a shame. They would even save some of their CSSA money to support their children. They would regard it as a loss if they don’t apply for it” (HK, Administrator 1). Indeed, this welfare policy has corrupted the virtues of both elderly and young persons. As another old age home administrator points out, the policy is such that no matter whether you are rich or poor, if you are admitted to an elderly institution, you can apply for CSSA. . . . CSSA is like a ticket to make “everything” free, including medical care. The benefit is actually more than what you are supposed to gain. It provides all sorts of disincentives; it is being abused (HK, Administrator 2). At the same time, as many CSSA recipients in Hong Kong decide to live on the mainland of China, they become very active consumers there. They can afford the elderly services of many old age homes up there (HK, Administrator 3 from Housing Society).

On the other hand, modern society does not offer assistance to support family care. Family care is hard, calling for societal support. However, as family members from Houston recognize, today’s society doesn’t conform to family life, and doesn’t set it up to help you take care of the elderly. Family life is not what it used to be, where you felt like you were dedicated to a family member because of the way you were brought up. Today’s children face a dilemma in taking care of their elderly. They would feel guilty if they fail to take care of their mummy or daddy at home. But if they do take care of them, then it puts them under a lot of stress, there will be a lot of caregivers needing medicine for anxiety and depression, and it may even break up their marriages (Houston, Family 5).

Finally, there has been a culture change in Chinese society that is now in favor of institution care rather than family care. The issue of which pattern of elderly care should be taken is a culturally relevant issue. It is generally believed that there is a difference between Chinese culture and Western culture. Chinese aged parents tend to be taken care of by their children at home until the last moment of their lives. Whereas in Western culture, most people prefer to live by themselves. If they come to a point where they cannot cope with daily activities, they would go to stay in a nursing home themselves, rather than trouble their families (Houston, Physician 3). However, Chinese culture today is changing. Many take that the young Chinese have been affected by the modern western culture and no longer want to take care of their aged parents. “The old people still hold the traditional Chinese idea. They like to live with their families even when they are old. But the new generation is affected by Western culture. . . . Once young people get married, they like to stay away from their parents in order to enjoy their independent couple lives” (HK, Physician 1).15

15 A relevant survey was conducted by an elderly care administration in Hong Kong. It was found that those aged 70 and above are more committed to traditional values. They very much desire to
Accordingly, many people are pessimistic about the future of family care. A Hong Kong physician predicts that “there may still be some elderly persons who can stay with their children, but they will not be the majority... Culture change is affecting the current cohort of young people so that they are more prepared to live either alone or with their spouses only” (HK, Physician 3).

No doubt, all these elements are relevant for understanding why family care has become so difficult in contemporary society. But I do not think they are sufficient to justify a change from family care to institution care. A careful reflection on these factors and issues, I would argue, will show that they are not intractable difficulties, if we really hold that family care is morally better than institution care for the elderly. In the first place, being busy is never a good reason to miss one’s important task. Instead, it is exactly because one wants to do important work so one becomes busy. Obviously, if taking care of one’s elderly is a primary moral responsibility that one should bear, then increasing family income by working outside of the family would no longer be equally important, as long as the family can have their basic ends met. If one does not want to quit one’s job for family care, one must make necessary arrangements and adjustments on one’s working agenda in order to fulfill family care. It is not easy, but there are always options available. For example, one can change to a part-time job or a job requiring only flexible working time so as to facilitate one’s care for the elderly at home. One can always choose to go home directly after work rather than drop by a drink club. One can even hire a domestic helper to obtain an extra hand, as many families in Hong Kong are doing. Indeed, for most individuals, it eventually depends on how important one thinks family care is.

It is true that elderly persons often have different life habits and hold different views from young people. But such differences do not constitute intractable elements to exclude harmoniously shared family lives. From a Confucian perspective, a three-generation family (the elderly, adult children, and their small children) constitutes a naturally appropriate environment for a human life to start, develop, and terminate. It best responds to the physical, psychological, and spiritual needs of every individual. No matter whether it is elderly persons, their children, or their children’s children, they all need mutual concern and support from one another through...
intimate everyday contacts and communications in a home environment. That is, a family structure of this kind is not only good for the elderly, but it is also good for the adult children as well as their children. For instance, the presence of the elderly offers small children (the grandchildren) valuable educational opportunities. In addition to receiving physical care from their grandparents, the small children can also learn from them life experiences and historical stories, if not other types of knowledge. This will help them come to appreciate the identity and integrity of the family as a whole. No doubt, some differences and disagreements naturally occur now and then in a family, but they should be taken as part of the family life and should not be used as an excuse to disintegrate the family. A family can be a unity of diversity, in which virtue is learned and harmony exercised. As a Hong Kong physician points out, “it is particularly true of Chinese society in which people are very much concerned about human relationships based on harmony. Independence may not be a bad thing, but people should not forget the importance of patience and forgiveness in the family life” (HK, Physician 2). Finally, even if living under the same roof really leads to numerous inconveniences and problems to some children, they can still think about taking care of their parents by living nearby (this is exactly what many adult children are doing currently in Hong Kong). That is, they do not have to abandon the pattern of family care by sending their elderly to institution care. When today’s public education is to the detriment of family values and family care, what should be changed is the substance of public education rather than the pattern of family care. This involves a proper understanding of the nature of the family and the value of children’s responsibility to which I shall turn in the subsequent sections. As to the issue of social welfare like Hong Kong’s CSSA that produces morally unfair and consequently undesirable effects on long term care for the elderly, such welfare should be corrected and reformed. If children face a dilemma in taking care of their elderly in modern society, it suggests that the development of modern society is wrongheaded in this regard and should be reoriented. Finally, cultural change cannot be used as a legitimate reason for giving up family care. At least for East Asia, culture is changing but is not yet completely transformed. What is crucially important is to figure out what is the right thing to do and manage to do it. Indeed, if family care is morally better than institution care, then we should formulate suitable policies and perform proper actions to restore and reinforce family care. This requires efforts to be made at all possible levels, individual, family, community, and society. In particular, appropriate public policy is important. In this regard, a Hong Kong administrator suggests that we may need to offer some sort of incentives for children to engage in family care. From his idea, if children can spend 20 hours a month to take care of their parents, they should be given some kind of coupons as a kind of reward. Society should reward those who give up their jobs and spend all their time to take care of elderly persons to create an atmosphere for family care. This can be seen as a “soft sell” approach to encourage the movement (HK, Administrator 2). Another administrator thinks that “housing development may produce some new modes of service without conflict with traditional culture. Instead, new modes or methods can be introduced to maintain the continuity of traditional values” (HK, Administrator 3).
Some would argue that my analyses underestimate the difficulties for family care. For example, Norman Daniels summarizes two mismatches between traditional and current family care that, according to him, make family care largely impossible in contemporary time (1988, pp. 24–25). The first mismatch is caused by demographic changes: since many more individuals live to senior ages today than in the past, the burdens filial obligation would impose today are not really comparable to the burdens they could have imposed in the past. The second mismatch involves changes in the circumstance and structure of families: fewer adult women are at home today, and the increased frequency of divorce and separation produce complex parent and step-parent relationships in families. I agree that family care is by no means easy to conduct as the elderly has made up the fastest growing age group in contemporary society. It requires both particular family efforts and public policy assistance, including suitable population policies to improve the young-old ratio in developed societies. As to the second mismatch, fortunately, there has not been as dramatic change in family structure in East Asia as there has been in the West. East Asian societies are arriving at a crucial cross-road about where to go: all will depend on whether they want to maintain the pattern of family care and formulate relevant public policies for it. In short, I continue to insist on my judgment that the increasing popularity of institution care in East Asia is only superficially due to the “difficulties” of family care in contemporary society. The real problem lies in the fact that some individuals and governments have begun to give only lip service to the position that family care for the elderly is a primary moral responsibility that children must undertake. We need a better understanding of why children should bear such a responsibility.

### 6.4 Children’s Responsibility: The Manifestation of \textit{De} (Virtue, 德) and \textit{Xiao} (Filial Piety, 孝)

Western liberal scholars ridicule the ideal of maintaining family care by appeal to children’s responsibility as an attempt to turn back the clock (e.g., see Daniels, 1988, p. 21). For them, in addition to the practical difficulties discussed above, there are also theoretical problems. There are diverse beliefs about filial responsibility, and in the West there is neither a homogeneous tradition nor a compelling philosophical account that can overcome this diversity (p. 22). I do not know if there ever was a homogeneous tradition of filial obligation in the West. But, fortunately, there is such a homogeneous tradition in the Confucian East which is not lost yet and can be drawn on to maintain the pattern of family care. This section will reconstruct a philosophical account of this tradition in response to contemporary problems. Whether this account can count as compelling should be left to the readers’ judgment.

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16 In the case of China, a real difficulty for family care will be from the one child policy. If this policy continues to be imposed, family care on mainland China will become impossible.
From the Confucian tradition, children’s responsibility for taking care of their aged parents is a fundamental and comprehensive responsibility, including physical, mental, social, and spiritual care which can only be carried out at home. A complete view of such a filial obligation is found in the fundamental Confucian classics, especially the Confucian Analects (Lunyu, 論語) and the Classic of Filial Piety (Xiaojing, 孝經). In the first place, Confucianism holds that, without undertaking this responsibility, children cannot cultivate virtue for human lives, and neither can they express virtue in their lives. Parents must receive their children’s love and respect through filial responsibility exercised by their children. This Confucian understanding is based on an appreciation of the crucial importance of an agent-relevant reason embedded in proper human relations: it is not only that my aged parents must be taken care of by a care-giver, no matter who is the care-giver; it is rather that I myself, as a child of my aged parents, must be the care-giver, in order to embody the virtue of being a normal human being. The Confucian virtue (de, 德) is a power with which individuals can form normal relations and live authentic lives without the need of using force to treat others. This power can only be secured by individuals through appropriate familial and social practices in cultivating a fundamental innate human emotion:

Affection (qin, 翕) is fostered by parents during childhood, and from there springs the child’s reverence (jing, 敬), which grows daily, while sustaining his parents. The sages were to follow this innate development by teaching reverence and to follow this innate feeling of affection by teaching love. Thus, the teachings of the sages, though not stringent, were followed, and his governance, though not rigorous, was well ordered. All this was brought about because of this innate disposition (Xiaojing IX).

This is to say, it is part of human nature to love one’s parents, just as parents love their children. The issue is how to foster this innate disposition. The Chinese character for filial piety, xiao (孝), is the image that the son carries the father on his back. Confucius and his followers emphasize that filial piety is the root of perfect virtue, benevolence (ren, 仁) (Analects 1.2), and it constitutes the foundation of Confucian education (Xiaojing I). Indeed, for Confucians, filial piety is not only the source of perfect virtue, but is also the major manifestation of perfect virtue. An authentic human person must first be filial to his parents at home, be respectful to his elders abroad, and only if he still has time and opportunity after performing these duties, may he employ himself in the studies of other things (Analects 1.6). For those who may charge that this Confucian morality is lacking in general benevolence, Confucians would answer that the true nature of general benevolence involves a natural hierarchy in which one’s own parents must be cared for before one can care for other people. As the Xiaojing points out, “one who does not love one’s parents, but others, acts to the detriment of virtue (de). One who does not revere one’s parents, but others, acts against ritual (li, 礼). Should the rules of conduct

17 My quotations of the Analects are adapted from James Legge (1971), and the quotations of the Xiaojing (孝經) are adapted from Chai and Chai (1965).
be modeled on such perversity, the people would have no true norm by which to abide” (*Xiaojing* IX). Instead, Confucian filial morality provides a complete ethical system: “Filial piety commences with service to parents; it proceeds to the service to the sovereign; it is completed by the establishment of one’s own personality” (*Xiaojing* I).

Moreover, children’s responsibility for taking care of their aged parents illuminates the value of moral reciprocity in human lives. As a Hong Kong physician puts it, “as parents have taken care of the first half of their children’s life, the children should take care of the second half of their parents’ life” (HK, Physician 2). Similarly, a Houston nurse states, “my parents gave me all they could while I was helpless as a child, and I certainly feel that now it is my turn to give to them” (Houston, nurse 2). This sense of reciprocity does not suggest that parents and children treat each other as means to promote mutual benefits. Rather, it is a proper moral response to the natural course of a human life from the cradle to the grave. It manifests the deep moral sentiment of gratitude that one should possess in return for the self-sacrifice and contribution that the parents have generously made for one’s life and happiness. When liberals argue that requiring children’s responsibility ignores a basic asymmetry between parental and filial obligations – parents assume the duties of caring for their children through their own adult choices and actions, while children did not ask to be brought into existence (see, e.g., English, 2002), Confucians see that understanding the parent-child relation in terms of such contractual arrangement is fundamentally misleading (see next section). For Confucians, if one does not have a sense of moral reciprocity for one’s parents, one is not only morally mistaken, but is also morally degraded.

Furthermore, exercising children’s responsibility for elderly care can successfully remove the morally unfair and consequently undesirable social welfare programs that have been imposed on contemporary societies for taking care of elderly persons. From the Confucian view, it is morally unfair for the government to impose social welfare for every elderly through coercive taxation. If I, as a child, do not have a moral responsibility to take care of my parents, why should I, as a stranger, have a moral responsibility to pay tax in order to take care of others’ parents? This latter moral responsibility of mine cannot be based on my voluntary intention, because I cannot have such an intention for strangers when I do not even have it for my own parents. On the other hand, if such a responsibility is based on my existential status as a fellow human being – namely, everyone human being should care for other fellow human beings, then my existential status as a child of my parents should assign me a more significant moral responsibility for taking care of my parents, because my relation with my parents is more closely tied and intimate in my family than my relation with strangers in society (Cf. Wang, 1999, p. 251).

Meanwhile, as is discussed in the previous sections, institution care funded by welfare programs cannot provide adequate care for the elderly. From the Confucian view, adequate elderly care must be fulfilled by the children seriously performing five duties:
In serving his parents, a filial son reveres them in daily life; he makes them happy while caring after them; he makes anxious care of them in sickness; he shows great sorrow over their death; and he sacrifices to them with solemnity. When he has performed these five duties, he has truly served his parents (Xiaojing X).

Such services of the parents are universally required of every child, irrelevant of his profession or social status. For Confucians, serving parents in these ways can also bring about positive impacts on one’s attitudes to treating other people and contribute to the harmonious relations of whole society. “He who really serves his parents will not be proud in a high position; he will not be rebellious in an inferior position; among the multitude he will not be contentious” (Xiaojing X).

Many people in Beijing and Hong Kong take that welfare for elderly care is a western, not Chinese, idea, and this idea has been influential and generated negative outcomes in contemporary society. As a Hong Kong family member expresses, “Chinese and westerners hold different views. Westerners see long term care as based on social welfare. They are so individualistic that their young people do not think they have any role to play in caring for their parents. They feel that government should take care of elderly persons through the use of old age homes. Our culture is different – we rely on our families, not government – to take care of the elderly. If we continuously accept our own culture, we will have no problem” (HK, family 4). Similarly, an elderly house administrator complains that Westerners are so “cold-blooded” that they would live independently once they are over 18 years old and would only concern about themselves, not supporting their parents. From his view, this is partly accountable for why many western youngsters have chaotic lives (HK, admin 4, private old age home). 18 However, while it is true that many modern Western societies provide welfare for elderly care, Western people also recognize the problem. As a Houston nurse argues, “I don’t want a government paying for my mother. That’s my mother. ...I know a lot of people who want to do that, but they are not going to get any better offer from the state paying, because then the state is going to have to charge so much on our taxes, or however the state is going to charge, to where no one can afford anything” (Houston, nurse 1).

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18 Another family member in Hong Kong complains that there is a lack of warmth in western families. “Perhaps I am old-fashioned. I would prefer having a sense of warmthness of being home. In western countries, there isn’t such a sense of warmthness. I have a western friend whose children have grown up and moved out to live independently, and once she told me that her house got a fire and many things were burnt and she got to dump them, and she said she was happy to receive a greeting card from her children, but I told her that ‘what the hell they sent you a greeting card for? What you need is their assistance!’ She seemed to be fully satisfied with just having a greeting card from her children. Why have westerners created something called ‘Mother’s Day’ and ‘Father’s Day’? This is because western children never look after their parents, and they got to create the holidays to remember their parents! For me, everyday is ‘Mother’s Day’! We are not like those people who want to take their mothers to have big meals in order to pretend to celebrate Mother’s day and then just dump and ignore their mothers. We do not celebrate Mother’s Day because everyday is Mother’s Day... The government should teach students the importance of respecting and taking care of parents. It is a matter of education” (HK, family 10).
Indeed, it is the shared view of our interviewees throughout Beijing, Hong Kong,
and Houston that welfare for elderly care is consequently undesirable and even dis-
astrous. Some clearly warn that the more welfare, the worse the situation. In the case
of Hong Kong, a physician illustrates the issue this way:

Building more old age homes would only make things worse because old age home by itself
is a concept that would encourage children to send their old parents to old age homes. Just
like the attempt of the Hospital Authority to reduce the waiting time in public hospitals,
the more resources you allocate to the public system, the more people would move to the
public from the private, and as a result, it doesn't help to reduce the waiting time in public
hospitals. Therefore, instead of building more old age homes, the government should try to
let people know that it is the responsibility of children, not government, to take care of their
parents (HK, Physician 2).

Similarly, a family member contends that young people are badly educated by
the government these days. They can easily get CSSA and send their elderly to old
age homes rather than take care of them at their own home. But children are elderly
persons’ “own people” (zi ji ren, 自己人). If your own people do not take care of
you, you would lose the most important thing in your life. It would be useless even
if you own an apartment of gold and pearl (HK, family 7). If government attempts
to offer help, it should not build up elderly hostels; rather, it should promote family
values and reward children’s good conduct in taking care of their parents.19

6.5 Why Family? A Confucian Account of the Family for Elderly
Care

The final defense of children’s responsibility for taking care of their elderly persons
must be offered in a proper account of the family. No doubt, elderly persons can
be taken care of outside of the family. If people want to, they can leave their elderly
persons in non-familial, state-operated or privately-run institutions, just as children
can be educated and trained outside of the family environment (in Plato’s Republic,
for example). However, the Confucian endorsement of children’s responsibility for
taking care of their elderly at home is ultimately embedded in the Confucian account
of the family as the normal bearer of elderly care as well as the normal bearer of
child care. Accordingly, the Confucian justification of children’s responsibility will
eventually depend on the strength of the Confucian account of the family.

That Confucianism provides the most complete and persuasive account of the
family can be shown in comparing different accounts of the family available in the
literature. H. Tristram Engelhardt lays out three major accounts of the family in

19 A Hong Kong administrator argues that “government should provide some sort of subsidy for
those family care-givers who are committed to taking care their elderly persons. It is unavailable
now. For example, if a child is able to earn $6,000, but she quits her job in order to take care of her
parents, she should be given some subsidy, say $3,000 or even just $2,000. Nowadays government
does not give any assistance to those good and filial children” (HK, administrator 5).
different categories. As a natural category, the family is a socio-biological unit constituted from the long-term sexual, reproductive, and social union of a man and a woman, meeting basic socio-biological needs. As a contractual category, the family is a consensual unity created out of the consent of its participants and shaped by the values and the goals to which they agree. This understanding regards the family not as a biological or metaphysical fact, but as a social unity whose structure as well as lines of authority and obligation are created through the agreement of some number of free and equal individuals. Finally, as an ontological category, the family is discovered as a relatively non-negotiable social structure that confers status obligations and authorities on its members. The family in this sense is a social reality that achieves a moral unity and exercises certain autonomy against the state (Engelhardt, 2007). The Confucian view of the family is consistent with the ontological category of the family. Although the contractual category of the family correctly understands the family as a moral unity, this account as a whole, from the Confucian view, is gravely facile and superficial. The moral unity of the family under this account is simply based on mutual individual consent but overlooks a fundamental fact in human life: an individual’s coming into existence and living circumstance are essentially determined by factors other than one’s own choices or agreements. No one could ever choose whether to be brought to the world. Neither can one decide who should be one’s father and mother. Just as unborn children cannot agree or disagree regarding whether they should be born to the world, the parents cannot make contracts with their unborn or newborn children regarding whether the children should look after their lives when they are old in the future. Accordingly, although the contractual category of the family gains popularity in contemporary liberal society, the Confucian categorial account of the family goes much deeper than this account. Confucians take the family as an eternal social category that reflects the profound mechanism of the universe, the Dao (道) of Heaven and Earth.

The Confucian account certainly goes beyond a natural category concerning mere socio-biological and materialistic needs for human lives. It reaches a unity. And this unity also goes beyond a mere moral unity in accounting for the interests of all living members of the family. Instead, it carries a Confucian metaphysical significance, which is clearly reflected in the image of the Chinese character of the home (家). The character shows that the home is a special place where selected animals are sacrificed to the ancestors in the family ritual (Zheng, 2005, p. 190). Thus the Confucian notion of the home is a sacred symbol that brings ancestors and descendants into unity by expressing the Dao of Heaven and Earth. It supports a web of sex- and age-specific orders of authority and obligations that are not grounded in consent or equality. Normal family relations and activities are the embodiments of the universal Dao realized in human virtue, such as filial piety. This unity does not dissolve when children grow up and marry out.20 For Confucians,

20 Modern Western philosophers fail to recognize the true nature of the family as an eternal social reality. For example, Hegel construes that the family as a social unity, and “in the children that the unity itself exists externally, objectively, and explicitly as a unity, because the parents love the
the elderly are always at the center of the family, and the family is an eternal unity.\textsuperscript{21}

Indeed, among the natural virtues and obligations upheld by Confucianism, filial piety is always the central one. As the \textit{Classic of Filial Piety} points out, “it is the nature of Heaven and Earth that man is the most honorable of all beings. Of all human conduct none is greater than filial piety. In filial piety nothing is greater than to revere one’s father. In revering one’s father, nothing is greater than making him the peer of Heaven” (\textit{Xiaojing} IX). This is to say, if the children can perform the virtue of filial piety for their parents to the utmost, they can help their parents join Heaven and reach the transcendent so as to accomplish an eternal life. Meanwhile, serving the parents well is the primary Confucian way of serving the transcendent. “Formerly enlightened kings were filial in the service of their fathers and thereby became enlightened in the service of Heaven. They were filial in the service of their mothers and thereby became discreet in the service of Earth” (\textit{Xiaojing} XVI). In serving their parents well, one could serve Heaven and Earth well so as to contribute to the great trinity of Heaven, Earth and Man in a complete Confucian universe. This is why Confucians see that “filial piety is the supreme virtue of the fundamental Dao held by the sage kings to regulate the world” (\textit{Xiaojing} I).\textsuperscript{22}

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\textsuperscript{21} The Confucian account of the family rebuts an individualistic understanding of human dignity that emphasizes equality, independence, individual autonomy or self-determination, as upheld in the modern Western Enlightenment project. The Confucian family-oriented understanding of elderly dignity is clearly articulated by a few elderly care administrators in Hong Kong. “Chinese people’s interpretation of the dignity of elderly persons is not independence or autonomy. . . . Instead, the elderly is at the center of a family. The family is tied by the elderly” (HK, Administrator 3). Meanwhile, it is the Confucian belief that one’s life belongs not only to oneself, but also to one’s family members. One’s family members share one’s life in a way that decision making of elderly care must be a family decision. Regarding elderly care issues, “final decisions should not be made by the elderly alone. Instead, they should be family decisions” (HK, administrator 6). For Confucians, the most important thing is that children make virtuous decisions in taking care of their elderly parents. Interestingly, this view is largely shared by a physician from Houston: “The concept of autonomy is nonsense. The last thing in the world people want to be is to be left absolutely alone and absolutely autonomous. We are a gregarious species, dependent one on the other. It is more dignified to be with people around caring for you than to be out 100-percent on your own” (Houston, Physician 1).

\textsuperscript{22} For those who critique Confucian filial obligation as violating human equality, it is important to recognize that the Confucian view of ideal familial and social order is not based on uniformity
6.6 Concluding Remarks

The foregoing analysis of Confucian resources bearing on long-term care provides the resources for critically re-examining long-term care. The implications are immediate for those areas tightly bound to the roots of this tradition, such as Beijing and Hong Kong. In these contexts, the resources from these Confucian reflections can help to reverse a kind of cultural imperialism through which the attempt has been made to recast the moral discourse of Hong Kong and mainland China in terms of the moral assumptions of America and Western Europe. As this chapter has argued, as mainland China and Hong Kong go to the future in the development of their health care policies, they must take care on two different levels. First, one must critically re-assess all taken-for-granted translations of Confucian moral terms into English. That is, one should not assume that the cognate moral terms identified in English, German, and other non-Chinese languages adequately appreciate the force of the Chinese moral and metaphysical concepts. This is the case because all moral and metaphysical concepts are embedded within a framework of theory and values. Just as space, time, mass, and energy mean different things within Aristotelian, Newtonian, and Einsteinian physics, so, too, the Chinese concepts of de (德), xiao (孝), ren (仁), and jia (家) do not have strict translations within other languages with different background moral and metaphysical assumptions. This is the second or critical contribution of this chapter: a call to look more carefully at the naïve presumption that Chinese thought shares with the West the same understandings of beneficence, family, liberty, and justice. Finally, one must take seriously the explanatory and morally directive power of Confucian metaphysical and moral understandings. These must be drawn on in their own right in order to develop an authentic Chinese bioethics of long-term care and a defensible approach to long-term health care policy. This is the positive contribution of this chapter: it offers resources for a new approach with ancient roots to the challenge of the bioethics and health care policy of long-term care.

or equality. Things are not equal from the Dao of Heaven and Earth. There is no such thing as uniformity or equality inherent in any society. Confucianism recognizes differences implicit in the very nature of things and emphasizes that only through the harmonious operation of these differences could a fair social order be achieved (cf., e.g., Ch’U, 1961, p. 226).
Part III

The Market, the Goodness of Profit, and the Proper Character of Chinese Public Policy
Chapter 7
Towards a Directed, Benevolent Market Polity: Looking Beyond Social Democratic Approaches to Health Care

7.1 An Introduction to Confucian Health Care Policy and Bioethics

Health care systems in Singapore, Hong Kong, and mainland China are strikingly distinct from those in the West. Economically speaking, each of the aforementioned East Asian systems relies in great measure on private expenditures supplemented by savings accounts. Western nations, on the other hand, typically exhibit government funding and wariness about healthcare savings accounts. This chapter argues that these and other differences between Pacific Rim health care systems and Western systems should be assessed in light of background Confucian commitments operating in the former. In the Confucian context, bioethics and health care policy have a unique content, texture, and set of implications that often offends Western assumptions about the appropriate individual autonomy of patients and the appropriate character of social safety nets for health care.

Despite the depth of these differences, they are nevertheless difficult for Westerners to appreciate. In part, this is because many influential accounts of Confucian thought have re-framed Confucian theory to make it fit more congenially with modern Western moral and political commitments. A dominant contemporary Neo-Confucian view is that Confucianism must integrate itself with liberal democratic ideals so that Confucian societies can be democratized in these terms. Moreover, a frank acknowledgement of fundamental differences between Eastern and Western bioethics would embarrass efforts to enshrine Western commitments in a canonical global bioethics. Moral differences between East and West are obscured from the Eastern side as well, because approval-conscious Pacific Rim bureaucracies often

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1“The way an East Asian interprets another person’s actions and makes normative judgments is still powerfully informed by Confucian teachings. This is true even in the political sphere” (Bell and Hahm, 2003, p. 42).

2A dominant contemporary Neo-Confucian view is that Confucianism must integrate itself with liberal democratic ideals so that Confucian societies can be democratized in these terms. See, e.g., Liu (1996).

3An illustrative example in bioethics is the four bioethical principles proposed by Tom Beauchamp and James Childress in light of modern Western moral thought and experience. They claim that these principles constitute a basic minimum of the common morality that should be applicable normatively to every region of the world. See Beauchamp and Childress (2001).
engage in moral double-bookkeeping. Like those who wish to recast Confucian thought and commitments, local legislators recognize that much of Confucian moral and political theory invites Western criticism. In response, the official law-on-the-books is often different from what is applied in actual practice.\(^4\) Finally, there is on-going debate about the trajectory of development in mainland China: while a group of Confucian scholars call for a reconnection with China’s Confucian cultural heritage (Jiang, 2003; Kang, 2005), others argue for a continuous dilution and adjustment of Confucian values in accommodation to the “global ethics” advocated by Western liberal social democracies.

Approaches to Confucian theory that discount its moral distinctiveness deprive both those in the Pacific Rim and those outside of an adequate understanding of the moral and political assumptions that shape health care policy in many parts of East Asia.\(^5\) This chapter seeks to aid in the correction of this deficiency by employing the concept of a “directed benevolent market polity” to summarize the complex ways in which Confucian ideas inform governing elites and shape healthcare policy in the Pacific Rim.

### 7.2 Beyond Social Democracy and Limited Democracy: A Directed Benevolent Market Polity in the Pacific Rim

Though social and political cultures in the Pacific Rim are complex and diverse, many countries (especially Singapore) exhibit what I will call a directed benevolent market approach.

These polities are directed in the sense that they are controlled by a ruling group, who are endorsed through some form of election. The election, in these contexts, is a public ritual of legitimization (i.e., a form of community ritual affirmation of the political status quo), but not a mode of actual citizen rule as it is understood in the West. Within a Confucian framework, the polity is viewed as a family of families. Polarization among competing moral and political factions is discouraged because it is detrimental to family harmony. Ritual elections underscore the obligation of the

\(^4\) A good example is afforded by Hong Kong medical ethics, which has come recently to resituate the legal commitments it inherited from its British colonial past within Confucian guidelines for actual clinical practice. The result is that, if one looks to the general governing medical law regarding individually-oriented informed consent, one should assume that it was being applied in the same patient-oriented fashion as law in Britain. However, the actual, legally-recognized medical ethics norms for clinical practice orient the physician-patient relationship in more family-oriented terms. See Tse and Tao (2004).

\(^5\) “The first among the East Asians to openly and enthusiastically espouse the idea that Confucianism had much to do with the rapid industrialization of the region were politicians. Most notoriously, Singapore’s senior statesman Lee Kuan Yew has invoked Confucian values – under the guise of ‘Asian values’ – with the apparent aim of justifying constraints on the democratic process. Authoritarian governments in the region have similarly appealed to Confucian values meant to contrast with Western-style democracy. . . . Confucian principles may also help to explain the fact that contemporary East Asian states rely mainly on nonstate agencies – community, firm, and family – to finance and provide welfare services, with significantly less direct state financing of services than other developed states” (Bell and Halm, 2003, p. 3). See, also, Goodman et al. (1998).
established elite not to be exploitative of its position, but rather to exercise authority in a benevolent manner so as to secure and maintain important social structures and goods, most particularly the flourishing of individuals within the family.\textsuperscript{6} Formal examinations held to select civil servants in Singapore, Taiwan and contemporary mainland China are an inheritance from the Confucian tradition and have no direct counterpart in Western countries.

Such polities have a market orientation grounded in the convictions that (1) the market can be trusted to increase wealth and (2) that property is integral to human flourishing. Property rights are held to more fully reflect the dignity of persons than do civil libertarian rights, such as rights to political protest and dissident political commentary. Hence, the market is taken to be the proper means for people to increase their wealth and enrich their lives.

The moral and political character in such polities expresses the cardinal Confucian virtue of benevolence (\textit{ren} 仁). Benevolent governance (\textit{ren zheng}, 仁政) requires the acquisition of people’s safety and welfare. But this objective cannot be achieved by establishing egalitarian welfare rights, because such rights are in tension with the Confucian family-oriented ideals and values. Indeed, many East Asian regions draw elements from Confucian philosophy that are at their core familist in two decisive ways. First, political structure and governance are understood neither in terms of a Rawlsian hypothetical rational contract nor in terms of an Lockean actual historical contract, but rather in terms of a comprehensive moral vision where society is regarded as a large family of families. Just as claims of civil liberty and equality and participation in active protests should not be central to family life, or at least to the functioning of traditional families, so, too, such behaviors are regarded as out of place in a directed benevolent market polity. Second, political theory and governance are aimed at recognizing and nurturing families as entities that are responsible for the welfare of their members. Normally, individuals should rely on their families, rather than government, to secure their welfare in general and health care in particular.

Indeed, a focus on families lies at the root of a number of bioethical practices that distinguish many Asian societies. First, patients are presumed, unless proven otherwise, to wish to be treated within the nurturing concerns of their family members (Fan, 1997; Chan, 2004; Fan and Tao, 2004). The burden of proof, unlike that in North America and Europe, is on patients to show if and when they wish to be considered as isolate, autonomous individuals rather than as integrated members of a family (Fan, 2002; Cherry and Engelhardt, 2004). As a consequence, prognoses that might be emotionally difficult for a patient immediately to accept are mediated first and foremost through family members (Fan and Li, 2004). Moreover, consent to

\textsuperscript{6}There are numerous legitimate concerns about how to check and balance power and to avoid abuse in such East Asian polities as have just been described. Any reflection upon these concerns would require addressing a considerable literature and exploring a long list of issues. Such falls beyond the compass of this book, much less this chapter. Here the attempt has been much more modest: to offer a Confucian reconstruction of social and political reality one encounters. Also, traditional Confucian literature itself addresses issues of checking the abuse of power and establishing appropriate balancing institutions. This too falls beyond the endeavors of this book.


treatment is acquired via a family-oriented model, which avoids the harmful effects of approaching patients in isolation from the support and direction of their families (Cong, 2004).

Second, there is an appreciation that families should bear primary responsibility for the costs of health care for their members. The best public policy example is the Central Provident Fund of Singapore, which compels citizens to accumulate wealth within families by establishing savings accounts and to learn free and responsible choice in the use of these resources. These savings accounts not only provide resources for health care, but since they can be transferred without tax consequences for the needs of other members and can in addition be given to heirs and assigns, they have the effect of increasing the wealth of families that act responsibly (Duff, 2001; Healthcare Research Group, 1999). Moreover, they contribute to an ethos of mutual propriety within families.

Finally, given the commitment of directed benevolent market polities to property rights, and to improving the standard of living through creating wealth, humanitarian concerns are primarily pursued through a leveling up of the circumstances of citizens through increasing wealth, rather than a leveling down through heavy progressive taxation or restrictions on the free-market purchase of better basic health care, as in Canada. The income tax rates in areas such as Singapore and Hong Kong are significantly lower than those in the Western social democratic countries.

7.3 The Confucian Perspective: Why It Is So Different

The Confucian worldview is grounded in a moral experience of benevolence (ren 仁) cultivated and sustained in rightly-directed ritual behavior (li 礼). This understanding is complex and includes the following salient features. First, Confucianism is not a social-democratic account or theory and, in distinction from such theories, is not primarily concerned with liberty, equality, human dignity, or human rights. Instead, Confucian thought has its own cardinal moral concepts such as li and ren. Li identifies proper rituals and ren identifies the realized full humanity, human heartedness or benevolence required to discipline oneself through proper rituals (li) so that one can become an authentic moral agent and

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7 The Confucian account offered in this section is based on the views of classical Confucian figures, Confucius (Analects, 1971), Mencius (1970) and Xunzi (Knoblock, 1999), without addressing any disagreement among them. Their disagreements, if any, are not relevant to the argument of this chapter.

8 To read such social democratic concepts into Confucianism involves at best a form of naïve presentism, and at worst a reconstruction of the past to meet the conceits of the contemporary age. It would produce a new account – a reform Confucianism, if you will – but would not constitute a presentation of the background cultural understandings currently influencing the moral and political thought of many people in the Pacific Rim (Fan, 2002a, b). Unfortunately, some most influential contemporary Neo-Confucians took pains to develop democracy from Confucian thought. For instance, see Mou (2000), (1987), and (1988). For an excellent analysis of the failure of his endeavors, see Jiang (2003).
appropriately engage in right action. As the cardinal Confucian virtue, ren is a type of human love naturally rooted in family relations, especially in the parent-child relation (Analects 1.2; Mencius 7A.15; The Doctrine of the Mean 20.5). Confucianism sees the foundation of morality in the cultivation of this natural benevolence and its gradual extension to other people (Analects 12.12; Mencius 4B28) through the observation of proper rituals (Analects 12.1). In order to become a virtuous person, one must first take care of one’s family members; then one should endeavor to assist people outside of one’s family. Finally, one who aids a great number of people by increasing their standard of living is considered not only a benevolent ruler, but a sage of the highest moral rank (Analects 6.28).

Although everyone is encouraged to cultivate the virtue of benevolence, only the gentleman can fully devote his mind to it (Analects 15.13) and be versed in it (Analects 4.16). Accordingly, only the virtuous should be selected to rule society, and they must govern people not by the force of punishment, but by the power of virtue (Analects 12.19) in line with proper rituals (li) (Analects 2.3). Confucians use li metaphorically to denote normal behavior patterns that manifest authentic human existence. Although every tradition has li in the sense of ceremonies or rites, Confucianism emphasizes the formation of moral character through proper Confucian rites. For Confucians, virtue can be cultivated through rites because rites embody a sense of solemnity or sacredness that can inspire and maintain the attitude of reverence in the hearts of participants, helping them to control their passions and live in an appropriate, rule-governed manner. In short, Confucian concerns with li differ radically from the cardinal, secular commitments of Western morality and political thought. Confucianism employs a unique moral epistemology linking virtue with ritual, so that, for instance, a one-party democratic election of a ruling group is appreciated as a morally authorizing act in conformity with public propriety, elastic politics, and civic virtue.

Second, Confucian thought affirms the market as well as the institution of private property. As Mencius argues, a government that deprives people of private property does not manifest benevolence. For Confucians, people deprived of private property will not have a fixed heart. In the absence of fixed heart, morality and social order lose their ultimate sanction. A government that deprives people of private property and then punishes them for trying to acquire it, entraps its citizens (Mencius 3A3: 3). Moreover, Confucian thought does not support an egalitarian pattern of redistribution through heavy taxation. Instead, Confucians emphasize that

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9For a brilliant exposition of the Confucian view of li, see Fingarette (1972). For a systematic exploration of the appropriate relation between ren and li for Confucius, see Shun (2002). For a collection of the 20th century Chinese research on li, see Chen et al. (1998). Also see Chapter 12.

10For a very helpful exploration of Confucian elitism as well as its favored way of selecting legislators and officials through examination rather than democratic election, see Bell (2000).

11The Chinese system of private ownership already formed in the Warring-State Period of China more than two thousand years ago. Confucians before Mencius may have supported a special public-ownership system, the so-called Well-field System of Land. However, as Zhao and Chen indicate, Mencius’ call for “forming property for the people” (wei min zhi chan, 為民置產) helped
governments must leave resources to families so they may care for the welfare of their members (Mencius 1A5.3). Confucius clearly states that government should not tax people for more than 10% of their income (Analects 12.9). Finally, Confucian thought is anti-egalitarian in that it emphasizes the necessity of a division of labor in the exchange of goods and services along with the different levels of social status this produces (Mencius 3A4; Xunzi 9). Since different types of labor and services are of unequal social value (Mencius 3A4; Xunzi 9), a fair and fruitful society must realize that better work receives higher remuneration through the market mechanism (Mencius 3B4; Xunzi 10).

Finally, the Confucian moral point of view does not seek a disinterested regard of individuals, but instead the moral flourishing of families. The values of families are not reducible to the total sum of the interests of their individual members. Because Confucian understandings of ren and li are located within the perspective of the family, the profit motive, or for that matter the greed that moves many if not most engagements in the classical market, is domesticated by being placed within a benevolent familial context. The profit motive is further moderated by forms of ritual propriety that direct resources towards the support of families (Redding, 1996). The family savings-account strategy adopted in Singapore is exemplary in this regard.

This Confucian account of benevolence, politics and governance is alien to both the secular character of social-democratic thought as well as the sparse claims of libertarian, limited-democratic theory. Undeniably, this account is often characterized as supporting authoritarian capitalism. However, such descriptions typically ignore the content and force of Confucian moral-political commitments to the maintenance of socially- and ritually-sustained virtue. In light of these commitments, one can appreciate the moral and political-constitutional differences shaping health care policy in the Pacific Rim.

7.4 Chinese Health Care Reforms: Towards a Confucian Health Care Policy

The People’s Republic of China maintained a socialist ideology from the early 1950s to the late 1970s, but since that time has gradually moved toward a market economy. The world has witnessed enormous changes in almost every aspect of Chinese social life, health care included. How should we characterize the ethics and politics of such changes? How should we properly evaluate Chinese health care reforms? This section argues that China not only could but also should formulate a health care policy that manifests Confucian values on the model of a directed benevolent market polity.

In its formal principles, the Chinese socialist approach to health care mimicked the liberal egalitarian social-democratic ideology prevalent in contemporary

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to bring about the privatization of land. Since Mencius, Confucian scholars have always supported a marked system based on private ownership (See Zhao and Chen, 1991, p. 5).

12For a vivid exposition of Confucian family values, see Liang (2003).
Western states. It required that equal basic care for all people be ensured by the
government through public resources. The Chinese government pursued this ideal
by establishing a series of strictly government-controlled, but differentially funded,
health care projects. First, private ownership was abolished in the 1950s, and all
significant productive means and wealth were confiscated by the government and
became “public.” The government gradually set up three different types of health
care project. The first was “public-fee medical care” (*gong fei yi liao* 公費醫療),
financed directly by government revenues and providing free health care for gov-
ernment officials and the employees of governmental institutions. The second was
“labor-protection medical care” (*lao bao yi liao* 勞保醫療), financed by state-owned
enterprises and companies to provide medical care for their employees with only
token personal co-payments. The final project was “cooperative medical care” (*he
zuo yi liao* 合作醫療), in which each collective-owned village provided peasants with
the services of barefoot country doctors – financed through premiums paid by the
peasants and supplemented by small government subsidies. At least ostensibly,
most Chinese were covered in these public health care projects in the early 1970s.

The cooperative medical care project dissolved in the early 1980s when the
economic reforms began. At that time the families of the Chinese peasants won
back a right to determine their production and appropriate their income as they saw
fit, no longer being strictly controlled by the village collective and the government
under the centrally planned economy. The cooperative medical care project col-
lapsed because the peasants were no longer interested in contributing resources to it.
Some critics lament this collapse because peasants have returned to the traditional
way of purchasing medical care out of their family savings. However, the project
failed to gain the peasants’ support because of several important shortcomings. First,
it was built on the mandatory “collective” economy which deprived citizens not only
of the private property, but also of familial financial autonomy. Second, it offered
very low-quality medical services through the barefoot doctors because they were
not adequately educated or trained. Finally, although it claimed to offer equal care
for all the peasants, cadre-favoring corruptions were not uncommon. Village chiefs
received better medications and treatments, while ordinary peasants were treated
poorly (Zhou et al., 1991).

Labor protection medical care fared better, at least initially, insofar as it exploited
peasant labor and benefited from a centrally-planned system that focused on indus-
trial development. This policy generated a huge economic gap, including a gap
in access to quality healthcare, between the urban and rural areas. The policy
was challenged in 1953 by the so-called “last Confucian,” Liang Shu-ming
(梁漱溟), but the challenge was ruthlessly suppressed (Alito, 1986, pp. 324–330).
Nothing much changed until the market-based reforms of the 1980s brought
state-owned enterprises into competition. Their economic viability and that of the

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13“Barefoot doctors” refer to a group of young peasants who were selected to accept a short time
medical training and to offer medical care for the peasants while at the same time participating
manual agricultural labor by themselves. See Kunming (2002). Also see Fan (2006b).
labor-protection medical care project were no longer guaranteed by governmental revenues. Moreover, as medical markets developed and advanced technologies were imported, health care costs in governmental hospitals escalated. As a result, many state-owned enterprises could no longer afford the medical care project for their employees, and many urban workers, like peasants, had to pay directly for healthcare. At the same time, however, the public-fee medical care project for governmental employees remained intact, eliciting charges of unfairness from aggrieved citizens.

These circumstances led to the State Council’s 1998 decision to recast basic insurance for urban citizens. This new insurance plan requires that both employers and employees contribute so as to establish both savings accounts (which are tax-free and inheritable) for every employee and a united fund for catastrophic insurance. Covered individuals contribute about 2% of their salary to the medical savings account. Medical costs must first be paid through the savings accounts before the united fund can be used for reimbursement. According to a survey made by the Ministry of Health in 2003, the basic insurance covered about 30% of the urban population (about 9% of the total population). It had not fully developed as the original plan required because a great number of governmental officials and employees (accounting for 4% of the urban population and 1.2% of the total population) wanted to maintain the privilege of enjoying the vested benefits of their public-fee medical care project and were not willing to join the basic insurance.

Meanwhile, the government began to rebuild cooperative medical care for the peasants. A cooperative medical care insurance plan was launched in 2003 for every peasant through a tripartite annual financing plan – 10 yuan from central government, 10 yuan from local government, and 10 yuan from the peasant. The following table summarizes the percentages of the Chinese people covered in different types of health care insurance in the urban and rural areas in 2003:

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Total</th>
<th>Urban</th>
<th>Rural</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Insurance</td>
<td>8.9</td>
<td>30.4</td>
<td>1.5</td>
</tr>
<tr>
<td>Public-fee Medical Care Project</td>
<td>1.2</td>
<td>4.0</td>
<td>0.2</td>
</tr>
<tr>
<td>Labor-protection Medical Care Project</td>
<td>1.3</td>
<td>4.6</td>
<td>0.1</td>
</tr>
<tr>
<td>Cooperative Medical Care Insurance</td>
<td>8.8</td>
<td>6.6</td>
<td>9.5</td>
</tr>
<tr>
<td>Private Insurance</td>
<td>7.6</td>
<td>5.6</td>
<td>8.3</td>
</tr>
<tr>
<td>Other Types of Insurance</td>
<td>2.0</td>
<td>4.0</td>
<td>1.3</td>
</tr>
<tr>
<td>Out of Pocket Payment</td>
<td>70.3</td>
<td>44.8</td>
<td>79.0</td>
</tr>
</tbody>
</table>

15 The table was created with adapted English translations of the information offered by the National Survey on Health Care Service in 2003, available at http://www.moh.gov.cn/open/statistics/digest06/y25.htm. All websites used in this chapter were accessed in July 2008.
How best to evaluate the Chinese health care reforms (1980s–2005) has recently become a topic of hot debate. In July 2005, the State Council Development Research Centre publicized a report on the Chinese health care reforms,\textsuperscript{16} judging the reforms as a failure as a whole and seeing much of the problem as rooted in the reduction of government funding to the medical sector and in the introduction of market mechanisms to the health care area.\textsuperscript{17} In particular, the report argues that using savings accounts is not a good idea for health care because it does not conform to the basic principle of insurance and reduces the function of mutual benefit through insurance. This evaluation is misleading because it imposes Western notions about how to cultivate “mutual benefit” on Pacific Rim healthcare economies. In any case, the debate is still going on in current China regarding what is a proper Chinese health care system in the market economy.

The moral and political assumptions that distinguish the approach to healthcare in Singapore, Hong Kong, and current mainland China from that of the USA and the United Kingdom sustain, as we have observed, different frameworks of personal and family responsibility. In Singapore, from 6 to 8\% of one’s salary must be paid into a medical savings account. In Hong Kong, a 5\% payment must be paid into a savings fund that at retirement can be used for income maintenance as well as health care expenditures. From a Confucian perspective, the establishment of such savings accounts can be appreciated as integral to both the nurturing of ren and engagement in li. Importantly, the problem with savings accounts in the current Chinese basic insurance scheme does not lie in its rationale for funding health care, but rather in its not being sufficiently family-oriented, as it is in the Singaporean scheme. Unlike the Singaporean system, the Chinese savings accounts cover only individual employees, not their family members.

In fact, family health care savings accounts provide a social structure that avoids two hazards:

1. The political hazard of politicians’ promising entitlements that must be funded through future taxation, thus encumbering the future with the political rhetoric of the past.
2. The individual moral hazard of persons’ overusing health care entitlements, once they are created, thus undermining the long-term financial sustainability of such entitlement programs.

Since such savings accounts are tax-free and can be transferred among family members without tax consequences, they not only avoid the political and moral hazards usually involved in insurance systems, but achieve a number of important moral goods. They nurture individual responsibility regarding the purchase of health care,


\textsuperscript{17}Such judgments have been echoed by some Western scholars from views grounded in liberal social-democratic ideology. See, e.g., Blumenthal and Hsiao (2005).
pharmaceuticals, and medical devices. When such funds can be shared without tax consequences among family members, an incentive is created for families to recognize themselves as a social unit and to work together as an integrated whole. Accordingly, rather than abolishing the savings accounts in the basic insurance, China should extend them to cover all family members.

Such family-oriented policies have produced striking results in the Pacific Rim, where successful programs have effected a shift towards private healthcare financing (Goodman et al., 1998). In Singapore, governmental health care expenditures amount to only around 30% of health care financing. Though people admire Hong Kong’s quasi-free medicine for all residents via its public hospitals, most Hong Kong people in fact use family savings to visit private clinics for their ordinary health care. This is why the percentage of Hong Kong’s health expenditures from public coffers is less than 60%, making Hong Kong more analogous to the United States in its relatively low reliance on public funds for health care expenditures – in the United States only about 44% of the health care dollar is public (Smith et al., 2005, 189). Social-democratic polities of Western Europe and Canada, on the other hand, depend primarily on government funding – the percentage of the public covered by governmental insurance ranges from 92% in Germany to 100% in Sweden and Canada (Anderson and Poullier, 1999, 181).

The following table indicates relevant health care information on Singapore, Hong Kong, mainland China, USA, and UK (in 2001, unless otherwise marked):18

The contrasts between Singapore and Britain are striking. In Britain only about 18% of the total health costs were paid by individuals and their families, while in Singapore the figure was about 67%. This indicates that individuals and their

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18 The sources of the information for this table are the following websites:

1. **WHO:**

2. **Hong Kong government:**

3. **Winterthur Insurance (Far East) Pte Ltd:**

4. **XL Winterthur International Co Ltd:**

5. **Chinese National Survey on Health Service:**

6. **US Census:**

7. **National Statistics (UK):**
families in Singapore took more financial responsibility than those in Britain – and probably avoided the entitlement-induced moral hazard of over-spending. Singapore spent only 3.9% of its GDP on health care, while Britain spent almost double that figure. Evidently, the Singaporean medical savings accounts played a very positive role in taking care of people’s health care while controlling financial costs.

Before the reforms in mainland China, government controlled nearly all economic resources. There was no private medical sector or private insurance. People were compelled to participate in one of the three medical care projects, which, in the name of equal basic care for all, offered health care of quite different quality. A small group of people enjoyed unfair privileges from the public-fee medical care project and up to the present they still want to maintain it by refusing to join the basic insurance. The reforms have brought in private clinics and hospitals and promoted competition between the public and private sectors. The Chinese people have obtained choices for their health care financing based on their family circumstances. As the first table shows, even in the countryside about 8% of the peasants have secured private health insurance of some type, which would have been unimaginable before the reforms.

Of course, it is an enormous challenge for China to build quality basic care for its peasants, who constitute about 60% of the Chinese population. But the problem is by no means only a health care problem. Strikingly, there is still a huge income gap between the rural and urban residents, with urban residents earning three times as much per capita.19 Correction cannot be achieved by offering bits and pieces of welfare to the peasants. A robust Confucian benevolent policy must be formulated to benefit the peasants. Healthcare reform is, in fact, only a facet of the needed

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reforms – more robust property rights are perhaps even more crucial. The fundamental point is that China should develop a directed benevolent market polity in which the Confucian teaching of enriching the people (Analects 13.9) should be enacted by securing their private property ownership and using the market to meet their various health care needs through effective family financial responsibilities.

Finally, blaming the market as a dirty hand, distorting and corrupting Chinese health care, is simply misleading. The problem was not generated by the introduction of the healthcare market. To the contrary, Chinese health care markets are far from being sufficiently developed. There are only about 1,500 private hospitals throughout the country, since most local governments require those covered in the basic insurance to use only governmental hospitals to spend their savings accounts or reimburse their medical costs from the united fund. Moreover, the government maintains a cluster of public policies originated from the past centrally planned system and generates only improper incentives in current health care markets. For instance, physicians in governmental hospitals are not rewarded for providing better care. Accordingly, economic incentives are generated only by paying physicians under the table (so-called “red packets”) in order to get access to better basic care. It is such improper policies that have distorted the normal operation of the market and induced the corruptions of Chinese health care.

7.5 A View from Asia: Not Bioethics as Usual

This essay takes moral difference seriously, while focusing on the substantive particular moral commitments that define Confucian bioethics and health care policy. In important ways, the health care policy of Singapore, Hong Kong, and even current mainland China reflects moral commitments and an understanding of bioethics other than that of the established bioethical views of Western Europe or even the United States. Core to these differences is the Confucian recognition of the centrality of the family and its understanding of society as appropriately a family of families. Core as well is the central role played by ren (benevolence) and li (ritual propriety) in sustaining the meaning of the family and of political activities. Because there are family resemblances between Confucian concerns with benevolence and families and Western moral concerns with benevolence and families, appeals to ren

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20 For instance, economic reform so far has given the peasants’ families a right to manage their production on land, but not a right to own land. Rural land is often sold to land developers by local governments and village chiefs without benefiting the peasants. That is, the Chinese peasants still have not obtained reliable private property in Mencius’s sense, so that they cannot control their land as they wish and consequently raise their standard of living, health care included. Accordingly, quality basic health care for the Chinese peasants, like other items such as education and housing, have to be achieved by their first securing a right to own their land.

21 For detailed analyses and explorations of the corruptions in the current Chinese health care reality, see Chapter 8.
do not at once produce a clear recognition that one is encountering a fundamentally different set of moral understandings.

However, the Confucian appreciation of benevolence and families cannot be fully grasped without understanding the Confucian concept of *li*. Concerns with ritual behavior or ritual propriety are not central to much of moral life in the West, much less to its moral theory. In the light of Confucian concerns, however, ritual behavior is understood not merely as expressing social conventions, but as achieving virtue and moral knowledge. Ritual does not merely create social reality, it is a means of appreciating moral structures and commitments. Family-oriented rituals in the Confucian tradition not only provide opportunities for individuals to cultivate a benevolent heart, but also direct government to enhance solidarity through the cultivation of caring and responsible families. Only by first acknowledging these distinctions, is it possible to effect appropriately critical comparative analyses between Western and Pacific Rim healthcare policies.
Chapter 8
How Egalitarianism Corrupted Chinese Medicine: Recovering the Synergy of the Pursuit of Virtue and Profit

8.1 Three Varieties of Medical Corruption in Contemporary China

China is characterized by dramatically different levels of economic and technological development. Areas such as Beijing, Shanghai, Guangzhou, and Shenzhen are rapidly approaching a level of economic development equal to areas in Western Europe and North America. These areas of China possess physicians, hospitals, and health care resources comparable to the best in the developed world. In contrast, in rural areas of western China, resources in general are very limited, and access to basic health care is constrained by both lack of funds and the absence of modern, high-technology medicine. Between these two extremes, there is a continuum of levels of technological development and access to care. Access to health care also is affected by the fact that about 70% of the population (specifically, 79% of rural residents and 45% of urban residents) pay for their health care out of pocket, with only 30% covered by insurance of some sort (Ministry of Health, 2003). The largest insurance program is the government-run basic insurance plan designed in 1998 for employees in urban areas. Although this insurance is supplemented by a mandatory, individual medical savings account, both the insurance (a united fund) and funds from the medical savings account are available only for treatment at approved government hospitals.1

At present, like other elements of Chinese society, health care is being reshaped by market forces. Among other things, physicians are coming to recognize that, if

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1This new insurance plan was formulated according to the State Council’s decision (The People’s Republic of China State Council Decree 44/1998) for urban citizens. It mandates that both employers and employees contribute so as to establish medical savings accounts which are tax-free and inheritable for every employee as well as a united fund for catastrophic insurance. Under this plan, one’s medical costs are first paid from one’s savings account before the united fund can be used for reimbursement. Although the State Council’s decision does not require that the benefactors must use government hospitals, most local governments have decided that only the medical costs incurred from government hospitals can be reimbursed from this plan. Such local policy has granted a virtual monopoly to government hospitals and fails to generate fair competition between government and private hospitals. I shall discuss this issue further later in the chapter.
they are in the right circumstances – e.g., able to be admitted to practice at private hospitals of great excellence that are frequented primarily by foreigners and very rich patients from major urban areas – they can earn incomes somewhat analogous to their colleagues in Hong Kong, Western Europe, and North America. Others appreciate that they at least will earn incomes sufficient to allow them to purchase many of the new goods and services now available in China’s market economy. Many patients and even some physicians hold that the allure of better remuneration is corrupting the dedication of physicians and undermining the trust that once characterized the physician-patient relationship in China. People generally complain that it is too hard to visit a physician and too expensive to get treatment (看病難，看病貴).

At the very least, the physician-patient relationship in China is in a period of transition. In particular, three forms of corrupt practices have become common in government hospitals. The first two are a function of the circumstance that, unlike their counterparts in North America and Western Europe, Chinese physicians not only prescribe but also sell those drugs they prescribe to their patients. The third practice, which involves informal extra payments to physicians, is analogous to practices in former Soviet Bloc countries, as well as in other Pacific Rim countries. These three practices can be summarized as follows.

(1) The over-prescription of indicated drugs: physicians will prescribe and sell to patients more of a drug than is most likely necessary for treatment. Although at times this is done to provide patients who have come to a large city hospital but who reside in distant rural areas with a sufficient amount of a medication in the event it would be needed, the motivation is usually to increase the physician’s revenue.2

(2) The prescription of more expensive forms of medication than indicated for treatment. This practice, along with the practice of ordering more diagnostic work-ups than are clearly indicated, is motivated by the desire to increase the physician’s income. Although at times this is done without a shred of actual justification, usually the decision falls in a gray area where the prescription of the drug or the diagnostic work-up is not clearly without indication. In most cases, such expensive forms of medication are prescribed to the patients who

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2More accurately, the direct result of a physician’s over-prescription is to increase the total revenue of one’s department as well as one’s hospital. Consequently, everyone in the hospital, both physicians and administrators, will benefit. Under present policy, a physician’s payment scale includes two parts: basic salary and bonus. The basic salary is fixed by the government, but the monthly bonus depends on how much revenue one’s department and hospital make. The amount of bonus a physician receives, at least in large government hospitals in big cities, is as much as, if not more than, the amount of one’s basic salary. Strikingly, for most government hospitals, approximately one half of the total hospital revenue is from selling the drugs prescribed by physicians. This circumstance and relevant policy are taken to be using medication to raise medicine (yi yao yang yi, 以藥養醫). See footnotes 3 and 14 for more relevant information on drug-related issues. See footnotes 10 and 11 for more details of the physician payment scale.
are covered by insurance plans or to some direct-paying patients whose mailing addresses or other features indicate that they are from affluent districts. The use of supplementary cash payments to physicians for quality care. This practice goes under the term “red packets” (红包). The payments are made to secure either better care or access to treatment from a more qualified physician.

The first two phenomena involve distortions of the physician’s clinical judgment, in that they lead to the provision of treatment or diagnostic interventions that are not clearly clinically indicated. Such practices may lead to risks from the side effects of over-treatment or receiving unnecessary diagnostic procedures. These two phenomena corrupt medical practice in the sense that they improperly distort the ways in which physicians treat patients medically. The third phenomenon corrupts medical practice in that it goes against established legal practices and thus brings into question the rule of law in medicine. Although the practice itself likely has no adverse clinical outcomes and may even motivate better care, it is both illegal and formally

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3 The prescription of more expensive forms of medication than are clearly indicated for treatment is further complicated by the phenomenon of kickbacks (hui-kou, 回扣): some drug companies and middleman distributors illegally offer payments to physicians in proportion to the amount of their drugs prescribed by the physicians to their patients. Nobody has precise information about how common or severe this problem is. It is generally believed that, unlike the red-packet phenomenon, this corruptive practice involves practitioners of internal medicine more than surgeons. Some publicly noted legal cases indicate that the problem could involve entire hospitals as well as most of their physicians. That is, some hospitals as institutions make illegal deals with drug companies for kickbacks. For a useful analysis of the circumstances of Chinese medical care and the drug policy that led to over-prescription, the prescription of more expensive forms of drugs, and the practice of kickbacks, see Chen and Lin (2004). For relevant legal issues, see Wang and Wenjun (2005) and Wang, W. (2005).

4 Since this practice is illegal, there is no way to obtain precise statistics regarding its prevalence or severity. Indeed, for all the three forms of corruption addressed in this article, I have learned much more through personal experiences, private communications with physicians, and browsing informal discussions uploaded on various Chinese websites than from reading formal journal articles. Regarding the red-packet practice, the following facts are worth noting: (1) It involves many physicians in almost all government hospitals, especially good-quality physicians in large government hospitals. (2) It occurs much more often in surgical departments than in other types of departments, particularly because patients and their families want to use red packets to secure experienced doctors to perform the operations and to make them more careful in performing the operations. (3) Most red packets are voluntarily offered by patients and/or their families rather than required by the physicians. (4) If a physician never has a chance of receiving a red packet, the physician is not considered to be technically good. (5) Although everyone knows that the practice is illegal and violates the medical ethical code of government hospitals, it is rarely reported to authorities or prosecuted at court, unless a medical incident or malpractice has occurred.

5 The phenomenon of prescribing more expensive medications than can easily be justified occurs in other countries, too. In the United States, this phenomenon is complicated by the presence of liability concerns. As a result, in the United States and elsewhere, expensive diagnostic work-ups and investigations of questionable value may be undertaken primarily for the purpose of practicing defensive medicine rather than for the benefit of the patient. Of course, it occurs as well when the physician may profit from fees for laboratory and other tests.
unprofessional: it brings physicians into disregard, and thus corrupts society’s trust in physicians. It is true that in many areas of Asia, there is the custom of gift-giving in order to secure or maintain a good relationship. For instance, the Filipino phrase “tang na loob” and the relevant practices express a concept of reciprocity or debt of gratitude or honor that imposes corresponding obligations and behavioral expectations (Alora and Lumitao, 2001, p. 12). However, it is not appropriate to offer a cultural defense for the Chinese red packet phenomena. Chinese do have a gift-giving culture. But it is one thing to deliver a gift expressing gratitude or in order to maintain a good relationship, and quite another to bribe physicians under the table in order to obtain a quality service that should have been available in a legal and transparent way.

Many Chinese officials and scholars regard these forms of corruption, together with other problems in the Chinese health care, as the effects of market forces distorting the sound or appropriate character of the physician-patient relationship. Physicians and their sense of professionalism are seen as having been corrupted by concerns for financial gain. On the part of many, the view is that concerns for profit introduced by the market have led physicians to abandon a previously virtuous

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6Similar phenomena occurred in the former Soviet Bloc, such as the situation of giving gratuities to physicians in Hungary (Adam, 1989). This Hungarian “red packet” practice was initiated in the years 1950–1954 when the doctors were regarded as civil servants and assigned low salaries. Although the law prohibited them from accepting any gift from patients (and the penalty was up to two years imprisonment), the giving and accepting of gratuities for doctors nevertheless became more and more frequent. Eventually, such gratuities came to be considered part of the wages of the doctors, which came to be acknowledged in semi-official comments and in the media.


8In the view of many officials, including some from the Ministry of Health and scholars working for the State Council Development Research Center, marketization (shi chang hua, 市場化) was the main factor causing the corruption of the contemporary Chinese health care system. See a broadly noted research document provided by the State Council Development Research Center in August 2005, available at http://dazhen.blogchina.com/2573588.html. Indeed, the term “marketization” has come to serve as an umbrella concept to cover the multi-faceted aspects and problems of contemporary Chinese societal circumstances and has been used to blame the direction and operation of Chinese health care reform launched since the 1980s. When people talk about health care marketization, a cluster of different meanings are involved, such as: (1) the government’s abolition of the central-planning strategy for health care as adopted in the 1950s and 1960s; (2) the government’s failure to offer a general health insurance for most people; (3) the attempts of some government offices to make money for themselves through the manipulation of health care policies; (4) the government’s failure to invest sufficiently in public hospitals; (5) the government’s failure to regulate and manage public hospitals effectively; (6) the conduct of unprofessional, illegitimate, and even illegal activities by public hospitals in order to expand their size and enlarge their revenues; and (7) the high income accrued to medical professionals through unprofessional, illegitimate, or even illegal means. In the present chapter, I maintain that the term “marketization,” as well as the views usually conveyed by appeals to this term, are at best incomplete and ill-formed even when they are generally not false (such as in the meanings (1) through (5)), because they fail to make necessary identifications, clarifications, and elaborations of the problems at stake. They are at worst wrongheaded when they are meant to blame the market mechanism for the problems (such as in the meanings of (6) and (7)), because they miss the real policy root of the problems.
commitment to maintaining physician-patient trust. In this present chapter, I shall demonstrate that this account of the roots of the corrupt practices in Chinese health care is at best one-sided and incomplete. I argue that the true source of the distortions corrupting the Chinese medical profession and the physician-patient relationship is the result of a cluster of public policies that establish fundamentally misguided incentives. The second section of this chapter advances the view that the red packet phenomenon reflects rational responses on the part of patients and their families to a system that does not allow physicians to be rewarded for providing better care so that patients and their families cannot openly and legally purchase a better quality of medical care when they are willing to spend more resources. The other two practices, i.e., the over-prescription of medication and the prescription of more expensive drugs and tests, although surely corrupt and unjustifiable, are an understandable response on the part of physicians to an ill-structured government attempt to contain medical costs for patients. The third section offers proposals for needed policy reforms to eradicate effectively these corrupt practices. The fourth section shows why the necessary policy reforms cannot be appreciated within the conventional Chinese socialist moral ideology. Instead, the required reforms can only be justified and motivated by traditional Confucian moral thought. The final section covers concluding remarks on the necessity of a market-friendly Chinese medical ethics.

8.2 Distortions of the Medical Market

There are cardinal elements of Chinese health care policy that have led to the distortions and invite the corrupt practices described above. First, the fees for physician services in government hospitals are fixed. It is impermissible for patients to pay more for better basic care or to pay more for care by physicians of greater talent and better training. As a result, there cannot be an open and legal way to accommodate the interests of patients with resources who wish to purchase better care, and the interests of physicians who wish the financial rewards for providing better care in such hospitals. Accordingly, patients with resources either will move to high-quality private hospitals for better care if such hospitals are available, or will pursue better care in public hospitals through an illegal red packet response.9

Second, high-quality private hospitals are not available in most places, and private and public hospitals do not compete on a level playing field. Currently, throughout mainland China, there are only about 1,500 private hospitals, while there are approximately 70,000 government hospitals (Chen et al., 2008).

9This is not to deny that some patients and their families may have given red packets to physicians, not to secure seek better care, but only to secure the usual standard professional care. They might have been concerned that, in the already corrupted medical environment, physicians would not take care of them according to standard professional requirements if they did not give red packets.
most private hospitals are small. They find it difficult to survive, much less to grow, because their public-sector competitors enjoy significant policy advantages, in addition to receiving government subsidies. For instance, individuals who possess the basic (government) insurance plan are required by local governments to use only government hospitals in order to spend their savings accounts for medical care or to be reimbursed for their medical costs from the insurance fund. Consequently, government hospitals dominate the market in almost all urban areas of China. Physicians are unable to find suitable private hospitals in which they can practice and charge fees commensurate with the quality of care they wish to offer and at prices that patients are willing to pay. In other words, some patients can and are willing to pay, but private hospitals are not available or of a sufficient quality to support the kind of care that patients want. Accordingly, patients with adequately paying jobs find themselves in a position in which they can only acquire better medical care by illegally paying extra for it in public hospitals. In addition, many wish to use the money in their medical savings accounts and the fund provided from their insurance coverage, and therefore go to public hospitals and then seek to upgrade the quality of their care through the use of red packages. Thus, the red packet phenomenon can be taken as a reasonable black-market solution to these policy problems.

Similarly, instead of claiming that over-prescription and the prescription of expensive forms of medication and diagnostic services have resulted from the introduction of various health care markets to Chinese health care, it is more accurate to hold that these practices have been generated by an ill-structured government policy on physicians’ payment scales as well as the misguided incentives established by this policy in public hospitals. First, the government sets physicians’ basic salaries at a very low level and then expects them to enlarge their income by gaining bonuses through their services to patients.10 Second, the fees for physician services are set at a very low level in comparison with the charges for drugs or technology-mediated interventions.11 In this case, many physicians consider themselves compelled to earn or to supplement their livelihood through the sale of drugs or the performance

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10 For example, physicians’ basic monthly salaries in a top government hospital in Beijing are somewhat in this order (in U.S. dollars): $250 for a resident physician, $300 for a consultant physician, and $360 for a senior consultant physician. In contrast, they can usually receive a monthly bonus in the amount of $250–$400 depending on the titles they hold, as well as the financial situations of the departments in which they work. Usually physicians in the departments that conduct surgeries secure larger bonuses.

11 For example, ordinary physician service charges for a regular patient visit in a top government hospital in Beijing are quite low (in U.S. dollars): $0.65 for a resident physician, $0.85 for a consultant physician, and $1.85 for a senior consultant physician. In contrast, high-technology diagnostic work-ups are expensive. A CT scan costs the patient $50, and a MRI examination can cost as much as $120. Finally, the most common way of gaining money for most hospitals is by prescribing and selling drugs. Again, as much as 50–60% of their total revenues are from drug sales.
of high-technology procedures,12 with the result that physicians seek reasons to justify their prescription of more drugs or more costly drugs or to require more expensive diagnostic work-ups, shifting the burden of proof against prescribing or doing less.

The corrupt practices characterizing contemporary Chinese medical care thus plausibly can be laid at the feet of policies that artificially limit the ability of physicians to bill adequately for their services, and the ability of patients to secure better basic care. It is not the introduction of market forces into Chinese health care that inevitably has generated these problems.13 Rather, it is the improper policies governing the market that have distorted the market’s normal operation and induced the prevalence of the three forms of corruption. The improper policies have developed these three forms of corrupt practices as hidden rules that actually govern medical reality in China, even though they are in contradiction with the publicly announced rules (Fu and Li, 2005). Chinese physicians and the Chinese medical profession as a body have recognized that corrupt practices distort the physician-patient relationship and undermine medical professionalism. But they have failed to recognize clearly the root causes of the corruption. There have instead been attempts to suppress these corrupt practices without addressing the policies that make these corrupt practices attractive. In particular, there has been a failure to adjust physician payment scales for services upward. Only such reforms can lessen the temptation to engage in such corrupt practices.

8.3 Proposals for Policy Reform

It goes beyond the scope of this chapter to address the full range of policy issues relevant to current Chinese medical care practices, such as how to set up broad health insurance plans to cover more citizens, especially peasants, under the Chinese health care system; which proportion of public resources properly should be invested in

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12 In private communications, physicians draw an analogy between the impact of current health care policy on physicians and the circumstances that induce persons to become prostitutes.

13 This is not to deny that in circumstances where the market is greatly constrained or rendered marginally inoperative, as was the case in China in the 1950s and 1960s, there were not the forms of medical corruption similar to those discussed in this article. However, there were few public examples of better goods and services producing better financial rewards, and fewer goods and services to purchase. But one should not forget that in such circumstances corruption nevertheless tends to abound as a strategy for coming to terms with all-encompassing bureaucracies. This is to say, the market does play a role in the salience of the corrupt practices in current Chinese society, in that the allure of better rewards for one’s services increases in a market economy where one is provided with numerous instances of better goods and services producing rewards for the providers. The presence of more goods and services for purchase increases the interest in earning more. However, the market is at most a necessary, but not a sufficient, condition for the emergence of such corruptions. The sufficient condition is, so this chapter argues, the improper government policies that have misguided and distorted the market.
the public health sector; and what specific policy reforms should be made regarding the production, circulation, and sale (including wholesale and retail) of medical drugs.\textsuperscript{14} This section lays out only a proposal for reforming the current policies that are directly related to public hospital management and that underlie the corrupt practices reviewed above. The basic point is, as China turns to building its health care system in a market economy, it will need to reexamine critically the ways in which previously established government policies in a planned economy no longer serve the goals that motivated their creation. The recommendations offered here are by no means exhaustive. They are intended to indicate that it is the failure of the government, rather than the market, that is the root of current corruption in the health care system. They are also meant to be heuristic examples for Chinese policymakers as well as the public to consider in re-exploring what policies are suitable for Chinese health care consistent with the market forces.

First, in order to bring more resources into health care while containing costs and serving the various health needs of the citizens, the government must support competition between public and private hospitals on a more level playing field. It is often the case that patients with resources cannot find a good-quality private hospital to satisfy their needs. If they possess the basic government insurance and a medical savings account, it is almost always the case that they are not allowed to use it at private hospitals. Accordingly, they find themselves in a situation in which there are strong incentives to turn to government hospitals and bribe their physicians through

\textsuperscript{14}The Chinese policies as well as the circumstances of drug production and circulation have been misguided in recent years. Presently there are more than 4,000 drug producing companies, 8,000 wholesale companies, and 120,000 retail businesses (see http://news.sina.com.cn/c/2006-02-19/07109140510.shtml). Regarding drug prescriptions and sales in public hospitals, it has been the policy that the more expensive a drug purchased by hospitals, the greater degree of mark-up the hospitals are allowed when selling the drug to patients. This policy has encouraged hospitals to import more expensive forms of drugs and physicians to prescribe them. Indeed, it appears that the processes of drug licensing, pricing, and circulation in contemporary China are abominable. Here again many of the corrupt practices are due to government interference in the normal incentives offered by the market. For instance, the government sets the price for generic drugs at prices for which companies may no longer be interested in producing them. Instead, they seek profit to producing new drugs where the profit margin is not as constrained. In addition, there are numerous corrupt distributors engaged in various kick-back schemes that dramatically increase the price of drugs. So for example, a drug that may have the price of 3 Yuan when sold by the pharmaceutical company may cost the patient 25–30 Yuan. Most of the profit goes to in-between distributing companies, drug promotion representatives, and various administrative organizations both outside and inside the hospitals, see Meng and Zhou (2006). This chapter does not intend to tackle these sophisticated issues. However, in no way as a defense of the corrupt practices in China, it must still be noticed that in any well-functioning economy, a great deal of a final price of any good or product is attributed to the profit of middlemen who are essential to sustaining the economy’s function. It is because of lack of middle man that crops rotted in the fields rather than to be taken effectively who would consume them. The Marxist ideology of Soviet Union did not recognize it is central for middle men to have the incentive profit in order to effectively move produce from the fields to consumers. The increase in price due to middlemen is thus good. It is the price paid for an effective distribution system. In short, the China’s problems lie primarily in its policies for setting drug prices as well as the poorly functioning governmental procedures in approving drugs.
red packets in order to acquire better basic care. Thus, a specific policy reform that the government should conduct is to permit private, as well as public, hospitals to accept patients under the basic government insurance plan and medical spending accounts.15

Moreover, the creation of a more level playing field also requires the nullification of unfair policy privileges for the large government hospitals located in big cities. Such large public hospitals have most of the health care resources, most of the best professionals, and most of the policy support in Chinese health markets. In the first place, they have been defined as non-profit hospitals,16 so they are tax-exempt, even though they generate enormous income through expanding their size and the use of their high-tech medical facilities (Du, 2005). Moreover, they receive the same proportion of direct government subsidies (about 10% of total hospital revenues), if not more, as other mid- or low-level government hospitals, despite being in a much better economic situation than the latter because patients with resources always turn to the larger hospitals for medical care even when their medical problems are not serious. These two privileges, together with the benefit of being eligible to receive payments from the government insurance plan, have placed large public hospitals in an unfair monopolistic position in Chinese health care markets. At the same time, however, the basic payment scales of physicians in these hospitals are similarly fixed and controlled by the government, just as in the case of all other government hospitals. As a result, the physicians in these hospitals—who are generally the best medical professionals in the area—have to prescribe more drugs and more expensive forms of drugs, use more high-tech diagnostic procedures, and accept red packets in order to increase their income.

In order to spend public health care resources efficiently and to create an environment for fair competition, the government needs seriously to consider whether all such large hospitals should be kept as public, non-profit institutions. They may wish to have many of them privatized. Also, even if the government wishes to maintain their tax-exempt status, these hospitals should no longer receive government subsidies. At the same time, they should gain the freedom to make their own salary policies for their physicians as well as decisions regarding their preferred target patients and suitable price schedules. Mid-level and low-level government hospitals

15 An investigation made by Shandong University Medical School has found a number of advantages possessed by private hospitals in Shandong province: (1) relatively low hospitalization costs; (2) good service attitudes; (3) convenient geographical positions; (4) flexible hours of access; (5) simple procedures; (6) various and flexible methods for payment; (7) sound communication with patients; and (8) good institutional environments. Nevertheless, they have not been approved to accept patients using the government insurance plan for the reimbursement of medical costs (see Chen, Yang, and Shen, 2008).

16 According to a recent speech delivered by the Minister of Health, the government investment accounts for 7–8% of the total revenue of a public hospital (see http://news.sina.com.cn/c/2006-02-19/07109140510.shtml). Indeed, this is not a big proportion in terms of the total revenue of a public hospital. However, it means an extra benefit for large hospitals, while it constitutes an essential but far from sufficient amount of funds for maintaining the normal operation of a small-scale public medical institution or a community hospital.
and clinics should receive more funds from the government to provide sufficient support for their staff and services. Their target patient population should be the middle- and low-income families who do not enjoy any first-rate health insurance plans and have to pay out of pocket. The prices for their services must be constrained and monitored by the government. In this way, a useful division of functions and a healthy competition among different types of hospitals would be created and encouraged, with the availability of adequate government support for the basic care of the less affluent populations.

In addition, the structure of the payment scales for physicians in public hospitals should be changed in order to reduce incentives to increase their income in inappropriate ways: physicians’ basic salaries should be raised significantly, and the use of bonuses should be abolished. It is totally misguided to set low basic salaries for physicians and then expect them to obtain more income through bonuses. Such a payment policy encourages physicians to offer high-cost diagnostic or therapeutic services, even if they are not clearly medically indicated. Evidently, over-prescription, the prescription of expensive forms of drugs, and the recommendation of diagnostic procedures that are not indicated have resulted primarily from this ill-structured salary policy (Qiu, 2005). Even if the government supervises government hospitals and monitors their service prices, it is unwise for the government to require very low physician consultation fees in the name of controlling costs for patients. The value of medical professional knowledge and wisdom should be manifested in the provision of medical consultations, not in the prescription of high-cost, technologically mediated interventions, much less in the sale of drugs. A right judgment or wise advice offered to a patient is often crucial to the patient’s health. The time and energy invested in such consultations should be respected and compensated appropriately through a reasonable fee schedule so that physicians would not feel compelled to prescribe expensive drugs or to recommend unindicated high-technology procedures in order to gain an adequate income. In addition, practices of additional billing will need to be established and further developed so that patients legally can pay for better basic treatment, and better physicians can receive legal financial reward.

8.4 Restructuring Chinese Medical Ethics: Some Reflections on Confucian Moral Resources

The policy reforms recommended above cannot be appreciated within the Chinese socialist moral and political ideology that was officially adopted after 1949. This ideology is fundamentally egalitarian in nature. It requires roughly equal income for everyone under the so-called public-ownership planned economy (公有制計劃經濟), regardless of different professions or occupations. Accordingly, with its egalitarian moral requirements imposed by the government, the ideology leads to low-level, egalitarian pay scale in health care institutions: physicians, like other ordinary workers, are allowed to receive only low pay for their services but are
required to work wholeheartedly for patients. The policy blurs a morally necessary
distinction between fair and reasonable self-interests that should be satisfied and
unfair or immoral benefits that should be prohibited. The Chinese experience has
shown that this egalitarian moral requirement is practically devastating. Instead of
creating a group of doctors working selflessly for patients, the practical result of this
ideology is significant hypocrisy and the corruption of the Chinese health care and
the physician-patient relationship as discussed above.

But the needed policy reforms can be justified within the positive Confucian
regard for remuneration. Traditional Confucian moral reflections on financial gain
do not establish the view that physicians should not be generously paid for their
services. Neither does it assume that physicians with better skills and capacities
should not seek to be better remunerated than others. The Confucian moral concerns
with cultivating virtue and maintaining trust in human relations in general, and in
professional relations in particular, do not count against the inclination of those with
greater resources to use those resources to purchase better care for themselves and
their families. These Confucian moral insights, which remain a substantial part of
Chinese life, should be drawn upon to replace the outdated egalitarian ideology so
as to both motivate and justify an appropriate government policy for the medical
market.

There is a misunderstanding that Confucian thought does not have a market-
and profit-friendly attitude. It is true that Confucius once commented that the
gentleman is versed in righteousness; the small man is versed in benefit (Analects
4.16). And Mencius encouraged a king to think of governance by following the
moral virtues of benevolence and righteousness rather than concentrating on the
skills of enriching the state and empowering the military (Mencius 1A1). However,
such Confucian teachings should be appreciated within the principal Confucian
agenda to build a robust societal climate that accommodates trust and encourages
moral education in the particular form of virtue cultivation. Taken properly, these
teachings only mean that individuals, especially those who are willing to cultivate
the virtues of benevolence (ren 仁) and righteousness (yi 義), should not pursue
personal benefit by immoral means: whenever one sees gain to be got, one should
think of righteousness (Analects 16.10); if a wealth or honor is unrighteous, one
should see it as a floating cloud (Analects 7.15). The same goes for a state, whose
prosperity and military power would not be justified if they were achieved by means
that contradict the moral guidance of benevolence and righteousness. However,
these moral concerns by no means imply that people should not seek profit or
enrich themselves. To the contrary, Confucius clearly recognizes that riches and
honors are what everyone desires (Analects 4.5). His concern is that people must
seek them in the proper, virtuous way.

While the Confucian views presented in this chapter are derived primarily from classical
Confucianism, namely, the writings of Confucius, Mencius, and Xunzi, the essential point can be
found in all versions of Confucianism as well as the most influential Confucian thinkers through-
out Chinese history. However, given the main theme and constraints of this chapter, I will not offer
arguments in favor of this point.
Properly pursuing profit requires moral endeavors made by both government and individuals. On the side of government, enriching people is one of its three most important obligations (Analects 13.9). Government must formulate and implement appropriate public policy. Taxes and levies must not be made heavy so that resources will be left to families for taking care of the welfare of their members (Mencius 1A5.3). Specifically, Confucians insist that government should not tax people for more than 10% of their income (Analects 12.9). If a ruler can confer extensive benefits on the people, thus assisting all the people, he would be considered not only to be a benevolent ruler, but also to have the qualities of a sage, the highest Confucian moral character (Analects 6.28). As to individuals, everyone must pursue a proper way of making riches and diligently work to this end. As Confucius sees it, if one resides in a well-governed country and lives nevertheless in poverty or in a poor condition, one should feel shame (Analects 8.13; 14.1).

It is true that Confucian tradition admires as worthy one who holds an honorable intention to benefit others rather than to obtain material advantages for oneself. This is because Confucian ethics is a virtue-based morality; it places emphasis on cultivation of the virtues and encourages everyone to become morally worthy, not simply materially well off. For instance, physicians should nurture and have a benevolent heart in treating patients, and not simply intend to secure reward and profit by practicing medicine. However, this does not mean that worthy practitioners should not receive a high remuneration for their valuable work. Confucian tradition recognizes that intention and remuneration are two different things. Morally good intentions are certainly very important. In selecting and practicing a profession, one’s primary intention should be to exercise the virtues and to assist others rather than to gain material benefits for oneself. This requirement prevents one from choosing a career or conducting an activity in conflict with the guidance of the virtues. At the same time, however, Confucians argue that society should remunerate everyone for the quality of the work done, not for the individual intention: the better work one does, the higher remuneration one should receive (Mencius 3B4; Xunzi10). This is a crucially important Confucian moral insight that should be understood and used to shed light on current Chinese reflections on their public policy and health care markets.

Indeed, contemporary Chinese people should be reminded of a cogent Confucian argument for this insight offered in the Mencius 3B4. When a student challenged Mencius concerning whether a gentleman could live a luxurious life, Mencius replied: “if there be not a proper ground for taking it, a single bowl of rice may not be received; if there be such a proper ground, receiving all-under-Heaven is not to be considered excessive.” This is to say, remuneration is first a matter of quality, not a matter of quantity: the primary consideration is whether remuneration has a proper moral ground; i.e., righteousness. It is the character of the action rather than the amount of remuneration that is at issue. Mencius agrees that the primary intention of the gentleman differs from that of an ordinary person, such as a carpenter or a carriage-wright. Although the aim of the latter is to earn a living by practicing a trade, the aim of the gentleman is to practice the virtues of benevolence and righteousness. Nevertheless, Mencius contends, society should not remunerate a man according to his intention, just as society should not want to remunerate a
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This Confucian argument indicates that it is gravely misleading to hold that persons of virtuous intent should not be remunerated well for their valuable work. Confucianism indeed requires that one should cultivate virtue and possess honorable motives, but it also insists that remuneration depend on work rather than intention. For Confucians, this latter insistence is not only fair to everyone but is also most beneficial to society. No doubt, in order to achieve a decent and prosperous society, nobody wants to reward a bad work done from a bad intention. Instead, society may well want to punish such a worker. Moreover, it is easy to understand that poor-quality work, even if done from a good intention, cannot be well rewarded. Confucians would suggest that such a worker needs to make more effort to improve the quality of his work in order to be well rewarded. Finally, Confucianism holds that valuable work must be highly rewarded, no matter whether the work is done from a virtuous intention or from a less virtuous or less honorable intention—such as a motive for personal material benefit. This is to say, Confucianism would support a policy of highly rewarding a technically superior physician who is able to offer stable and high-quality treatment to patients, even if her main motive for the medical work is personal profit, but it would not support a policy of highly rewarding a technically inferior physician who is unable to offer high-quality treatment, even if he holds a perfectly moral motive for assisting patients.

This position is fair because Confucianism holds that (1) society is based on a division of labor and an exchange of services, and (2) different types of labor and services are valued unequally (Mencius 3A4; Xunzi 9). When physicians conduct highly valuable work and significantly contribute to people’s welfare, they deserve generous pay from society. This is also most beneficial to society because it can serve as an effective educational function. In fact, classical Confucian stories show that Confucius himself not only explicitly supported highly rewarding good work, but also held that the person who did the good work should accept the reward even if one’s original intention was not aimed at receiving one. Confucius thought that, unless one is actually rewarded, one’s good work cannot effectively influence other people to conduct similar work. When his student Zi Gong (子貢) ransomed a compatriot of the state of Lu (魯) enslaved in another state but refused to receive an award as stipulated by the law of Lu, Confucius commented: Zi Gong has failed here, the people of Lu will no longer ransom others from now on; in contrast, when his student Zi Lu (子路) saved a drowning person and accepted an ox from the person for reward, Confucius commented: from now on the people of Lu will save drowning

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18I shall not address the case of a valuable act done from a morally bad or evil motive because this possibility is generally irrelevant to the issue of payment to medical professionals that is under discussion.
Indeed, Confucianism holds a realistic estimate of human nature: most individuals are not perfectly virtuous gentlemen who can offer quality services to other people from only benevolent intentions; instead, they also need material incentives in order to perform good works. This is to say, from the Confucian point of view, providing high remuneration for valuable work not only is fair and compatible with the cultivation of virtue emphasized by the tradition, but also is necessary for a feasible educational program of virtue cultivation.

It is important to attend to this Confucian distinction between rewarding intention and rewarding work in considering an appropriate pay-scale policy for contemporary Chinese physicians. Indeed, Confucians always have viewed medical practice as a way of exercising the cardinal Confucian virtue of benevolence (ren, 仁) and medicine as the art of benevolence. Physicians have been taught to have a benevolent heart in treating the illness and suffering of patients. That is, Confucians hold that the essential purpose for which one should select and practice medicine as a career is to aid people rather than to pursue financial gain for oneself. Concerns for reward or profit should not be the defining feature of one’s medical practice. Benevolence is certainly a proper moral orientation for the medical profession. Many have noticed that Confucian physicians in history made admirable efforts to save their patients, regardless of whether the patients were capable of rewarding them. However, the good aim of benevolent practice does not preclude physicians from seeking financial gain from their quality services. It is not morally inappropriate for physicians to charge high service fees when patients are able and willing to pay for them. If these reflections on the Confucian moral teachings are sound, the Chinese government must reform the current structure of the payment scales for physicians. In particular, it must abolish corrupting financial incentives as well as significantly raise the basic salaries of physicians. Providers who offer higher quality medical services should be able legally and openly to obtain higher financial rewards commensurate with the value of the services provided, as recommended in the last section.

Some may worry that even if physicians’ basic salaries are significantly raised, practitioners may still attempt to gain more benefit by accepting red packets or through other possible corrupt practices. Therefore, they would contend, raising remunerations to physicians cannot fully solve the problem. This worry, however, may have been grounded in an erroneous assumption that most individuals including physicians are infinitely greedy. Confucianism understands that most individuals are only reasonably, but not infinitely, greedy. When physicians receive an income that can ensure a social status commensurate with the quality of their medical work, it is reasonable to expect that most physicians will no longer to engage in legally and morally prohibited activities – such as requiring and accepting red packets from their patients.

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19 These two stories are contained in a couple of ancient Chinese classics. Their most complete version can be found in Lu’s Commentary on the Spring and Autumn Annals (2003, p. 461).

20 For instance, as Confucius observes, it is not easy to find a man who is as fond of virtue as he is fond of beauty in women (Analects 9.18; 15.13). And many individuals make no effort to learn even after having been vexed by difficulties (Analects 16.9).
patients. They will be able better to avoid morally disgraceful and culturally face-losing endeavors that often cause confrontations and conflicts among colleagues and between physicians and nurses. Confucianism maintains that only a small number of individuals will not change in response to their environment. Perhaps a small number of physicians are perfectly virtuous and would never become involved in any corrupt practice no matter how low their remuneration is, just as, at the opposite end of the spectrum, there may be a small number who always will be corrupt no matter how high a remuneration they receive. The majority fall in the middle, however, and a public policy grounded in Confucian morality would have sufficient reason to target this majority of individuals who could respond to a proper policy with a positive attitude and reasonable conduct.

8.5 Looking to the Future: Taking Both the Market and Traditional Morality Seriously

A medical ethics for China in the 21st century, which faces an ever more robust market economy, will need to support healthcare policies that allow physicians to maintain their professionalism in an environment that is fundamentally different from China’s socialist past. Today’s environment, in contrast with that of only a quarter-century ago, is strongly determined by market opportunities and an increasing level of affluence. Both physicians and patients find themselves within a culture shaped by new allures and financial possibilities. A reform of Chinese medical ethics at the very least will require a recognition that in a market economy:

(1) People seek to earn more in order to buy more of the goods and services the market produces.
(2) People expect to be able to pay more for better goods and services, including medical services.
(3) Imposing artificially low fees for medical services will lead to significant moral and economic distortions of physician behavior and will undermine medical professionalism.
(4) Prohibitions against supplementary payments for better medical services will lead to significant moral and economic distortions of physician behavior and will undermine medical professionalism.

Maintaining physician-patient trust and medical professionalism in a radically new moral and economic environment will require recognition of the character of that environment. The good of patients and medical professionalism can be maintained only if one rededicates the medical profession to trustworthy patient care in the light of contemporary realities. One cannot avoid corruption and pursue virtue in

21For an excellent anonymous dialogue regarding such problems in the red-packet phenomenon, see http://www2.bbsland.com/iwish/messages/212144.html.
the absence of policies that strategically diminish the allure of temptations to corrupt clinical judgment and the character of the physician-patient relationship.\textsuperscript{22}

As China turns to the future, it also will need to nest its growing and dynamic market economy within a set of moral considerations rooted in its millennia-old Confucian tradition regarding the protection of human trust and the reliability of human relationships. This tradition still shapes expectations and lies at the roots of generally accepted views regarding the character of the trust that should bind physicians and patients and that should frame the character of medical professionalism. Coming to terms with new realities will be successful only if China draws on commitments rooted in the foundations of its background culture. China must draw on its own Confucian cultural resources in order to show how the market can be lodged within framing expectations true to China’s past and directed to the realization of China’s future.

\textsuperscript{22}For a more detailed exploration of the Chinese medical professionalism in relation to Confucian virtue ethics throughout the history of modern China, see Fan (2006b).
Chapter 9
Honor, Shame, and the Pursuit of Excellence: Towards a Confucian Business Ethics

9.1 Understanding Confucian Management Concerns

Confucianism supports an ethos and style of business management quite different from that dominant in Western Europe and North America. This chapter explores the source of these differences by reference to the cardinal role of honor, disgrace, and shame in Chinese Confucian culture. In the process, a reconstruction is offered concerning the subtle differences that mark many East Asian corporate management structures. As such, this study offers an insight into that which already exists. On the other hand, it reconstructs Confucian moral commitments, which are being taken ever more seriously by Chinese scholars, and which are likely to render the implicit commitments of contemporary management styles more explicitly Confucian.

Other areas of professional moral reflection have witnessed a cultural renewal, an attempt to rearticulate moral concerns within the frameworks of Asian culture in general and Chinese culture in particular. The growing consciousness that the Pacific Rim naively imported moral assumptions from the United States and Western Europe is expressed in the reaction against the uncritical acceptance of American/European views of bioethics and medical ethics. Over the last decade, a literature has developed contrasting Asian vs. Western bioethics (Hoshino, 1997; Fan, 1999a; Alora and Lumitao, 2001). A particular target of criticism has been the aspiration to a global bioethics, to a universal set of bioethical norms (Tao, 2002). In general, there has been an attempt to take moral diversity seriously and to recognize its implications for bioethics and medical ethics (Qiu, 2004; Lee, 2007).

At the very least, this phenomenon suggests that in business ethics it will be important to come to terms with the diversity of moral assumptions underlying management styles. It will also be useful to reconstruct the roots and implications of these differences. Of course, it is not the case that modern Asian businessmen have never been aware of the connection between Confucian values and modern management. As early as in the 1920s, an outstanding Japanese businessman, Eiichi Shibusawa, was delivering a series of lectures on the topic of “the Confucian Analects and Abacus,” which were re-appreciated and put in print in Japan in 1985. Historians have attempted to locate the impact of Chinese religious ethics (especially Confucian morality) on the development of Chinese business in modern time.
In particular, as the rise of industrial East Asia has attracted much public attention and generated a great deal of scholarly inquiry, since the 1970s, into the role of the Confucian moral tradition as a constitutive part of the East Asian economic dynamics as well as its effective management pattern has increasingly received research and discussion (e.g., Tu, 1996). In the 1990s, scholarly works focusing on the features of Confucian management appeared in both Taiwan (e.g., Zhu, 1994) and mainland China (e.g., Li, 1997).

However, these discussions have failed to offer a robust conceptual framework in which the character of Confucian management can be explicitly demonstrated in contrast with the nature of modern Western management grounded in rights-based considerations. This chapter intends to fill out this conceptual gap. Specifically, it plans to indicate that many East Asian understandings of appropriate business management can best be set within a Confucian background of honor-based considerations. This chapter lays out the geography of implications of this honor-based approach, showing that an honor-based vs. a rights-based corporate ethos are quite different. Section 9.2 demonstrates the Confucian virtue-based conception of honor. Section 9.3 explores the necessity of a sense of shame in relation to honor manifested in ritual behavior and ritual propriety for the pursuing of excellent governance and management. Section 9.4 compares honor-based and rights-based corporate ethos, examining how honor-based management style can improve and perfect modern management. Section 9.5 digresses to explain why rights language is insensitive to particular culture-laden management styles. The final section summarizes the specific moral features of management supported by the Confucian concerns with honor, disgrace, and shame.

9.2 Rights Alone Are Not Enough

Management involves basic relations between employers and employees. The dominant Western moral approach used to guide such relations gives salience to rights claims, often leading to explicit lists of employees’ rights. In the context of business ethics, this approach interprets employer-employee contracts and relationships within a web of specific rights and duties within a framework of general civil and political rights. Such accounts lead to defining the duties of employees in terms of a background set of moral and legal rights. It is not just that in East Asian management style such a web of rights and duties is not explicit or in the foreground, but that in general a Confucian approach to business ethics holds such a portrayal of employer/employee relations to be one-sided and incomplete. For Confucians, even if individual rights and duties are inevitably involved in modern management, a set of honor-based considerations, institutions, and skills are significantly required in order to seek excellence in management.

At the outset, a number of distinctions must be developed, for the concept of honor is far from unambiguous. In particular, Chinese understandings of honor embedded in the Confucian tradition have a meaning and texture that invite interesting comparisons with what one would find in most Western discourse. The English
concept of honor has its roots in the Latin *honor*, which carries the meaning of “high esteem or respect accorded to superior worth or rank” (Glare, 1982, p. 801). The word “honor” came to encompass not only the internal moral value of a person and of a person’s actions, but also the person’s reputation and social status. It should also be noted that the bestowal of honors, both in Roman and English culture, is often related to ceremonial performances, ritual conveyances of awards, dignities, and honors.

In Latin, honor also borders on the Roman notion of *Gloria* (Glare, 1982, p. 767). Honor is tied as well to those offenses and circumstances that generate shame and that would in many traditional European cultures have been grounds requiring one party to request a duel to the death with a second party. The European usages of honor and the possibility of affronts to honor include issues beyond the direct control of the person dishonored, as when a husband is cuckolded. Thus, in addressing the importance of considerations of honor that should constitute the character of appropriate management relationships binding employers and employees, it is important to lay out with care the complex geography of the concept of honor at stake in this particular instance.

Chinese understandings of honor, though in many areas coincident with those of Western culture, possess subtle and significant distinctions. The Chinese equivalent to the English term honor is *rong* (榮), a Chinese character that carries the same pictorial image as the character of *hua* (flower, 花) (Wang, 1993, p. 94). This indicates that the original meaning of *rong* in the Chinese language is flowers of plants or blossoms of trees, implying that honor is a kind of outcome or accomplishment achieved through a process of effort. It possesses Chinese cognates such as *zun* (尊) and *gui* (貴). *Zun* originally stands for a type of precious drinking vessel used by nobles in rituals, and it comes to refer to someone’s high status in society; *gui* originally refers to the high prices of valuable objects, and it is subsequently used to indicate a high remuneration someone deserves from society (Wang, 1993, p. 891).

All these Chinese characters, *rong*, *zun*, and *gui*, hold a meaning that is essentially similar to that of the English word “honor”. However, ancient Confucians have made further clarifications of these characters and developed a particular Confucian view of honor in terms of the Confucian virtues.

The classical Confucian visions of honor illustrate the moral significance of honor. Both Mencius (372–289 BC) and Xunzi (c. 298–238 BC), the two greatest followers of the way of Confucius (551–479 BC), developed the Confucian accounts of honor in accordance with Confucius’ view of virtue. Mencius might be the first philosopher to take “honor” and “disgrace” as a pair of important ethical categories. For him, in the governance of a state, the cardinal Confucian virtues of *ren* (benevolence, 仁) and *yi* (righteousness, 義) could bring a governor honor and glory, whereas the contraries of *ren* and *yi*, that is, non-*ren* and non-*yi*, bring a governor disgrace. In particular, he points out three things that are commonly esteemed (*zun*) in the world: rank (爵), age (齒), and virtue (德). As he sees it, “at court, rank is supreme; in the village, age; but for assisting the world and ruling over the people, it is virtue” (*Mencius* 2B2). Virtue is most significant to the governance of a state
because, for Mencius, virtue can be universally attractive to the people and bring a
governor the highest honor.

Xunzi (荀子) offers systematic discussions of honor and disgrace (ru, 尊) in sev-
eral chapters of his book (e.g., *Xunzi* 4, 18). He considers the difference between
honor and disgrace as being important for peace and safety. For him, considering
morality before benefit is most important for honor: “Those who put first what is
righteous (yi) and later matters of benefit are honorable; those who put first what
is beneficial and later what is righteous are disgraceful” (*Xunzi* 5; Knoblock, 1999,
Vol. I, p. 77). On his view, a conception of honor vs. disgrace (ru) is one of the
highest standards that the Confucian sages and kings had set up (so that we can
make valid deliberation and argument), those standards that “establish the bound-
ary between truth and falsity and that give rise to social class distinctions, to the
offices of government and to their names and symbols” (*Xunzi* 5; Knoblock, 1999,
Vol. II, p. 591). Following this view, he distinguishes between the honor of virtue
(yi rong, 義榮) and the honor of circumstances (shi rong, 勢榮):

There is the honor that derives from the force of the virtues and that which derives from
the force of circumstances... When a person is developed in will and purpose, substantial
in conduct springing from inner power, and lucid in wisdom and thought, then there arises
from within the cause of honor, and this is what is meant by honor that derives from the
force of the virtues.

Holding exalted rank and distinction, receiving substantial tribute or emolument, holding
a position of overwhelming power and influence, being at the highest Son of Heaven or a
feudal lord or at the lowest a minister or prime minister, knight or grand officer – these are
honors that arrive from without, and precisely these are what is meant by honors that derive
from a person’s circumstances.

Thus...although it is possible that the petty man should possess honors deriving from per-
sonal circumstances, it is not possible that he should possess honors deriving from the
virtues...As for the honor that derives from the virtues and that which derives from cir-
cumstances, only the gentleman may possess both at the same time (*Xunzi* 18; Knoblock,

Xunzi can be read as making the distinction between conventional honor and moral
honour. Conventional honor comes from outside (such as social status, rank, and
award), while moral honor comes from inside (such as one’s will, wisdom, and
virtue). It is important to notice that he does not simply emphasize moral honor,
ignoring conventional honor. The highest honor for him is the unity of the virtues
and circumstances as embodied in the gentleman. If one is not virtuous, he would not
deserve any award assigned to him. On the other hand, if one is virtuous but does
not receive honor, it would be an unfair and unfortunate circumstance, damaging
appropriate expectations in good governance or management as a result.

These Confucian reflections support important distinctions regarding the nature
of honor. First, honor is not simply the opposite of disgrace. Honor is a concept that
is morally much more profound than the absence of disgrace. Historically, in opposi-
tion to disgrace, honor is an ancient concept connected with “good”, “achievement”,
“fairness”, “rite”, etc. Honor has been regarded as the basic condition of individ-
ual worth and excellent governance. When a person or a group is appropriately
judged to be honorable, this serves as a justification or warrant for praising the per-
sonal or collective action. Even in a rightly-ordered appreciation of honor, praise for
personal or collective action will be in proportion to the moral or social value of the action.

Second, honor has two reference points: external and internal. The external reference point is concerned with honor from without, and the latter with a person’s experience of his own glory or self-value. The honor of public opinion reflects an external value of an action. This is the case with the sense of honor when an athlete wins a championship. On the other hand, a person’s sense of honor when grounded in his consciousness of the moral value of his own action has an internal locus. Of course, these two groundings of honor reflect the circumstance that actions have both external as well as internal value (moral value). That is why Xunzi emphasizes the unity of virtue and circumstance in governance and management through honor.

Finally, the concept of honor reflects unequal individual performance and motivates excellent conduct. This circumstance constitutes an interesting contrast with the concept of rights. While the contemporary discourse of rights tends to equalize individuals in terms of their equal moral dignity (i.e., everyone is entitled to equal basic rights), the concept of honor tends to distinguish individuals according to their actual performance (i.e., some individuals are honored because they perform excellently). Appropriate honor is in proportion to the social and moral value of the action.

In short, the classical meaning of honor reflects a cultural value, as when public opinion or public authority bestows a moral and social distinction on the actions of a particular person or a group. Honor in this sense reflects an award, reward, prize, title, or medal, as well as the praise of public opinion. There is an accent on both moral worth and social standing, embedded in certain ritual or ceremonial practices. Whatever the forms of honor, its social function consists in encouraging people to work better and in promoting cohesion in a society. When honor is given to praise a person’s virtue, it carries essential moral meaning.

9.3 Honor, Shame, and Motivation

It is important as well to distinguish the moral considerations or grounds for a concern regarding honor from feelings of honor that can serve to motivate appropriate employer/employee relationships. That is, one must distinguish honor as defining the moral character of appropriate employer/employee relationships (which can be defined as honorable relationships) from motivating concerns to maintain honor and avoid shame. Cultures that understand shame to be a major negative social and cultural condition give grounds for their members to exert themselves to maintain honor and avoid shame. Moral concerns with honor are tied to powerful, socially motivating forces to avoid shame. Indeed, Confucians see that a sense of shame is indispensable to moral development as it is presupposed in one’s having some ideal conception of one’s own character. For instance, Mencius stipulates that everyone has a sprout of the virtue of righteousness (yi). To demonstrate that this is the case, he illustrates that for every human there are some things that he avoids doing because he believes they are shameful (chi) (Van Norden, 2004, p. 151).
Moreover, Confucians hold that attending to a sense of shame is crucial for conducting an appropriate type of governance:

Guide them by laws, keep them in line with punishments, and the common people will try to avoid the punishment but will have no sense of shame. Guide them by virtue, keep them in line with the rites, and they will have a sense of shame and also reform themselves (Analects 2.3).

The cliché that Asian culture is concerned with avoiding shame is acknowledged as an important cultural force often marginalized in contemporary Western contexts (Al Jallad, 2002). Guilt as it has come to be understood in Western cultures presupposes that an agent has willfully committed an improper act. That is, guilt requires an evil intent, a mens rea, and is not incurred involuntarily or in ignorance (unless the ignorance is culpable in the sense that the agent knew or should have known that a particular circumstance would likely cause the outcome that grounds the shame). Psychologically, shame is a feeling that looks to oneself – i.e., attending to the effect of my action (or what I am subjected to) upon what I am, while guilt looks in another direction – i.e., towards what happens to you because of what I do (Williams, 1993, p. 92). Indeed, guilt is more closely associated with the concept of individual rights: if we violate a person’s rights, the focus of our guilty feeling is typically on that person as a victim harmed by our action.

A sense of guilt is certainly important. But Confucians hold that a sense of shame is also essential. To pursue an excellent management, just as to develop an honorable moral character, not to violate rights is far from being sufficient. This is the case especially when we notice that Confucians would distinguish the moral sense of shame from the conventional sense of shame, just as they distinguish the moral sense of honor from the conventional sense of honor. Basically, if you have not violated any rights, you should not feel guilty. However, even if you have not violated any rights, you may still properly feel shameful if you have not made efforts to live up to a moral ideal or perform a good action to the extent that you are capable. For Confucians, ritual behavior and ritual propriety (i.e., rites) offer you superb opportunities in which you are no longer in a position of doing or not doing things due to fearing punishments but, rather, of making your best in harmonious cooperation with others to attempt to avoid shame due to imperfection and pursue honor for excellence. Although concerns with rites are not central to much of moral life in the West, much less to its moral theory, Confucians understand them not merely as expressing social conventions, but as achieving knowledge, virtue, and moral honor in the light of Confucian concerns.

Rites do not merely create social reality, they are also means of appreciating moral structures and commitments. They bring together a group of people (either a family or a business corporation) in cohesion, care, and loyalty, carrying a collective sense of honor and shame. Though in Western culture there are analogues, as for example when one is dishonored and incurs shame through the behavior of a spouse or other family member(s), shame is not as central a moral category in Western moral thought as in Asian reflection. Because honor can be lost involuntarily, Chinese management is at risk of being shamed even when it is not in any
9.4 An Honor-Based Vs. a Rights-Based Corporate Ethos

Business management involves a basic tension. Corporations tend to acquire a business- and lifestyle of their own, shaped not only by the economic niche in which the corporation functions, but also by the cultural commitments of management and the culture within which the corporation finds itself located. Different moral and cultural assumptions define the dialectic between the surrounding society and the corporation, and this dialectic, in turn, establishes a paradigm within which employer/employee relations are understood and interpreted. In the process, a life-world, a set of taken-for-granted, *prima facie* assumptions, comes into being. Insofar as the corporation frames its moral life-world and standards in contrast to that of the surrounding culture, a tension develops between corporate morality and the morality of the surrounding culture. In such circumstances, outside of the corporation, the corporate culture will be regarded as amoral at best and immoral at worst. At the very least, the tendency to fashion a corporate moral life-world requires moderating and regulating moral norms.
This tension between corporate and cultural morality and some of its consequences for employer/employee relations are well summarized by Jerry Mander, who observes:

Corporations behave according to their own unique systems of standards, rules, forms and objectives. The most basic rule of corporate operation is that it must produce income and must show a profit over time. All other values are secondary. Human beings within the corporate structure are prevented from operating on their own standards and are seriously constrained in their ability to influence corporate behavior – corporations and the people within them, are not subject to moral behavior (Mander, 1992, p. 59).

Such a conflict of moralities obviously constitutes a problem both in business ethics and for effective management.

The Western moral approach has been to address this tension by promoting a discourse of rights and responsibilities so as explicitly to bind employers and employees within a rights discourse in a network of obligations. This elaboration of a web of rights and responsibilities reflects the contemporary cultural inclination to establish an ever-increasing list of human rights, so as to protect employees from exploitation and to avoid the development of an immoral corporate culture. Confucian moral thought holds that this remedy is at best one-sided, incomplete, and insufficient.

Granted, rights are basic entitlements for everyone. Rights-based entitlements can be understood as establishing minimal standards for morality in employer/employee relations that allow corporate life to proceed without fear of violating legally-defined rights. However, these standards are minimal and for the most part require forbearance rather than the provision of a good, a service, or a positive action. In particular, they are not positive in the sense of inspiring employers or employees to act with a spirit of dedication and creativity. They do not evoke a commitment to act beyond the minimal obligations articulated. In short, they do not inspire supererogation: the commitment to excellence that allows a corporation to flourish. Instead, the corporate ethos becomes defined in terms of a moral and corporate minimalism: “basically, showing up, obeying a boss, and conforming to a minimal performance standard will meet the average worker’s obligation” (Nirenberg, 1997, p. 243).

In this way, the relation between employees and employer in modern economic organizations is reduced to a simple economical exchange relation between the buyer and the seller of labor - the main concern for both employer and employee is focused on whether contractual obligations have been discharged. It is taken for granted that employees have no responsibilities beyond providing the employer with labor within the minimal rights and duties that the employees have acquired through “bilateral bargaining.” In this case, employees would feel it unnecessary to behave with a sense of loyalty to the employer. It may be for this reason that business spying has increased greatly in recent years and has generated significant losses for many enterprises (Wang, 2002).

Indeed, once the relation between employees and employers is transformed into a relationship between buyers and sellers of labor, concerns for loyalty, honor, and
excellence are marginalized. When management is oriented simply to maintaining a minimal balance of rights and responsibilities, management concerns become translated into merely imposing sanctions for disturbing this balance. Management’s response to misconduct thus becomes negative, rather than focused on evoking a positive response that will lead to better behavior and a better realization of the corporation’s goals. The difference is indicated by Confucius’ comparison between management through law and punishments on the one hand and management through virtue and rites on the other, as cited in the last section. Sanctions by themselves can at best force persons reluctantly to follow organizational rules and regulations. The best-case outcome is that employees supply their labor and services within the minimal requirements of the employer/employee contract. The worst-case scenario is that they default on their obligations, requiring management to impose sanctions, which will often be a net cost not only to the employee but to the employer.

9.5 Why Rights Language is Blind to the Particularity of Culturally-Embedded Management Styles

From a Confucian point of view, it is puzzling why Western moral theory, especially Western business ethics, fails to recognize the particularity of corporate cultures and the thick webs of moral concerns that a sense of honor and a concern for avoiding shame discloses. An insight into the difference between the sparse character of rights discourse and the Confucian recognition of the proper regard for honor and the avoidance of shame can be garnered from the Kantian account of moral obligations. Immanuel Kant (1724–1804) attempts to ground his entire account of morality in a rationalistic universalism. His three versions of the categorical imperative present moral persons and their obligations in anonymous and fully general terms. He develops his account of morality by reference to anonymous moral laws, a sparse concept of moral personality, and an anonymous moral legislator. As he puts it, one could determine the content of morality in terms of the requirement that one should:

1. Act only according to that maxim by which you can at the time will that it should become a universal law (Kant, 1969, 421).
2. Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only (Kant, 1969, 429).
3. Act only so that the will through its maxims could regard itself at the same time as universally law giving (Kant, 1969, 431).

In this way, Kant provides an account of morality for persons as such, an account that does not merely eschew particular commitments to particular cultural understandings, but even to the nature and inclinations of humans as such.
Kant’s crucial assumptions in his argument are that:

1. rational action and moral action are equivalent;
2. rationality can be explicated in an ahistorical, non-culturally-embedded fashion;
3. therefore, all persons can be understood in terms of an ahistorical reference point, the kingdom of ends, a moral point of view independent of culture and history.

The difficulty is that, if one attempts to establish such an ahistorical, non-culturally-embedded perspective, it loses all content. Any moral perspective, to have moral content, must affirm a particular ordering of important human goods and right-making conditions. This, however, cannot be achieved anonymously and outside of any particular cultural-historical context.

Another way to put the matter is that such a sparse, ahistorical perspective cannot guide business ethics, which must address the morality of management in distinct contexts and different cultures. Reference to the pursuit of honor and the avoidance of shame, in contrast, engages the thick context within which honorable success can be achieved and disgrace avoided. The language of honor, disgrace, and shame notes the thick texture of the moral life and its particular embodiment. It thus offers the possibility of a nuanced appreciation of the concrete character of employer/employee relationships and can evoke a context-located appreciation of a substantive business ethics. In particular, it can appreciate the ways in which East Asian culture in general and Confucian moral thought in particular can shape and direct corporate activities beyond mere rights and duties and toward a supererogatory pursuit of excellence.

9.6 Conclusion: Beyond Rights and Towards Excellence

Ku Hung Ming, a Chinese scholar in the late Qing Dynasty, points out correctly, “Without the sense of honor in men, all society and civilization would instantly break down and become impossible” (Ku, 1922, p. 30). Even in such a trivial matter as gambling we can still find the effectiveness of the sense of honor in social life because, without a sense of honor, the gambler would not pay to the winner when a certain color of dice turns up; without honor, even gambling would be impossible. Similarly, if the policeman, the army officer, and the magistrate do not feel themselves bound by the sense of honor, they will not be satisfied with their relatively low income in comparison with the businessman and be tempted to engage in corrupt activities. Without a sense of honor and with mere reliance on legal sanctions, the transfer of money in business would be at increased risk. “In fact, without the sense of honor in men, society can only be held together for a time by force. But then I think I can show you that force alone cannot hold society permanently together” (Ku, 1922, p. 30).

Confucian moral thought engages concerns with honor and the avoidance of disgrace and shame towards the supererogatory pursuit of virtue and the achievement of
excellence. As such, the moral concerns supported by concern for honor, disgrace, and shame are:

1. **Other-regarding** – honor, disgrace, and shame are relational moral concepts that aim at the good of persons. Within this Confucian perspective, honor and love are bound together. This is not only because the cardinal Confucian virtue, *ren* (benevolence), requires loving others (*Analects* 12:22). Also, in pursuing honor not violating others’ rights is by no means sufficient. One must care about others and wholeheartedly contribute to their wellbeing. For example, Seachance LTD, an environmental corporation in western China regards “love” as the spirit of the corporation, and tries to create a culture of the management in which all employees treat honor of the corporation as their individual honor so that every employee pays much more attention to the quality of products than before and tries to promote a good image of the corporation (cf. Chang, 2002, p. 153).

2. **Community-directed** – honor, disgrace, and shame can only be understood within a cohesive appreciation of communal interaction. For example, as David Needle notes in his study of the process of communication within a Japanese organization, it is very much akin to the mating dance of penguins: there is considerable ritual and a great deal of consultation. Much attention has been focused on consensus and collective decision-making although in practice there would seem to be considerable initiatives and decisions taken by top management alone (Needle, 1994, p. 87). In many Japanese economic and social organizations, collective value is emphasized. Naturally, the collective sense of honor and pride for a collective are very important there. So, award given to the collective is often more effective than the award given to individual in increasing productivity. This is also one of the reasons why different systems of reward should be used in American and Japanese enterprises.

3. **Hierarchy-accepting** – honor, disgrace, and shame are concepts that both create hierarchies of excellence and reflect hierarchies of virtue and success. In this fashion, a Confucian business ethics can appreciate how a healthy hierarchy can “release energy and creativity, rationalize productivity, and actually improve morale... if we happen to get done as well, we consider that a useful bonus” (Jaques, 1990, p. 130). In comparison with an unhealthy hierarchy, a healthy hierarchy is one in which people widely share information, have common goals, competence is deployed throughout the organization, have forms where staff can set goals consistent with organizational goals, the people closest to an issue make decisions, and rewards are based on accomplishment (Ashkenas et al., 1995, pp. 43–51; Palmer and Hardy, 2000, p. 23).

4. **Supportive of loyalty** – this can be accomplished by discounting the concern for direct sanctions and holding out the prospect of honor, thus offering what some scholars have described as soft rules, those that enable employee creativity and productivity (Palmer and Hardy, 2000, p. 22).

5. **Evocative of supererogation** – the appeal to honor aids in identifying the employee’s identity with the goods and goals that can only be realized corporately. Once a sense of collective honor has been developed, it can help evoke
love and dedication on the part of employers and employees to promoting the
good of the corporation, so that they can share in the collective success of the
corporation.

6. Productive of excellence – within the discourse of honor, disgrace, and shame,
the moral focus has shifted from concerns with satisfying a minimalist web of
rights and obligations to the pursuit of creativity, which is the foundation of
excellence.
Chapter 10
Human Dominion Over Nature:
Following the Sages

10.1 Introduction

A Confucian understanding of the proper character for an environmental ethics is as different from that dominant in the West, as is a Confucian business ethics from that affirmed in the Occident. To appreciate the differences requires attending to the ways in which Confucian morality structures the relationship between humans and nature. In this chapter, a reconstructionist Confucian account is brought to bear on the ethics, epistemology, and metaphysics of environmentalism. The view defended is in many regards anthropocosmic, rather than anthropocentric (Tu, 1989: 102; Tu, 1998). However, the adjective “anthropocosmic” is too obscure, ambiguous, and imprecise to describe an environmental ethics with substantive, specific, normative implications for how humans should treat animals and other objects in nature. On the other hand, ethical anthropocentrism is relevant to the intrinsic values of humans vis-à-vis other entities. Can the Confucian view of the environment be both anthropocosmic and anthropocentric? No doubt, anthropocentrism, as well as cosmocentrism and naturocentrism, involves metaphysical, epistemological, and ethical theses, which are best considered not as independent accounts, but as intersecting constellations of concerns (Ivanhoe, 1998: 65–67). Nevertheless, a distinct ethical anthropocentric view is not necessarily derivable from a particular epistemological and metaphysical view. Accordingly, it is helpful to distinguish different possible senses of ethical anthropocentrism in order to locate the substance of the Confucian environmentalist view.

I will identify three versions of ethical anthropocentrism. First, to be qualified as anthropocentric, a version of ethical anthropocentrism must include a humanist view: human individuals have higher intrinsic values than other things in nature. That is, even if other things, in addition to human individuals, also have intrinsic values, they must be held as lower in ranking than human values. In short, in an anthropocentric view, humans must be distinguished out to stand a privileged position to treat other things in the environment. The issue is what standards and rationales humans should adopt to treat other things.

The first version of ethical anthropocentrism may be described as individualistic humanism. To wit, it is morally acceptable for a human individual to treat
other entities (organic or inorganic) in whatever way she judges appropriate, useful, or pleasant, as long as such entities have not become other humans’ property. For example, under such a view it is morally permissible to torture one’s pet dog or cat for fun.

The second version is contractual humanism. Since human individuals must cooperate with one another in groups, communities, or societies, they must establish unified moral standards for treating other things, and such standards should be determined by actual contracts, agreements, or something such as a democratic procedure based on their desires, preferences, or whatever intuitive views they happen to hold in the process of democratic negotiation. Such communal anthropocentric accounts recognize the centrality of the human person and accept the fact that whatever standard is communally established is morally acceptable. For example, dogs may be eaten in one society but not in another.

The third version is religious humanism. In this version why humans are more valuable than other things and how humans should treat other things depend not just on individual human choices or collective agreements; instead, normative criteria are obtained from certain external sources rather than human opinions – for example, from divine revelation (as in the case of Christianity) or from cosmic workings (as in the case of Confucianism). Thus, such criteria are transcendent. In other words, God’s will or Heavenly Dao (天道) as regards the environment is apprehended within the conditions of human knowledge so that the divine/cosmic perspective may be best articulated in human terms. This view, although anthropocentric insofar as it affirms that only humans have high intrinsic values, is in essence cosmocentric – the place of humans is located in terms of considerations or realities that transcend humans as well as the environment, including animals and plants.

In short, all three versions of ethical anthropocentrism are humanist in that they all hold that humans have higher intrinsic values than other things in nature. In this sense the Buddhist view is neither religious nor humanistic, because it regards humans as being of equal value with other entities. For an anthropocentric view, the higher the intrinsic values assigned to humans, the stronger the ethical anthropocentrism. However, given the complexity of human justifications and motivations in treating other things, it is easier to gauge the degree of ethical anthropocentrism by looking at what limits are placed on humans in treating other things. In this regard, the individualist humanism is a very strong anthropocentric version, because it virtually sets no limits on humans except for respecting private property. The contractual humanism is a less strong anthropocentric version, because individuals are constrained by collective decisions in this version. The religious humanism is only a weak anthropocentric version, because humans must follow God’s will or the cosmic workings regarding what they may legitimately do with the environment.

This chapter argues that Confucianism holds a weak anthropocentric account of man and nature and that such an account is cosmic-principle-oriented. It is anthropocentric because it recognizes that humans have higher intrinsic values than other things in nature, such that humans occupy a superior position in the cosmos. It is cosmic-principle-oriented because it is animated and governed by the cosmic
10.1 Introduction

principles disclosed by the Confucian sages; it looks through nature to the basic normative structure of the cosmos. Accordingly, the substance and force of a Confucian environmentalist approach can be understood around a group of principles, whose cardinal themes and concerns point to the uniqueness of a Confucian view and its enduring importance.

Revealing these principles requires a reconstructionist appreciation of Confucian thought, which acknowledges that (1) there are numerous Confucian accounts; (2) any account must be a particular account, which articulates particular Confucian viewpoints culled from diverse texts and a heterogeneous tradition spanning at least two-and-a-half millennia since the time of Confucius (551–479 BC); (3) this particular account is selected over others because it putatively offers the most complete, least one-sided, and most powerful portrayal of Confucian environmentalist reflections on the world and cosmos. The power of a portrayal lies in its explanatory success; that is, forging relevant moral, metaphysical, and political issues into an integrated account of human life without slavish reliance on modern Western philosophical resources. Thus, a reconstructionist Confucian account of environmentalism, based on Chinese traditions and cultural resources, should be able to give an account of human flourishing that is more nuanced and complete than competing accounts. This requires a reconstruction of various elements of Confucian thought concerning humanity and its relation to nature. The end product must have an explanatory power greater than that of its rivals, and should, at the very least, have strong family resemblances with core elements of Confucian thought.

To satisfy the last criterion, we may first appeal to a chapter from the Commentaries (Yizhuan or “Ten Wings” 易傳 or “十翼”) on the Classic of Change (Yijing, 易經) in order to explicate the Confucian cosmic principles regarding man and nature.¹ The chapter chosen is Chapter 2 of the Second Part of the Xici (系辭), which vividly illustrates the Confucian message about man and nature.² However,

¹The classic Yijing (易經) is divided into texts and commentaries. The texts, consisting of 64 hexagrams and judgments on them, were compiled long before Confucius. The commentaries (Yi Zhuan, 易傳 or “ten wings” 十翼) were supposedly written by Confucius. However, the dominant view today is that the commentaries were a product of many hands over a long period of time, probably from 5th or 6th century BCE to the 3rd or 4th century BCE See Chan, 1963: 262. For our purposes, the crucial issue is not about who wrote them and at what time. At stake is which message they basically convey: Confucian or Daoist? This chapter argues that they convey the Confucian instruction (see note 2).

²Whether the Xici (系辭) is primarily a Confucian or Daoist text has been a matter of considerable controversy. However, both sides agree that the Xici synthesizes doctrines from several different schools, including the Yin-Yang, Daoist, and Confucian schools. Even the most enthusiastic contemporary defender of the Daoist interpretation of the commentaries, Chen Guying, acknowledges that the ethical view contained in the Xici is primarily Confucian (Chen, 1994: 105). But many seem to believe that the metaphysics and cosmology in the commentaries of the Yijing (the Xici included) are primarily Daoist. For this chapter’s purposes, the most important issue is as follows: if Confucians regard the character of the commentaries as basically Confucian (as I do), can they still accept a Daoist metaphysics and cosmology? This chapter holds that they cannot, because Daoist metaphysics and cosmology are in tension with Confucian moral assumptions. This position is elaborated below.
given the limitation of space, what is presented here is at best a general overview of the basis for a comprehensive understanding of Confucian morality within which environmental ethics is an integral part.

10.2 A Weak Anthropocentric and Cosmic-Principle-Oriented Account of Man and Nature

The first section of the chapter from the Xici (B) of the Commentaries states:

When in ancient times Fuxi (伏羲) ruled the world, he looked up to observe the phenomena of the heavens, and gazed down to observe the contours of the earth. He observed the markings of birds and beasts and the suitabilities of their soil. Near at hand from his own body he found things for consideration, and the same in things at a distance. Thus he invented the eight trigrams in order to comprehend the virtues of spiritual beings and to classify the qualities of the myriads of things. He knotted cords and made nets for hunting and fishing. This idea he probably adopted from the hexagram li (離). (Paragraph 1)

The rich Confucian message conveyed in this paragraph can be analyzed in terms of three underlying postulates regarding the significance of the cosmic principles that reveal the morally appropriate relationship between humans and the environment.

The first postulate, (1), is that there are cosmic principles structuring and governing the cosmos, including the heavens, earth, men, animals, and the myriads things. The cosmic principles, specifically, are the principles of change graphically represented by the eight trigrams (八卦) and the sixty-four hexagrams (六十四卦) explicited in the Yijing. They were disclosed, according to this paragraph, by the sage, Fuxi, through observing the patterns of the heavens, the contours of the earth, and the markings of animals. They are both metaphysical and moral principles providing an encompassing cosmic context within which both humans and nature are located and their relationships are properly determined. Accordingly, neither individual humans nor other natural objects have a standing that can be appropriately appreciated in isolation. Granted, by virtue of the fact that humans are the fulfillment of nature, they establish authority and dominion over nature. However, that authority and dominion are not unlimited, but are instead constrained and guided by the cosmic principles. The position of man and the environment, in this Confucian account, is articulated from the perspective of the cosmos itself, duly accommodating all the natural components in terms of their interrelations.

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3 Unless otherwise explained, the English translation of the chapter is adapted from the work by De Bary et al. (1960: 197–199). I have divided the whole chapter into five paragraphs for separate citations.

4 The phrase “the suitabilities of the soil” appears in Legge’s translation (1973: 382).

5 The phrase “to classify the qualities of the myriads of things” appears in Legge’s translation (1973: 383).

6 This view has been developed in a series of works by Chung-ying Cheng, who used the thought from the Yijing and the Yizhuang to lay out the traditional Chinese vision of the environment. See, for instance, his 1994 and 1998.
By contrast, most contemporary Western environmentalist accounts, in the same way that they conceive of human persons, view nature, the species, and particular organisms in an individualistic and atomistic light. Just as human persons are regarded as isolated individuals with rights, so animals, plants, and species, as well as ecological systems as a whole, are seen as separate entities with rights. The strategy has been to counter claims on behalf of human dominion over nature with claims on behalf of animals, environmental systems, and natural formations against human domination. There has been the attempt to check, limit, and refocus human rights by giving equal, if not greater, concern to entities in the environment, especially by claiming rights on their behalf. The cosmic-principle-oriented Confucian thought stands in sharp contrast to the various approaches that characterize many of the Western reflections on the environment, which treat humans, animals, and ecological systems as isolated entities. From the view of the Confucian cosmic principles, those approaches are one-sided and incomplete.

The second postulate, (2), which allows the further development of the previous argument, is that the cosmic principles are expressed in the character of man and nature, but not directly shown or written in natural phenomena. Rather than natural laws discovered in nature, they are normative cosmic principles appreciated (but not invented) through attending to nature. Therefore, instead of looking at nature to discover the laws of nature, Confucians seek to see through nature to appreciate the deep metaphysical and moral principles of the cosmos determined by Heaven (tian, 天). In particular, to comprehend such principles is “to comprehend the virtues of spiritual beings and to classify the qualities of the myriads of things.” The Daoist tradition has long interpreted the principles of changes (via the eight trigrams or the sixty-four hexagrams as shown in the Yijing) as something like natural laws in the Western tradition: there are structures or requirements in nature disclosable by reason that normatively ought to guide human conduct. But the Confucian view differs from the Daoist view. Confucians hold that sages can look through nature to comprehend the cosmic principles as the Mandate of Heaven (tianming, 天命). While the Daoist regards the cosmic principles as natural laws possessing a normative force simply due to natural causality and necessity, called Dao (道), the Confucian takes the cosmic principles as moral requirements grounded in an understanding of the

7The notion of natural law is multivalent in the West. One strand of natural law has its roots in the Western Christian 13th-century synthesis of Aristotelian and Stoic assumptions, which regarded nature as structured by intrinsic normative teleologies that not only shape the usual course of events, but in the case of humans, also mark out normatively constraining goals ingredient in their very biological character. An example of this can be found in the position developed by Thomas Aquinas (1224–1274). Other concepts emerged in the Western philosophical tradition that saw moral-normative ingredient in the very character of rationality itself. Immanuel Kant (1724–1804) is an example of such a position. Anticipations of Kant’s position can already be found in the Second Scholasticism, as with Francisco de Vitoria (1480–1546), for whom the rationalistic, non-biological account of natural law predominates. I appreciate the instruction of H. T. Engelhardt, Jr. regarding the Western notion of natural law.

8The following image is sometimes used to convey the nature of the cosmos in the Daoist thought: “the web that knows no weaver.” See Kinsley (1995: 68).
ultimate reality of Heaven as a supernatural, quasi-personal God.\textsuperscript{9} Although the Yijing was originally a book of divination, the Confucian sees it primarily as a guide for virtuous human conduct.\textsuperscript{10}

Anyone who reads the Analects carefully cannot avoid the impression that, for Confucius, Heaven is a quasi-personal God: Heaven carries a moral intention, will and force. This is why Confucius wants officials always to stand in awe of the Mandate of Heaven and to govern society by virtue. As an intelligent interpreter of the Chinese tradition, Confucius inherited the ancient Chinese understanding of virtue (\textit{de} 德) as force, which the ancient kings acquired through their willingness to perform sacrificial rituals to the spirits of their ancestors and Heaven on behalf of their subjects.\textsuperscript{11} The rituals involved a quasi-personal relationship with the divine and not merely a causal interaction with impersonal cosmic objects. Unfortunately, later Confucian scholars have gradually accepted the Daoist naturalistic view of Heaven,\textsuperscript{12} abandoning the original Confucius conception. They began to adopt Daoist concepts such as the Great Beginning (\textit{taishi}, 太始), Great Oneness (\textit{taiyi}, 太一), and Great Ultimate (\textit{taiji}, 太極) rather than appeal to the Confucian concept of Heaven in their account of metaphysics and cosmology. They came to see Heaven in juxtaposition with the earth, referring to heaven as a set of natural objects and phenomena, such as sky, sun, moon, cloud, thunder, lightning, rain, and so on. They thus transformed “Heaven” into “the heavens” (\textit{tianti}, 天體). This Daoist naturalistic corruption and distortion of the Confucian supernatural view of Heaven has haunted Confucianism from the Han dynasty to the present.\textsuperscript{13}

\textsuperscript{9}My view expressed here is in tension with a relevant view held by many Neo-Confucians since the Song dynasty, especially contemporary Neo-Confucians. Many contemporary Neo-Confucians are keen to give an atheist interpretation to the Confucian conception of Heaven in order for Confucianism to sound more “secular” and “scientific.” I take their view to distort the essential character of Confucianism. For an excellent explication of Heaven as a supernatural, quasi-personal God in early Confucianism, see Ivanhoe (2007). I use the word “quasi-personal” in order to distinguish the Confucian notion of Heaven from the Judeo-Christian notion of God.

\textsuperscript{10}See the Analects 7:17; 13:22. Although these two references might be the only direct discussions of the Yijing in the Analects, they demonstrate clearly that Confucius’ view in line with that of the Yizhuan.

\textsuperscript{11}For a brilliant exploration of this issue, see Nivision (1996).

\textsuperscript{12}For a more detailed explanation, see De Bary et al. (1960: 192).

\textsuperscript{13}For instance, the most influential contemporary Neo-Confucian, Tu Wei-ming, says: “it is more difficult to believe in an omnipotent God who violates rules of nature for mysterious reasons than in enduring cosmic patterns discoverable by human rationality” (1989: 95). According to his view, “the idea of theistic God... is totally absent from the symbolic resources of the Confucian tradition” (1989: 116). In his earlier work, he already claims that “[u]nlike the Christian’s relationship to his personal God and the Pure Land Buddhist’s relationship to Amida Buddha, but like the Taoist’s [Daoist’s] attitude toward Tao [Dao], ... Confucianist tries to embody jen [ren, humanity]” (1978: 10; emphasis added). Tu is right that the Confucian notion of Heaven is not the same as the Christian notion of an omnipotent God. But this does not mean that, as he believes, the Confucian notion is a Daoist notion. Interestingly, the Daoist naturalistic distortion of Confucian religious attitudes even affected the European Enlightenment and its secularist agenda. For an excellent essay on this fact as well as its misinterpretation of Confucianism, see Louden (2002).
If the Confucian tradition as expressed in Confucius’ *Analects* as well as in the Confucian classics formed before Confucius (such as the *Classic of Documents* and the *Classic of Poetry*, in addition to the *Yijing*) is taken seriously, then the only coherent way to interpret the Confucian view of Heaven is to see it in terms of a supernatural quasi-personal God. The cosmic principles expressed in the sixty-four hexagrams are primarily moral principles established by Heaven to instruct humans to appropriately conduct themselves in general and in particular to behave virtuously. Without this theistic interpretation, the long-standing Confucian tradition with its unique and persistent insistence on moral virtues would become unanchored, rootless, and gratuitous. We would not be able to distinguish the Confucian moral virtues from the Daoist naturalistic account, and we would not be able to make sense of the claim that Fuxi “invented the eight trigrams in order to comprehend the virtues of spiritual beings.” Indeed, in ancient Confucian tradition, gods (shen) corresponded with natural objects and phenomena, and hence the sun god, moon god, star god, earth god, mount god, river god, and so on. Heaven has not only created the natural objects and phenomena, but also supervised the gods who govern natural objects and phenomena. Heaven is first and foremost the master of these gods. Just as human virtue (de) is a power that can be acquired from Heaven by performing appropriate rituals, the virtues of those gods are powers that they obtain ultimately from Heaven. Thus, all virtues stem from the virtue of Heaven. Accordingly, the eight trigrams and sixty hexagrams offer heuristic patterns and principles for humans not only in their understanding of the virtues of those gods so as to appreciate the forces behind natural objects and phenomena, but also in their understanding of the virtue of Heaven so as to motivate and guide their actions.

This interpretation of the *Yijing* is substantiated in the *Wenyan* of the commentaries concerning the hexagrams *qian* and *kun*. For instance, according to the *Wenyan*, *qian* is a moral principle that teaches the superior man to practice four cardinal virtues: pursuing ren (humanity, 仁), performing li (ritual, 礼), exhibiting yi (righteousness, 道), and exercising zhen (uprightness, 正). For Confucians, all the sixty-four hexagrams should be interpreted in the same way – they are sixty-four images or metaphors that provide instructions regarding moral virtues that humans should practice in specific situations.
This leads us to the third postulate, (3), which concerns humans’ use of nature for economic purposes; namely, that the cosmic principles offer guidance as to how humans should use entities in nature to sustain their livelihood. This is to say, in addition to moral instructions, the cosmic principles also offer other practical and technical guidance consistent with moral virtues. As another passage from the Yizhuan points out,

The Master said: “Is not the Yijing a perfect book!’ It was by the Yijing that sages exalted their virtue and enlarged their sphere of occupation” (Xici A: Chapter 7; Legge, 1973: 359).

The cosmic principles expressed in the hexagrams teach humans how to enlarge their sphere of occupation. Paragraph 1 gives the example of adopting an idea from the hexagram lì (離) so as to knot cords and make nets for hunting and fishing. This indicates that, for Confucians, using animals as food for human living is morally acceptable. Indeed, it is Confucius’ teaching that humans are more valuable than animals: if there is a conflict of interests between humans and animals, then humans, not animals, should be cared for and saved (Analects 10:17). Moreover, animals are useful for human spiritual pursuits: humans should not feel pity toward the sacrifice of animals in the performance of human rituals (Analects 3: 17; 6:6). Finally, the cosmic principles, as shown in Paragraph 1 as well as the subsequent paragraphs, even indicate how humans can more efficiently secure animals for human use.17

10.3 Nature as a Garden

The third postulate embodies an attitude toward nature which expresses a key element of the Confucian view of how to properly tend, cultivate, and reshape nature so as to bring about its full flourishing. This postulate is further developed in the second paragraph of the chapter:

After Fuxi died, Shennong (神農) arose. He carved a piece of wood into a plowshare and bent another piece to make a handle, and taught the world the advantages of plowing and weeding. This idea he probably took from the hexagram yì (益). He set up markets at midday and caused the people of the world to bring all their goods and exchange them and then return home so that everyone got what he wanted. This he probably took from the hexagram shìké (世際). (Paragraph 2)

In addition to the idea of using things in nature, this paragraph offers the portrayal of a development from a hunting/fishing society to an agricultural and trading society. Nature is recognized as a resource for humans, although its use is set within thick, cosmic, normative constraints.

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17This chapter will not offer technical interpretations regarding how the hexagram lì (離) can offer the idea of making cords and nets for hunting and fishing, as well as how the other hexagrams mentioned in the subsequent paragraphs can inspire the respective ideas for human activities. Readers can easily find such explanations from any explanatory book of the Yijing.

latter interpretation, I argue, is more consistent with the Confucian tradition taken as a whole. Also see Legge (1973: 50–54) for a useful discussion of the view of Heaven as expressed in the other commentaries of the Yijing.
Paragraph 2 can be read in light of the following postulate, (4), that *nature is to be partially preserved and partially transformed under the guidance of the cosmic principles so that it can support human flourishing, providing land for agriculture and trade*. In the process, the environment is appropriately reshaped as a human garden that can be appreciated by humans and can also support human flourishing through a market economy based on the use of nature and natural resources. Humans should cease living a primitive life of fishing and hunting. The cosmic principle of the hexagram *yi* inspired the sage Shennong to use wood to design the plowshare and handles so that people could begin to plow and weed. In this way, they transformed an environment appropriate for hunting and fishing into an environment appropriate for agriculture, thus changing the nature of the human garden. Indeed, humans always transform, reshape, or locate nature in accord with human understandings of governing laws, values, and patterns. One might think, for example, of Japanese Bonzai trees. Even an attempt to create a deep ecological natural preserve in which nature would be as if it had never been touched by humans is not simply letting nature be itself, but is in fact another form of human gardening. Given the dominant human power to act and reflect under the cosmic principles, all of nature is always by design or by default influenced by human dominion. The decision to act or to refrain from intervention results in nature having a character it would otherwise not have in the absence of human power and reflection. This effective and reflective dominion by humans is augmented in moral dominion, obliging humanity to ensure that their gardening conforms to the normative patterns of the cosmos. In addition, the authoritative dominion of humans is endorsed because humanity must be recognized not just as the fulfillment of nature but as nature’s gardeners. Humans, by right and obligation, garden and transform nature.

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18 Deep ecological understandings of environmentalism enshrine a particular, romantic vision of wilderness as the untouched earth. At least three appreciations of wilderness are at stake. The first is a sense of wilderness as untouched by humans and without humans, an ecological impossibility on an earth where there is also an industrialized human civilization. The second is a sense of wilderness recognized as altered by humans but not explicitly recognized as a garden (even if it is a disordered garden), though all such wilderness is dependent on humans for its maintenance up to a certain point within a particular set of ecological systems in a particular condition (i.e., a form of gardening is required). One begins to depart from deep ecological understandings when one recognizes a third sense of wilderness that appreciates that wilderness must always be explicitly recognized as a special form of garden.

19 First, under the Confucian cosmic-principle-oriented view, humans are as much a part of nature as any other animal, and to abstract humans from nature is in a very important sense to affirm an unnatural human view of nature. Second, nature changes over time, so that to attempt to render any particular pattern in nature canonical is a human choice. Nothing in nature itself is enduring, for all things change, organisms die, and species themselves are transient. On the other hand, the environment always survives, and, under anything but truly disastrous circumstances, ecological systems will continue to exist. For instance, the asteroid that struck the earth, ending the dinosaurs and the Mesozoic Age, did not destroy the environment, although it radically changed it, ushering in the environment of the Cenozoic Age. The Confucian view is that humans should comprehend and follow the cosmic principles in transforming and changing things in nature for human good and flourishing.
However, a human community is not able to transform their piece of land to an all-inclusive and all-perfect garden, just as we cannot find an all-encompassing and all-perfect park, although there are many different, distinct types of gardens in the world. Instead, gardens in different cultures reflect a human appreciation of the appropriate relationships between humans and the environment. French gardens, for example, are structured in geometric patterns, so that the garden portrays a mathematical character taken to reflect the deep rationality of nature and the beauty of the rational. English gardens provide a presentation of nature’s diversity, but from the perspective of humans, so that a pattern is imposed by the gardener that is not geometric, but instead displays the profligate richness of nature’s patterns and forms. Japanese and Chinese Buddhist gardens are highly structured in order to elicit a sense of peace and contemplation that leads beyond the horizon of the immanent to the enduring. Daoist gardens bring rocks and other artifacts from nature into a thickly symbolically textured garden that moves the observer from the immanent to the eternal Dao. What would a Confucian garden be like?

Paragraph 2 seems not to offer a detailed answer to this question. It does convey, however, a moral message by informing us that the sage followed the cosmic principle of *shike* to set up the market for people to exchange their goods. In addition to its economic, social and political significance, the necessity of the market suggests the following postulate, (5), regarding the environment; namely, *that humans as gardeners of nature should not deplete the environment in the development of their economy, but instead should restructure and nurture its character* – hence, the focus on responsible gardening guided by the cosmic principles. Goods for exchange in the market are produced from natural resources that need not all come from the same place. The market plays the role not only of enabling the unavoidable division of human labor, but also ensuring that this division supports a responsible use of the environment by drawing resources from different regions. If one human community is forced to use its lands to produce everything needed for its maintenance, harm may be done to that particular environment. A market that engages different regions in supplying different resources protects any one environment from being overused. Thus, it is wise for the sage to encourage the establishment of a market for people to exchange goods so that they can obtain things from different communities in different areas, thereby limiting the burden on any one environment. In this way, communities can effectively preserve and transform their various environments in accord with the cosmic principles.

### 10.4 Placing the Natural Order Within a Human Order that Reflects Cosmic Principles

It is humans that guarantee that nature will be rightly ordered in harmony with the cosmic principles. The reflective and responsible shaping and gardening of nature are thus the expressions of human power over and human obligations to nature. Accordingly, in order to transform nature so as to bring about its full flowering, a
rightly ordered and dynamic human society is crucial. The third paragraph of the commentaries illustrates this point:

After Shennong died, the Yellow Emperor (黃帝), Yao (堯) and Shun (舜) arose. They comprehended change and caused the people to be unwearied, transforming them with spirit so that they were rightly ordered. When a series of changes has run all of its course, another change ensures, and by changing it is able to continue, and by continuing it achieves longevity. Thus it receives help from Heaven: good fortune and nothing that is not beneficial. (Paragraph 3)

This passage supports the following postulate: (6) assessment as to whether alteration of the environment is rightly ordered can be made on the basis of whether it involves alteration, reshaping, or recasting that supports and nurtures human flourishing. The core to human flourishing is not material wealth, but is rightly ordered human relations that are in conformity with cosmic principles. Successful agricultural developments make possible peaceful and abundant living. However, people can become corrupt and slothful as a result of easy living, if they are not appropriately instructed and disciplined. That is to say, the transformed environment can produce material wealth that facilitates human flourishing, but material wealth is not a sufficient condition for human flourishing. For Confucians, rightly ordered human relations have to come to the fore in order to establish a suitable human society with an appropriate obligation to nature. Such a view is vividly conveyed in the Mencius:

This is the way of the common people: once they have a full belly and warm clothes on their back, they degenerate to the level of animals if they are allowed to lead idle lives, without education and discipline. This gave the sage king further cause for concern, and so he appointed Qi (箕) as the minister of education whose duty was to teach the people human relationships: affection (qin, 父) between father and son, righteousness (yi, 義) between ruler and subject, distinction (bie, 別) between husband and wife, order (xiu, 順) between the old and the young, and fidelity (xin, 賛) between friends (Mencius 3A: 4; Lau, 1970: 102).

The five relations presented in the Mencius have always been taken by Confucians to be the five basic models of human relations for a civilized society. As this and other passages from the Mencius show, human use and transformation of the environment is endorsed. What is especially noteworthy is the emphasis on how such use and transformation contribute to the health and flourishing of the five basic relations. The virtues embodied in these relations provide the cardinal criteria, because they are the full expression of nature realized within the cosmic principles. It is not simply that human society is superior to natural relationships, including those of other animals or ecological systems, but that only human society can fully realize the deep principles of the universe on earth.

Paragraph 3 quoted above also affirms change; change is inevitable and beneficial. Change is help from Heaven and that there is nothing unbeneificial. The question is what kind of change is at stake here. Does it imply that the five basic human relations should also change? This leads to the fourth paragraph of the commentaries:
The Yellow Emperor, Yao and Shun designed and wore their upper and lower garments (as patterns to the people), and the world was ordered.\textsuperscript{20} This they probably took from the hexagrams qian and kun. They hollowed out logs to make boats and shaved pieces of wood for rudders, and by the means of boats and rudders opened up new roads of communication to distant places and benefited the whole world. This they probably took from the hexagram huan (渙). They yoked oxen to pull heavy loads and mounted horses to go long distances, thus benefiting the whole world. This they probably took from the hexagram sui (隕). They provided double gates and watchmen with wooden clappers to guard against robbers, and this they probably took from the hexagram yu (豫). They split wood to make pestles and scooped hollows in the ground for mortars and thus benefited all mankind by the advantages of mortar and pestle. This they probably took from the hexagram xiaoguo (小過). They strung a piece of wood for a bow and whittled arrows of wood and introduced the benefits of bow and arrow to the world. This they probably took from the hexagram kui (睽).

(Paragraph 4)

It turns out that change includes using, reshaping, and recasting the environment for the erection of an appropriate human order, but the appropriate human order manifested in the five basic relations is not changeable, for it reflects the eternal cosmic order. The first sentence of Paragraph 4 may be perplexing, because its meaning is extremely rich. Wearing clothes appropriately, for Confucians, is significantly important for rightly ordered human relations and society. The different forms of dress for man and woman, ruler and subject, and adult and child manifest the distinct roles and responsibilities individuals assume in families and society. More importantly, wearing mourning clothes is one of the most important elements of the Confucian burial ritual: different types of mourning clothes are worn by different relatives in terms of their respective relations with the dead, embodying the degree of intimacy of familial relations and an appropriate human order. All of this reflects the eternal cosmic principles of qian and kun, and reinforces the notion of the immutability of the proper human relations. This is why the first sentence of Paragraph 4 states that the model of attire established by the sages produces the order of the world. Thus, paragraph 4 supports the following postulate (7): the proper transformation of nature for pursuing human flourishing must be made to preserve a proper human order that reflects the cosmic order. One must recognize an important interplay of the deep character of the cosmos and the using and altering of the environment for the sake of human flourishing.

Following the cosmic principles, the sages designed boats for navigation and trained animals for carrying goods. This made long-distance human communication

\textsuperscript{20}De Bary et al. admitted that the original Chinese sentence would seem to be a description of the invention of traditional Chinese dress. Nevertheless, they followed an interpretation in conformity with the Daoist ideal of “nonaction” in their translation, avoiding using a word such as “invent” or “design” (1960: 197). I interpret the sentence to mean the invention of traditional Chinese dress. First, this interpretation is consistent with the Chinese legend that the Yellow Emperor invented clothes. Second, the next sentence points out that this was done by following the hexagram qian and kun, suggesting that different styles of clothes were invented for men and women.
and transportation possible, thereby expanding the scope of markets. They made double gates and developed the warning clapper to prevent violation of the human order, thus securing human property that comes from the transformation of mere things into possessions. They built pestles and mortars to produce refined grains so that humans could enjoy delicious meals. Finally, they designed bows and arrows as defenses against enemies that wanted to destroy this now complex human order established through the transformation of nature. These remarkable changes in human society as well as the environment were achieved through the practice of wisdom grounded in the cosmic principles, manifesting the important interconnection between wisdom, nature, and fundamental cosmic concerns in the transformation of nature in support of human society.

10.5 Home, Ritual, and Eternity

The appeal to proper human order and flourishing as determining the appropriateness of the alterations of the environment is necessary in that proper human order and flourishing are the greatest and fullest flowering of nature. It can only be achieved if humans appropriately appreciate and respect the cosmic principles. An understanding of environmentalism is rightly ordered when it directs the care and use of the environment to the construction of a human order and flourishing set within the cosmic principles. Given that Confucians understand such principles as the Mandate of Heaven, a virtuous Heaven that takes care of humans, a final issue arises as to how Confucians can bring their way of life, their good and flourishing, as well as their gardening of the environment all together to bear witness to the final reality, Heaven. This leads us to the last paragraph of the commentaries:

In the earliest times men dwelt in caves and lived out in the open. But the sages of later times substituted houses with ridgepoles and roofs to protect them from wind and rain. This they probably took from the hexagram dazhuang (大壯). In the earliest burials the dead were covered thickly with brushwood and buried in the fields with neither mound nor trees to mark the grave, and there was no set period of mourning. But the sages of later times substituted inner and outer coffins. This they probably took from the hexagram daguo (大過). In the earliest times knotted cords were used in government but the later sages substituted written documents and tallies so that the officials could use them to govern and the people learn them to understand.21 This they probably took from the hexagram guai (夬). (Paragraph 5)

Humans are embodied beings needing a home. The earth is the human home – a home not only for the living body but also for the dead body. Humans must shape nature into an appropriate place for the presence of humans, living and dead. The sages were the great architects in this sense: they not only built houses for living

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21 The translation of this sentence by De Bary et al. is “the officials were kept in order and the people had a clear idea of their duties.” I think the translation is problematic and have therefore changed it.
humans, but also designed coffins and graves for dead bodies. In the latter activity, they transformed the natural happening of death into a burial ritual, significantly binding humans not only in history but also linked them with the eternal, Heaven. For Confucians, death is not the end of a human life; rather, death gives one the opportunity of joining one’s ancestors in proximity to Heaven. This great matter cannot be handled appropriately except through a well organized ritual (li 禮): grave sites are erected and monuments placed so as to bind a particular place on this earth within the memory of a family and a community. “Conduct the funeral ritual of your parents with meticulous care and let not sacrifice rituals to your remote ancestors be forgotten, and the virtue of the common people will incline towards fullness” (Analects 1: 9; Lau, 1979: 60). Burial rites establish the continuity between persons, families, and Heaven.

Here one recognizes a further importance of the Confucian rituals: they embed humans not only in the history of a community, but also in the history and meaning of the cosmos. In relation to a Confucian environmentalism, Paragraph 5 supports the following postulate: (8) one of the most significant transformations of nature is the digging of graves, the burying of bodies, and the erecting of monuments in the burial ritual. The meaning of the burial ritual is tied to the humanization of the environment in terms of its cardinal relationship with the eternal cosmic principles. Indeed, a coherent Confucian account that is in harmony with the foundational elements of the Confucian tradition, while adequately providing an understanding of human flourishing and the proper use of the environment, points to the appropriate use of nature that is set within rightly ordered rituals. The highest form of gardening is the transformation of nature into sacred buildings, shrines, and places for rituals. Rituals bring together aesthetic and moral values within the recognition of the deep metaphysical character of reality. Rituals provide an exemplar of the interaction of humans with nature and Heaven, thus providing an image of foundational harmony.

Most significantly, Confucian rituals are set within the Confucian community that has a history and therefore opens the possibility of maintaining the tradition across generations so as to sustain continuity with Heaven and the principles of the universe. For this reason, the use, transformation, and responsible gardening of nature not only can but also must be appreciated in terms of rituals. This leads us to the final postulate (9) suggested by Paragraph 5: the invention of written language is tied to the ritual success of humans. Ritual books can be produced, the records of the family can be conserved, and the virtues of sages can be preserved, assuring the continuity of civilization in its transformation of nature, which is committed both to human history and harmony with Heaven. Compared to the knotted cords used to calculate events, written language is the glorious achievements of human civilization. It improves human memory, facilitates learning, and promotes effective ways of governing and managing for the sake of ritual performance. The sages’ invention of written language and documentation of rituals facilitate the maintenance of the proper way of transforming nature in accord with the cosmic principles and of harmony with the eternal, Heaven.
10.6 Conclusion

This chapter lays out nine Confucian postulates regarding the relation between humans and nature. The core of these postulates shows that both humans and nature are lodged within a cosmic context regulated by the cosmic principles as expressed in the *Yijing*. Such principles are best understood as Confucian moral requirements that reflect the virtue of a supernatural, quasi-personal power rather than the causal necessity of Daoist natural law. Humans transform the environment into a human garden in accord with the cosmic principles, placing the natural order within a human order for the human good and flourishing. As finite and embodied beings, humans naturally use the environment as their home, while incessantly performing proper rituals to transform nature so as to pursue the profound meaning of the cosmos and maintain harmony with Heaven.
Part IV
Rites, Not Rights: Towards a Richer Vision of the Human Condition
Chapter 11
Rites as the Foundations of Human Civilization: Rethinking the Role of the Confucian Li

11.1 Introduction

Rituals are roughly fixed and repetitive social practices. They are not general principles that depend on specific interpretations to determine their requirements. Instead, rituals provide concrete and detailed instructions, specifying what individuals should say and do in particular contexts. Evidently, every civilization or tradition carries distinct, important rituals in its community. A prominent example is the li (禮) of the Confucian tradition. Importantly, li refers not only to well-known Confucian ceremonies, such as the family rituals of capping, wedding, mourning, and sacrificing, the village rituals of drinking, banqueting, and archery, and the state rituals of interchanging missions, visiting the emperor, and sacrificing to Heaven. Li also denotes ordinary Confucian behavior patterns, such as various quasi-ceremonial manners in which Confucian individuals address and treat each other. Throughout the thousands of years of the Chinese and East Asian history, these ceremonies and patterns have been the essential mechanisms for the Confucians to manifest their cultural symbolism, structure their societies, and embody their Confucian way of life. In short, li is the essence of the Confucian civilization.

However, since the collapse of traditional China in 1911 and the attempt to recreating a new culture in the May Fourth Movement in 1919, modern Chinese individualists and Marxists have depicted the Confucian rituals as backward, feudalist practices. From their view, the primary effect of the Confucian li is the oppression of the Chinese people, especially women and children, having them to

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1 “Li” could have various English translations. As Wing-tsit Chan points out, “li originally meant ‘a religious sacrifice’ but has come to mean ‘ceremony,’ ‘ritual,’ ‘decorum,’ ‘rules of propriety,’ ‘good form,’ ‘good custom,’ etc.” in the Confucian tradition (Chan, 1967, p. 367). This chapter explores the central meaning and function of li in order coherently to bring its various uses together.

The quotations of the Analects in this chapter are adapted from D. C. Lau’s translation with reference to additional versions offered by other translators. The quotations of the Records of Li (禮記) are adapted from James Legge (1967).

2 For detailed descriptions of these Confucian ceremonial rituals, see the Confucian classic Yili (禮記); for the English version of this classic, see Steele (1966).
be afflicted and tortured by ritual performance. They have even analogized the function of the rituals as equivalent to “eating the people” (chiren, 吃人). On the other hand, the modern Neo-Confucian scholars lodged in Hong Kong, Taiwan and the United States in the latter half of the 20th century (a period that was most hostile to Confucianism in Confucius’ home country, China) have attempted to defend Confucian morality by diluting the role of the rituals in the tradition. Their strategy is to characterize the Confucian morality by separating its cardinal virtue, ren (仁), from the practices of li, emphasizing the inwardsness and self-sufficiency of ren as well as “the self-reviving, self-perfecting, and self-fulfilling process of an individual” which “gives meaning to li” rather than being “caused by the mechanism of li from outside” (Tu, 1968, p. 34). The hope is to adapt the Confucian tradition to modernity by overlooking the ritual practices in the Chinese moral lives. Under such Neo-Confucian interpretation, li should not be perceived as the stable rituals that require the people to observe through self-cultivation, but as the movements of self-transformation that emphasize individual creation. Accordingly, in the process of such self-transformation, the content of li must vary from time to time in correspondence with situational dimensions (Tu, 1972). Consequently, such Neo-Confucian accounts have reinterpreted the fundamental Confucian commitments to virtue and morality in separation from the Confucian ritual practices. And this reinterpretation has paved a way for the contemporary Neo-Confucians to further recast the Confucian concerns in light of the liberal social-democratic principles of liberty, equality and individual rights so as to remark Confucianism as “relevant” to, or “consistent” with, Western modernity.

This chapter holds that Confucian culture consists in the integration and interdependence of specific Confucian rituals and general Confucian virtue principles. Confucian morality is not rooted in any general Confucian principles in separation from the Confucian rituals, much less the general liberal principles of liberty, equality, and individual rights. Rather, this chapter argues that the true nature of any human morality cannot be properly understood without appreciating the substance of a series of familial and societal practices commonly performed by the group of human beings. It recognizes that the deep character of the human condition is more effectively predicated by specific rituals that people actually conduct than general principles that people usually announce. Indeed, in light of the Confucian approach to morality through li, we are reminded that morality is primarily a practice-oriented rather than a principle-oriented subject. This chapter demonstrates that the Confucian morality must be reconstructed by disclosing and illustrating the most complete meaning and function of the Confucian li in the Confucian moral life, including their fundamental role in virtue cultivation and shaping a Confucian moral character. Contrary to the Neo-Confucian understanding of the Confucian virtue in separation from or prior to li, my reconstructionist Confucian account indicates and defends the inseparability and interdependence of the Confucian virtue and ritual. Toward this end, next section discloses the nature of the Confucian rituals by drawing a few necessary conceptual distinctions regarding practice. This work is facilitated by a few analytical philosophical tools available from the literature. In Section 11.3 the ordinary Confucian activities as the minute rituals understood
in terms of closed and quasi-closed practices are addressed. This is followed, in Section 11.4, by exploring the moral significance of the Confucian rituals for the Confucian moral tradition as well as their implications for a moral way of life in contemporary society. The last section covers concluding remarks on the importance of a need for further investigating the role of traditional ritual in general and the Confucian rituals in particular in order to deal with thorny moral issues facing today. Finally, a postscript is attached to explore a Confucian thesis regarding ritual reform.

11.2 *Li* as the Universal Social Practices of the Confucian Tradition

Generally, a ritual is a practice. But this identification is not enough for understanding the nature of ritual in general and the Confucian rituals in particular. No doubt, the Confucian *li* is a series of practices that are commonly performed by Confucian individuals in their moral lives. We would need to make a few necessary conceptual distinctions in order clearly to disclose the features of the Confucian rituals.

First, the Confucian rituals are social practices, not natural practices. Natural practices are governed by the laws of nature (namely, causal laws) and are employed by people to seek natural objects or effects. For example, hunting animals for food has been a typical natural practice. In this practice one may make a series of causal considerations in order to determine, e.g., what kind of bows to make, what type of arrows to use, and how closely one should approach an animal before shooting it, and so on. All these elaborations are made for achieving a natural effect, namely, catching an animal for food. Although in a collective hunting activity some social rules are adopted to organize the hunters, they are not the primary elements to characterize the entire activity. Instead, the causal laws to be followed and the natural objects (such as animals used for food) to be achieved are most important.

The Confucian rituals are not such natural activities for obtaining food. However, when a group of people hunts animals for providing sacrifices to their ancestors, it is no longer a natural practice. Although relevant causal considerations still function in the process, they are no longer the major factors for the meaning of this activity. Instead, it is a system of social rules, such as the rules regarding what time to do the hunting, who should participate, which species of animals should be chosen, how many animals to hunt, how to hunt them, and in what ways to offer them to the ancestors, and so on, that dominate the nature of the activity. Such rules represent not causal considerations to observe but practical reasons to act, bearing rich symbolic implications. The most important final effect of the practice, sacrificing the animals to the ancestors, cannot be described as a natural effect, like eating or entertaining. It is rather a social, spiritual, or even sacred effect that is both created and directed by a particular type of social rules. Crucially, such a rule is constitutive. It has the format that “doing such and such things in such and such ways constitutes as sacrificing to the ancestors.” Indeed, it is a social practice of this kind that is
typically termed *li* in the Confucian tradition.³ It is governed by social rules rather than determined by natural laws. While natural laws are discovered to describe natural phenomena and their causal relations, social rules are established to create social institutions and activities. It does not make sense to explain a social practice by investigating the involved natural laws. Instead, we must find out the social rules that have been established and followed by the practitioners in order to understand the social practice.⁴

Moreover, the Confucian rituals are not only social practices, but are *closed* social practices. A distinction between “closed practices” and “open practices” is necessary if we attempt to capture the important function of the rituals in the Confucian culture.⁵ Closed practices differ from open practices in a number of respects. First, a closed practice has clearly defined boundaries, while an open practice is on-going and open-ended. For example, a football match (namely, an instantiation of the football game) is a closed practice, which has an explicit beginning and end; in contrast, football players’ ordinary activities (such as eating, drinking, exercising, relaxing and resting) are open practices. Both types of practices are governed by social rules, but rules in different types. Closed practices are governed by *constitutive rules*, while open practices by *regulative rules.* The form of a constitutive rule is that “*x* counts as *y*” or “*x* counts as *y* in context *c*,” while the form of a regulative rule is that “do *x*” or “if *y*, do *x*” (Searle, 1969, pp. 34–35). As a result, a closed practice carries internal goals that have been created and defined by its constitutive rules: since a constitutive rule has the form that “*x* counts as *y,*” “*y*” constitutes an internal goal of the practice defined by the rule. For example, a Confucian

³ As the Confucian classic *Records of Li* discloses, “At the first use of ceremonies (*li*), they began with meat and drink. They roasted millet and pieces of animal meat; they excavated the ground in the form of a jar, and scooped the water from it with their two hands; they fashioned a handle of clay, and struck with it an earthen drum. (Simple as these arrangements were), they yet seemed to be able to express by them their reverence for spiritual beings” (*Liji*: *Liyun* 禮記・禮遠；Legge, 1967, Vol. I, p. 368).

⁴ Archery can serve as a useful example here. In the Confucian tradition, archery is not a casually-performed game. Instead, it is one of the important ceremonial rituals, created and governed by a system of Confucian constitutive rules for the purpose of virtue cultivation. “The archers, in advancing, retiring, and all their movements, were required to observe the rules. With minds correct, and straight carriage of the body, they were to hold their bows and arrows skillfully and firmly; and when they did so, they might be expected to hit the mark. In this way their virtues could be seen. . . . Archery suggests to us the way of the cardinal virtue” (*Liji*: *Sheyi* 禮記・射義；Legge, 1967, Vol. II, pp. 446, 452). As Confucius points out, “there is no contention between gentlemen. The nearest to it is, perhaps, archery. In archery they bow and make way for one another as they go up, and on coming down they drink together. Even the way they contend is gentlemanly” (*Analects* 3.7). For the detailed constitutive rules of the Confucian archery ritual, see *Yili*: *Dasheyi* 射義；for an English translation, see Steele (1966, Vol. I, pp. 150–160).

⁵ The distinction between closed practices and open practices is made by Tom Morawetz (1973, pp. 860–861), and is further developed by Emily Martin Ahern in explaining Chinese rituals (1981, pp. 64–74). However, Ahern failed to recognize that the Confucian rituals, as to be argued in this essay, are closed and quasi-closed practices. My argument in this section has been developed based on these two essays as well as the distinction between constitutive and regulative rules made by John Searle (1969, pp. 33–42).
sacrificial ritual is both created and defined by a system of constitutive rules whose form is such that “providing an animal in such and such ways counts as offering a sacrifice to one’s ancestors,” hence “offering a sacrifice to one’s ancestors” is an internal goal of the ritual defined by the rule. In contrast, regulative rules are not constitutive or creative; they only regulate the forms of behavior that are already existing (namely, open practices). For example, the traffic rule that “one must stop at a red light” does not create transportation activity; instead, it only regulates traffic behavior. Evidently, such rules do not create or define internal goals.

Recognizing the features of constitutive rules in contrast with regulative rules is important for exploring the meaning of ritual in general and the Confucian rituals in particular. Again, a closed practice has internal goals established by its constitutive rules, while an open practice does not have such internal goals. This contrast makes a difference in justifying rule-following or rule-violating behavior. For example, we may justify not adhering to a usual regulative rule in an open practice by citing a point of the practice that is not defined by its regulative rules: “I went through the traffic-light because I was trying to get a critically ill person to the hospital – the point of traffic laws is to preserve lives anyway.” Obviously, this point (“to preserve lives”) used in justifying the violation is not defined internally by the traffic rules (cf. Ahern, 1981, p. 66). In contrast, we may not make such justification for violating a constitutive rule in a closed practice, such as in a Confucian greeting ritual (xingli, 行禮). Suppose you did not bow to your teacher as the ritual rule requires. You may not justify your violation by arguing that “shaking hands is better than bowing because it shows an even closer relation between us – the point of the xingli is to promote close relations anyway.” This justification does not work because the ritual is created by a constitutive rule in the form that “bowing counts as xingli” – “xingli” is the internal goal of the ritual that cannot be put aside by any external points that the ritual may have. In other words, in exercising a ritual, one does not have freedom to supersede the internal goal of the ritual by its external points, even if the ritual does such external points as effects.

This is to say, the Confucian ceremonial rituals, such as capping, marriage, funeral, and sacrifices to ancestors, are closed social practices that are created, shaped and regulated by a system of Confucian constitutive rules that may not be violated for the sake of expediency. Such rules set forth the internal goals of the Confucian rituals as social and/or spiritual rather than natural effects. As closed practices governed by constitutive rules, these rituals have a conservative nature. While the regulative rules may change during the instance of an open practice, the constitutive rules are fixed during the instances of a closed practice. Indeed, constitutive rules are more accurate in anticipation than regulative rules. This is the case for any closed social practice, not only for the Confucian rituals. For example, the constitutive rules of chess as a closed practice anticipate all normal situations of the game. Any question, for example, whether a move is permitted, has an easy answer, presupposes the rules, and is obviated by a knowledge of the rules. However, whether a move is permitted by a regulative rule may have no easy answer. It is open to interpretation, for example, whether an ordinance forbidding mechanical transportation in a park forbids pogo sticks (Morawetz, 1973, p. 862).
On the other hand, while the Confucian rituals are closed social practices, not all closed social practices performed in Confucian society are the Confucian rituals. Sports, such as the basketball and football games, are closed social practices and are played by many individuals in China, just as in many other countries, but they are not Confucian rituals. Indeed, they may not be taken as rituals by any culture. Why not? Performing a ceremonial ritual seems like playing a game: both have an explicit beginning and end, and both are a sort of skill display by following constitutive rules. However, a Confucian ritual differs from a sport game in its importance to the Confucian culture. Some closed social practices constitute the Confucian rituals because their internal goals (such as “getting married,” “burying the dead,” and “offering sacrifices”) set by the Confucian constitutive rules are central, essential, and irreplaceable to the meaning of Confucian culture. In contrast, such internal goals as the “anti-offside” and “shooting the gate” set up by the constitutive rules (that “doing such and such things counts as anti-offside” and that “doing such and such things counts as shooting the gate”) of the football game cannot be essential at all to the meaning of Confucian culture. No matter how popular it is to play the majiang (麻將) game in Chinese society, Chinese Confucians will remain Confucians without playing this game, just as no matter how popular the game of football is in American society, American Christians will remain Christians without playing this game. But the Chinese culture will no longer be Confucian if Chinese stop performing the Confucian rituals of marriage, funeral, sacrifices, and so on, just as Americans will no longer be Christians if they stop attending church regularly. In short, some closed social practices constitute the Confucian rituals because their rule-defined internal goals are irreplaceable to the core meaning of Confucian culture. They generate the essential symbols of the culture.

Finally, we cannot fully appreciate the significance of the Confucian rituals without recognizing that they are in fact universal social practices, “universal” in the sense that every individual within the Confucian tradition must learn and employ these rituals in order to live a normative Confucian life. Evidently, many social practices are not universal in this sense. Indeed, many general practices, such as farming, crafting, medicine, and the arts are undoubtedly important to society, but they are not universal in the sense just defined. No matter how important each of these practices is, none of them can be required for everyone to exercise. For instance, it would be ridiculous to require everyone to practice the arts. In contrast, the Confucian rituals must be practiced by every Confucian: every Confucian must participate in the capping, wedding, funeral and sacrificing rituals in order to live the Confucian way of life, no matter what other general practices they employ. It is just like whether a Christian is a farmer, artist, doctor, or lawyer, one must attend Sunday services as a part of living the Christian way of life. Accordingly, the distinction between universal and general practices is an important one for understanding rituals – rituals are universal, not general, social practices.

To sum up, this section discloses that the Confucian rituals are best understood as the universally-employed, closed social practices, whose internal goals

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6 A specific activity inside a game, such as playing the national anthem, may be taken as a ritual.
are created and defined by the Confucian constitutive rules, and such goals are indispensably important to the meaning of Confucian culture and morality. In this light, the Confucian rituals provide specific content to Confucian ethics. Without attending to the Confucian rituals, Confucian ethics would be too abstract to stand clearly.

11.3 Two Types of the Confucian Rituals

There has been a general classification of the Confucian li in the tradition. However, the Confucian concept of li is unique in that it refers not only to formal ceremonial rituals, but also to small behavior patterns. This feature distinguishes the Confucian li from the usual concept of ritual or rite used in most cultures, a concept limited to denoting strictly ceremonial procedures. The broad application of the Confucian li as gives significant attention to the small concrete patterns of personal behavior and interactions. Indeed, the importance of such “small” rituals are emphasized in the Records of Li (Liji, 禮記), one of the three Confucian classics of li. In fact, the classic of Liji explicitly divides the Confucian li into two types: yili (儀禮), ceremonial rituals, and quli (曲禮), minute rituals. “Quli,” literally meaning “crooked or bent” rituals, is best understood as referring to the partially-exhibited ceremonial rituals – they are the ceremonial rituals employed in a small degree in ordinary human interactions and behaviors (Cf. Legge, Vol. I, p. 16). Since the Confucian tradition stresses the prominent position of the minute rituals, the Confucian life world can be termed ritualized: in addition to a series of formal ceremonial rituals, a large amount of minute rituals, as closed or quasi-closed social practices, are also seriously performed in everyday life. Chinese people are firmly committed to such minute rituals rather than extensively wedded to open practices in their ordinary relations and interactions.

In the Analects, Master Confucius appears to talk about the li simpliciter – he does not explicitly distinguish the ceremonial li and the minute li. However, he is evidently assuming the necessity of both ceremonial and minute li for virtue cultivation. For example, when a student asks about how one should cultivate the fundamental virtue, humanity (ren, 仁), the Master answers: “to return to li through

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7 The most comprehensive and popular classification of the Confucian li was offered by a Qing dynasty scholar, Qin Huitian (秦惠田, 1702–1764), who integrated all li into five sorts: auspicious li (jili, 吉禮), propitious li (jiali, 嘉禮), diplomatic li (binli, 禮記), military li (junli, 軍禮), and ominous li (xiongli, 凶禮). See Qin (1994). Nowadays Chinese people still use the word of li in broad ways, such as political li, business li, everyday life li, etc.

8 “Quli” constitutes the title of the first chapter of the Liji. I translate quli into “minute rituals” because it is formally taken to be partially-employed yili or small pieces of yili. We are told that the Confucian tradition used to include 300 ceremonial rituals and 3,000 minute rituals (Liji : Liqi 禮記 : 禮器；Legge, Vol. I, p. 404). Although these figures were not meant to provide accurate statistics, they do indicate that a great amount of the Confucian rituals were practiced and recorded in the ancient Chinese society. Unfortunately, most ancient corpora covering the Confucian li were destroyed in the anti-Confucian, despotic Qin (秦) dynasty (4th–3rd century BCE).
overcoming the selfish passions constitutes humanity” (12.1). When the student asks for a specific method, the Master answers: do not look, listen, speak or move unless it is in accordance with li (12.1). Here by “li” Confucius cannot only refer to the ceremonial rituals. Given that the ceremonial rituals do not take place every day, they cannot constitute a sufficient means for virtue cultivation. Indeed, Confucius must have meant both the ceremonial and minute rituals when he persistently emphasizes that the only way for one to take one’s stand is to learn the rites (8.8; 16.13; 20.3). When someone asks about how one should be filial (xiao, 孝) to one’s parents, the Master replies: never fail to comply with the rites (2.5). When asking for a specification, the Master states: “when your parents are alive, comply with the rites in serving them; when they die, comply with the rites in burying them; comply with the rites in sacrificing to them” (2.5). While the burying and sacrificing rituals are ceremonial rituals, the rites in serving the parents in everyday lives are minute rituals. Indeed, it is the Confucian minute rituals along with the ceremonial rituals that create a momentarily shared Confucian sociality of emotion, attention and solidarity, producing a Confucian reality in the here-and-now activities so that the Confucian life-world is significantly ritualized.

Evidently, every culture has certain ceremonial rituals to constitute the important events of the culture. But most cultures do not call their small behavior patterns, social conventions or customs “rituals.” They do not have such things as the Confucian minute rituals. Some may want to argue that the minute rituals, although called “rituals”, cannot possess strict sets of procedures or rules as ceremonial rituals. Compared to the closed practices of ceremonial rituals, minute rituals may have to be open-ended, allowing alternations from person to person and from situation to situation. Indeed, everyday ordinary activities are much more flexible and much less formal than such closed practices as weddings or funerals. For example, when parents and children live under the same roof, their everyday meetings with each other cannot have explicit beginnings and ends. Neither can their interactions have fixed forms to be defined by a system of constitutive rules. In short, they would argue, such activities can only be open practices, even if one wants to call them “rituals.”

This is not the normal condition of the Confucian tradition, though. Confucian ordinary interactions and activities are at least quasi-closed practices. They are not governed by merely regulative rules such as today’s general cross-culture rules of etiquette – e.g., say “good morning” when you see another person first time of the day. Rather, they are governed by the same systems of the Confucian constitutive rules that create and shape the Confucian ceremonial rituals. The only difference is that in the case of a minute ritual, a system of constitutive rules is engaged only partially or in a smaller degree, while in the case of a ceremonial ritual the full system is employed.9 In any case, the nuances of the issue consist in the central

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9 This understanding of the minute rituals is suggested and supported by the Confucian classic of the Records of Li. It has also been upheld by some Neo-Confucian scholars, such as the great Neo-Confucian master Zhu Xi (朱熹, 1130–1200). Zhu Xi emphasized the role of li, seeing that yili serves as a primordial model from which quli is derivable. From his view, it is incorrect to say that quli is changeable while yili is unchangeable. Instead, both yili and quli include adjustable and
function that the Confucian constitutive rules must play in Confucian ethics. A few points need to be elaborated and deployed to illuminate this point.

First, the Confucian doctrine of the rectification of names discloses that a system of Confucian constitutive rules establishes the meanings of the names used in Confucian society, especially the names referring to the roles that individuals perform in familial and social relations, such as “father,” “son,” “ruler” and “minister.” For Confucius, getting such names correct is vitally important:

If names are not correct, what is said will not be in accord [with what is to be done]; if what is said is not in accord [with what is to be done], what is to be done cannot be implemented; if what is to be done cannot be implemented, rites and music will not flourish; if rites and music do not flourish, punishments will not be appropriate; when punishments are not appropriate, the people will not know where to put hand and foot (Analects 13.3).

Confucians do not think names only play naturalistic, non-normative functions. A name of a human is not defined by a law of nature referring to a purely natural entity or reporting a natural effect. If a father, for example, is defined simply as a man who had a sexual intercourse with a woman and obtained a child as a result, then the man would only be a natural entity, and the sexual affair only a natural effect determined by the laws of nature. This definition would fail to distinguish human beings from the beasts, which distinction Confucianism stresses as vitally important for an authentic way of human life. For Confucius, human names play a creative and performative function in human society. A name creates a new form of existence (distinguished from a mere natural state) through a system of constitutive rules. Such rules specify the “objective” and “normal” behavior of an individual under the name. This is to say, a name characterizes a social entity that is created by social rules. For example, the correct use of the name of “father” in Confucian society implies that a system of rules in the form that “a man doing and saying such and such things under such and such relations counts as a father” establishes the social being of fatherhood as well as the social conventions of marriage and family. Hence, “the word ‘father’ carries the implication that the father will ‘act like a father’ as well as the assumption that the language will provide information on how to do so” (Schwartz, 1985, p. 92). If there were no constitutive rules for the name of “father,” no individual could be called “father.” By the same token, when
an individual is called “father,” he receives descriptions and specifications through the constitutive rules that define the name of “father.”

It is misleading to understand such rules only as regulative rules in the form that “one should do such and such things.” They are indeed regulative – governing the behavior of individuals. But they are first and foremost constitutive in the sense that they create and specify the existence of individuals as particular social and moral beings. If a rule is only regulative to govern an activity, the activity is pre-existing – its existence is logically independent of the rule. For example, a son’s speech act of voicing “good morning” to his father can be described whether or not there is a regulative rule stipulating that he should say so. However, without the constitutive rules of defining what father and son are, no individual can exist as father or son. That is, the existence of father and son as well as their relation are created by a system of constitutive rules. Moreover, looking after their young children is the typical activity of parents and is implied in the names of “father” and “mother”; serving one’s aged parents is the typical activity of adult children and is implied in the names of “son” and “daughter.” The rituals specify what one should say and do. For example, as a child, one must use one’s two hands to hand anything to one’s parent. Accordingly, normative Confucian appraisals are based on and derivable from “constitutive” judgments: a “good” son or daughter is a person who serves one’s aged parents in well-grasped ritual skills. If one does not serve one’s aged parents according to the rites, one is not qualified to be, and thus should not even be called, a son or a daughter. In such a case the “name” used would not be correct, because “what is said will not be in accord [with what is to be done].” For Confucius, this incorrectness would cause a fundamental mess: “if what is said is not in accord, what is to be done cannot be implemented” (Analects 13.3).

The recognition of the “constitutive” roles of human beings in family and society leads Confucius to appreciate the significance of the rituals and call for a ritualized life-world. He is well prepared to transform everyday activities into ritual-like behaviors, namely, the minute rituals. For him, this transformation would first require an appropriate attitude that one should adopt toward ordinary activities: “when abroad behave as though you were receiving an important guest; when employing the services of the common people behave as though you were officiating at an important sacrifice” (Analects 12.2). This is to say, you should always attempt to behave yourself in a ceremonial way: in your ordinary interactions with other people, you should treat such interactions as if they were important-guest-receiving

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11 This interpretation is consistent with Alasdair MacIntyre’s account of functional concepts. Confucian names for individuals can be taken as functional concepts. As MacIntyre points out, a functional concept (such as father) must be defined in terms of the purpose or function which the concept bearer (the father) is characteristically expected to serve. Accordingly, the criterion of some individual’s being a father and the criterion of some individual’s being a good father are not independent of each other. Both criteria are factual so that there would be no problem of a “is-ought” gap in functionalist ethical argument (1984, p. 58). In my interpretation, the Confucian constitutive rules for creating and specifying the Confucian individuals and their roles are both descriptive and prescriptive.
rituals, although they are not; in organizing the work of the common people, you should treat such organizing as if it was a sacrificial ritual, although it is not.

With such a serious “as if” attitude, you can attempt to behave yourself elegantly in your everyday life. You treat your parents-in-law in ways as if you were performing your wedding ritual; you yield to an elderly person in ways as if you were performing a village drinking ritual; you speak to a relative in ways as if you were performing a guest-receiving ritual. These ordinary activities and interactions are shaped by the same constitutive rules that create the ceremonial rituals. The difference is only that, again, the systems of constitutive rules are only partially or in a smaller degree exhibited in the minute rituals. Accordingly, a minute ritual differs from a ceremonial ritual only in degree, but not in essence. Although we do not need mechanically to assume that each minute ritual closely models after a ceremonial ritual, we can fully appreciate the minute rituals as established by the same systems of constitutive rules for the ceremonial rituals. In short, the “as if” attitude that Confucius endorses is equivalent to the attitude of reverence (jing) that he stresses for performing the rituals in the Analects (see, e.g., 2.7, 3.26).

Evidently, a great amount of the minute rituals are engaged in the Confucian life world, from nuclear family to large society. For instance, greeting the parents in the morning is not a casual action governed by a simple regulative rule, such as a rule of etiquette for politeness. Rather it is a minute ritual called qingan (請安), which is shaped by a system of constitutive rules. These rules specify how it begins and ends and what a participant should say and do in each step. Of course, it would be too stretching to understand the Confucian life experience as an incessant continuation of the rituals. Nevertheless, the prevalence of the minute rituals in an ideal Confucian society does ritualize human interconnections and interactions in which individuals are expected to behave in quasi-ceremonial ways. They must cultivate themselves through the rituals and form harmonious relations with each other so as to implement “what is to be done.” As sincere ritual performers, Confucian individuals must understand their rituals as a big play with different acts: some acts are long and complete, and other acts are short and episodic. But the entire play is created by the same comprehensive system of the Confucian constitutive rules.

Anyone who has carefully read the Book X of the Analects could confirm that this understanding of Confucian ritualization is well grounded. Confucius’ behavior in his everyday life, in eating, drinking, dressing, walking, speaking, sitting and even sleeping, represents exemplary ritual patterns just as he elegantly performs the ceremonial rituals. This understanding can also be supported by the relevant chapters of the Records of Li, such as Chapters I, II, XII, and XVII, which focus on the minute rituals. In short, the minute rituals stand out as a peculiar cultural character of the Confucian life. The Confucian constitutive rules not only create and inform the Confucian ceremonial rituals, but also shape and inform the Confucian ordinary activities so as to ritualize Confucian society.

12 Even when one is alone, Confucianism emphasizes that one must be watchful over oneself (shendu, 慎獨) in observing the rituals (Great Learning 6; Doctrine of the Mean 1).
To sum up. From the Confucian view, undertaking important names (“what is said”), such as father, mother, son, daughter, brother, sister, teacher, student, employer, employee, etc., must be in accord with conducting the proper ritual behavior corresponding to them (“what is to be done”). The Confucian rituals are not only ceremonies for big events, but also minute patterns for everyday interactions and activities. Only through this kind of ritualization, can a unity of name and practice be achieved. Thus, Confucius emphasizes that “what is said must be in accord with what is to be done” (Analects 13.3).

11.4 The Function of Ritual and the Feeling of Shame

Western modernity has been unfriendly, if not hostile, to traditional rituals. The modern man wants only a set of minimum, regulative rules (usually called “principles”) to maintain a social order in which everyone can make a contract with consenting others to do anything as they see fit, as long as it does not involve or harm a third party. The liberal moral principles of individual liberty, equality, and individual rights are the representative principles in this regard. To emphasize these principles, the modern man has embraced a robust sense of individual autonomy, autonomy as self-gratification and self-determination, which is significantly incongruent with the spirit of traditional rituals. Traditional rituals, as closed or quasi-closed practices for individuals to observe, seem to be unbearably “conservative” and “restrictive” to the “free” development of the modern man.

Against this background, one would need a sense of patience in order to investigate the moral function of the Confucian rituals to appreciate their moral strengths. From the Confucian view, the “restrictive” or “conservative” features of the Confucian rituals are morally necessary for shaping the Confucian character. There are at least three important points to note in this regard. First, how is it possible for individuals to acquire the virtues? In both Aristotle’s and Aquinas’s views, the virtues are acquired through habituation: we become just by performing just actions and courageous by performing courageous actions. However, how can we perform just and courageous actions before we become just and courageous? The Confucian provides the answer to this important question: it is the learning and exercising of the rituals that make this possible. In other words, it is through the process of ritual observance, one gradually accomplishes the integration of the inner (namely, one’s desires, feelings, attitudes, and decisions) and the outer (namely, one’s oral words, bodily movements and activities) so as successfully to acquire the virtues. From the Confucian view, for any moral tradition to cultivate and realize virtue among its members, there must be a corresponding recognition of the need for something like the Confucian \textit{li} in order to close the gap between inner and outer.\footnote{Of course, this process of harmonizing the inner and outer cannot be completed overnight. Confucius described the process of his life experience this way: “At fifteen I set my heart on learning [the rituals]; at thirty I took my stand; at forty I came to be free from doubts; at fifty I}
11.4 The Function of Ritual and the Feeling of Shame

rituals are “conservative” because, in the normal situation, a child’s performing of the rituals is primarily a matter of comprehending the constitutive rules and observing them skillfully by learning from one’s parents and teachers. It is not a matter for one to find or argue which rules to follow by oneself. Accordingly, it is the Confucian constitutive rules, rather than the regulative liberal principles of liberty and equality, that provide a specific mechanism for parents and teachers to teach the virtues to their children. As Alasdair MacIntyre observes, “the young novice does not act as justice requires because justice requires it, but to avoid the approval or disapproval of parents and teachers” (2004, p. 157).

Second, the rituals are required for virtue cultivation because they provide concrete and detailed guidance regarding how one should act in society. Such specific guidance is necessary for forming a habit of doing “what is to be done.” It is hard to shape this habit merely through open practices because open practices leave too much leeway and too many “crossroads” for individuals to go, so that individuals could easily get astray. If I teach my children that bowing to their uncle is showing respect to him, they will know what to do; but if I only tell them that they should show respect to their uncle, they will not know what to do. Accordingly, Confucians understand that without the direction of the Confucian rituals defined by the constitutive rules, regulative principles alone would inevitably end up in a situation in which “what is to be done cannot be implemented” (Analects 13.3).

Finally, the Confucian rituals as universal practices are necessary in order to achieve harmonious human relations. In order effectively to employ any general practice (such as farm, medicine, commerce, law, or arts), one would need to form harmonious relations with relevant others in the practice. However, harmonious relations cannot be achieved by only focusing on the internal good of a general practice (such as medical treatment) under the regulative liberal principles of liberty and equality. For example, if one wholeheartedly concentrates oneself on medical skills, one may become a great medical doctor in the technical sense. But one may not become a great medical doctor in the full sense (with appropriate, harmonious relations with one’s patients, peer doctors and nurses). If one fails in such relations, one’s medical practice will be disturbed. It is the other type of practices, namely the Confucian rituals, that one must learn and exercise in order to achieve harmonious relations. These ritual practices teach and train individuals to interact with each other in proper, cooperative ways. In short, the skills of farming, chess playing, or painting cannot inculcate or represent the normal human relations advocated by the Confucian tradition. It is the skills of participating in the Confucian li that contributes to a harmonious society.

understood the Decree of Heaven; at sixty my ear was attuned; at seventy I followed my heart’s desire without overstepping the line” (Analects 2.4). This is to say, Confucius acquired a perfect freedom or unity between his inner and outer at the age of seventy: at that point what he desired to do was always what he ought to do.

In Fingarette’s words, the Confucian Way is “a Way without a crossroads” (p. 18). To a great extent this chapter shares his view on the significance of the Confucian rituals. But I don’t need to accept his behaviorist assumptions on Confucian ethics taken in his book.
Confucius recognizes that “if rites and music do not flourish, punishments will not be appropriate” (13.3). This Confucian insight is worth serious consideration for modern society. The modern society has been dominated by a perspective of law that does not take virtue to be a foundation of law. In this perspective, law is simply a set of regulative rules that individuals are required to obey in pursuing a conception of the good life as they see fit. In contrast, the Confucian tradition pursues the ideal of the rule of virtue encouraging individuals to promote the common good of society. Importantly, the significance of the rule of virtue cannot be fully recognized without appreciating the function of the rituals. As Confucius points out:

Guide the common people by edicts, keep them in line with punishments, and they will stay out of trouble but will have no sense of shame. Guide them by virtue, keep them in line with the rites, and they will, besides having a sense of shame, improve themselves (Analects 2.3).

For Confucians, “a sense of shame” is a crucial factor for self-cultivation. It is necessary to note that the Confucian notion of shame (chi, 同) is primarily ethical than conventional. It is closely relevant to judgment on moral character. Ethical shame is an unpleasant feeling that individuals have when they believe that they have significant character flaws. Individuals can also feel ashamed if their actions reveal about their character problems (cf., van Norden, 2004, p. 162). Accordingly, shame and guilt are dramatically different. They point human actions towards different directions: guilt points what one person has done towards what has happened to another person, while shame points what one person has done towards what his or her character is (Williams, 1993, pp. 92–93). I should not feel guilty if my action has made nobody a victim. But I should feel ashamed if I have failed to achieve the moral character that I should have achieved. While many moderns have emphasized the notion of guilt to the underestimate of the notion of shame, Confucians have held that a clear sense of ethical shame is inevitable for character cultivation. I should feel ashamed of what I did if I could have done better, even if what I did has not wronged or harmed any other person. Hence, a sense of shame is primarily a concern with one’s own character as well as one’s relevant actions, regardless of their effects on others. This feeling of shame motivates the individual to accomplish a civilized, authentic personhood by participating in the rituals. From the Confucian understanding, liability to such ethical shame is inescapable and crucial to any culture as long as it is interested in an ideal conception of character for individuals to inculcate.

The peaceful, gradual and persistent way of learning and exercising the Confucian rituals create an effective context of invoking the ethical sense of shame or honor to be nested in the individual. First, the rituals are not coercively imposed upon the individual through punishment. Punishment can inspire fear and hatred, but not shame or honor. Second, to teach the rituals is in very concrete and repetitive ways to teach about what is to be done. That is, one will be informed and trained

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15 Since the Confucian ceremonial rituals have particular music (yue, 禮) to accompany the proceeding, Confucian rituals are also called ritual-music (liyue, 礼樂). That is, the Confucian concept of li generally covers the concept of yue.
all-around regarding the comprehensive systems of the constitutive rules and their identified internal goals of the rituals. The rituals will be internalized in the individual who will gradually be able to perform the rituals spontaneously. Finally, in this process of ritualization, the individual is naturally experiencing the seriousness, graveness, and sacredness of ritual behavior which transforms and improves the individual to become an authentic, civil human being. The only ethical “gap” left to fill for good ritual performance is one’s own efforts: if one fails to reach the standard requirements of the rituals, one can blame nobody except oneself. A sense of shame would be aroused in this case so as to stimulate the individual to make improvement.

Unfortunately, shame, as an important moral feeling that Confucianism recognizes, has been ignored, despised, and even stigmatized in the Western modernity. Under the regulative liberal principles of liberty, equality and human rights, it is difficult to arouse and nurture a sense of ethical shame for the individual in modern liberal society. Instead, since individual autonomy as self determination has been emphasized as the basic moral ground to conduct social activities, modern society has diluted and transformed traditional rituals into open practices. Individuals are left to do whatever they see fit as long as their acts do not violate some regulative principles, such as so-called universal human rights. Worse yet, the modern social ethos of self determination has increasingly produced de-ritualized liberal cosmopolitans. They are prepared to attack and destroy any traditional rituals wherever they find. Under the influence of the liberal cosmopolitan view, it is no accident that contemporary society bears witness to more and more “shameless” individuals: they do not do “what is to be done” in the Confucian sense, much less do them well. Young boys get lost in computer games and drug cultures; young girls become abortion clinic visitors or single-mothers. They cannot develop a sense of ethical shame because their everyday lives are entirely de-ritualized: ritual and virtue are no longer meaningful words for them. They can confidently claim a right to welfare from society because they have not been trained to acquire the sense of ethical shame.

Interestingly, although traditional rituals have been critiqued as historically backward and unnecessarily restrictive, their constitutive rules have not been entirely abandoned in today’s liberal society. Instead, some rituals’ constitutive rules have been maintained as regulative rules (in separation from their original coherent systems carrying internal goals) that govern modern societies. That is, many regulative rules adopted in modern societies are in fact the remnants of the constitutive rules of traditional rituals. For example, modern society has maintained the rules that prohibit cannibalism (human body cannot be eaten even upon agreement), incest (close family members should have no sexual intercourse with each other), and other

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16 In Randall Collin’s words, “participation in a ritual gives the individual a special kind of energy, which I will call emotional energy...it makes individual feel not only good, but exalted, with the sense of doing what is most important and most valuable...rituals are the source of the group’s standards of morality. It is the heightened experience of intersubjectivity and emotional strength in group rituals that generates the conception of what is good” (2004, pp. 38–39, italics original).
improper relations (e.g., a man should not marry his ex-wife’s mother). These rules are originally part of a coherent system of constitutive rules that clearly informs both proper and improper human behavior patterns.

From the Confucian view, society cannot be kept in good order for a long term by merely relying on regulative rules. This is because when individuals live de-ritualized lives, it is hard for them to form a good and stable character to conduct activities. Without the direction of traditional ritual and virtue, the only “reason” that seems to be “reasonable” is that everyone is left “free” to do whatever one likes with consenting others, as long as their acts do not harm a third party. In this way, many remnant regulative rules (such as those mentioned above) would sound like superstitious taboos left over from the past, gratuitously restricting individuals’ “free will” and self determination. Courts and judges face more and more bizarre but seemingly “legitimate” cases. For instance, why is a man not allowed to marry his ex-wife’s mother out of “free love”? The problem is, when this man has not been nurtured in an environment in which he learns the proper familial and social roles through ritual practices, he has not internalized a knowledge as to how he should behave as a decent, authentic human person concerning marriage and remarriage. He cannot understand why his idea of marrying his ex-wife’s mother is morally problematic. In this situation, “punishment will not be appropriate” (Analects 13.3) according to the Confucian view. The reason is that this man has not been taught through ritual performance to know the wrongness of such behavior. He has simply been put in a situation where, according to the Confucian description, he does “not know where to put [his] hand and foot” (Analects 13.3).

11.5 Concluding Remarks

American sociologist Randall Collins observes, “the collapse of formally polite, overtly stratified boundary-marking rituals, which observers of the 1960s sometimes called the rise of the ‘counterculture’ ” happened in the West in the 1960s. And “it is this revolution favoring standards of casualness over standards of formality that characterizes the situational stratification of the turn of the 21st century, where overt signs of class differences are hidden and formality is widely considered bad form” (2004, pp. xvii–xviii). Worse yet, the significant moral implications of the Confucian rituals have been defamed in modern Chinese societies. People fail to understand how the Confucian rituals establish both the form and the substance of Confucian culture, generating and embodying the fundamental symbolism of a Confucian common life-world. If the Confucian way of life is morally significant, the function of the Confucian rituals must be re-appreciated.

Confucius is still a good teacher for today. But many people do not understand what he really teaches. The Confucian rituals, as universal, social practices in Confucian culture, have been ruthlessly attacked in modern Chinese society. Contemporary Neo-Confucian scholars attempt to recast general Confucian principles like ren (humanity) and yi (righteousness) in separation from the constitutive
11.6 Postscript: A Thesis on Confucian Ritual Reform

In Confucian society, rituals are applied in appropriate contexts circumscribed by a system of Confucian constitutive rules defining the rituals. Everyone has learned (primarily from one’s parents and teachers) to employ distinct rituals in particular contexts. For example, when one receives a guest, one performs the guest-receiving ritual; when a memorial day comes, one performs the sacrificial ritual for commemoration. In performing such rituals (which is taken to be the proper activity in one’s situation), one is not supposed to doubt whether an established rule of the ritual should apply to one’s case. One is, instead, expected to observe the rule in the normal situation. In this sense, participating in a ritual is like participating in a sports game – both are closed practices. As John Rawls puts it clearly, it is one thing to justify a practice, but quite another to justify a particular action falling under it. Even if a practice may be justified in light of utilitarian considerations, a particular case falling under the practice may not be weighed on utilitarian grounds. Rather, there is a clear obligation to follow the rules of a practice once it is established, even if it is unbeneﬁcial according to an act-utilitarian judgment (Rawls, 1955). In the case of playing a baseball game, you, qua participant, have no authority to question the propriety of the rules of the game. For example, you are not expected to challenge the rule of three strikes and ask instead for four strikes. As Rawls points out, “it doesn’t make sense for a person to raise the question whether or not a rule of a practice correctly applies to his case where the action he contemplates is a form of action defined by a practice. If someone were to raise such a question, he would simply show that he didn’t understand the situation in which he was acting” (Rawls, 1955, p. 26).

However, this does not mean that the rules of the Confucian rituals as practices are absolute in the sense that the participants must always observe them without exception. Instead, the Confucian rituals and rules do allow exceptions. It is important to recognize that in the establishment of a Confucian ritual (just as in the

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The attempt to abstracting the Confucian morality from its rituals happened in the mid history of China. About one thousand years ago, a reformative premier of the Song Dynasty decided to abolish the rituals as recorded in the Yili (禮記) as a subject for civil examination. Instead, he arranged only the general principles upheld in the Liji (禮記) in their place for examination. This change was critiqued by the contemporary Confucian Master, Zhu Xi, as “putting the cart before the horse” (Zhu, 1994, p. 2225).
establishment of any closed practice), certain defenses, excuses, and exceptions are already accepted, either explicitly or implicitly, for the applicable cases of the ritual. Such defenses, excuses, and exceptions for the application of a ritual are themselves an important, inalienable part of the ritual as a whole. For example, while the Confucian mourning ritual generally requires that during the mourning period for the death of a close relative, one should not take luxurious food, such as meat, it has also made it explicit that if one is ill or otherwise weak, needing nutritious meals to maintain health, it is legitimate to take them.

This is to say, proper Confucian deliberation on observing a ritual in a particular case does not allow complete liberty to weigh one’s action on personal, subjective, or utilitarian grounds. It is rather deliberating about whether any of the defenses, excuses or exceptions already accepted in the ritual applies to one’s case. When Confucian individuals weigh their particular situations, they must find out whether the defenses, excuses, and exceptions allowed in the rituals apply to the particular cases they are confronting. Through such a legitimate Confucian casuistry, they can make proper decisions on ritual observance. For example, when Mencius is provided with a scenario in which one must choose between adhering to a ritual prohibition against physical contact with one’s sister-in-law and reaching out to save her from drowning, he argues that everyone would, by weighing the situation, know that one should suspend the ritual prohibition and save his sister-in-law (Mencius 4A17). Here Mencius obviously offers a solution to the problem by appealing to an exception consideration for ritual observation. The point is that when the ritual requirement (that a man should avoid physical contact with his sister-in-law) is made, emergency situations are already granted for exceptions.

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18 Rawls’ discussion in his essay (1955) is very helpful for understanding the rule-governing nature of practices. Unfortunately, Rawls fails to distinguish closed practices from open practices, although most examples he offers in the essay are closed practices by my standard, such as court trials. From my understanding, general practices to which people usually refer, such as farming, medicine, law, architecture, painting, music, enquiries of physics, chemistry and biology, and so on, include a lot of closed practices as well as open practices in themselves. Distinguishing open and closed practices is necessary for understanding the nature of ritual.

19 However, a Song-dynasty Confucian, Li Gou (李觏, 1009–1059), challenges Mencius’ solution on the ground that Mencius has misunderstood the nature of the Confucian rituals and weighing. From Li’s view, stretching out to save one’s sister-in-law is not violating the rule of a family ritual that does not allow physical contact with one’s sister-in-law in the usual family life. Rather, holding one’s sister-in-law to save her is employing a totally different ritual in a totally different context. For him, this different ritual requires that one must stretch out to save one’s sister-in-law (or any known or unknown woman) in the context of danger, and this ritual has nothing to do with the family ritual that requires a man not to have physical contact with his sister-in-law in normal family circumstances. See Li (1981, pp. 18–19). However, Li’s view could be criticized as begging the question – when one is not following an obviously relevant ritual in one’s situation, one could always claim observing another different ritual as an excuse for not following the first ritual. The “exception-making” strategy seems to be more defensible than this “different-ritual-performing” strategy.
Moreover, as a function of the Confucian constitutive rules, a Confucian ritual must be taken as a coherent system serving the primary goal of the ritual. Such constitutive rules differ from the regulative rules of an open practice. Regulative rules can work independently from each other, but constitutive rules cannot meaningfully stand except by functioning in a system (cf., Searle, 1969, p. 36). This implies that, on the one hand, following one or two separate constitutive rules cannot make an act a ceremonial ritual. On the other hand, it is permissible, in certain circumstances, not to follow some rules of a ritual in order to complete the ritual as a whole. For example, the Confucian funeral ritual requires that, among other things, (1) one should bury one’s father and mother into the same grave, and (2) one should have one’s parent’s body coffined in the yard of the home for a few days before burying it. From a passage of the Records of Li, Confucius did not know where his father’s grave was because he was left fatherless when he was quite young. Then when his mother died, he had her body coffined in the street in order to attract people’s attention so as to inquire the location of his father’s grave. He succeeded in obtaining the information and burying his mother in the same grave as his father (Liji: Tangong 禮記：禮弓; Legge, 1967, Vol. I, pp. 124–125). In this case, if Confucius strictly followed the rule of placing his mother’s coffin at home as required in the usual situation, it would not have been possible for him to complete the Confucian funeral ritual for his mother.

Finally, it is not the case that Confucian rituals should never be changed. As a matter of fact, rituals in any tradition change over history, and so do the Confucian rituals. However, Confucians rightly recognize that allowing exceptions in ritual observation is one thing, but changing the rules of the rituals is quite another. Just as it is necessary to distinguish between a game of baseball and the game of baseball, the difference between a ritual as a closed practice and an instantiation of the ritual as a particular case falling under the practice should also be made. The game of baseball is an evolving institution over time in which an appropriate committee may change its rules. But a game of baseball is an instance of a closed practice whose rules may not be changed during the performance. In other words, in a baseball game, one may not play the role of a participant and the role of a critic at the same time. Only when one is not a participant, can one question, for example, the rule of three strikes by suggesting that the rules in general be changed to allow batters four strikes (Morawetz, 1973, p. 862). Similarly, it is not that the rules of a Confucian ritual should never be changed; some changes may be necessary, proper, and beneficial to make. Still, Confucian rituals should not be freely changed by individuals during the process of ritual performance. They should only be changed in accordance with proper procedures. For Confucius, some rituals are centrally important in the life-world of Confucian persons. Their practical significance is comparable

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20 Concerning the Confucian rituals through the earliest three Chinese dynasties, Xia (夏), Yin (殷) and Zhou (周), the Master said, “the Yin built on the rites of the Xia. What was added and what was omitted can be known. The Zhou built on the rites of the Yin. What was added and what was omitted can be known. Should there be a successor to the Zhou, even a hundred generations hence can be known” (Analects 2.23).
to the severity of punitive expeditions. Accordingly, Confucius suggests that a rule might be added to or omitted from such a ritual only by the highest authority of Chinese society through a proper procedure (*Analects* 16.2).

Having got this clear, we have yet to explore the most important issue: is there any substantive Confucian standard to appeal to in order to reform a ritual? Did classical Confucians – especially Confucius – adopt any substantive standard to change the rules of a ritual? For the latter question, a few candidates are available from the *Analects* that are worth considering. First, Confucius appears to support changing a ritual rule for the sake of frugality:

> The Master said, “a ceremonial cap of linen is what is prescribed by the rites. Today black silk is used instead. This is more frugal and I follow the majority” (9.3).

Frugality in ritual practice is also supported by another passage, where the Master argues that “with the rites, it is better to err on the side of frugality than on the side of extravagance” (3.4). However, if we take Confucian thought on the rituals as a whole, frugality cannot be a necessary, much less a sufficient, condition for reforming a ritual. Some rituals are inevitably not frugal, and Confucius does not want to change them to be frugal. For example, when a student wants to do away with the sacrificial sheep, the Master comments that “you are loath to part with the price of the sheep, but I am loath to see the disappearance of the rite” (3.17). This implies that, for Confucius, there is something in a ritual that is vitally important and should not be changed, no matter whether it is frugal or not. Let me call this vitally important part of a ritual the substance of the ritual (*lizhishi*, 禮之實). No matter whether every Confucian ritual has such a substance, it suffices to hold that some do. Accordingly, regarding frugality as a standard for reforming a ritual, the Confucian view is, presumably, that one can change the rules of a ritual for frugality only when the substance of the ritual can be maintained, such as in this cap case.

It is also clear that Confucius does not approve the majority choice as a sufficient condition for ritual reform:

> To prostrate oneself before ascending the steps is what is prescribed by the rites. Today one does so after having ascended them. This is casual and, though going against the majority, I follow the practice of doing so before ascending (9.3).

This is to say, because this change makes the ritual appear casual, it is wrong to make the change, even if the majority supports the change. Accordingly, a majority’s view is not a sufficient standard for changing a ritual. Other factors, such as frugality and seriousness (i.e., not casual), must be taken into account. This seems to suggest that Confucius might adopt a system of factors or reasons, like frugality, seriousness, and a majority’s view, as substantive standards to consider maintaining or reforming the rituals. Although each of these factors may not constitute a necessary, much less a sufficient, condition for deciding to maintain or change the rules of a ritual, they together may serve that function. Most importantly, such factors or reasons are apparently articulated and identified independently of the rules of the rituals, so that they may serve as the directors of reforming the rules of the rituals.
This view seems to gain support from some passages of the Analects regarding the virtues. It may be suggested that such reasons – like frugality, seriousness, and a majority’s choice – are the very reasons that are not only consistent with, but also derivable from the Confucian virtues, especially the most complete virtue, ren (仁), that Confucius emphasizes to manifest an authentic human life. Indeed, it may be concluded that it is the virtues that should be taken as the substance of the rituals and should not be changed, while the rules of the rituals should be evaluated and reformed in accordance with the requirements of the virtues. After all, Confucius asks if a man is not ren, “what has he to do with li” (Analects 3.3)? This is to say, if a man does not want to be ren, li would be useless or meaningless to him. Li would be useless because it would be unlikely or even impossible for him to observe li. Li would be meaningless because even if he apparently observes li for personal benefit or other external considerations, he would just do it mechanically, without having a proper internal attitude or feeling that should have accompanied his li performance. In either interpretation, ren is taken to be more important than li. Accordingly, it is not far-fetched for Kwong-loi Shun to suggest that passage 3.3 favors an instrumentalist interpretation of li (Shun, 2002, p. 59): li is a useful means for cultivating and manifesting ren. Thus, li can be changed in accordance with the requirement of ren in order to promote ren more effectively. This instrumentalist view of li is plausible when we find that in the Analects Confucius often explains ren in terms of certain general moral requirements that are articulated independently of the rules of li. For example, a frequently cited general requirement of ren is that a ren man must love the people (Analects 12.22). In this case, ren works as a general principle, while li provides specific ritual rules. Following the general principle, the rules of li may be reformed and subsequently justified – e.g., the rule of using

21 This is clearly stipulated in the following passage of another classic, the Records of Li. After stating that certain items used in the rituals, such as clothes and calendars, could be changed, the passage continues that

“no changes could be enjoined upon the rituals in what concerned affection for kin (qingin, 慎親), the honor paid to the honorable (zunzun, 尊尊), the respect due to the aged (zhangzhang, 長長), and the different functions of male and female (namnuyoubie, 男女有別)” (Liji: Dazhuan 礼記：大傳; Legge, 1967, Vol. II, p. 62).

22 There are numerous other examples of this kind in the Analects: “a ren man helps others to take their stand in so far as he himself wishes to take his stand, and gets others there in so far as he himself wishes to get there” (6.3); “do not impose on others what you yourself do not desire” (12.2); “a ren man is loath to speak” (12.2); “when faced with an opportunity to practice ren, do not give precedence even to your teacher” (15.36); “a ren man...may have to accept death in order to have ren accomplished” (15.9), and so on. As complete virtue, ren is also often explained by Confucius in terms of more specific virtues. For example, “filial piety (xiao, 孝) and fraternal submission (di, 弟) are the root of ren” (1.2); “while at home hold yourself in a respectful attitude (gong, 敬); when serving in an official capacity be reverent (jing, 敬); when dealing with others be loyal (zhong, 諸)” (13.19); “unbending strength (gang, 勁), resoluteness (yi, 意), simplicity (mu, 素) and reticent (ne, 納) are close to ren” (13.27); “to be able to practice five things under heaven constitute ren...: respectfulness (gong, 敬), tolerance (kuan, 寬), trustworthiness (xin, 信), quickness (min, 敏) and generosity (hui, 賢)” (17.6), and so on.
humans as sacrifices must be rejected because the rejection manifests the love of
the people; the rule of using the linen cap should be changed to using the silk cap
because this change shows more love to the people by being frugal; and the rule
of prostrating oneself before ascending the steps should not be changed to doing so
after having ascended the steps because this change shows less love by being casual.

However, if this instrumentalist view of *li* is correct, then whether *li* is all together
necessary for fulfilling the Confucian virtue or principle of *ren* would become an
open question. No doubt, under this view, *li* may be sufficient – if *li* is good enough –
for accomplishing *ren*. But other ways than *li* may also be sufficient for realizing
*ren*. It then would be like getting married through a Confucian wedding, or get-
ning married through a simple registration. Either way is sufficient, but neither is
necessary. In this case, *ren*, as the Confucian ideal, can be identified and realized
independently of *li*, the Confucian rituals. This might be welcome by some individ-
uals (contemporary Neo-Confucians too?) today who want to emphasize the liberal
general principles of liberty, equality, and self-determination for providing direct
guidance to their lives, rather than following traditionally-shaped practices or rituals.

However, this is not what Confucius understands about *ren* and *li* in the *Analects*.
As I already cited in Section 11.3, a famous passage in the *Analects* informs that
when a student asks about *ren*, the Master answers: “to return to *li* through over-
coming the selfish passions constitutes *ren*” (*keji fuli weiren*; 克己復禮為仁); when
the student asks for a specific method, the Master answers: do not look, listen, speak
or move unless it is in accordance with *li* (12.1). Two points are important to note
here. First, Confucius and his student are not interested in asking or providing a
precise definition of *ren* or a *ren* man; rather, as usual, their focus is on how to be
*ren* or become a *ren* man. Second, Confucius is not simply saying that one must
observe the rules of *li*. He is saying that one must return to *li* by overcoming one’s
selfish passions. If one does not attempt to overcome one’s selfish passions, it
would be difficult or even impossible for one to return to *li*. Importantly, “return
to *li*” does not imply that one must always observe *li*; “overcoming one’s selfish
passions” does not always lead one to follow a *li* rule. All will depend on how a
Confucian casuistry can properly be made as I discussed above. For example, if one
fails to follow the rule of prostrating oneself before ascending the steps rather than
doing so after having ascended the steps, Confucius would say that this man has
failed to observe *li* by overcoming his selfish passions (e.g., he cares more about
his own convenience than he should). On the other hand, however, if one fails to
stretch out one’s hand to save one’s sister-in-law and offers the excuse of following
a ritual rule, Confucius would join Mencius to argue that this man has done wrong
by failing to overcome his selfish passions (e.g., his desire to avoid the danger to
himself in stretching out his hand). Accordingly, the full sense of Confucius’ saying
in 12.1 should be summarized this way: in order to be *ren* or become a *ren* man, one
must *properly* observe the rules of *li* – *properly* in the sense that through overcoming
one’s selfish passions, the defenses, excuses and exceptions of the rules of *li* must
be adequately deliberated in one’s case.

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23 Here I overlook the other possible interpretations of *keji* (克己), which do not affect my argument.
This is to say, Confucius’ full view of *ren* and *li* consists in the idea that *ren* cannot be manifested or fulfilled without properly following the rules of *li*. True, Confucius articulates many general requirements for one to be *ren* or become a *ren* man as I list in footnote 21. These requirements, like the one expressed in 12.22 (“loving the people”), serve as general principles that apparently do not have anything to do with the rules of *li*. However, just as it is misleading to understand that *ren* will be cultivated by mechanically observing the rules of *li* alone, without the need of following these principles, it is also misleading to understand that *ren* will be realized by following these principles alone, without the need of observing the rules of *li*. That is, a full Confucian view is not one-sided toward either the principles or the rules, but rather insists that both the general principles and the ritual rules are necessary – and they together are sufficient – for one to nurture and express Confucian virtue. The ritual rules are necessary because they provide concrete guidance for moral conduct. The general principles are necessary because they provide reasons for the defenses, excuses, and exceptions of the application of a ritual.

In this case, it would be correct to understand the Confucian virtues as the substance of the Confucian rituals that should not be changed in ritual reform. It would also be correct to understand the Confucian virtues as the substantive standards for reforming the Confucian rituals. However, it would be incorrect to understand the virtue principles alone as the substantive standards for ritual reform, because the virtue principles do not exhaust the value of the virtues. Rather, such standards are constituted by both the virtue principles and the ritual rules. This is because, as my above analysis shows, both the virtue principles and the ritual rules are necessary for accomplishing the Confucian virtues. Accordingly, both are also necessary for considering and justifying a ritual reform.

This conclusion can be illuminated by further exploring the relation between the virtue principles and the ritual rules in the Confucian system. First, although the Confucian virtue principles can direct non-ritual behavior, they cannot play their full function independent of the ritual rules. Precisely, they provide effective guidance to one’s conduct on the assumption that one observes the rules of the rituals. In other words, they do not teach you to abandon the rules of the rituals and create your acts by directly following these principles, but teach you properly to observe the rules of the rituals. Confucius’ discussion of the virtue of filial piety (*xiao*) in the *Analects* offers a good example of their relation. To be filial to one’s parents, Confucius requires one to observe the rules of rituals, including the serving rituals when one’s parents are alive, the funeral rituals when they die, and the sacrificial rituals after they die (2.5). Meanwhile, he also requires one to follow the principle of respect (*jing*) in treating one’s parents: if one does not respect one’s parents, one cannot even distinguish treating one’s parents from treating animals (2.7). Evidently, following the principle of respect does not mean that one no longer needs to observe the rules of the rituals. Rather, it means that one must observe the rules of the rituals in the proper way, and it includes that in special situations one may not obey a rule of the rituals (e.g., Confucius did not have his mother coffinied at home as the rule of the funeral ritual required). Similarly, as a principle of *ren*, the requirement that you “do not impose on others what you yourself do not desire” (12.2) is not meant to substitute for the rules of the rituals. It rather provides guidance as to how you
perform the rituals appropriately. For example, when you perform a present-giving ritual, this principle reminds that you do not give to your friend a present that you yourself do not like.

This is to say, although the Confucian virtue principles may provide guidance to non-ritual behavior, they are primarily the ritual principles to play a function along with the ritual rules for the Confucian moral life. Moreover, it is also important to recognize that it is mistaken to conceive a linear, one-way relation between the principles and the rules in the application of the rituals. It is not that only the principles direct the applications of the rules, while the rules do not affect the status of the principles. The truth of the matter is that the rules also direct the application of the principles. The passage 17.21 in the Analects can be used to illustrate this point. When a student debates with Confucius about a ritual rule that requires a three-year mourning period for one’s parents, Confucius seems to propose a principle of ren to direct the student’s deliberation. The principle can be termed the principle of feeling at ease (xinan, 心安): if you do not feel at east at violating a ritual rule, that suggests that that rule is important and should not be violated; on the other hand, if you feel at ease in violating the ritual rule, you can go ahead. After the student answers that he does feel at ease, Confucius comments that he can go ahead but he is not ren: the rule is right in requiring a three-year mourning period for one’s parents with the consideration that every child was given three years’ love by one’s parents. That is to say, Confucius thinks that the rule – that one should keep a three-year mourning period – should also affect the application of the principle – that recommends that one observe the rule of the ritual based on whether one feels at ease or not. In other words, Confucius argues that given the rule requirement, one should not feel at ease in not following the rule in the case. The application of the principle is affected by the rule.

Taken together, it is Confucius’ view that the virtue principles and the ritual rules hold a dialectical, mutually-affecting relation in the Confucian ritual practices. Neither the principles nor the rules should stand in a dominant position to determine the ritual practices in every case. The best situation may be a reflective equilibrium: all things considered, sometimes a principle trumps a rule, and other times a rule trumps a principle. The justification of a Confucian ritual reform must also be considered through this reflective equilibrium of the Confucian principles and rules.

24 There is a remarkable difference between this Confucian “reflective equilibrium” (made between Confucian virtue principles and ritual rules) and the reflective equilibrium (made between principles of justice and considered judgments) Rawls adopts in constructing his theory of justice. “Considered judgments are simply those rendered under conditions favorable to the exercise of the sense of justice” (Rawls, 1971, p. 47). They are, indeed, not specific rules entrenched in practices, but are rather “new” beliefs resulted from reflections – reflections made under conditions guided by certain principles, or senses of principles. As a result, from the Confucian view, Rawlsian liberalism, through this kind of reflective equilibrium, fails to give due respect to established practices and rules.
Chapter 12
How Should We Solve Moral Dissensus?
Liberals and Libertarians Have It All Wrong

12.1 Introduction: How Should We Deal with Moral Dissensus?

All over the world one sees various expectations of globalization. For example, recently Kurt Bayertz and Angelo Maria Petroni (Bayertz, 2006; Petroni, 2006) have explored the recent experience of European approaches to bioethics and health care policy. As they show, the European Union, a super-national institution of Europe, is playing a more and more powerful role in providing “standard” bioethical norms to direct the biomedical research and health care policy of its member states. This constitutes a unique phenomenon in today’s overwhelmingly state-centered and state-dominant world. No continent other than Europe has had such a formal super-national power in addressing moral issues. Thus, the European Union could set an example for other continents. Since bioethical issues cross borders and affect people in different states, continentalizing bioethics might facilitate the approach of states to such issues. If Europeans can unify their bioethics this way, why not people in other continents, such as the Americas and Asia?

Is it because Europeans enjoy a sufficient bioethical consensus so that they can form a unified bioethics? Both Bayertz and Petroni inform us this is not the case. There is no generally shared European identity or “European bioethics” in Europe. Instead, the unity of Europe has always been a unity-in-diversity. As Petroni points out, “Europe is traditionally the land of diversity. Its very long history in civilization, the variety of races and religions, the existence of strong borders, made the Old Continent a mosaic of different institutions, languages, morals, and laws” (p. 238). Bayertz identifies numerous points in which European countries differ from one another: religions (some countries are predominantly Roman Catholic, others predominantly Protestant, and still others mixed), legal systems (British vs. Continental), mentality (“pragmatic” vs. “principled”), ethics (Utilitarian vs. Kantian vs. Cartesian), and history (pp. 220–223). Given these differences, it is no surprise that there have been dramatic disagreements and dissensus regarding bioethical issues and health care policies among European countries (e.g., Bayertz identifies two issues of particular dissensus: the moral status of the human embryo and euthanasia, see pp. 218–219). Accordingly, the “European Bioethics” affirmed by the European Union may only reflect the ethical view of some European people,
but not all of them. It may represent the temporary hegemony of one group and its ideology over others.

Indeed, as Bayertz observes, there is hardly any consensus regarding any important ethical issue in contemporary societies, if by “consensus” one means 100% agreement by the people involved (p. 220). This is a difficulty not only for the European Union. There is no consensus at any international level. There is no consensus at any national level, either. One should add that there is often no consensus even at a local level – simply imagine the situation of a small city, town, or village in any country today. Since people from different moral and cultural backgrounds move everywhere (let alone the diffusion of information by media) in today’s world, there are often dissenters about important ethical and bioethical issues in any place. There is also dissensus regarding when there is moral authority for the political imposition of a particular morality. If unjustified bioethical coercion is wrong, it is wrong at any level, international, national, or local. How should we, then, deal with moral dissensus in order to solve bioethical issues and formulate health care policy?

Bayertz and Petroni provide a number of views and arguments around this important issue. This chapter recognizes that, generally speaking, liberalism and libertarianism – the two most influential modern Western social and political philosophies – have been widely used to deal with moral dissensus in contemporary societies. Liberalism argues for global ethics and bioethics based on a doctrine of human rights and individual liberties. Libertarianism argues for the limited moral authority of the state based on its view of individual rights as side constraints and for allowing a non-geographically-located communitarian ethics and bioethics. More specifically, liberals attempt to resolve moral dissensus by promoting individual self-determination as a fundamental value, whereas libertarians take individual self-determination as a fall-back limitation. This chapter argues that neither liberalism nor libertarianism can adequately address bioethical dissensus or the issue of proper bioethical deportment. It offers a critical response to the very ways in which Bayertz and Petroni characterize the issues, problems, and disputes. By drawing on the Confucian insight into the nature of human civilization as ritual practice and appropriate set of action, I argue that the strategy of localization based on a thin principle of Confucian virtue is the only appropriate strategy for handling moral and bioethical dissensus among different moral communities and areas.

12.2 Bioethical Globalization: The Liberal View

In spite of obvious cross-religion, cross-culture, and cross-community moral diversity and dissensus, various liberal strategies for a global ethics and bioethics have been proposed. The most popular of them is the minimalist strategy: to establish a minimal ethic to bind all communities and individuals in the world (e.g., Küng, 1996, p. 2). Generally speaking, liberals see a set of basic human rights and individual liberties that composes the minimal ethic for all human beings. For instance, a well-known American liberal bioethicist, Tom Beauchamp, has incessantly argued
for “the common morality” of all the people. For him, this common morality is not merely one morality differing from other moralities. Rather, it is the universal core of all moralities embraced by various communities or traditions of practice. Moreover, this morality is represented by universal human rights as its favored category of claims in recent years (see, e.g., 2001, p. 613).

More specifically, the contemporary liberal strategy of handling moral diversity constructs an overarching theory of justice to guide people in dealing with moral disagreements and making public policy. For instance, John Rawls’ political liberalism proposes a theory of justice which, he believes, makes possible “a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines” (1993, p. xviii). This theory is meant to allow for “a diversity of doctrines and the plurality of conflicting, and indeed incommensurable, conceptions of the good affirmed by the members of existing democratic societies” (1985, p. 225). The political liberal ideal is that, with the principles of justice established, individual rights, liberties and other primary social goods will be fairly distributed to individuals so that each of them will be able to live up to whatever (reasonable) religion, morality, or a way of life as he or she sees fit in contemporary pluralist society.

According to the liberal understanding of individual liberty and equality, everyone has the capacity to autonomously and critically choose ends for oneself, including religions, moralities, and ways of life. The emphasis is not on the content of any particular religions, moralities, or ways of life. Rather, such substance functions only as a kind of value context (e.g. area of “spiritual” and moral concern) within which various particular concerns (e.g. with nature, sex, and the ultimate) can be arranged in particular compositions. The various concerns, like pieces of a mosaic, are at the disposal of individuals to choose, determine, and arrange. It is up to each of them, at any particular moment, “autonomously” to decide which composition is more appropriate, satisfactory, or interesting to him or her. Accordingly, liberalism focuses on the individual as the source and determinant of value. It emphasizes a particular notion of individual liberty as a dominant value; namely, the value of promoting individual sovereignty over oneself. Consequently, the cardinal values underlining contemporary liberal views are individual independence,

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1 It is generally accepted that the rebirth of normative political philosophy in the Western world began with the publication of John Rawls’ *A Theory of Justice* in 1971, and his theory constitutes the most powerful and representative view of contemporary liberalism. His theory dominates academic debates in the sense that alternative views are often presented as responses to it. Thus, it is appropriate to use his theory as the representative of contemporary liberal political philosophy. For a Confucian response to this theory, see Chapter 4.

2 For instance, as H. T. Engelhardt observes, “liberal cosmopolitanism finds the significance of sexuality in the free decision with others to achieve common projects of intimacy, satisfaction, fulfillment, and pleasure. This view is often announced in such cliché remarks as ‘I hope he is happy in this new relationship’ or ‘at least she has found satisfaction in her fourth marriage’ or ‘do whatever makes you comfortable with consenting others.’ The focus is not just on permission as a source of moral authority. The focus is first and foremost on autonomous self-fulfillment” (2000, pp. 141–142).
autonomous choice, and self-determination. Individuals are thus liberated from any structures claiming special communal authority, either religious or familial. In the liberal culture, one would be ridiculed as immature if one submits to one’s parents for a marriage arrangement or to one’s teachers for a career plan. In the health care context, liberals insist on the principle of informed consent not only for precluding medical interventions opposed by the patient. The principle is also voiced as a requirement for the patient to choose among alternative therapies, thereby directly making health care decisions by him- or herself. Moreover, patients are strongly encouraged to select another individual in advance as one’s exclusive surrogate decision maker to make decisions according to one’s wishes and values when one becomes incompetent. In this way one is believed to extend one’s sovereignty over oneself to the stage when one is incompetent. In short, liberalism takes individual self-determination as a fundamental value and gives it the first priority in moral decision-making.

However, not all people are sympathetic to this liberal understanding of individual liberty or autonomy as a cardinal value with priority. As Bayertz observes, although the value of autonomy is by no means alien to European ethical thinking, it has played no central role in the European tradition of medical ethics. While individual autonomy is currently emphasized by the European Bioethics Convention, it is also recognized that autonomy should be restricted by considerations of human dignity as well as concerns for solidarity (pp. 214–215). For the Chinese people in the Confucian tradition, individual autonomy is normally understood in the context of family sovereignty. For instance, the authority to consent to or refuse medical treatment belongs to the patient’s whole family, not the patient individually. Chinese take the family as an ultimate autonomous unit from the rest of society. When ill, the patient is supposed to relax and rest. The family, having a responsibility, must shoulder the fiduciary obligation of care for the patient, including taking care of the burdens of communicating with the physician and making medical decisions and signing a consent form for the patient. Moreover, when a fatal diagnosis or prognosis is involved, the patient is often protected from the truth. It is understood as unsympathetic and uncaring if such harsh information is immediately and directly disclosed to the patient. If we attempt to understand this Confucian familist pattern of medical decision-making in terms of a liberal contractarian model (namely, the patients have voluntarily chosen or agreed to such a familist pattern), we would distort the Confucian way of life. Confucianism understands humans as beings living in natural (appropriate) human relations, such as husband-wife, parent-child, and brother-sister. Such relations are existential, rather than contractarian, forming the living condition of humans. They generate certain natural moral obligations binding everyone, whether or not they agree. For instance, it is the natural obligation of the family to take care of its members in illness. And in illness what one should want is the interdependence of the family rather than one’s own independence. Moreover, it is too individualistic to be appropriate for the Chinese to pick out one single family member (much less an extra-familial person) as one’s exclusive surrogate decision maker, because this breaks the unity of the family as a whole. When the whole family makes medical decisions for the patient even when the patient is competent, it is
only appropriate that the whole family continues to shoulder the obligation when the patient becomes incompetent. It would be woefully embarrassing for the Chinese to designate one family member, ignoring the others, to be one’s single decision maker. To do this is to destroy the unity and harmony of the entire family.\(^3\)

In short, Confucian Chinese cannot accept the liberal cardinal value of liberty or autonomy as self-determination. Instead, their cardinal value is family-determination. This constitutes the first fundamental disagreement between liberals and Confucians in ethics and bioethics.

Moreover, the liberal understanding of individual liberty and its priority easily leads to unacceptable egalitarian requirements of equality of opportunity. As autonomous choosers of their ends and life plans, individuals need opportunity to realize them. If everyone, as liberals see it, is equally an autonomous chooser of their ends, everyone should have equal opportunity to realize their ends. This is the liberal logic of justice. For instance, Rawls argues that the state should not only ensure formal equality of opportunity, it should also affirmatively act to maintain fair equality of opportunity. The formal equality of opportunity requires eliminating formal or legal barriers (such as race, class, gender, etc.) to persons in seeking jobs and positions. Fair equality of opportunity requires taking additional positive steps (e.g., through the public educational system) to enhance the opportunity of those disadvantaged by social factors, such as family backgrounds. Such social factors, for Rawls, are arbitrary from a moral point of view, because no one deserves the advantages conferred by accidents of birth. Therefore, Rawlsian liberal justice requires the state to step in to maintain equality of opportunity unless inequality is beneficial to the least advantaged individuals (Rawls, 1971, pp. 72–74). This means that the state should offer various types of welfare programs, ranging from state-subsidized education and redistributed taxation to affirmative action, in order to maintain fair equality of opportunity. In health care, since disease and disability affect individuals’ opportunity, justice requires establishing a comprehensive health care system to satisfy everyone’s basic health care needs. Only those medical services that do not essentially affect individual opportunity may be left to the private health care sector (Daniels, 1985).

When European bioethicists emphasize equal access to health care in Europe, they are in concord with this liberal view of equality. However, Confucians cannot support this view because it contradicts the Confucian view of the autonomy of the family. Confucianism requires family-based opportunities autonomously provided by families, rather than the so-called “fair” equality of opportunity imposed by the state. The autonomy of the family is the requirement that decisions and activities within a given family governing the development of its children should not be coercively interfered with by the state (Cf., Fishkin, 1983, pp. 35–36). Evidently, families can give their children significant advantages by promoting their opportunities in society: a secure home environment, congenial home culture, successful role models, private schools, private lessons, an advantaged peer group, trips abroad,

\(^3\)For a more detailed explanation of the Confucian view on this issue, see Fan (1997, 2002).
nutritious meals, and advanced health care. All of these can substantially enhance their children’s opportunities for seeking offices and positions in society. Given that such advantageous family opportunities may not benefit the least favored children in society (at least in the short run), and given that Rawls’ account of justice requires equality of opportunity unless unequal opportunities are to the benefit of the least fortunate people, Rawlsian liberal justice would require the state intervene in this regard. Since mere leveling-up strategies of assisting poor families cannot fully meet the requirement of fair equality of opportunity when the institution of the family exists, Rawls’ liberalism will have to support leveling-down strategies in restricting advantageous family opportunities so as to equalize life prospects of all children with similar natural endowments. This leads to the conflict with the Confucian autonomy of the family.

Unequal opportunities provided by parents to their children have always been taken for granted by the Confucian understanding of an appropriate society. Parents, guided by the Confucian view of the parental virtues, are always encouraged to enhance their children’s opportunities by, e.g., providing them excellent educational programs. It is true that the fundamental Confucian moral principle of ren (仁) requires loving all humans. But it also requires loving humans with differentiation, distinction, and relativity of importance. One should always “love with distinction” and “care by gradation” in terms of different human relations. In particular, one must start one’s love from the family and give preferential treatment to one’s family members. The parents are obliged to work hard for achieving better life chances for their children, and the children are obliged to exercise filial piety in taking care of their elderly parents. Since the Rawlsian requirement of fair equality of opportunity has to use state-controlled measures to restrict parents from pursuing better educational opportunities or health care services for their children, it contradicts the fundamental Confucian moral conscience of ren with preferential love given to one’s own family. For Confucians, even if the existence of better educational programs or better basic tiers of health care for families’ voluntary purchases does lead to unequal opportunity for young people, it is just right and legitimate. A state-imposed egalitarian health care system prohibiting unequal private basic health care is in contradiction with the fundamental Confucian moral sentiment in favor of the family.

Evidently, even if liberalism only requires the government to achieve as much equal basic health care as possible without absolutely prohibiting private basic health care, liberalism may still require restricting the family autonomy in order to rule out the threat of market-based private health care services undercutting the basic egalitarian health care system by luring away resources and the best physicians. Without some such restrictions, affluent families would invest significantly in the private sector, good physicians would move to the private sector, the quality of the public sector would not be maintained. That is, the liberal ideal of equality cannot be reconciled with the Confucian value of the family autonomy. The

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4For a very helpful discussion of the systematic conflicts among fair equality of opportunity, the autonomy of the family, and the principle of merit within the liberal view, see (Fishkin, 1983).
more equality is pursued, the less family autonomy can be respected. Finally, an egalitarian health care system is inevitably expensive and requires heavy taxation. Confucianism has always required that a government of ren make taxes and levies light and leave resources to families for pursuing welfare for their family members (see, e.g., Mencius 1A: 5). The position of Confucianism is that the provision of welfare is primarily the responsibility of the family. It is morally misleading for the state to coercively impose an egalitarian welfare system.

Liberalism holds that the principles of justice specifying individual liberties and rights do not depend for their justification on any particular conception of the good life. In other words, liberalism appeals to the method of separating the right from the good to defend its account of justice. This method fails. It is illusory that the contemporary liberal theories of justice are justified independently of any particular conception of the good life. Any account requires a particular ranking of primary goods. Further, even if we assume that this method works, a liberal theory of justice and a set of liberties and rights will fail to provide any coherent moral approach to a series of bioethical issues. This is the case because, first, these liberal rights and liberties are always normal-adults-oriented. They cannot give sufficiently specified guidance regarding the status of non-adult humans. For instance, it is unclear what grounds have been offered by the liberal view of rights for coping with the issue of research using early human embryos. Secondly, the meanings of individual rights and liberties in the liberal account are often vague and ambiguous in specific bioethical contexts. For instance, what does “human dignity” mean for the issue of organ sale? Is it that the individual is promoting his dignity when he is able to sell part of his body as he wills? Or is it that his dignity is maintained when he is prohibited by the state from commercializing his body and its parts?

Particular answers to these questions require a particular ranking of goods and a particular view of human flourishing. As a result, if contemporary liberals have offered a full-fledged moral approach to bioethical issues, it cannot be the case that the approach has been established independently of any particular moral tradition. A full-fledged moral approach is inevitably a conceptual reconstruction of a moral perspective nested in a particular moral tradition. A moral perspective includes rich moral resources and content, such as moral narratives, exemplars, examples, commitments, and rules. When liberals argue that they are defending their views independently of any particular moral perspective, what is actually happening is that they are reconstructing various moral perspectives according to their general moral theory or some abstract moral principles that they hold. This is why their views often sound incomplete or even fragmented – they are not deeply committed to any coherent moral tradition, but at the same time they touch on the views of several different moral traditions. Hence, liberalism can only obtain “half-way” or fragmented moral content from different moral perspectives.

When the European Parliament demanded the British Government to withdraw all plans for allowing human embryos to be cloned for research by arguing that

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5For a more detailed argument for this assertion, see Fan (1999).
such research poses a profound ethical dilemma and crosses a boundary in research norms (Bayertz, p. 207), it is hard for a Chinese reader to make sense of the argument except by placing it in the context of the traditional Christian view of life. But the Parliament fails to give full voice to the traditional view because it aspires to rely on liberal “universal” reason to reach its conclusions. Since it does not draw on any complete moral tradition, Christian or other, the result is that only fragmented, even incoherent, moral views are offered. On the one hand, the European Parliament prohibits the creation of human embryos for research. On the other hand, however, it allows research on already created embryos in vitro and believes that such research will ensure adequate protection of the embryo. How can anyone, as Petroni comments, give any serious meaning to such a “law” that allows experiments on embryos and at the same time claims that embryos are “protected” (p. 258)?

Evidently, liberal bioethical views are ultimately from somewhere. They are inheritors of particular Western religions, moral traditions, and ways of life, although not full-fledged inheritors of any of them. These are not self-evident to everyone. They are only self-evident to those who already share the views. In this sense, liberalism is philosophically disingenuous in claiming that its views can be justified independently of any particular religion, morality, or conception of the good. To the contrary, since its views, though fragmented, are still reconstructions of particular moral or religious perspectives implicit in particular moral traditions, the liberal claims advanced are not nested in a universal moral perspective or “reason.” Claiming that the commitments of liberalism are a universal foundation able to ground a global bioethics is morally misleading and politically arrogant. Since many people do not accept these particular liberal views and commitments, imposing them everywhere in the name of global bioethics could be the source of social unease and even disturbance.

To summarize, contemporary liberalism cannot deal with moral dissensus. First, its particular idea of liberty or self-determination as a cardinal value is not accepted by many non-liberal people in the world. Second, its requirement of equality of fair opportunity is in contradiction with the Confucian autonomy of the family. Finally, its particular view of liberty as well as its lexical priority is the result of a particular moral tradition without a justified claim to universality. Its protest to the contrary notwithstanding, liberalism draws on particular moral and religious traditions, which are not universal, for its resources. Accordingly, as a series of European examples offered by Bayertz and Petroni show, attempts to establish a liberal ethics and bioethics as a state bioethics, a continental bioethics, or a global bioethics, fail to be rooted in a foundation that all must affirm. The foundation in the end turns out to be particular and contingent. The aspiration of liberalism to a global bioethics fails.

12.3 Bioethical Communitization: The Libertarian View

As liberals, libertarians also take individual rights and liberties seriously. Their theories are also theories of entitlement. However, their view of rights and liberties sharply differs from the liberal view. Essentially, libertarian rights and liberties
are not values to be promoted. Rather, they are constraints by individuals against others – when individuals have rights, there are things no person or group may do to them (Nozick, 1974, p. ix). This is why libertarians style fundamental rights and liberties as “side constraints.” For them, no one should be coerced to do anything that is taken to be valuable by others (for instance, no one should be forced to make decisions about his own health care, even if some people like liberals take self-determination to be a cardinal value). Similarly, no one should be coerced not to do anything that is taken to be wrong by others (for instance, no one should be forced not to commit suicide, even if many people believe suicide is morally wrong). Compared to liberals, libertarians are proud of themselves being coherent in not taking liberty as a value, thus leaving enough room for individuals to choose what to do or not to do according to their own views, as long as their action does not involve coercing innocent, non-consenting others. Consequently, under the libertarian view the function of the state must be minimal – only maintaining the order of the free market in which consenting individuals contract and collaborate with each other for their preferred ventures.

Why do individuals have such rights as side constraints? H. Tristram Engelhardt, Jr. has offered an impressive argument for this libertarian view in consideration of the possible solutions to moral controversies.6 His argument can be summarized as the following. On the one hand, many of the controversies depend on different foundational metaphysical commitments, as with respect to the significance of abortion and the production of embryos for research, and infanticide (i.e., whether entities involved should be considered as persons on a par with competent adult humans). As with most metaphysical controversies, resolution is possible only through the granting of particular initial premises and rules of evidence. On the other hand, even when foundational metaphysical issues do not appear to be at stake, the debates turn on different rankings of the good. Again, resolution does not appear to be feasible without begging the question, arguing in a circle, or engaging in infinite regress. One cannot appeal to consequences without knowing how to rank the impact of different approaches with regard to different interests (e.g., with respect to liberty, equality, prosperity, and security interests). Nor can one uncontroversially appeal to preference satisfaction unless one already grants how one will correct preferences and compare rational versus impassioned preferences, as well as calculate the discount rate for preferences over time. Appeals to disinterested observers, hypothetical choosers, or hypothetical contractors will not avail either. If such decision-makers are truly disinterested, they will choose nothing. To choose in a particular way, they must be fitted out with a particular moral sense or thin theory of the good. Intuitions

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6It is interesting to compare the beginning remarks of Robert Nozick and Tris Engelhardt, both well-known libertarians, in their respective influential books. Nozick: “individuals have rights, and there are things no person or group may do to them (without violating their rights)” (1974, p. ix); Engelhardt: “Moral diversity is real. It is real in fact and in principle” (1996, p. 3). Nozick does not offer an argument for why individuals have rights as side constraints. Engelhardt, using moral diversity as an inevitable sociological fact, offers a by-default argument for such rights on the basis of an epistemological, though not metaphysical, skepticism for the moral truth.
can be met with contrary intuitions. Any particular balancing of claims can be countered with a different approach to achieving a balance. In order to appeal for guidance to any account of moral rationality, one must already have secured content for that moral rationality (Engelhardt, 2006, 1996, Chapter 2).

This is to argue, facing various incompatible and incommensurable moral traditions, views, and theories in contemporary pluralist society, we are not able through sound philosophical argument to establish a standard morality to bind all communities and individuals. As a result,

the only source of general secular authority for moral content and moral direction is agreement. To rephrase the point, because there are no decisive secular arguments to establish that one concrete view of the moral life is better than its rivals, and since all have not converted to a single moral viewpoint, secular moral authority is the authority of consent. Authority is not that of coercive power, or of God’s will, or of reason, but simply the authority of the agreement of those who decide to collaborate (Engelhardt, 1996, p. 68).

Engelhardt’s basic idea is that since no one is able to prove or justify a particular moral view to be the right view without begging the question, by default every individual obtains a right not to be treated by unconsented-to force from others. Thus, through a type of moral epistemological (not metaphysical) skepticism, Engelhardt offers a by-default philosophical argument for the libertarian understanding of rights as side constraints. Again, Engelhardtian libertarian rights are not rights as values. They are only by-default entitlements. With this view, it is incorrect to say that every individual should practice self-determination because self-determination is valuable. Rather, every individual has a right to give up self-determination if one judges it not valuable or less valuable than an alternative model. What is crucial for libertarians is that no one be treated by unconsented-to force. As to what one should consent to, the libertarian argument cannot offer a concrete answer. For Engelhardt, one has to join a particular moral community to find an answer.

Not many libertarians emphasize the role of specific moral communities for moral substance as Engelhardt does. For him, however, one cannot find content-full, meaningful morality except through joining a moral community (such as a religious group) that carries a specific moral tradition. From his view, a true libertarian must simultaneously be a true communitarian. If one is lucky enough, one could even join the right community and find the right morality. Accordingly, instead of seeking the liberal ideal of ethical and bioethical globalization, one should, according to the Engelhardtian libertarian ideal, pursue ethical and bioethical communitization:

With the advent of a general, worldwide, peacekeeping authority limited by the morality of mutual respect (which is to say, with the coming of the secular millennium), one could be assured of the possibility of individuals freely joining in various associations, which need not be limited to any particular geographical area. One might think here of the ways in which individuals of different faiths may proceed to gain a divorce in Israel, on the basis of the rules of their particular religious groups. In such associations, individuals could pursue their views of the good life. Each association could in its own way provide a level and kind of health care in accord with its guiding view of the good life. Such associations would tax their members. Some associations (e.g., religious) would establish a thick set of regulations and canons. The result would likely be a world in which individuals would
belong in different ways to different associations. As a consequence, individuals could have complex entitlements to health care and other support (Engelhardt, 1996, p. 175).

This ideal is true communitarianism in the sense that each moral community is shaped by its own fundamental moral views of rights, goods, and virtues which are shared by its members. Such communities can easily move beyond the borders of the state and become cross-state organizations. True Christians, for example, should not be distinguished by being Americans or Chinese. They would be the members of the same community, a community that is not in its essence geographically fixed. No doubt, such non-geographical communities can play a significant function in weakening the unjustified power of the state, whose power remains one of the main sources of people’s suffering and disaster in today’s world. Finally, when such communities recognize that they cannot through rational argument prove their moral view to be more true than their rivals’, they should tolerate (in the sense of forgoing force against) the practice of other morals and not attempt coercively to use control over other people. Hence, members of different moral communities may peaceably collaborate with each other domestically and internationally.

Engelhardt’s account of moral epistemological skepticism is clear-cut and persuasive. Facing today’s moral diversity and disagreement, an honest scholar has to concede that he has no general rational argument for establishing a particular moral view as canonical without ultimately begging the question, arguing in a circle, or engaging in infinite regress. Now the question is where we can go from this moral epistemological skepticism? Is Engelhardt’s by-default argument for the libertarian view of rights as side constraints a sound argument? I will turn to this issue in the next section. Here my concern is a practical one: is Engelhardt able to integrate his libertarian requirement of rights as side constraints and his ideal of ethical communitization into a feasible comprehensive moral system for practice? I think he is not. Such integration is not feasible because his communitarian ideal cannot be pursued in practice in conformity with his requirement of individual rights as side constraints. The reason is as follows.

Many people today do not live a communitarian moral life. That is, they have already become post-modern persons in the sense that they do not belong to any particular, coherent moral community. As Engelhardt himself recognizes,

What if the chaos of the moral life is such that many people possess no coherent understanding of the right, the good, and the virtuous? Thoroughly post-modern persons that not only have no moral narrative to share with others but also no coherent moral account of their own lives are exactly such individuals. Life happens to them, including their passions. They are persons without a moral plot for their own biographies. They have desires, impulses, urges, needs, wants, and concerns, but no moral projects that shape and unite their lives as a whole (2000, p. 137).

The question is: can emphasizing libertarian rights as side constraints help those people stop being post-modern cosmopolitans and join particular moral communities? The answer is unfortunately negative – at least for most individuals. This is because enjoying the moral commitments of a moral community requires active moral cultivation that is not available within a general libertarian ethos regulated by
libertarian rights as side constraints. To the contrary, emphasizing libertarian rights will most probably induce individuals to seek “liberation” from the constraints of traditional moral communities and become liberal cosmopolitans. For most individuals, libertarian rights as side constraints can easily be used for gratifying their immanent physiological impulses or whims rather than for fulfilling their moral pursuits or religious hungers. Again, as Engelhardt himself observes,

Because sex sells and self-indulgence is appealing, a market ethos can thus favor a liberal cosmopolitan critique of asceticism, Christian tradition, and heterosexist ideals. The general affirmation of consensual sexual gratification becomes the norm. By appealing to immediate and simple gratification, or refined self-satisfaction (admittedly a smaller market niche), the focus becomes robustly thisworldly and openly post-metaphysical (2000, p. 142).

It is simply natural for most individuals to find self-indulgence easy and appealing, moral commitments hard and demanding. This is why traditional religions and moralities, such as Confucianism, have always emphasized the significance of overcoming self-indulgence through gradual moral discipline and cultivation. It is unrealistic to expect that a good moral habit will naturally take place without careful moral cultivation. And it is impossible to lead a communitarian moral life without forming a good moral habit. This is to say, a commitment-required communitarian way of moral life requires training, nurturing, and disciplining, which is comparatively more difficult to live, while a life of self-indulgence is comparatively more easy-going. Given that the very individualistic tone of rights as side constraints makes self-indulgence sound legitimate and even self-confident (“I have a right to do it, even if it is wrong”), it is no surprise that many individuals claiming such rights naturally go for it. Moreover, from such “rights” many individuals can easily make an additional step to reach the position of supporting the liberal ideal of a welfare state: the state ought to ensure basic welfare to every individual so that they are enabled to live up to whatever way of life they prefer. Accordingly, pace Engelhardt, stressing libertarian rights induces many individuals to become liberal cosmopolitans rather than moral communitarians. It would in fact accelerate the emerging dominance of liberal cosmopolitan culture in every region of the world. As a result, ever fewer will still take particular moral communities seriously.

To summarize, the libertarian strategy of dealing with ethical and bioethical dissensus is to establish individual rights as side constraints by which individuals can join non-geographical moral communities so as to pursue their substantive ethical and bioethical goals. However, since many individuals today no longer belong to any coherent moral community, emphasizing libertarian rights as side constraints does not help them in joining particular moral communities. Rather, it helps with the dissemination and assurance of a worldwide liberal cosmopolitanism. In this sense, the entire Engelhardtian libertarian system (consisting of both the requirement of treating individual rights as side constraints and the ideal of ethical and bioethical communitization) has become self-defeating in practice, even if it is not self-contradicting in theory.
12.4 Bioethical Localization: The Confucian Insight

If liberal globalization is unjustified and libertarian communitization is infeasible, do we have any other suitable strategy to deal with ethical and bioethical dissensus? For this difficult issue, I would like to draw on the insight of a great Chinese master, Confucius (551–479 BCE), for useful instruction. Confucius lived in a time of immense social conflict and turmoil in Chinese history. By his time, China already had thousands of years of civilization, with the splendid system of $li$ established in the Former Zhou Dynasty (周, about 1066–771 BCE). As explored in the last chapter, $li$ originally identified holy rituals or sacrificial ceremonies performed by the family to venerate the ancestors (Ho, 1992). Given the sacredness, seriousness, and sublimity of such rituals or ceremonies, the Chinese found them a significant metaphor for understanding the nature of human life as distinguishable from that of animal existence. Accordingly, the Zhou Chinese used a system of $li$ metaphorically to mean more broadly behavior patterns that had been established and accepted as appropriate for an authentic way of human life, including what Western people call rites, rituals, ceremonies, manners, etiquettes, customs, and social and political systems. This system of $li$ regulated human relations, organized communal lives, directed individual actions, and shaped social institutions. A brilliant Chinese civilization was established based on $li$. Unfortunately, the glory of $li$ was declining at Confucius’ time. Rich and ambitious feudal lords desired to grasp unlimited political power and expand their territories. The states began to wage wars against each other, subjects murdered their princes, and children killed their parents. They no longer followed the rites used to be highly venerated. Accordingly, the rites were disintegrated, and the Chinese society was experiencing moral corruption, degeneration, and chaos. A dozen of the greatest minds China had ever produced began to reflect on the nature of human civilization and seek solutions to its contemporary difficulties. Confucius was among them. Although he did not offer a discursive philosophical argument, his moral thought proved to be most profound and most instructive up to the present. To make the long story short, I take that Confucius’ reflections can be summarized into the following points.

First, distinctively human civilization is embodied in human rites ($li$). Confucius recognizes that civilized humans are ceremonial beings – they are following rules in cooperation, rather than simply reacting by instinct. The image of the original memorial ceremony of the family’s ancestors becomes a metaphor of authentic human existence because it brings out forcefully not only the harmony and beauty of human intercourse but also the historical roots and moral perfection of human development manifested in achieving one’s ends by dealing with others in the ceremonial way. Hence, the very feature of following rules in rite-performance distinguishes human behavior from mere animal reaction. For Confucius, no human civilization can exist in any geographical region without such symbol-rich and somewhat mystic rites, rituals, or ceremonies. They constitute the essential character of human civilization. Metaphysically, rites relate humans to the transcendent – which is incomparably higher than humans – so as to give human life an eternal meaning. Humans have no way of getting access to the transcendent (whether it
is God, Heaven, Dao, or their deceased ancestors and parents) except through performing such rites. Aesthetically, rite-performance offers opportunities for humans to enjoy the beauty and sublimity of their lives. Morally, rule-following rite-performance assigns sanctity to human actions that other animals can never obtain in their instinct-driven behaviors. Finally, virtue is cultivated in rite-performance, and virtue in turn strengthens human civilization (see the subsequent argument in this section). Accordingly, for Confucius, human civilization is impossible without rite-performance.7

Moreover, distinctively human civilization is rooted in the following of the constitutive rules of human rites (li). As illustrated in the last chapter, rites are possible because they are rule-governed activities, with constitutive rules to define them. These rules are rules of propriety about how to perform rites. You cannot perform a rite without following rules. For instance, the rules of a sacrificial ceremony tell you about when you begin to join, where you stand, how you move, and what you say. This does not mean that every act in a rite is predetermined by rules – it is not determined by ritual rules any more than each move in transportation is settled by traffic laws. Instead, a rule stands like a sign-post: it does restrict one’s behavior – at a no-left-turn sign one should not turn left, but it also opens the possibilities of one’s action – one can go straight or turn right without being caught in chaos. With this insight Confucius was not far from the later Wittgenstein in recognizing that humans are rule-following animals. However, it is very important to understand that, for Confucius, such rules of propriety are constitutive of concrete rites or rituals and thereby are highly context-sensitive. They are rite-bearing rules for real practice, not philosophical abstracts for general theorizing. As a result, particular rules characterize particular rites and shape different principles in practice. For example, the principles of truthfulness applied in human rites are never so abstract as philosophically articulated claims of an absolute obligation for “truth-telling.” In one culture, the principle of truthfulness covers the rule of not telling the truth to elderly great-aunts who invite their young relatives to admire their new hats. In another culture, it covers the rule of not telling the truth to the terminally ill parents who still hold hope for survival. The rules of truth-telling vary from culture to culture because people are performing different rites with specific constitutive rules.

Third, rules exist only when people (especially children) are appropriately educated to follow them. Human civilization cannot be maintained and developed if the established rites and rules are not duly respected. Again, rites are possible because there are constitutive rules to define them. Rules are possible because a certain convention or consensus on their meanings dominates. Consensus is possible only when people are educated and trained in ways in which their passions and impulses are regulated and reshaped by rules so that their capricious impulses to violate the rules cannot prevail in the disguise of a legitimate moral reason. For Confucius, in order to maintain human civilization, individuals must be trained to control their

7For an interesting account of the Confucian thought in terms of rites, see Herbert Fingarette (1972). For a useful brief introduction to Confucianism, see Ni (2001).
selfish impulses and follow the rules of propriety (Analects 12:1). Indeed, humans are not self-sufficient individuals who just happen to consent to a social contract. They become truly human as their raw impulses are recast by the rules of propriety, which make them authentic persons in the process of performing appropriate rituals. A man is born as “raw material” who must be civilized by education through rites, and thus become truly human. He must be taught and trained to follow the established rites and rules so as to direct his attention to the traditional social pattern of conduct and relationships (Cf., Fingarette, 1972, p. 34). This is why education, for Confucians, is crucially ritual education. As I indicate in the last chapter, education cannot work well solely based on general principles, such as the liberal principles of liberty, equality, and individual rights, in separation from the rules of rites.

Finally, rites are morally meaningful because they are indispensable to the fulfillment of a fundamental human virtue. The Confucian theory of virtue is grounded in the Confucian understanding of human nature. Confucius reflected on human nature and recognized that humans are never atomistic, discrete, self-serving individuals coming to construct a society through contract. They are first and foremost characterized by the familial roles that they take on: husband, wife, father, mother, son, daughter, and so on. A human cannot come into being without the combination of a man and a woman. Children cannot grow up without being looked after by their parents. And elderly parents cannot survive without being taken care of by their adult children. For every human individual, this familist way of existence is not chosen, but given. Accordingly, Confucius held that humans are by nature familial animals, possessing the potential to form the family and to be realized in the family. More importantly, Confucians found in familial relations a most significant and noble aspect of human nature: a propensity to sympathize with each other.\(^8\) This natural sympathy constitutes the human disposition of love. For Confucius, the natural love between parents and children and between siblings sets down the root of a fundamental human virtue, ren (仁, Analects 1: 2). This Confucian virtue of ren as love is not only a feeling, but is more foundationally a potential, a power, and a character, from which the feeling of love is cultivated and regulated. However, a root is not a trunk yet, much less a fruit. The fundamental virtue of ren as the best aspect of human nature is only a potential, which must be cultivated, nurtured, and developed in order to fully realize itself. For Confucius, the only way of cultivating and exercising this virtue is to follow the rites. As discussed in the last chapter, he clearly taught that the method of realizing ren is: “do not look, listen, speak or move if it is not in conformity with the rites” (Analects 7:1). The Confucian rites become morally significant because they are indispensable to the fulfillment of the fundamental human virtue.

\(^8\) As is well-known, Mencius (327–289 BCE), the Confucian master second only to Confucius, developed this Confucian view by arguing that every human has an original heart of sympathy (ceyin, 仁心); that is, the heart that cannot bear to see the suffering of others (Mencius 2A: 6). This Confucian sympathy-based view of love may be taken as similar to David Hume’s. But a difference is that for Hume, love is only a passion – a simple impression or feeling (1978, p. 329), while for Confucians, ren as love is first a substance, a potential, or a virtue that must be cultivated and developed in order to bring it into full play.
This view can also be illustrated by further appreciating the Confucian concept of love implicit in the fundamental human virtue of ren. The basic Confucian love is a particular type of love. It is not erotic. Neither is it agapic. If we must coin a name for it, it is relational. The love between the parent and the child is the primordial case of such Confucian love. On the one hand, a father loves his son not because his son has certain valuable properties that his neighbor’s son does not have. Even if he knows that his son has much less merits compared to his neighbor’s son, he still loves his son more than his neighbor’s son. Thus this type of love is not erotic.

On the other hand, the father’s love of the son or the son’s love of the father does have a reason: “he is my son” or “he is my father.” Thus it differs from God’s love of humans or Christian neighbor-love. God’s love of humans goes beyond any human reason. God loves humans not because humans are the creatures of God. Rather, God loves humans because He is God – His nature is to love. Hence, Confucian love is relation-centric, while agapic love is exclusively subject-centric. As a result, Confucius set up a vision of love – relational love – differing from either erotic or agapic love. A significant Western question is: should we promote erotic love (like the love a human person has for God) or agapic love (like the love that God has for human persons) in order to build a good society? A typical Confucian question is: how should we promote relational love in order to shape a good society?

The Confucian answer is ritualization: one should perform different rites with different people in order appropriately to practice relational love. Relational love is by nature non-egalitarian – it is not the loving of everyone without distinction or in the same degree. If loving all humans equally means that one should exercise the same rituals with everyone, it would basically conflict with the Confucian view of

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9There are two major views of love in the West: one is from the eros tradition, comprising the eros of Plato’s Symposium, sexual love, courtly love, and romantic love; the other is from the agape tradition, including God’s love for humans and Christian neighbor-love. Erotic love is property-based and reason-dependent: x loves y because y has some attractive, admirable, or valuable properties that give x a reason to love y. On the other hand, Agapic love is not property-based or reason-dependent. The ground of agape love is not in the perceived merit of the object (the beloved), but is in the nature of the subject (the lover). Thus agapic love is subject-centric rather than object-centric: x finds the properties that y has attractive because x loves y. The structure of agapic love is that love is its own reason and is taken as a metaphysical primitive. For instance, the reason why God loves men is not because men have merits deserving love, but because it is His nature to love. Further, individual attractiveness plays no role in the Christian love of one’s neighbor, which requires loving the sinner, the stranger, the sick, the ugly, and the enemy, as well as the righteous and one’s kin. For a very useful explication of these two views of love, see Soble (1990, pp. 4–13).

10Some may want to argue that I love my son because my son has the property of being a son of mine so that parent-child love can still be characterized as erotic love. However, this type of property – if we may call it “property” – is not meritorious, but relational. In such “relational” type of cases I love someone because she holds a particular relationship with me (such as being my sister, my classmate, or my friend); in the non-relational type of cases I love someone because she holds some meritorious property (such as beauty, wealth, or knowledge). Since these two types of cases carry different moral and practical significance, it is necessary to distinguish them. Both erotic and agapic love covers a clear sense of impartiality – it is agent-neutral, while relational love is agent-relative. Relational love is closely related to the conception of loyalty or patriotism rather than impartiality. For relevant issues in this regard, see Oldenquist (1982) and MacIntyre (2002).
the relational love manifested in ritualized human relations. Again, for Confucius, relational love is rooted in the familial-tie between parent and child and between siblings (Analects 1: 2). This love illustrates the best part of human nature, ren, disclosing that the moral nature of human relationships is love (Analects 12: 12). Confucianism requires that love be applied to all the people in differentiated ways in terms of relationships. If some fault Confucianism with strong familial love in the absence of a clear manner to extend familial love (e.g., taking care of the family) into love for all (e.g., aiding strangers) (Wong, 1989), they fail to recognize the Confucian strategy of ritualization. As is well-known, the five basic relations emphasized by Confucianism have formed general pattern of traditional Chinese society. “Between father and son, there should be affection (qin, 賤); between sovereign and minister, righteousness (yi, 義); between husband and wife, attention to their separate functions (bie, 別); between old and young, a proper order (xu, 序); and between friends, fidelity (xin, 証)” (Mencius 3A: 4). These different virtues, qin, yi, bie, xu, and xin, manifest specific relational love in different rituals. A filial son is one who exercises the rituals of greeting his parents every morning, speaking to them in a gentle tone, solving their problems wholeheartedly. Faithful friends are those who exercise the rituals of visiting each other from time to time, drinking together joyfully, and assisting each other in need. In short, relational love is ritualized love. It is in the exercise of the relevant rites that the love is manifested, nurtured, and promoted.

What do these Confucian reflections have to offer for dealing with ethical and bioethical dissensus we face in contemporary society? A few useful points are in order. First, in order adequately to deal with moral dissensus, we need to understand the nature of moral dissensus in terms of human rituals. If the distinct nature of a civilization, culture, or morality can be understood better in terms of particular rituals being performed, then moral and bioethical dissensus may first suggest the possibility of different rituals to be practiced across-civilization, culture, or morality. Consider people’s painful disagreements about abortion, infanticide, female circumcision, polygamy, homosexuality, or euthanasia. The adherents of euthanasia, for instance, usually perform a kind of medical ritual sharply different from that performed by the opponents. Second, what is crucially important for maintaining the order of a human civilization is virtue, shared rituals, not individual rights. What is most destructive to a human civilization is vice, de-ritualization, not usual disagreements. Indeed, usual dissensus is always there in human society. It occurs not only across moral communities carrying different moral traditions. It also occurs inside a moral community carrying the same moral tradition. Even within a moral community, it is not rare that individuals may disagree about the moral standing of some ritual-constitutive rules, and there may not always be a straightforward way to settle

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11 Ideally, when people nurture and practice relational love, no one should be a stranger, for he is at least related as an older or a younger; similarly, no one should be an enemy. See Chan (1963, p. 71). For Confucians, as long as one is a human being, one is related to another human being in one of the five relations that should embody ritualized love. For a recent exploration of the Confucian affective relations, see Hahm and Bell (2004).
the disagreement by appeal to a general principle (e.g., *Analects* 17: 21), as discussed in the last chapter. Decision-making procedures are always necessary for the unity of a moral community. In fact, such procedures constitute part of the accepted rites of each sustaining moral community. They are rites about rites – “metarites” if you will. The success of such special rites in a community often relies on the distinctive role of some authoritative persons accepted by the community. The severe or persistent failure of such procedures leads to the fragmentation of a moral community as well as its tradition. Hence, it is not the case that the ritual-constitutive rules of a moral community can never be changed. But they must be changed by following the “metarites” accepted by the community. For the Confucian community, revision of the rites may be made by Confucian sages according to the moral virtue of *ren*.

Moral disagreements between different moral communities carrying different moral traditions are more severe and difficult than disagreements inside a moral community. In terms of rites, severe cross-community moral conflicts consist in their disagreement about the moral status of certain rites – some rites are held to be evil by one community, but they are held to be acceptable by another community. While liberals and libertarians offer general moral principles to deal with cross-community moral and bioethical dissensus, the Confucian view suggests that their strategies cannot succeed because they fail to recognize the ritual-bearing nature of moral dissensus as well as the significant importance of specific ritual rules. In particular, as discussed in the previous sections, neither the liberal principle of individual liberty as self determination nor the libertarian principle of individual rights as side constraints is proper to handle cross-community moral disagreements, and this is because they fail to take different types of rituals seriously. They are too “thick” in the sense that they essentially favor the Western *individualist* type of rites over non-individualist types of rites (such as the Confucian familist rites). Accordingly, if we want to propose an appropriate principle to direct resolving cross-community moral disagreements, we would need a rite-sensitive principle – it should not be biased to either individualist or non-individualist type of rites. Instead, it should allow various types of rites to flourish. Of course, at the same time, this principle should not be relativist in the sense that it grants all rites as equally morally good. It should contain a minimal sense of morality so as to set down a necessary condition for morally acceptable rites. Can Confucianism offer a promising principle in this regard?

A thin principle of *ren* is the best hope. The thick Confucian principle of *ren* carries all the important features of Confucianism: its metaphysics, its familism, its favorite ceremonies, and so on. In order to deal with cross-community moral disputes, a thin principle of *ren* should be abstracted from such thick content and only hold a basic moral sense: *humans should treat each other with a sense of love.* I would style this thin principle of *ren* as “the thin principle of love.” Although many moral traditions and theories hold a principle of love, this thin principle drawn from the Confucian moral resources contains several special points. (1) Love is an emotion generated from familial relations, cultivated in the family, and extended to other relations through common ritual performance. (2) Love is not only an emotion; it is also a virtue – a character that tends to enable one to treat others with love in
common ritual performance. (3) Love, as a virtue, is not individual entitlement-oriented, but obligation-oriented. While both liberal liberties and libertarian rights are individual entitlement-oriented, self-centered, and self-regarding, this virtue of love is obligation-oriented, cooperation-centered, and others-regarding. However, as a thin principle, it does not require love in the full-fledged Confucian sense. It only requires a minimum necessary sense: a sense of sympathy with others’ sufferings, care about others’ feelings, or concern of others’ expectations in any ritual performance or practice. This is “a minimum necessary sense” because without it, one cannot make sense to say “treating people with love.” (4) Love is relation-sensitive. It allows differentiation, gradation, and priority among different people. It does not require, although it does not have to conflict with, any claim for universal love without distinctions.12 (5) The thin principle of love, assuming that performing rituals is essential for human civilization, serves as a minimal condition for the possibility of common ritual performance. (6) The principle suggests that moral disagreements or controversies between moral communities be “solvable” through shared rituals.

Before I turn to point (6), it is necessary to emphasize the “thinness” of this principle again and explain why it is more sensitive and suitable to the moral diversity of contemporary society than the liberal or libertarian principle. It is thinner than the liberal principle of individual liberty as self-determination because it allows the rituals that do not take self-determination as a central value to be morally acceptable rituals insofar as they exemplify a sense of love of the ritual participants. It is also more thin than the libertarian principle of individual rights as side constraints because it allows local people to decide whether they want an overarching, individual-oriented principle of autonomy or permission to guide their ritual practice as long as the people treat each other with love according to the local view. In short, since this principle is unbiased to either individualist or non-individualist types of ritual practice, it is friendlier to actual moral rituals and practices conducted by various peoples in the world and thereby takes moral diversity and epistemological skepticism more seriously than either the liberal or libertarian principle. To apply this principle, one does not have to understand human relations in terms of the Confucian five relations. As long as one accepts that humans should be related to one another in ways that contain at least a minimum sense of love/sympathy, it is sufficient to meet the principle.

This principle is not relativist, though. It sets down a fundamental moral norm for the moral (un)acceptability of actual rituals and practices, while taking moral diversity and epistemological skepticism seriously. It rejects the claim that any ritual is as morally good as others. A morally acceptable ritual must exemplify some relational love to its participants as its moral tenability. Accordingly, under this principle some rituals are not morally acceptable because they do not contain any sense of love in treating the participants. For instance, if a group of people regularly sacks another

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12The Confucian understanding is that as long as one performs different rituals with different people, he is already practicing love with distinctions, because his love is already differentiated among different people in those different rituals. This being the case, even if one claims universal love without distinctions, the claim may simply be empty or even hypocritical.
group of people for their resources, it is hard to see how the former group can meet the basic feature of love/sympathy required by this principle so as to grant its act as a morally acceptable practice.

However, we should not be overambitious in using this principle to settle controversial rites or rules among different moral communities or districts. For most cross-community or cross-district ethical and bioethical dissensus and controversies, such as those regarding artificial-technology-aided reproduction, stem-cell research, human cloning, abortion, physician-assisted suicide, euthanasia, and same sex marriage, this principle cannot be used to show which community or district is performing the morally ideal rituals by maximizing love, because different rituals performed by different communities or districts may exemplify love in quite different ways. Rather, this principle works by treating cross-community and cross-district moral diversity and epistemological skepticism seriously. The basic moral orientation of this principle is (a) respecting existing local rituals insofar as relational love is exemplified in the rituals according to the local view, and (b) appealing to morally acceptable (according to the thin principle) shared rituals among different communities or districts to resolve cross-community or cross-district moral controversies. It is important to recognize the significance of point (a). Here I use “local rituals” rather than “communitarian rituals” because some rituals in a local area may be shared by different moral communities even if they interpret the rituals differently. From the eyes of outsiders, some local rituals may seem short of any relational love, but from the local view, they manifest some sense of love. Since love is a basic virtue based on a human emotion for common rite-performance, I would contend that the local view should be taken more seriously than an outside view. Accordingly, such rituals would be morally acceptable rituals according to the thin principle of love, even if outsiders find them morally offensive. Respecting local rituals means that one does not attempt to use force to change them, or to coerce local government to legislate a law to prohibit them. We have had many lessons to learn in treating other cultures in this regard in the modern time – the so-called “export problem” in David Solomon’s insightful terminology (Solomon, 2006).

Of course, respecting local rituals does not mean that one accepts them as ideal moral practices. Every moral community or tradition has its own reason to judge which rituals are the best rituals to perform. The thin principle of love is supposed to inform which rituals are morally acceptable, but not to inform which rituals are morally ideal – this latter question has to be answered by each community based on its own “thick” moral views. Then what moral guidance can the thin principle of love give us in our attempts to improve and alter other people’s rituals or practices which, although morally acceptable according to the thin principle, are not the best rituals according to the moral standards of our own moral community or tradition? Here point (b) above is crucial. Being ritualized animals, humans should attempt to solve their disputes by relying on existent shared rituals that are morally acceptable in accordance with the requirement of the thin principle of love. Just as within a moral community people appeal to special procedural rites (I termed “metarites” previously) to solve their moral disagreements, the cross-community and cross-district people should also appeal to their mutually shared rituals to solve
problems. No doubt, the cross-community and cross-district people often conduct terribly problematic rituals – warfare is a typical example – to each other. Such rituals violate the thin principle of love. Fortunately, humans have also well developed at least four types of the cross-community and cross-district rituals that have met the requirement of the thin principle of love: *dialogue, contract, philanthropy, and the market*. These rituals are certainly performed by members of the same moral community or district, but they are also shared by members of different moral communities or districts. If we term “first-level rituals” the usual rituals (like Confucian familist rituals or the Orthodox Christian Liturgy) that are shared by members of a moral community or district but are not shared by members of other communities or districts, these special rituals shared by different communities or districts can be termed “second-level rituals.”

1. **Dialogue**: At least in small regions, such as villages or towns, people live together and contact each other frequently, even if they belong to different moral communities carrying different moral traditions. Indeed, people talk to each other. Some even come from afar to talk to others. Dialogue is a real cross-community and cross-district second-level ritual performed by humans. It is a practice in which people sit down to listen to each other and attempt to come to an agreement. The minimal requirement of the thin principle of love – treating each other with love – is met in this practice. Just as people rely on both argument and procedure to solve their moral disagreements within a moral community or district, people are also doing cross-community and cross-district dialogue, although this latter task is more difficult – arguments are more diverse, procedures are more loose, authorities are more feeble, etc., than the task done within a community or district. Still, cross-community and cross-district dialogue is often appealed to and is important. It can even provide an opportunity of mutual learning, given that people are treating each other with love. Although it is difficult to account for mutual learning theoretically when different, incommensurable religions, metaphysics, and moralities are involved, mutual learning is still possible because dialogue as a second-level ritual is not a self-enclosed, static game. It is living and developing, and can affect the first-level rituals of each community. This might be why Confucius: “do not entertain conjectures (yi, 意), do not insist on certainty (bi, 必), do not be inflexible (gu, 固), and do not be egotistical (wo, 我)” (*Analects*: 9: 4).

Again, people inevitably share dialogue as a second-level rite, which can be very helpful for the resolution of cross-community or cross-district moral controversies. For instance, the Christians may inevitably contact the Buddhists if they live in the same Chinese village, so that they engage in a dialogue with each other. It is naturally up to the Christians and the Buddhists in the same village through a dialogue to make solutions to their moral disagreements. Evidently, each side has its own first-level rites – their favorite rites, acceptable rites, tolerable rites, and prohibited rites. Through a dialogue, their solution to a moral controversy could be some special arrangements in which, for all controversial first-level rites, each side can do their own way (including, for example, how
they will eat meat when a Buddhist dines with a Christian). To use the issue of abortion as an example, their agreement could be that abortion is okay for the Buddhists but prohibited for Christians (namely, each side does its own way). But their agreement could also be otherwise: e.g., for all the people in the village (regardless of whether they are Christian or Buddhist), only therapeutic abortion is allowed; or only therapeutic abortion and abortion for rape-caused pregnancy are allowed; or no abortion is allowed at all.... The point is that their solution should simply depend on the outcome of their dialogue. If libertarians want to make the solution of each side doing its own way as a general principle (or right) imposing on these people a priori, that would be both practically and morally groundless. Proper general principles should be rites-sensitive and rules-relative. A rite-transcending principle or right cannot provide appropriate guidance to cross-community practices. Accordingly, no solution should be imposed on people as a priori transcending their shared second-level rites of dialogue.

2. Contract: All people understand the importance of contract. For instance, although Confucians do not like to make formal contracts with their family members or close relatives (because they hold that such formality discounts the intimacy of their relationships), they understand the necessity of making contracts with other people for mutual benefit. One can even use contract to promote the values or ideal rites that one holds. In this way contract can serve as a second-level ritual in handling cross-community or cross-district moral controversies. For instance, if a group of people is bothered by female circumcision in some African countries, they can offer a deal for those people: we will do such and such business with you if you stop doing circumcision on your female family members. This way not only conforms to the thin principle of love but would also work better than a prohibitive governmental law. Similarly, if Confucians want to promote their familist way of informed consent in medical practice, they can manage to set up a first-rate non-profit hospital in which every voluntarily coming patient is required to be accompanied by a family representative and make their medical decisions by the family as a whole.

3. Philanthropy: Human sympathy can reach beyond one’s relatives, neighbors, or friends. We have rich evidence to show that people help each other cross-community and cross-district. Philanthropy is a wonderful ritual for people to perform among different moral communities and districts. It can also be used to help resolve cross-community and cross-district moral dissensus. For instance, infanticide is often a tragic event caused by poverty. Families committing infanticide take such a tragic effect to be comparatively less harmful to the whole family and even to the infant him- or herself. If others can voluntarily donate to such poor families, infanticide as a moral problem can be substantially relieved.

4. The market: People exchange things with each other in the market. The market constitutes a special ritual which can be shared easily by all people, no matter to which moral communities they belong and how serious moral disagreements they hold. The market is helpful to the resolution of cross-community and cross-district moral dissensus in at least two ways. First, by doing business in
the market people obtain more opportunities of contacting each other and using contracts to terminate their moral disagreements. Second, a law of the market is that, other things being equal, investments move to regions where marginal cost is low. As a result, if poor regions can develop the market, they can receive more marginal benefit than affluent regions. In this way, the market can help poor people to relieve the moral problems related to poverty.

In short, it is the basic orientation of the thin principle of love that people should attempt to resolve their moral dissensus via peacefully shared rituals. The cross-community and cross-district rituals (dialogue, contract, philanthropy, and the market) offer the best chances for people to handle their moral and bioethical controversies in following the thin principle of love. In this regard, the Confucian strategy of handling cross-community and cross-district moral and bioethical controversies is neither liberal globalization nor libertarian communitization. It is localization. Liberal globalization wants through state power to impose a particular value of liberty upon all the people who perform different types of rituals that do not embrace the liberal individualist value of liberty. The liberal aspiration is thus morally mistaken. From the strategy of localization, the role of the state should significantly be limited. For instance, in respecting people’s love with each other substantiated in particular rituals, the state should not impose any egalitarian welfare policy on the people, because such state-created “super-rituals” are not real rituals – they are not shared by people belonging to different moral communities or different districts.

This strategy is not libertarian communitization because it does not impose on all communities or areas an individualism-oriented ethical principle (such as individual autonomy or permission) as a universal procedural requirement. The thin principle of love requires respecting local rituals as long as a sense of love is embodied in the rituals according to the local view. It respects local people in relying on their shared rituals (such as the second-level rituals of dialogue, contract, philanthropy, and the market) to reach specific solutions to moral controversies among different moral communities in the same district. This strategy is fairly called “localization” because it is most friendly to actual rituals performed by people belonging to different moral communities or holding different moral views in any local areas.

12.5 Conclusion

The papers by Bayertz and Petroni provide us excellent European lessons in searching for legitimate approaches to bioethical issues and decisions in the context of moral diversity and dissensus in Europe. Non-Europeans can learn a great deal from

13By performing these second-level rites together, individuals from different moral communities may become moral acquaintances in a sense that Kevin Wildes identifies: mutual understanding (Acquaintanceship A1). See his (2001, p. 139).
these experiences in order to deal with their moral dissensus appropriately. However, Bayertz and Petroni have not fully recognized the moral defects of the liberal strategy and the serious destruction it is inflicting on the world in general and in Europe in particular, although Petroni enthusiastically argues against centralization and in favor of individual liberty and the free market. With individual fulfillment as a central concern and state-imposed welfare programs as a major endeavor, liberal global ethics is destroying the values of dialogue, contract, philanthropy, and the market as well as the integrity of the family and local culture in contemporary society. A super-state institution like the European Union based on the liberal global ethic would make things even worse in these regards.

Neither liberals nor libertarians have recognized the rite-bearing nature of human civilization. They fail to understand that humans are ritualized beings. In this regard this chapter can be taken as providing a Confucian reconstruction of Western moral rationality: the rationality that structures the Kantian community and the contractors in Rawls’ original position is not individualistic universalizability or maximin, but rather, is Confucian relational love substantiated in human rituals. That is, Kant and Rawls have the wrong philosophical anthropology, but Confucius has it just right. A thin principle of love is proposed for dealing with cross-community and cross-district ethical and bioethical dissensus by means of people’s peacefully shared second-level rituals: dialogue, contract, philanthropy, and the market, because these rituals have met the requirement of the thin principle of love. As a result, my proposal is, in the end, more feasible than libertarian cosmopolitanism, and is more congenial to diversity and free choice than liberal cosmopolitanism. It is not committed to any individualist moral principle. It supports dialogue, contract, private philanthropy, and the free market as special rituals for people to deal with cross-community and cross-district moral controversies and disputes.

Some may want to argue that my thin principle of love contains an intent to impose a substantive Confucian moral view on non-Confucian others so that it is not sufficiently thin for different moral communities. They may want to stress that a libertarian principle of autonomy or permission as a pure procedural norm is more substance-free than the thin principle of love. I concede that my principle contains a substance – love. But I would contend that the distinction between substance and procedure can only be drawn in a comparative sense. The libertarian principle of individual autonomy or permission is more procedural (or less substantive) than the liberal principle of individual liberty because the latter sees liberty as a value while the former does not. But the libertarian principle of individual autonomy is more substantive (or less procedural) than the thin principle of love because it is biased towards the individualist type of moral rituals and practices. A context-irrelevant, absolute dichotomy between substance and procedure may be one of a series of the Enlightenment ideals that, as libertarians correctly argue, can never be well established by reason. It is simply self-deception to believe that a moral norm, no matter how purely “procedural” it is meant to be, can be totally separated from a view of the good and human flourishing. In fact, although the thin principle of love contains a substantive sense of love as an emotion-based virtue, it is maintained in a minimum necessary sense only. It is true that Confucianism offers a profound and full-fledged
account of the significance of such relational love for human civilization while other moral traditions do not. But a basic sense of human relational love is universally cherished by every moral tradition – at least it is more universally cherished than the norm of individual autonomy or permission. Accordingly, a minimum necessary sense of love as a moral norm for human relations can hardly be rejected by any moral community with good reason. The burden is on anyone who does not accept this claim to explain why.
Chapter 13
Appeal to Rites and Personhood

13.1 Introduction

In contemporary bioethics there are such salient questions as: What is a person? What is the essence of personhood? Where can we find a general standard to judge the presence or absence of personhood? These are not ordinary questions within a traditional Confucian morality, but one can ask such questions within a Confucian framework. In this chapter these questions and their answers are approached in terms of the ritual-embedded character of persons. This chapter recognizes that it is vitally important to distinguish a standard for personhood and a conception of personhood. A standard for personhood is a narrow concept. It sets down a particular criterion of a person by which people can judge whether a given entity is a person in a relevant context. A conception of personhood is a broad concept. It usually includes accounts of what the nature of a person is, where a person is from, what relation a person has to other beings, and etc. Under this assumption, a standard for personhood can only be derived from a conception of personhood. Although different conceptions of personhood may sometimes lead to the same standard for personhood, they carry different religious, metaphysical, or moral implications on the nature and meaning of personhood.

This chapter indicates that conceptions of personhood can be classified into three types that have different epistemological status. The first type is substantive conceptions of personhood, such as a Judeo-Christian conception. They are based upon particular and content-full moral or religious convictions. The second type is a general conception. It is established out of a transcendental argument regarding the necessary conditions for the possibility of ethical and bioethical exploration as an intellectual enterprise. The third one is a Confucian rite-based conception. It differs from the first two types of conception in that it emphasizes the rite-oriented and relation-based nature of human persons. From a Confucian perspective, a conception of personhood should not be “fixed” through an elaboration of general principles in separation from typical practices and rules that humans engage and embody their profound moral concerns.

The second section of this chapter illustrates a Judeo-Christian conception of personhood, which I call the “appeal to creation” conception. The third section deals
with modern Western conceptions of personhood which I call the “appeal to rights” conceptions. Although these conceptions are not derived from any particular religious perspective, they are still particular in the sense that they all include a specific modern moral position as their central point: a person is a holder of rights, especially the right to life. Then the fourth section argues why a transcendental conception of personhood, although more general than the other modern conceptions, may serve as a fall-back conception for conducting bioethical discussion in pluralistic Western society. Finally, the fifth section introduces the Confucian conception of personhood which I call the “appeal to rites” conception. Differing from all others, this conception shows that personhood is inevitably practice-embedded, relation-based and degree-relevant. It does not suffer from any type of principlism to identify a concept in separation of specific rules. To adopt the Confucian conception of personhood, the most significant task may not lie in determining who are persons so as to settle bioethical controversies. It lies in something else.

13.2 The “Appeal to Creation” Conception of Personhood: The Judeo-Christian Conception

The biblical tradition of Judeo-Christian religions understands personhood from a special starting point. I call this conception of personhood the “appeal to creation” conception, because it is established on the faith that persons are created by God. Although there are many different denominations of Judaism and Christianity, ranging from the most conservative to the extremely liberal, the “appeal to creation” conception of personhood I am laying out in this section seems to be a core faith accepted by every Jew or Christian. Accordingly, it is legitimate to mark it “the Judeo-Christian conception of personhood.”

As is well-known, from the Judeo-Christian beliefs, a transcendent God created all other things, earth and humans included. The defining essence of personhood must be understood in relation to such divine creation. According to the Judeo-Christian narrative, God created human beings in ways that He made them look like himself. As Judaist scholar Michael Wyschogrod points out, “to the extent that [personhood] was defined, it was in terms of the ‘image of God’” (1996, p. 4). Being created in God’s image constitutes a fundamental character of personhood. More importantly, the life or the soul of a human is given by God. In God’s making of the first human, “God took some soil from the ground and formed a man out of it; he breathed life-giving breath into his nostrils and the man began to live” (Gn 2:7). In God’s continuous creation of new humans, God infuses the soul to every new human in its conception in the mother’s womb. As a result, from the Judeo-Christian perspective, it is not human parents who truly reproduce their children. It is God who procreates new lives. Human parents, in this process of creation, play the role of no more than a medium. It is the divine creation that constitutes the core of this conception of personhood.
However, the divine creation is usually done through human medium. First, the image of God is reflected in humans. And second, the soul is infused by God to every human in his or her conception. Thus, it is only logical that the standard of species for personhood is integrated into this conception and accepted by Jews and Christians. They ascribe personhood to all human organisms, from the very beginning of the conception. Indeed, from this “appeal to creation” perspective, human dignity and rights are not primary conditions for personhood. Instead, they are derived from God’s creating act. Features such as “sentience” or “reason,” which often serve as standards for personhood in the present time, also lose their attraction. For instance, in the case of reason,

...some have said that the “image of God” refers to man’s possession of reason. The truth is that the definition of man in terms of reason is the contribution of Greek philosophy, perhaps its most significant contribution. But it is not the Bible definition of the essence of man...the Bible would find it difficult to focus on reason as the defining essence of man because reason is a mental capacity that does not take into account the physical uniqueness of man...Finally, and perhaps most important, the biblical view of man cannot focus on reason because Man’s fundamental project is not understanding but obedience to the divine command. It is, of course, true that obedience is possible only for a creature who has understanding, but it is not in the domain of understanding that man’s uniqueness is to be sought (Wyschogrod, pp. 4–5).

Although the Judeo-Christian conception of personhood echoes the contemporary standard of species in its ascribing personhood to all human organisms, regardless of their degree of normality or defect, maturity or decay, it differs from the contemporary standard of species in that it is based upon the particular account of the divine creation. It is formed in its religious convictions on God’s image and spiritual infusion as well as its special understanding of the fundamental human project as obedience to God’s commandments. It is this original position of the Judeo-Christian tradition that sets the very foundation of the serious objection of almost all Judeo-Christian denominations to taking human life, including abortion and euthanasia in health care area. For instance, in the Roman Catholic Church’s “Declaration on Procured Abortion” in 1974, we read:

in the visible universe everything has been made for man, who is the image of God and the world’s crowning glory (cf. Gn 1:26-28)...Infused by the creator, life is again taken back by him (cf. Gn 2:7, Wis 15:11). It remains under his protection: man’s blood cries out to him (cf. Gn 4:10) and he will demand an account of it, ‘for in the image of God man was made’ (Gn 9:5-6). The commandment of God is formal: ‘You shall not kill’ (Ex 20:13)...The tradition of the Church has always held that human life must be protected and cherished from the beginning, just as at the various stages of its development...O’Rourke and Boyle, 1993, p. 35).

This passage illustrates why the standard of species for judging personhood must be contained by the Judeo-Christian conception of personhood. This conception carries dramatically different implications from a rights-based conception of personhood (which may also contain a standard of species) to which I turn now.
13.3 The “Appeal to Rights” Conceptions of Personhood: Modern Western Conceptions

Baruch Brody and H. Tristram Engelhardt, Jr., in their edited volume (1988, Chapter 5), offer very useful selections of representative contemporary essays on five different conceptions of personhood. This section relies on their selections and summaries of these conceptions to identify the nature of these modern Western conceptions. From my understanding, these five different conceptions hold a similar moral nature, and that is why I term them the “appeal to rights” conceptions of personhood. Essentially, each of these conceptions covers in it the main point of the modern view of individual rights. Each insists that a person, whatever he or she is, is a rights-holder. Among such rights, a right to life in one’s existence is the most important. This is to say, under each of these conceptions, a person is such a being that, without overwhelmingly strong reason, he or she should not be destroyed or harmed. This constitutes the central point of each of these modern conceptions of personhood.

Evidently, the holders of these conceptions of personhood no longer draw on the theological conviction of divine creation to deploy their ideas. Instead, they each emphasize the moral point that a person must be a rights-holder to build their particular conceptions of personhood in which a specific standard for personhood can be derived. The logic seems to construct an essentially non-religious reasoning system in which one can find out what factors enable a being to constitute such an entity that should not be killed or harmed without a convincingly strong reason. That is, one sets out to seek a standard for personhood based on this moral assumption of rights so as to establish a full-fledged conception of personhood. The result, fortunately or unfortunately, is multiple. As Brody and Engelhardt summarize, there have occurred five distinct conceptions of personhood which include five different standards for identifying personhood: the standards of species, potentiality, sentience, brain or heart functioning, and awareness of self as a continuing entity. These standards have in turn explained and defended why the entities identified as persons by these respective standards should have a right to life.

The standard of species states that persons are those organisms who are members of the human species. It identifies personhood with biological humanity, which is recognizable in the genetic structure of the organism. Indeed, like the standard from the Judeo-Christian conception, this standard ascribes personhood to all human organisms, including fetuses, newborns, the severely deformed, the gravely retarded, and the permanently comatose, regardless of their degree of maturity or decay. It does not, however, ascribe personhood to non-human animals, robots, or extraterrestrial lives (Devine, 1987, pp. 136–138).

Why is it that all and only members of the human species enjoy the right to life and thereby are qualified to be persons? As we have seen, the answer from the Judeo-Christian conception of personhood to this question is through an appeal to their understanding of God’s creation. But this conception is not an “appeal to creation” conception. It appeals to a moral deliberation regarding what entities should enjoy a right to life and there should not be killed or harmed without compelling moral reason. The answer is all human beings. Why? Some would argue that this
conception is inappropriate because it represents exactly a type of human chauvinism: we want to protect all humans and only humans simply because we are humans. But Philip Devine contends that this is not strictly human chauvinism. From his view, it is not morally improper to argue that between two intelligent species, members of one species have no rights which members of the other species are bound to respect, while each agent is morally required to respect the rights of members of his own species, in particular not to kill them. This is because, for him, all other things being equal, it is worse to kill one’s brother than a stranger, “not because one’s brother in himself is morally more worthy than the stranger, but because the relationship between brothers is itself morally significant” (Devine, 1987, p. 137). Hence, the logic of the argument from this standard is like this: given that persons are those entities whose right to life must be respected, and that our human brothers and sisters are the only entities whose right to life we must respect due to the relationships, therefore, our human brothers and sisters are the persons.

This reason is not strong enough for those who want to emphasize certain features other than membership of the human species to qualify an entity to acquire a right to life. In this regard, the standard of potentiality claims that any entity that has the potentiality of possessing certain crucial features of a normal adult human should not be killed and thereby is a person. Such crucial features can be self-consciousness or the use of speech, for example. An organism is said to possess such features potentially if it will come to have them under normal conditions for development. This standard excludes humans who are gravely retarded or in a permanent vegetative state from the scope of personhood, because they no longer potentially possess the capacity to have such crucial features. However, this view could ascribe personhood to members of non-human intelligent species as well as to normal human fetuses. Evidently, the reasoning of this standard is simple: what makes the difference between some entities who should enjoy a right to life and other entities who should not have such a right is certain property, rather than membership of a particular species. Such property makes an entity eligible for the right to life. It is irrelevant whether this property is possessed by an entity presently or in the future. It is also irrelevant whether this property is possessed by a human entity or an entity of other beings (Devine, 1987, pp. 138–139).

The third standard, the standard of sentience, identifies all creatures who experience sensations such as pleasure, pain and emotions to be persons. Like the potentiality standard, this standard also does not intend to be unfairly biased for human species. It does not adopt anything distinctively human to be a standard for identifying persons. Rather, it takes sensations shared by at least all vertebrate animals to be the standard. Since all sensational beings are able to feel pleasure and pain, they should all be qualified to enjoy a right to life – not to be killed or harmed – and thereby be qualified to be persons. Moreover, even if some humans are severely retarded or seriously mentally ill, they are still capable of some forms of enjoyment and suffering. Therefore, they would retain their standing in personhood under this standard. Only those whose sentience is entirely lost, such as anencephalics or the irreversibly comatose, should no longer have a right to life and thereby no longer be persons (Sumner, 1987). Accordingly, unlike the potentiality standard, this standard
does not select an “advanced” property, such as self-consciousness or the use of speech, to be the measure to personhood. Instead, it is in terms of a “low” property of sentience to fulfill its moral concerns with rights to life. The moral argument behind this conception of personhood seems to be this: rights must have things to do with the protection and promotion of interests; we owe moral duties to all those beings capable of having interests; it is in virtue of being sentient that creatures have interests; therefore, sentience should be the standard for personhood (Sumner, 1987, p. 141).

Still others want to hold the standard of brain or heart function for personhood. They attempt to locate this standard in accordance with the current criteria of death. Specifically, this standard is based on a particular assumption regarding when a person loses his or her right to life: a person loses his or her right to life when he or she dies, because he/she goes out of existence when he or she dies. Accordingly, following the brain-death criterion, a human entity would gain his or her right to life when he/she acquires a functioning brain; following the heart-death criterion, a human entity would gain his or her right to life when he/she acquires a functioning heart. Of course, in order to determine at what time a human becomes a person under this standard, one would need to answer the question of when a human begins to have a functioning brain or heart. Evidently, the fetus at the moment of conception surely is not a person yet, but it becomes a person later around the end of the third month (Brody, 1987, pp. 143–146).

Finally, the standard of awareness of self as a continuing entity requires a person to be such an entity who possesses at some time the concept of itself as a continuing self. Under this standard, for an entity to enjoy a right to life it is not sufficient for it to be conscious of its existence. It is also necessary for it to be aware of itself as a continually existing substance. Consequently, this standard for personhood becomes very exclusive. It does not ascribe personhood to human fetuses or even newborn babies, because they do not possess any concept of continuing self (Tooley, 1987, pp. 146–152).

Michael Tooley offers a complicated moral defense for this standard of awareness of self as a continuing entity for personhood. Like Sumner, he also defends rights in accordance with interests. For him, a right of an entity makes sense only if the entity has some particular interests (e.g., it is nonsensical to say that a cat has a right to university education). He also assumes that an entity cannot have any interests unless it has desires at some time. Accordingly, an entity has interests of continued existence only if it has a desire to continue its own existence at least at some time. But “an individual existing at one time cannot have desires at other times unless there is at least one time at which it possesses the concept of a continuing self or mental substance” (Tooley, 1987, p. 152). Therefore, awareness of self as a continuing entity becomes the essential characteristic of a person who enjoys the right to life.

In summary, although these are quite different standards for personhood, they all share the same moral perspective that a person is a being who possesses the right to life. This is their central point. Hence they all belong to the same set of modern conceptions of personhood. These “appeal to rights” conceptions do not depend
on a particular religious conviction, like that of the Judeo-Christian “appeal to creation” beliefs, so that non-Jews and non-Christians can also engage the conceptions. The problem is, however, these conceptions cannot lead to one dominant standard for personhood. I do not have space in this chapter to provide a detailed analysis of these different standards in order to determine which standard is more plausible than others. The obvious fact is that each candidate gains support of some, but not other, legitimate reasons for the issue. That is, each has its distinct strengths and weaknesses. Consequently, even if the “appeal to rights” point can be accepted by everyone, incompatible standards for personhood are still irresolvable, in part because the “appeal to rights” view, as the central point of these conceptions of personhood, is too thin in itself to provide sufficient resources to settle the issue. Accordingly, the “appeal to rights” view cannot provide effective guidance to ethical and bioethical practices regarding personhood.

13.4 The Transcendental Conception of Personhood: A General Conception

H. Tristram Engelhardt, Jr. argues that a general conception of personhood can be found in the conception of bioethics as an intellectual enterprise. For him, if bioethics is an intellectual enterprise, then peaceful communication, theoretical exploration, and rational discussion are what bioethics is all about. In other words, the existence of bioethics as an intellectual enterprise presupposes the existence of moral entities or agents that are engaging in the moral discourse of bioethics. The existence of bioethical discussion also presupposes the fact that these moral agents hold ethical ideas, confront bioethical issues, participate in bioethical controversies, and are able to agree or refuse to resolve them. In order to do these things, these agents

must be **self-conscious**. They need in addition to be able to conceive of rules of action for themselves and others in order to envisage the possibility of the moral community. They need to be **rational** beings. That rationality must include an understanding of the notion of worthiness of blame and praise: a **minimal moral sense**. Sociopaths would cease to be moral agents (persons in the moral sense) only if they lost the capacity to understand blameworthiness to the point that they could not blame those who might injure them. Finally, they must be able to think of themselves as **free** (Engelhardt, 1996, p. 139, italics original).

These four characteristics, self-consciousness, rationality, moral sense, and freedom, identify those entities capable of moral behavior as moral agents. For Engelhardt, they may also be taken as the core of a **transcendental** conception of personhood. It is “transcendental” because the existence of such persons is a necessary condition for the possibility of bioethics as an intellectual enterprise. It is only because there are such persons – to be self-conscious, rational, morally sensible and free, can the intellectual enterprise of bioethics has become possible. This conception can be termed general because it is not derived from the substance of any particular religious or moral tradition, either “creation” or “rights.” It is entailed as
a minimal condition by the activities of bioethics as intellectual activities. Without this condition, bioethics is impossible. Because bioethics is already in reality, this condition holds. Accordingly, for Engelhardt, anyone who engages in bioethics and morality cannot deny this conception of personhood in order to conduct intellectual ethical work.

Engelhardt acknowledges that such a transcendental argument for a general conception of personhood is principally Kantian. Although Kant restricts transcendental claims to areas of theoretical knowledge and does not extend them to claims about morality, he underscores morality’s presupposition of freedom. Given that “transcendental” is used to identify an argument that lays out the conditions for the possibility of a major domain of human experience, it is legitimate for Engelhardt to extend it to the sphere of moral experience. What is crucial for a transcendental argument is that, as defining conditions, transcendental conditions are a priori. They sketch general conceptual frameworks within which science and morality become possible (see Engelhardt, 1996, n. 82–83, pp. 94–96).

Evidently, this conception of personhood contains a particular standard for personhood: a person must be a moral agent. That is, only a being who has self-consciousness, rationality, moral sense, and freedom is a person. However, this standard does not make the conception a particular conception in the sense that the other standards we have discussed in the last section do, because this standard appeals to nothing more than the existence of ethics or bioethics as an intellectual enterprise, while the other standards assume particular religious or moral starting points. Only to those who do not believe that ethics is an intellectual enterprise (e.g., those who believe that might is right), may this conception not hold. From Engelhardt’s view, anyone who does not commit oneself to peaceable communication and rational discussion regarding bioethical issues has gone beyond the protective scope of bioethics.

Under the standard of moral agents adopted by this conception, not all persons are humans, and not all humans are persons. As Engelhardt points out:

Not all humans are self-conscious, rational, and able to conceive of the possibility of blaming and praising. Fetuses, infants, the profoundly mentally retarded, and the hopelessly comatose provide examples of human nonpersons. They are members of human species but do not in and of themselves have standing in the secular moral community (Engelhardt, 1996, pp. 138–139).

By “the secular moral community” Engelhardt means general society in which different and incommensurable religious, metaphysical, and moral visions are viable, including a variety of particular conceptions concerning what a person is, such as the particular conceptions I discussed in the previous sections. The secular moral community includes different particular moral communities in which parochial conceptions of personhood are employed, such as a Judeo-Christian conception. Engelhardt argues that at the level of general society, everyone is only required to accept the general conception of personhood as well as the moral requirement it implies: persons must be respected. They hold the right to forbearance. In Kant’s terminology, persons are ends in themselves, and they should never be treated only as
means. In contrast, such a moral requirement does not apply to nonperson humans, such as fetuses, newborns, the profoundly mentally retarded, and the hopelessly comatose. Different particular moral communities may treat these types of humans differently, depending upon their respective specific conceptions of personhood as well as their particular moral requirements: some may treat them as persons, and others may not.

Although this conception of personhood concords with the “appeal to rights” conception in the requirement that all persons hold a right not to be killed without compelling moral reasons, their starting points are quite different. While the “appeal to rights” conception begins with the assumption that persons are rights-holders, this conception begins with the assumption that there must be necessary conditions to make it possible that ethics and bioethics exist as an intellectual enterprise. In effect, for the “appeal to rights” conceptions, the standards of personhood lies in the consideration of species, potentiality, sentience, brain or heart function, or awareness of self as a continuing entity; while for this conception, the standard of personhood lies in the characteristics that enable the entities to engage in ethics and bioethics as an intellectual enterprise, namely, self-consciousness, rationality, moral sense, and freedom. Depending on which reason is made to qualify an entity as a rights-holder, the “appeal to rights” conceptions of personhood produce dramatically different answers to the question who are persons. The core idea of the “appeal to rights” conception of personhood has no way to settle the disagreement due to such diversity of reason. In contrast, this transcendental conception of personhood gives a crisp solution: only moral agents are the persons.

This is to say, compared with the “appeal to rights” conceptions, this transcendental conception can provide a comparatively definite standard for personhood. However, the problem is that this standard can only serve as a fall-back idea for moral practice: one cannot deny that moral agents are persons. It cannot – and does not – require that one must admit that only moral agents are persons. That is, in addition to accepting moral agents as persons, one may also hold some entities other than moral agents are also persons. Accordingly, it cannot help with the debate as to who else are also persons. For example, both devout Christians and enthusiastic animal-right advocates fighters can accept the transcendental conceptions of personhood; that is, moral agents are persons. But devout Christians would insist that human fetuses are also persons. And enthusiastic animal-rights supporters would insist that all vertebrate animals are also persons. They cannot come to agreement on this debate in light of the transcendental conception of personhood. In this regard, the fate of the transcendental conception of personhood does not fare better than that of the “appeal to the rights” conceptions.

In short, contemporary bioethics has expected to tackle some thorny moral issues, such as abortion and the use of animals, by discovering a proper conception of personhood. This expectation, based on the exploration of this chapter, seems to have

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1 Here Engelhardt suggests that both devout Christians and enthusiastic animal-rights advocates, as persons, should negotiate with each other peacefully. This, however, already goes beyond the conceptual issue of personhood.
failed. The “appeal to creation” conception of personhood is peculiarly religion-related and is not accepted by non-Judeo-Christian people. The “appeal to rights” conceptions cannot provide one dominant standard for personhood in light of reason because people hold incompatible reasons. The transcendental conception cannot provide feasible guidance to ethical and bioethical practices because it is not a full-fledged conception of personhood. It is true that if one accepts bioethics to be an intellectual enterprise, one must accept some humans with certain features capable of intellectual activities to be persons. But one accepts personhood in this sense does not entail that one must exclude personhood in other senses. The problem is exactly that people hold personhood in different senses, even if they all accept the sense of moral agents as persons. Accordingly, what else can we do in exploring more plausible conceptions of personhood? Will a Confucian conception make a difference?

13.5 The “Appeal to Rites” Conception of Personhood: A Confucian Conception

Unlike Judeo-Christian tradition, Confucius and his followers do not understand the essence of human beings from a “creation” perspective. Their attention is given to distinctively human practices, or *li* (禮) in the Confucian terminology, a series of commonly performed familial and social rites in the Confucian community. If we can tease out a type of the conception of personhood from the Confucian discourse, I would term it the “appeal to rites” conception in comparison with the other conceptions discussed in the previous sections. Basically, this conception would be established on the fundamental Confucian belief that a person is essentially a participant in communal *li*, namely rites, rituals, or ceremonies. The basic idea of this Confucian understanding has been summarized by a contemporary Confucian scholar, Herbert Fingarette (1972). In his words, Confucius

does not talk in the Analects of society and the individual. He talks of what it is to be a man, and he sees that man is a special being with a unique dignity and power deriving from and embedded in *li* (1972, p. 76).

Evidently, the Confucian conception of personhood is not an “appeal to creation” conception. Although Confucius does not deny the creation of humankind by the ultimate reality, Heaven (*tian*, 天), he does not hold that the essence and moral status of personhood can be found in a particular act of the divine creation. Instead, Confucians see that the fact that every human is reproduced by their parents is in itself part of the manifestation of the Mandate of Heaven (*tianming*, 天命) or the Dao of Heaven (*tiandao*, 天道). That is, human procreation is made through a process of the direct reproductive activities of the parents, and this process does not involve an extra intervention of divine infusion. No matter how ultimately an important function Heaven plays for the procreation of every human, the role of the parents is
essential. In any case, for Confucians, divine creation is far from being enough for appreciating a suitable conception of personhood.\footnote{More specifically, the Confucian view of human life can be explicated in terms of the crucial Chinese concept of \textit{qi} (氣). \textit{Qi} is taken to be the basic elements of the universe. They are both physical and mental. Although the theory of \textit{qi} is further developed by Neo-Confucians in later dynasties, Classical Confucians, including Confucius, already adopted the concept to convey their thought on human life (e.g., \textit{Analects} 16.7; \textit{Liji:Jiyi}, 禮記: 祭義). Basically, Confucians believe that human life is made up of the finest and noblest \textit{qi} of the universe and is therefore most valuable in comparison with other living beings in the world. Everyone must acquire such essential \textit{qi} in order to be alive. It is directly through the work of one’s ancestors (especially one’s parents), rather than a transcendent God, that such essential \textit{qi} is transferred, transformed and developed into one’s life. Accordingly, one’s parents cannot be understood merely as a medium for one’s life to be formed or ensouled by God, although Confucians do believe that God or Heaven has set the nature and maintained the order of the human world as well as the entire universe. Indeed, for Confucians, one’s life is a gift from one’s ancestors. It is Heaven’s mandate that one must be formed and born into the world through the union of one’s father and mother. But this is not sufficient automatically for one to be a person with dignity and power. One must cultivate oneself by participating in \textit{li} to become an authentic person.}

From the Confucian view, as soon as one is born, one is put into the context of a life world circumscribed by the communal practice of \textit{li}. As I have discussed in the previous two chapters, \textit{li} is not only the grand procedures of significant human ceremonies. It is also specific rules guiding everyday human behavior. More importantly, a typical Confucian \textit{li} is not a pattern of action that one as an individual – independent from other human individuals – conducts exclusively by oneself towards God and for God. Instead, a typical Confucian \textit{li} is practiced by an individual interdependently with other individuals, especially one’s family members. In this way of ritual performance, the Confucian constitutive rules of \textit{li} first and foremost sets down one’s personal roles in the human relations, including the relations between parent and child, prince and subject, husband and wife, old and young, and friend and friend, the so-called five basic relations. For example, as soon as a baby girl is born into the world, she immediately becomes someone’s daughter, someone’s granddaughter, someone’s younger sister, some future one’s elder sister, and so on. Confucian personhood cannot be identified independently of one’s roles in such relations identified by the rituals.

Some scholars have gone so far as to claim that, for Confucians, a human person does not play or perform his roles; he \textit{is} these roles (Rosement, 1988, p. 177; also see 1991, “Interlude”). This would be an improper exaggeration if it is meant to deny that a Confucian person is more than the total sum of his roles in the Confucian framework. In fact, Confucian personhood is achieved through the unity of personal roles as a coherent conceptual apparatus that certainly grants the Confucian individual as more than specific roles. However, this exaggeration does contribute to our understanding that an appropriate pattern of human relationships is internal to the Confucian conception of human person. That is, due to the nature of Confucian \textit{li} as communal practice, Confucian personhood must be appreciated through relation-related roles and properties. To establish Confucian personhood is “to establish
relationships that are not merely physical, biological or instinctive; it is to establish human relationships, relationships of an essentially symbolic kind through participating in li (Fingarette, p. 76).

In addition to this relationalistic feature, the Confucian conception of personhood demonstrates that personhood is by no means an all or nothing issue, but is a matter of degree. Unlike other conceptions under which an entity is either a person or not a person, the Confucian conception does not want to stress such absoluteness. For Confucians, one’s life is a process of virtue cultivation, in which the most complete virtue, ren (仁), must be nurtured and expressed by observing the rules of li in order for one to achieve a full sense of personhood. In this process, one is gradually transforming from a passive participant to an active participant in the rites. Again, as Fingarette recognizes,

Man is transformed by participation with others in ceremony which is communal. Until he is so transformed he is not truly man but only potentially so – the new-born infant, the wolf-boy of the forests, or the “barbarian” (1972, p. 77).

This is to say, it is by virtue of one’s role in li that a human being transforms one’s mere biological existence into personal life with sacred dignity. This “a matter of degree” feature of the Confucian conception of personhood certainly carries profound moral implications and rich practical significance that differ from other conceptions. However, this does not mean that Confucians would not recognize a new-born infant as a person at all. Rather, a new born infant is already a person in the basic sense because he or she, as a new family member, is already a passive participant in the rites – passive in the sense that he or she has been arranged to attend the rites. Although being passive or arranged to the rites, a new-born can still be the main figure of certain relevant rites. This is because the Confucian rites are family-based, communal rites. It is not necessary for every individual participant to be self-conscious or rational in order to be a real participant. Indeed, for some rites, such as a new-born’s full month celebration rite, the new-born would be the protagonist acknowledged by every participant. The Confucian tradition requires that the parents must respect (jing, 敬) their children. This respect is not due to children’s maturity or rationality, but due to their relation to the ancestors. As the Classic of Li points out, “the son was the descendant of the ancestors – could any father dare not to respect him?” (Liji: Aigongwen 禮記: 殕公門; cf., Legge, 1967, Vol. II, p. 266).

Moreover, juveniles are also more or less passive participants in rites. They learn and exercise the rites not because they recognize that engaging such rites is necessary for them to become virtuous, but because their parents arrange and induce them to attend to the rites. In other words, they conduct the ren act by observing the rites not because they recognize that the virtue of ren requires it, but because they want to please their parents or avoid their parents’ disapproval (cf. MacIntyre, 2004, p. 157). However, through continuous rite practices, the goals and meanings of the rites are internalized in their minds. They gradually become active participants in the rites and are capable of engaging in the practices voluntarily and harmoniously. So they gradually become full persons. This is to say, in order to become a full person, it is not enough to be conceived, to be born, to eat, breathe, drink, excrete,
enjoy sensual pleasure, or avoid physical pain. Rather, it is to become a participant in the rites, first passively, and gradually actively. It is the transformation of the act of mere biological human existence into sacred human rites that entitles a human being to become a full person.

In short, this “appeal to rites” Confucian conception of personhood is relation-based and degree-relevant. A Confucian person cannot be identified without reference to his or her roles in family relations. And a Confucian person always has room to improve him- or herself so as to become a more “true” person. Is there an explicit Confucian standard for personhood entailed by this conception to direct practices? For one thing, Confucians are not interested in finding out an exact point at which a human being becomes a full person. Instead, Confucian emphasis is put on the possibility that one may always have to improve oneself so as to become an even more “authentic” person. A process of virtue cultivation is the process of changing from a passive participant to an active participant in the rites. This process is on-going at least for a long time – if not for the whole time – of one’s life. It consists in the harmonization of one’s inner and outer through practice. Even Confucius himself did not reach a perfect situation until he was seventy: “at seventy I followed my heart’s desire without overstepping the line” (Analects 2.4).

Accordingly, Confucians would not find it appropriate to establish a single, absolute, and universally applicable standard for personhood in bioethics. Any attempt to settle bioethical disputes by imposing such a standard on all practices would be ethically misleading. From the Confucian perspective, deciding whether an entity is a person may not always be an appropriate, much less fruitful, moral pursuit to conduct in bioethical reflections. In many contexts, determining personhood is not the most important task for reaching proper moral decisions. For example, a legitimate Confucian decision regarding the termination of pregnancy cannot be predicated by a judgment as to whether the embryo, or fetus, is a person. Confucians understand that embryos, or fetuses, are quasi-persons in the sense that they are living inside of their mothers’ body and will, under normal circumstances, be born into the world, but Confucians do not see it as necessary, much less plausible, to decide their “exact” status with regard to personhood as an all or nothing matter. Instead, in order to make a suitable Confucian moral determination concerning the issue of abortion, it must be grounded in the Confucian insights into human life, the exercise of virtue, and the common good of the family to conduct a Confucian casuistry, transcending the issue of whether, or in what degree, the embryo or fetus is truly a person. As a result, for Confucians, the solution to the question of abortion can never be absolutely pro-life or pro-choice. Confucianism cannot make sense of such questions as to whether the human soul is infused on the 40th or 80th day after the conception because, based on its qi metaphysics, it does not hold a mind-body dualism in humans. Moreover, by emphasizing family relations and virtue cultivation in characterizing personhood, Confucians do not assign grave moral significance to such metaphysical convictions as the belief that human life must begin at the moment of conception.

Importantly, in order to properly decide a difficult case concerning pregnancy-termination, Confucians must consider not only the value of individual life, such as
the fetus’s life or the mother’s life, but also the common good of the whole family (cf. Fan, 2007). To settle such a difficult question by comparing the different values of human individuals may be a misleading moral task because it is not only difficult to calculate such value in an arithmetical sense but such calculation, also, implies repugnant consequences. Instead, maintaining a proper order of the family – under which different individuals necessarily receive different treatment – is for the common good of the family. In Confucianism, this common good is not a material good that must be distributed to everyone equally in an arithmetical sense. It is rather an immaterial order that is manifested and realized through the virtuous exercise of how one should act and treat other family members in ritual practices in various contexts. Accordingly, this common good is shared and enjoyed by every family member in the fullest sense. Family members receive different treatment under this conception of the common good of the family not because they possess different individual values, but because different treatments are themselves the signs of the order as the common good of the family embodied in concrete manners and practices. For example, in Confucius’ words, the good of the order is “in regard to the aged, to comfort them; . . . in regard to the young, to cherish them” (Analects 2.25). Accordingly, given the consideration of the common good of the family, Confucians do not accept an absolute principle in handling the questions raised by the issue of abortion. It is misleading to argue that abortion is always morally wrong because the fetus has an absolute right to life; it is also misleading to contend that the pregnant woman should have an absolute right to decide if she will terminate her pregnancy. A Confucian woman should not desire to have an abortion for purely personal reasons. The value of the embryo’s life, the reverence for one’s ancestors, and the common good of the family ought to weigh much heavier than the pregnant woman’s own personal reasons.

To sum up, the Confucian conception of personhood is practice-oriented, relation-based, and degree-relevant. It is practice-oriented because the importance of personhood is derived from and embedded in the Confucian rites. It is relation-based because a Confucian person cannot be identified independently of one’s roles in the basic human relationships. And it is degree-relevant because one can always become an even more “true” person through ritual practice. Due to all these features, a concept of personhood itself is not so important in the Confucian bioethical

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3This is obviously a simplified version of the Confucian view on abortion. In any case, the Confucian view is virtue-guided, rites-based and context-relevant. It cannot be predicated by a single, absolute standard for personhood. For example, in the oft-cited case in which one can save either the mother or the fetus, but not both, Confucianism would hold that one should save the mother, not the fetus. This decision can be justified not by comparing the different individual values of the mother and the fetus, but by considering the common good of the family in which it would be unrighteous (buyi, 不義) not to save the mother. In contrast, if the pregnant woman happens to be a terminally ill patient who will have only two-month life to lead, Confucians would argue for saving the fetus rather than the mother, because the woman is going to die very soon anyway in this special case. Indeed, if pressed, Confucians can offer more specific reasons to defend their decision in each case, regardless of whether the fetus is a person or not.
deliberation as it is in other moral systems, such as the Judeo-Christian. Perhaps this is the difference that the Confucian conception of personhood makes for general bioethical discussion today: deciding who is a person is not always necessary, much less helpful.

13.6 Concluding Remarks

Westerners have been living in an ever increasingly pluralistic society and confronting intractable ethical and bioethical controversies. The aspiration to establishing a canonical conception of personhood to settle such controversies is understandable, but it turns out to be unfruitful. The diversity of the conceptions of personhood is part of the contemporary Western pluralism. People can no longer expect that any single conception of personhood, either an “appeal to creation,” an “appeal to rights,” or an “appeal to transcendentalism” conception, will be universally accepted to close up a bioethical debate.

It is similarly unrealistic to expect that the Confucian conception of personhood introduced in this chapter will be universally acceptable. But the exploration of the Confucian understanding displays the one-sidedness of the Western conceptions in their priority given to theory over practice in appreciating personhood. In other words, all the Western conceptions discussed in this chapter suffer from a type of principlism: each conception of personhood is built upon a fundamental principle independently of the specific practices (like the Confucian rites) and rules that people actually observe in their ordinary lives. The different conceptions have reflected primarily different principles, such as that “persons are those that are created in God’s image,” that “persons have a right to life,” and that “the existence of ethics and bioethics as an intellectual activity presupposes the existence of persons as moral agents.” This principlist strategy inevitably downplays the rule-based nature of human civilization in exploring ethical and bioethical issues, including the seeking of a proper conception of personhood. Fortunately, Confucian rites-based ethics is not principlism. Confucians understand that personhood cannot be properly appreciated except through a practice-oriented strategy. The basic Confucian conviction of persons as participants in rites aptly characterizes Confucian personhood as relation-based and degree-relevant. A dramatic distinction between human persons and non-personal humans cannot be recommended in a Confucian system, because personhood is a matter of degree embedded in ritual participation. Accordingly, from the Confucian view, while it may be helpful to determine the status of personhood for tackling some bioethical issues, personhood cannot be a uniquely important bioethical conception, because other relevant bioethical factors must also be considered. As a result, to adopt a Confucian conception of personhood in moral life, the most significant task may not lie in determining who are persons. Rather, it may lie in identifying what specific moral features the Confucian person must have in order to recover a proper way of Confucian social life. To this I will turn in the next chapter.
Chapter 14
Restoring the Confucian Personality and Filling the Moral Vacumm in Contemporary China

14.1 The Confucian Personality

This volume ends with a chapter that offers a critical diagnosis of the moral situation in contemporary mainland China, a diagnosis that has implications for an understanding of the moral state of the contemporary West. My analysis draws on a recent important article by Xiaoying Wang (Wang, 2002), with which I in part agree and in part disagree. As I shall argue below, a diagnostic and explanatory account of the moral and social condition of contemporary China should show why particular actions and ways of behavior, both good and bad, have been taken for granted. Indeed, any valid account of contemporary China must acknowledge both its great successes and remarkable failures and show how the successes and failures are interconnected. This chapter provides a Confucian account of the three-decade-old market reforms in China launched in the late 1970s. I argue that the problems of contemporary Chinese society will require cultural therapy to restore a sound and dominant Confucian personality. This therapy must draw on the Confucian moral strengths that have characterized China for millennia. Only by restoring the substance of a Confucian culture, this chapter contends, can China fill what has been termed the moral vacuum that marks current Chinese society.

In all of this, I presume that the reader is well acquainted with reports of widespread instances of corruption on the part of Chinese officials and Chinese businessmen that have marred the remarkable economic and technological developments. Any account of China’s current problems must also account for its vigorous, capitalist economic development within the last three decades. If one does not appreciate how Chinese culture made this possible, the approaches to correcting current deficiencies may also undermine China’s current success. Unlike many former Soviet Bloc countries still struggling to set in place a successful market economy, China has accomplished this feat. As I argue, this can only be accounted for by reference to features of the Chinese culture, which, like the Protestant ethic to which Max Weber made reference in his account of European success, allowed China to become a leading world economy. The contention of this chapter is that this remarkable event is a function of the reservoirs of Confucian culture that maintain a still-viable, albeit partially deformed, Confucian personality. Despite radical changes in China over the
last century, Chinese culture and the general contemporary understanding of moral agency must be sustained by a strong Confucian sub-structure, which has been the source of the dynamism of the Chinese reforms in the past three decades. These Confucian resources should now be drawn upon to remedy contemporary moral shortcomings. I characterize this project under the complex rubric and injunction “restoring the Confucian personality”.

I use the term “personality” to identify a kind of moral agent, rather than use it in a psychological or psychoanalytic sense. The point is to characterize a general way of being a moral agent in terms of the basic structure of that agent’s moral sense and related practices. Thus, when identifying a personality as a Confucian personality, I mean to identify the moral sense and practice that would characterize a moral agency as a Confucian moral agency. A Confucian personality is thus defined by a Confucian person’s taken-for-granted moral commitments, the values that direct the person, and the basic social construction of reality (such as the family) within which the person acts. A Confucian moral sense brings with it foundational Confucian understandings of cardinal human values, right-making conditions and proper moral practices, namely the rituals (li, 禮). It is like when Tocqueville speaks of mores that are somewhat loosely defined as “habits of the heart” (Tocqueville, 2000, p. 287) – such mores involve not only ideas and opinions but habitual practices with respect to such things as religion, social and political participations, and economic life (Bellah et al., 1986, p. 37). Thus, when I use the term personality I accept with qualifications Wang’s characterization of Louis Althusser’s view that “every enduring social system has its corresponding ideology along with a personality structure that such an ideology helps to produce” (Althusser, 1971; Wang, 2002, p. 4). I recognize that a personality structure as much induces to produce or accept an ideology as the other way around. In short, the Confucian personality places a Chinese individual within a set of taken-for-granted moral commitments, social structures and personal engagements, and directs the agent towards certain actions and interactions, as well as away from others.

The phrase, “restoring the Confucian personality,” has both a diagnostic and a therapeutic focus. First, it recognizes the continued governance of Confucian moral commitments over a wide range of contemporary Chinese life. Although the superstructures of Chinese politics and economics have since the early 20th century ceased to be Confucian, a substantive “Confucian personality” has continuously informed the social base of Chinese culture and morality. The term “restoring”...
signals that the current public moral framework is not, or at least is not fully and manifestly, Confucian. It indicates as well that many Chinese cannot consciously, actively, or coherently integrate their nevertheless very Confucian moral sentiments into a Confucian way of life. As it stands, the Chinese moral personality is at best one-sided, incomplete, and not fully able to respond to China’s contemporary moral challenges. It is the Confucian personality that has initiated and maintained the contemporary Chinese reforms that are moving forward in a direction that is neither that of a Maoist communist egalitarianism (as was imposed in the past), nor that of a liberal social-democratic regime (as many Western thinkers would like to impose on China’s future). Since in current China the Confucian personality is still in its early stages of restoration, it is no surprise that the negative problems and even crises summarized by Wang in her paper (pp. 9–10) have occurred. However, it would be a mistake to attribute the difficulties of contemporary China primarily to the Confucian culture or hold that China should re-embrace communist moral principles or embark on the project of adopting the mores of European and/or American liberalism.

To begin, based on the central teachings of the Confucian classics, Confucian ritual practices as well as representative Confucian figures in history, the Confucian personality can be summarized to include a number of key features:

1. The Confucian personality is family-centered. This is a feature of the view of social reality ingredient in the practices lived in a taken-for-granted fashion by Confucians. The Confucian moral personality acts in ways that affirm the well-being of the family. This axiological commitment presents the family’s well-being as a central goal for persons to pursue. The goal of advancing the family is usually sufficient to motivate Chinese to shoulder grave hardships in order to produce wealth for their families. The Confucian virtues of benevolent parents and filial children (父慈子孝) for the well-being of the other side are deeply embedded in Chinese society. The goal of family affluence still serves to direct the energies of contemporary Chinese. Moreover, a sufficient capacity is nurtured within the context of the Chinese family that enables the Chinese to defer present gratification for the future reward of the family. That is, particular members are not only usually willing and expected, but also able, to sacrifice their immediate personal desires for the long-range success of the family.

2. The Confucian personality acts in ways that affirm the goodness of material wealth as long as it is pursued within the constraints of virtue. Material rewards are accepted as generally good, so that there is a pragmatist affirmation and openness to various means (such as centrally planning, the market, or both) as the source of monetary wealth, which is in turn a source of family and individual well-being. Confucians are thisworldly in pursuing a good life and human flourishing. They work for their families within a non-Puritanical acceptance of material success in this world in which material wealth is taken as, ceteris paribus, good and not grounds for moral suspicion. Wealth is desirable and should be pursued, as long as one does not pursue it by violating morality. Indeed, the Confucian conception of human flourishing grows within a “horizon
of significance”: it reaches from the notion of the original goodness of human nature to the idea of the moral nature of the entire universe, with Heaven as its ultimate spiritual source and point of reference. This ethics does not find any necessary contradiction between pursuit of virtue and pursuit of profit, although profit must be pursued under the constraints of virtue. Within these constraints, material wealth is a substantive good.

(3) The Confucian personality pursues virtue within a relation-specific, non-egalitarian appreciation of the obligations of altruism. It is taken for granted that one’s love of others is differentiated in relation-specific ways so that one should in a non-egalitarian fashion pursue beneficence, engaging in non-egalitarian commitments directed to relation-specific outcomes. The Confucian foundation of love is family love; namely, love between parents and children and love among siblings (cf., Analects 1.2). Families must save for the welfare of their members. A natural network of relatives is available for mutual aid. So in difficulties one is supposed to turn to one’s relatives rather than to the state for help. Confucianism insists that resources should be left to families and that income tax should not be more than 10% of one’s income (Analects 12.9). Accordingly, Confucians do not support a welfare state based on the concern of equality. Rather, they affirm a kind of elitism and a proper division of labor. A distinction between gentlemen (junzi, 君子) and the masses (xiaoeren, 小人) is taken to be a natural divide in society. It is emphasized that those with virtue and wisdom must be honored and appointed to lead society, conduct important work and benefit the people. In this light, the essence of good government is a rule of virtue: society should be ruled and ordered by a meritocracy based on the learning and exercising of virtue. While pursuing human flourishing through ritual performance, social equality or individual liberty is never a Confucian moral ideal in a life of virtue. Instead, Confucianism lays great emphasis on differentiated, virtuous conduct, such as filial devotion to parents, graceful respect for elders, loyalty to friends, and ritual propriety in society.

(4) The Confucian personality is relation-skilled and harmony-oriented. Chinese are encouraged to maintain a functioning web of family connections, and to take society as a big family. Their social relations are modeled after family relations. The ritual interaction that binds a family nurtures a relation-skilled personality that is apt for non-confrontation, peaceful negotiation, compromising mediation, and harmonious relations. This is conducive to successful life cooperation, business interactions, and market skills. The complex interconnections of Chinese extended families provide an understanding of the character of interpersonal relations that encourages the development of successful entrepreneurs as well as middlemen with the required skills for interpersonal collaboration. As a moral-sociological point, the family-nurtured social skills become market skills.

These features are by no means exhaustive. But they are at least among the most salient features of the Confucian personality and can be drawn on to provide a heuristic account of modern Chinese political and economic phenomena and shape a suitable approach to the existing challenges and problems.
14.2 The Communist Personality Disorder

Wang (2002) argues that the Chinese people are currently suffering from the consequences of what she terms a “post-communist personality.” Inspired by the thought of Weber (1930), Althusser (1971) and others, she employs the notion of a post-communist personality as an ideal type in order to identify a certain form of moral agency (immoral agency, if one will), which has come to characterize much of contemporary China. The post-communist personality, she claims, has been produced by a “disjunction between an official government moral code” and China’s encounter with the market (Wang, 2002, pp. 3–4). As she puts it, this new personality flourishes in a moral environment where the official moral code remains communist, replete with injunctions such as everyone should “serve the people wholeheartedly” without considering one’s own interests, while at the same time Chinese individuals are vigorously pursuing their own interests. The result is a novel personality form, “a brand new type of person...: a communist turned nihilist, a nihilist turned hedonist... [It is] undisciplined by a moral code or a conception of the self” (p. 7). Individuals with this personality, so she argues, are unable to organize their desires and impulses under a constellation of moral commitments because they lack the capacity to achieve a distance from their desires and impulses so as to reflect on them, assess them, and re-direct them. Consequently, a hedonist social ethos is prevalent in current Chinese society in which the pursuit of satisfaction is unmediated by any sublimated moral values, and individual pursuits and gratifications do not add up to the purpose of an ethical subject (pp. 7–8). The only thing that constrains such a personality from complete lawlessness is fear of the brute force of the law (p. 8).

By invoking this Weberian ideal type of the post-communist personality, Wang attempts to capture the character of the moral vacuum that exists in contemporary China: “there is “communist” morality and there is naked self-interest, but nothing in between” (p. 10). This diagnosis of the moral vacuum in current China is legitimate in the sense that the communist morality – the officially voiced morality – is no longer accepted or practiced by most Chinese people. Wang doubts that the post-communist China has the moral and cultural resources to fill this moral vacuum. From her view, unlike the early Western capitalist societies which drew on the moral and cultural resources of Christianity in general and on the Protestant ethic in particular, China does not have such cultural resources, “nor does Confucianism seem viable in the PRC as the function equivalent of the Protestant ethic” (p. 11). Hence, she is pessimistic regarding the future of Chinese morality. However, from my view, Wang’s account of the contemporary Chinese moral vacuum is importantly incomplete. Even if it is true that a type of hedonism directed to the pursuit of material wealth and pleasure is no longer constrained by the formal communist morality in contemporary China, it is not true that it is not mediated by any sublimated moral values. Confucian values, however submerged, are still present, guiding ordinary Chinese familial and social relations in a way that has facilitated Chinese successes in the market. Without Confucian moral and cultural resources, the recent three-decade Chinese economic and social reforms would have been impossible, and the moral vacuum attributed to contemporary Chinese society would have been
dramatically different and worse than at present. Indeed, the recent reforms have been motivated and directed not by officially announced communist morality, neither by modern Western liberal values, but by piecemeal, though not wholesale, Confucian moral and cultural concerns (see Section 14.3).

Unlike Wang, I would argue that the moral problems of contemporary China, including the so-called moral vacuum, are not due to the emergence of a new post-communist, social-moral personality. Rather, similar to the previous communist stage, they are in great measure due to a deformation, distortion, or disabling of morally healthy Confucian moral agency, the Confucian personality. Specifically, I shall adopt the concept of personality disorder to coin two particular personality disorders to account for the contemporary Chinese circumstances: “the communist personality disorder” for the Chinese communist utopia from 1950s to 1970s, and “the post-communist personality disorder” for the moral vacuum from the 1980s onward. Without adequately understanding these personality disorders in relation to the Confucian personality, we cannot properly grasp the moral reality of the previous three-decade communist China, and neither can we fully appreciate the Chinese reforms in the recent three-decade post-communist China. The Chinese communist utopia sought to construct a wealthy and egalitarian China. The fact that this utopia could have been accepted by the Chinese people in the 20th century, from the view of this chapter, is essentially related to the second feature of the Confucian personality (that affirms the goodness of material wealth as long as it is not pursued by immoral means) that functioned in a particular historical context. Since the Opium War in the 1840s, the Chinese intellectuals had recognized that the modern West had much more material wealth than China. The big modern guns awakened the Chinese from the dream of being the most powerful country in the world, and effective modern science, technology and industry destroyed the Chinese self-confidence in their own affluence and civilization for millennia. Now the communist utopia came along to inform the Chinese that they could catch up if they follow a new way. They could even quickly produce so much wealth so as to proudly surpass the most advanced countries in the world (such as UK and USA) in 15–30 years. The most important thing they should do, so this utopia instructed, was to abandon their traditional way of life and turn to a stated-owned and centrally-planned economic system for industrial development as well as a bunch of political and moral superstructures built on it to rearrange their social relations. This system could normally get ahead of the capitalist privately-owned and the free market pattern which

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2 Like “personality,” “personality disorder” is also a typical psychological and psychoanalytical concept. Personality disorder usually refers to a class of mental disorders characterized by rigid and enduring patterns of feeling, thinking and behavior that deviate markedly from the expectations of the culture of the individual who exhibits it, such as paranoid personality disorder, schizoid personality disorder, dissocial personality disorder, and so on. As this chapter focuses on the Confucian moral personality with salient moral and cultural characteristics, “the communist personality disorder” and “the post-communist personality disorder” coined in this chapter will be adopted to diagnose the factors that deviate from the basic features of the Confucian personality I introduced in Section 14.1.
is, from the view of this communist utopia, not only ruthlessly competitive (hence being immoral because it supports the capitalists to exploit the workers) but is also unnecessarily wasteful (due to its lack of central planning) for entire society. Instead, according to this utopia, the communist society to be built would be both efficient and moral. Not only would the people be promised to get rich. They would all get rich equally.3

The result was that, tragically, the Chinese got into a fit of the communist personality disorder, under which the Confucian personality suffered uncomparatively. Evidently, this disorder was engendered by a distorted version of the second feature of the Confucian personality: one must pursue wealth for the whole country under the communist state-owned, centrally-planned economic system. It is “scientifically” proved, according to the communist utopia, that this system is both historically necessary and morally justifiable. With a series of well-organized communist political movements to be carried out one after another, the essential features of the Confucian personality were disabled, deformed, and distorted. The central status of the family, the first feature of the Confucian personality, was replaced by the communist party. Instead of being encouraged to promote the well-being of the family, the Chinese were compelled to accept the party as the most important social institution in which every good man should join to work for the interests of all human beings in the world. One was not supposed to enhance one’s own family’s welfare. Rather, one should sacrifice oneself and one’s own family for other unfamilial people under the leadership of the party. The family-centered Confucian personality was taken to be too selfish in favor of one’s own family and should be reformed to become selfless with no special concerns about one’s family members. Moreover, the Confucian non-egalitarian fashion of altruism, the third feature of the Confucian personality, was suppressed for shaping a communist egalitarian society. The communist party tried to dissolve the family and realize “true” equality by arranging all the people to eat and live similarly within the people’s communes (人民公社) in the communist movement in the late 1950s. Professionals (such as university professors, medical doctors, and civil servants) were set at very

3No doubt, there must have been multiple complicated factors that are accountable for the Chinese acceptance of the Marxist communist ideology in the 20th century. This chapter wanted to emphasize one contributing factor in relation to the second feature of the Confucian personality; namely, the Marxist communist utopia has promised the Chinese a rapid growth of their material wealth as well as establishing a powerful state in competing with the West. Similar ideas, although not precisely in the form of my formulation in relation to the Confucian personality, have been proposed in Chinese history studies. For example, French historian Lucian Bianco recognizes that “Marxism proved itself the most effective system (the most effective ‘ism’) not only for restoring a national pride that had been solely tried for a century. Here was a doctrine borrowed from the West condemned the West, . . . a doctrine that put China on the road to the modernization she so clearly needed while sparing her the humiliation of aping more advanced nations and forever lagging in their wake” (1971, pp. 50–51). Others have often seen the issue as part of Chinese nationalism. For example, Chalmers Johnson points out, “the Chinese Communist version of Marxist-Leninist ideology is viewed as an adjunct to Chinese nationalism – that is, as a ‘national myth’ serving the newly created Chinese nation state” (1962, p. ix). I thank Jiwei Ci for discussing this issue with me.
low salary scales in order to avoid unequal status between them and others in society. Finally, the relation-skilled and harmony-oriented character, the forth feature of the Confucian personality, was mocked to be hypocritical, quasi-bourgeois tricks and to be harmful to the communist revolutionary cause for the proletarian class. The class struggle between proletarian working people and capitalist parasite exploiters was brought to the fore in everyone’s everyday life. The Confucian rituals of mediation and compromise were criticized and rejected. Ruthless confrontation and persecution were encouraged in order to destroy not only the body, but also the thought, of the class enemy. In intense political movements, spouses were coerced to report each other’s capitalist thought or counterrevolutionary behavior to the party, and the children were compelled to beat their “guilty” parents in public. In short, these horrific and disgusting symptoms of the communist personality disorder have been experienced and witnessed by hundreds and millions of the contemporary Chinese people.

14.3 The Post-Communist Personality Disorder

Dramatically differing from the communist personality disorder, the post-communist personality disorder has been produced primarily by a moral disconnect or dissociation between the officially announced morality and the actually operative morality in the recent thirty years of China’s reforms, as Wang addresses in her paper. Before I turn to this disorder, it is necessary to recognize that with the collapse of Maoist social controls, and with the market reforms of Deng Xiaoping, the Chinese people have since moved in the direction of regaining the features of the basic Chinese personality form.

As is well-known, the post-Mao Chinese reforms started with a glorious breakthrough in China’s countryside in the late 1970s. Although Maoist communists considered the commune-owned, collectively-organized, and equally-distributed rural economy to be the essential mark of Chinese socialism, some rural areas, soon after Mao’s death, began to reject this mode of collective agricultural economy and contracted individual pieces of land to farm households. Such courageous acts were essentially to recover the traditional farm household economy, with the power of the commune collective reduced to being little more than that of a landlord. This “counter-revolutionary” restoration gained the support of the Chinese communist party at its landmark Third Plenum at the end of 1978, and the household-based contract economy was spread and promoted across the country. Evidently, behind this initial significant breakthrough to motivate the Chinese reforms was the first feature of the Confucian personality. With the extremely painful experience of the communist personality disorder, Chinese came to re-admit and re-honor the central position of the family over the party as well as the legitimacy of family interests over state interests, contrary to the insistence of the conventional Maoist communist utopia or ideology. The egalitarian big pot was broken, so that those who were smarter and worked harder could receive more profits for their families. As a result, the state’s monopoly control of the peasants was eased. This family-based reform
strategy achieved significant success because it provided powerful new incentives to farmers: they could keep 100% of the harvest for their families above the contracted deliveries. By 1984, grain output had surged to 407 million metric tons, more than one-third higher than in 1978 when the reforms began (Naughton, 2007, p. 89).

The thought of Deng Xiaoping, the key leader of the reform, is illuminating in disclosing the basic features of the Confucian personality that made the initial reform possible and successful. In addition to the centrality of the family, these features include a pragmatist affirmation of and openness to various means for producing material wealth (feature 2), non-egalitarian commitments to the obligations of altruism (feature 3), and relation-skilled and harmony-oriented cooperation (feature 4), as described in Section 14.1. No doubt, constrained by the political reality at the time, Deng had to phrase his reflections in terms of the conventional political language of socialism and Marxism. “What is socialism and what is Marxism?” Deng asked. In reaction against the egalitarian poverty of Mao’s socialism, he definitely answered: “Socialism means eliminating poverty. Pauperism is not socialism.” He criticized Mao’s line by arguing that “one of our shortcomings after the founding of the People’s Republic was that we didn’t pay enough attention to developing the productive forces.” For him, “the superiority of the socialist system is demonstrated, in the final analysis, by faster and greater development of those forces than under the capitalist system. As they develop, the people’s material and cultural life will constantly improve” Deng (1987, p. 96). On the surface, he was supporting reforms by reinterpreting the meaning of socialism. But in fact he was dramatically changing Mao’s egalitarian communist direction. Instead of asking how to realize the communist, egalitarian, exploitation-free society for which Mao strove, Deng criticized that ideal as failing to pay “enough attention to developing the productive forces.” He emphasized that the superiority of the socialist system had to be demonstrated by its faster and greater development of the productive forces in improving Chinese people’s material and cultural life. This was actually motivated by the second feature of the Confucian personality.4 When he insisted to take economic construction rather than class struggle as the party’s central task and “to let some get rich first” in the process of reforms, he was regaining and exercising the

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4 This portion of the Confucian personality (that affirms the goodness of material wealth and pragmatically opens to various means to increase material wealth) played significant roles in pushing the reforms forward by trying innovative, apparently contradictory, means. For example, in the early 1980s, the reform measures used in the countryside were repacked to attempt the state-owned enterprises in urban areas. This was done through a mechanism called “the dual-track system” (shuangguizhi, 聲軌制). This implied a two-tier pricing system for most goods: there was both a state-set (typically low) planned price for state distribution and a typically high market price for corporations to make profit. That is, there was the coexistence of a traditional plan and a market channel for the allocation of a given good. In this way, Deng promoted the development of the market in China by blurring the line between socialism and capitalism. As he argues, “Planning and market forces are not the essential difference between socialism and capitalism. A planned economy is not a definition of socialism, because there is planning under capitalism; the market economy happens under socialism, too. Planning and market forces are both ways of controlling economic activity” (Deng, 1993, p. 203).
third and forth features of the Confucian personality. He had actually abandoned the Maoist class-struggle-focused, egalitarian communist project in all but name.

Indeed, the most plausible account of the moral and cultural sources of this great reform as well as Deng’s role in it is the resources of Confucianism in general and the Confucian personality in particular. They were engaged, even if not entirely consciously, to reinterpret socialism or Marxism so as to restore an economy and society in conformity with the Confucian commitments. Confucians, from classical figures such as Confucius and Mencius to other Confucian scholar-officials throughout Chinese traditional dynasties, have always argued that families should be allowed to work as basic social units for the welfare of their members. The view has been that one cannot take care of other people if one is not allowed to take care of one’s own family, whose well-being sufficiently motivates its members’ hard work and prudent savings. The Chinese could naturally support Deng’s idea that “let some get rich first.” Mao’s state-imposed egalitarian system was in contradiction to this basic Confucian moral commitment and was tied to the inevitable difficulties that previously plagued the Chinese economy. As all Chinese know, such Confucian moral and cultural resources remained operative even in the difficult period of Mao’s regime (such Confucian resources were supported partly by Deng himself even in the early 1960s before he was purged by Mao) but suppressed ruthlessly as “pro-capitalist” by Mao’s leftist measures in the name of class struggle and anti-capitalist movements.

The Confucian non-egalitarian commitment to altruism and the Confucian elitism, the third feature of the Confucian personality, played a crucial function in justifying the outcomes of the reforms. They were in part integrated into an official doctrine of the Chinese Communist Party (CCP), so-called “three representatives” doctrine proposed by Jiang Zemin, China’s leader after Deng Xiaoping. Formally written into the party charter in 2002, this doctrine requires that the CCP must always represent the trend of China’s advanced productive forces, the orientation of China’s advanced culture and the fundamental interests of the overwhelming majority of the Chinese people (Jiang, 2006, p. 2). Key to this doctrine

Although the 1989 Tiananmen Square movement is usually described as a pro-democratic movement, it reflected urban discontent fueled by a number of economic and political factors, such as rising inflation, anger at corruption, and conventional privileges (especially officials’ housing, health care, education, and transportation privileges). Students and intellectuals opposed such non-market privileges that appeared as relics from the old economy. The movement was crushed, but China’s reforms continued. Deng declared “development is the only hard truth.” In October 1992, the party endorsed a “socialist market economy,” making clear that markets must extend to all main sectors of the economy. The new leadership under Jiang Zemin continued reforming the large state-owned enterprises, which were gradually linked to the market, eventually leading to the sale of stock in these enterprises. Fiscal and tax systems, banking and financial institutions were redesigned to fit the market. China was finally accepted into the World Trade Organization (WTO) in December 2001, and the Chinese economy became part of the world market economy.

In short, it was due to the salient pragmatist feature of the Confucian personality that China could have successfully changed from the socialist economic system to a capitalist economic system under the name of socialism.
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is the concept of “China’s advanced culture.” It implies that, in practice, China’s advanced culture is represented by the emerging businessmen, professionals, technicians, and entrepreneurs working in private companies or foreign firms as well as the middlemen active in the market. The doctrine recommends that they should be allowed admittance into the CCP. In conventional communist doctrine, these people were considered to be among the “exploiting class” of the capitalists who should have been eliminated from China’s socialist culture. Now they are respected and relied upon for the so-called socialist market economy. This has become possible significantly due to the Chinese affirmation of elitism and an elitist division of labor embedded in the Confucian personality. With the doctrine of the three representatives, the CCP has been further reformed away from an embrace of the Marxist account of class division and its theory of exploitation towards embracing a Confucian appreciation of the goodness of the market and wealth, along with the Confucian acceptance of reliance on elites to govern society.

Finally, the relation-skilled and harmony-oriented Confucian personality (the forth feature) pushed the reforms further on a road to a harmonious Chinese society, thoroughly rejecting the Maoist ideology of class struggle. On September 19, 2004, at the Fourth Plenary Session of the 16th Central Committee, the CCP officially took the historical step of acknowledging that its goal was to “build a harmonious society,” which was described as one in which “all the people can work to their fullest abilities, be paid according to their hard-work and get on well with each other.” Under the new leadership of president Hu Jingtao, China is on its way to building a society characterized by harmony (he, 和), which is explicitly and centrally a Confucian virtue. Hu and his high-ranking colleagues aimed to redirect the Party’s guiding philosophy around harmony, so as to locate the focus on “economic growth” within the Confucian virtue of “social harmony.” In this fashion, there was an explicit turn to Confucian moral resources in order to come to terms with the country’s increasingly serious social and moral problems. The CCP recognized that in striving for sustained, rapid and coordinated economic growth, China needed also to establish a fine-tuned social management system that could address the cultural tensions (i.e., internal contradictions) people were experiencing and find proper ways of taking care of the vulnerable and unfortunate (without being trapped with the social, moral, and economic problems of the Western welfare state), while also strengthening environmental protection. The smooth transition of the Chinese society in the next decades to a more prosperous and morally ordered society will depend on how effectively Confucian moral resources can be drawn on in the construction of a harmonious society by combining the rule of law and rule of virtue.

Nevertheless, Wang is right in recognizing that a moral vacuum exists in contemporary China. This moral vacuum is caused, again, by a disconnect between the formally announced morality and the actual operative morality. However, Wang is wrong in identifying the operative morality as hedonist (p. 7). As my above analysis indicates, the truth of the matter is that the operative morality (i.e., what one actually knows one ought to do in everyday life, in particular in the market) since Deng
Xiaoping’s reforms has been essentially Confucian – although incomplete, one-sided, and sometimes still distorted, while the announced morality (i.e., the official account of morally appropriate behavior) has remained communist as since 1949. This disconnect has been combined with various defense mechanisms that developed against the announced morality. For example, many dissociate themselves from any public moral discourse since it often belies real economic circumstances, others would simply echo the announced morality in public meetings while practicing the operative morality in real life activities, and still others have actively turned to a nihilist and hedonist attitude. Accordingly, the moral vacuum as well as its accompanying difficulties in contemporary Chinese life has been produced and compounded by a robust hypocrisy that I term the post-communist personality disorder, rather than a brand new type of personality as Wang argues. This disorder currently afflicts what is at root a remarkably powerful, underlying, Confucian personality.

This is to say, the truth of the matter is two-fold. On the one hand, the success of the recent three-decade reforms can only be explained by the still widespread survival of a disabled but nevertheless Confucian personality characterized by the features I summarized in the first section, including a dominant motivation for the well-being of the family, an affirmation of the goodness of material wealth and an appreciation of the market for producing material wealth, a non-egalitarian commitment to the obligations of altruism, an attention to the harmonious interpersonal relationships needed to build up market networks and peaceful cooperation via compromise and mediation. It is the resources of the Confucian personality, however overlain by various disabilities from the communist utopia and movements, that explains the capacity of the Chinese to come to terms with the market in a way that has proven elusive to many of the post-Soviet societies of Eastern Europe.5

On the other hand, the very success of the market in the absence of the constraints and the direction of Confucian virtues led to vice. To live virtuously with luxury, one needs both an adequate rule of law and developed rituals for virtue. Unfortunately, the value understandings that brought Chinese success in the market are currently shorn from and dislocated out of the traditional Confucian understandings, habits, and rituals of the life of virtue. In fact, the life of virtue that had in traditional Chinese culture placed the pursuit of profit within the pursuit of virtue was radically undermined by an inadequate, if not perverse, rule of law and public policy,

5All the key features of the Confucian personality lie at the roots of the moral phenomenon of contemporary China. It is especially important to recognize the particular marks of the Confucian constitution of the social reality of the family. Many cultures also have strong commitments to intrafamilial support, as for example in Latin America. However, such cultures do not appear to be as successful in nurturing the interpersonal skills needed for entrepreneurial success, in developing the capacity to defer present gratification for future reward, and in regarding the material rewards of the market as ceteris paribus morally unproblematic. The characteristics of the Confucian agent are anchored in the circumstance that the Confucian moral agent stands in the midst of partly concentric and partly overlapping circles of relationships – family members, friends, colleagues, community, country, and universe. This kind of interrelatedness is marked by a coherent sense of humane love, reciprocity, and responsibility to motivate the proper acts in the market for profit.
combined with an absence of an appropriate public rule of virtue in contemporary China. The history of the 20th century was such as to weaken the Confucian moral constraints that appropriately guard the moral life and traditionally give direction to moral agency. Moreover, the allure of corruption has increased, as market success has increased the riches for which one can sell one’s integrity. As a consequence, the market success in China, which was supported by the wholesome elements of Confucian moral agency still persisting in China, created allures that were difficult for many to resist in the absence of the constraints of Confucian virtue. In addition, the dissociation between the announced morality by the government and the operative morality in the market led to an established hypocrisy and cynicism, which served as a form of public anti-moral education. This further undermined the plausibility of the rule of virtue, so that, finally, with the dis-establishment of a healthy Confucian moral sense, and in the face of numerous and significant opportunities for pleasure and self-realization, a hedonistic rather than a morally structured sense of human flourishing became normal. The contemporary moral vacuum of much of Chinese life is the consequence of this complex state of affairs.

The appropriate characterization of the current state of affairs is thus that of a post-communist personality disorder, not the emergence of a new type of post-communist personality as Wang proposes. This distinction is crucial in that it involves the recognition that the post-communist personality disorder must be addressed through reconstructing effective Confucian moral agency. Hence, the focus should be on reconstructing the Confucian personality. Although the Chinese reforms since 1978 have produced significant economic and social successes through the strengths of the Confucian personality, Chinese society is nevertheless marked by the malaise of a moral vacuum that Chinese must attempt to fill in proper ways.

14.4 Can Confucianism Fill the Moral Vacuum in Contemporary China?

All vacuums are relative. The moral vacuum of contemporary Chinese society is, as has been shown, a function of the deformation of the Confucian personality which has, nevertheless, provided the substructure of China’s remarkable successes. This moral vacuum has at least two important dimensions, one axiological and other phenomenological. As to the first, there is a vacuum in the sense of a failure to maintain a coherent public morality given the disconnect between the manifest morality which reflects China’s communist past and the operative morality which promotes China’s contemporary market culture. A result has been that Confucian moral values and social structures have been deformed in crucial ways leading to pervasive corruption in various forms. As to the second, life is experienced as lacking moral direction and eternal meaning. There is an arising hedonistic ethos affirming indulgence in immediate material gratification, and a hypocritical attitude to any serious moral tradition as a coherent whole. Both these dimensions of the
moral vacuum are symptoms of the post-communist personality disorder that has resulted from the impact of years of attempting to set aside China’s Confucian commitments. In short, this moral vacuum cannot be explicitly remedied until China more explicitly recognizes the importance of recovering a complete Confucian personality. Such restoration is by nature a reconstruction – reconstructing the central Confucian concerns and commitments in the new societal circumstances. Importantly, the reconstruction of a healthy Confucian personality will involve addressing the deformation by past policies of the Confucian values and social structures.

The first deformation involves a distortion of the traditional family-centeredness of Chinese culture, effected especially through the one-child policy imposed by the government on all Chinese families (especially those in urban areas) since early 1980s. This policy forced many Chinese to face a bitter dilemma: while they understand that they have an obligation to comply with the policy, at the bottom of their heart they want to maintain their Confucian commitments to the continuity of the family, which is a cardinal value of the family as a whole, the ancestors and descendants included. In order to obtain a second child, they are willing to try every means, even corrupt measures, such as bribing an in-charge official, to get a second birth quota. Most Chinese understand that China faces the challenge of providing employment for a huge population. Nevertheless they are puzzled by the fact that some other nations, such as Japan, are doing very well with a large population in a comparatively small territory. Moreover, they foresee the economic difficulties of having only one child to support two parents and four grandparents, leading to the question of whether the government’s one-child policy is wrongheaded and should be corrected. As China rapidly ages, there are good reasons to revise this anti-Confucian one-child policy, ranging from the need for an adequate young work force able to pay for the needs of the elderly to the more fundamental moral issue of recovering the normal Confucian family-based way of life. Here it must be noted that the attempt to suppress these normal Confucian moral commitments has led to both corruption and hypocrisy.

The second feature of the Confucian personality, to pursue the material wealth within the constraint of virtue, has been terribly distorted in modern China. The communist personality disorder took place in the coerced egalitarian task for everyone to produce wealth under the state-owned, centrally-planned economy that had been imposed on everyone, while the post-communist personality disorder has occurred in an uncurbed pursuit of profit with a hedonist ethos. Both situations mark the absence of a coherent public culture of Confucian virtue. In the current moral vacuum, many Chinese persons have lost the recognition that the prima facie goodness of material wealth must be placed within the constraints of virtue. Without these constraints, the person becomes directed to immediate material satisfaction rather than to the proper well-being of the family and society. In addition, current policy sets immoral incentives for officials and professionals to act in ways that lead to corruption: while they are provided with very low salaries, they are encouraged to gain bonuses by providing “more services” to society. Consequently, governmental or public departments often work together to establish unnecessary new procedures.
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(e.g., additional bureaucratic requirements) for other people to go through in order to do business in society. The real motivation is not to provide more services, but to gain extra payments by creating bonuses to enlarge their low salaries. Some of them even directly ask for and shamelessly accept bribes.

Such behavior is obviously in contradiction with Confucian virtue. From the Confucian view, although profit seeking is legitimate and is even encouraged, one must not attempt to define one’s moral character in terms of profit seeking. Most importantly, Confucius teaches that when one sees gain to be got, one must think of righteousness (yi, 仁) (Analects 16.10). One should never attempt to make profit by unrighteous means. This is the instruction of all classical Confucian masters. For example, Confucius sees unrighteous riches and honors as floating clouds and does not attend to them (Analects 7.15). Mencius emphasizes that ruler should govern the state by following the moral virtues of benevolence and righteousness rather than playing tricky skills for enriching the state and empowering the military (Mencius 1A1). And Xunzi states that the unworthy must not be rewarded (Xunzi 9). Indeed, it is the Confucian view that it is nothing improper for a virtuous man to seek profit, but one must seek profit by moral means. Individuals, especially those who are willing to cultivate virtue, must not pursue personal benefit by immoral means, nor in a way that makes the pursuit of profit the defining focus of one’s character. It is important for the state to formulate proper policy and conduct non-hypocritical moral education so that defining social policies are not in contradiction with the moral guidance of the virtues of benevolence and righteousness. The immoral incentives offered by the bonus system for public departments should be reformed in light of Confucian moral commitments.

This issue is closely relevant to the reconstruction of the third feature of the Confucian personality in Chinese society: non-egalitarian commitment to the obligations of altruism and a proper elitism. Indeed, another deformation of the Confucian personality that results in hypocrisy and corruption is the consequence of residual Chinese communist egalitarian commitments. These commitments lead to setting unrealistic low salary levels for governmental officials and professional employees in public institutions, such as judges, police, physicians, and professors. On the one hand, these officials and professionals live in a market economy of increasing wealth and an expanding range of goods and services. On the other hand, the remnants of the communist egalitarian morality of the past deny them an income through which they and their families can participate adequately in the new market economy. One finds here once again the results of the disjunction between the manifest morality and the operative morality, with its consequent deforming impact. Though the economy at large has become a market economy, such officials and professionals are nevertheless enjoined to engage in cheap labor under the communist slogan of “serving the people selflessly.” This state of affairs blurs a morally necessary distinction between obligation and supererogation, and therefore fails to encourage the excellence of civil servants and public professionals who also have concerns for their own welfare and that of their families. As a result, people lose the sense of seriously serving others since the rhetoric of serving others is involved as
a justification for unrealistically low salaries. In order to obtain remuneration commensurate to the quality of their services, individual officials and professionals often turn to corruption to achieve the purpose: they ask for extra payments as bribes for doing what is their formal obligation. Consequently, instead of creating a type of officials and professionals who can dedicate themselves to working wholeheartedly for the people, a culture of hypocrisy and corruption has been produced. An official culture of bribery takes hold.

This residual communist egalitarian ideology has engendered moral corruption and conflict between the pursuit of legitimate income and the pursuit of virtue. This should be corrected by the Confucian moral resources. Confucianism recognizes that one should be remunerated for what one accomplishes, not simply for one’s good intentions. The would-be Confucian gentleman is assured concerning the wholesomeness of profit: the expectation of profit is fully morally acceptable, and it is even necessary for a well-ordered society, indeed for humans, to thrive, as long as the pursuit of profit is put under the constraints of virtue. In society, the level of remuneration should not depend on the benevolent intention of the person (such as serving the people), but on the benefit one has conveyed to society (such as how good a work one has done). As Mencius contends, society should not reward a man according to his intention – just as society does not want to remunerate a thief for his purpose of earning a living. Instead, society should remunerate a man according to his work – the more important and better quality the work, the higher compensation (Mencius 3A4). The Confucian position is that different types of labor and service are of unequal value independent of the intention of the agent (Xunzi 9). The good work of officials and professionals deserve good payment so that they can well take care of their own families and set good examples for others in society. In summary, the egalitarian deformation must be repaired by a proper Confucian understanding of human motivation.6

Finally, China will have a long way to go in building a harmonious society. Although the Chinese government has abandoned its communist class struggle strategy and set a harmonious society as its formal goal, a healthy reconstruction of the relation-skilled and harmony-oriented Confucian personality still faces a lot of difficulties. In this regard, the danger of returning to the leftist Maoist class struggle should not be underscored, but a danger from the bureaucratization of Chinese society looms large: bureaucracies attempt to strengthen and expand their scope, authority, and power. In the West, such expansions have been significantly associated with the Western ideology of the egalitarian welfare state, in which the government has the obligation first and foremost to reach out to ensure the equal flourishing and equal opportunity of all citizens. Because one of the greatest threats to equality of opportunity comes from the family, which is obliged to privilege its own members, the welfare state comes to have an obligation in compensatory justice to serve as a source not only of protecting those in social and economic

6See Chapter 8 for more detailed analysis of the relevant issues in the case of medicine, for example.
need, but of equalization. The result is twofold: first, there is an attempt to build welfare from the top (i.e., government) down, not from the bottom (i.e., the family) up, as in Chinese culture. The second is a denial of the natural and important inequalities of talent, energy, and virtue that mark humans and enrich human society. In the West, for example, unlike Confucians, Rawls underscored the perspective of hypothetical contractors in an original position in which they could not consider their own talents, energies, family bonds, and understandings of human flourishing. In important contrast, Confucians are committed to starting with a recognition of these differences in talents, energies and virtues, so as positively to affirm these differences in order to draw on these natural strengths in enriching society, not only in its productive forces, but in its forces of virtue. Accordingly, the Chinese ideal of building a harmonious society should not be confused as the social-democratic ideal of establishing a welfare state. Confucianism does not endorse a system of egalitarian welfare based on rights, but instead only special programs for the worst off. The worst off for Confucians are those (a) who do not have complete families; (b) the disabled/handicapped; and (c) those suffering natural disasters. It is virtue, not claim-rights, that are the fundamental Confucian concern in taking care of the unfortunate members of society.

The loss of a healthy web of virtuous interpersonal relationships as required by Confucianism leads to moving the enforcement of morality from informal loci to formal, often bureaucratic, loci. When interpersonal moral relationships are robustly Confucian, families, associations of families, and local communal relationships can effectively enforce appropriate behavior through informal, social persuasion and sanctions. Thus, one would expect that, as these relationships are deformed and disrupted, ever more resources must be transferred to establish formal, usually bureaucratic, forms of societal governance. Government would become larger and larger. This is a real problem in current China. Consider, for example, that in the Han Dynasty (206 BCE–220), eight thousand people supported one official; in the Tang Dynasty (618–907), three thousand people supported one official; in the Qing Dynasty (1644–1911), one thousand people supported one official. With the weakening of informal family and communal structure, by 1987, sixty-seven people supported one; and in 1998, only forty people supported one official (Chen and Wu, 7

A harmonious society cannot be built without conducting an appropriate Confucian education of virtue. Confucius takes that a state must experience three steps in its development: the first step is to make the people numerous, the second step is to enrich them, and the third step is to educate them (Analects 13.9). China as a state had been numerous by the 20th century. The whole purpose of the recent three-decade reforms was to enrich the people. Although this step must keep going, moral education becomes urgently needed. A harmonious Chinese society cannot be realized through the communist egalitarian ideology. Neither can it be fulfilled through the liberal egalitarian neutrality. What is called for is the recovering of the Confucian personality through proper ritual participation and virtue cultivation. The Chinese have abandoned the Maoist ideological demarcations between socialism and capitalism for constructing a communist utopia. Nor are they attracted by contemporary Western egalitarian ethos to build a welfare state. China has reached a stage in which there is a growing recognition, however tacit or informal, that the people must be educated to construct a harmonious society by recovering the Confucian rituals and leading a virtuous life.
The bureaucratization of society is surely a world-wide problem: the traditional social frameworks of most societies are in disarray, as they are in China. Bureaucratization imposes not only economic transaction costs on society as a whole, but, even more importantly, it shifts the locus of moral responsibility from families, individuals, and communities to a distant bureaucratic structure. The latter is not as able to attend to the fine grain of local difficulties. The solutions not only are economically costly, but often injure the informal relationships that are still intact. Here again, one needs a restoration of Confucian virtues, especially their support of relation-skilled behavior expressed in social rituals, in order to address the problem of a mushrooming Chinese bureaucracy and to build a harmonious society.

In short, the reconstruction of the Confucian personality to fill the moral vacuum in contemporary China requires recognition both of the strengths of the Confucian personality as well as of what factors have contributed to disordered that personality. One issue is a failure of the rule of law; namely, the establishment of a number of policy structures that misdirect human inclinations and passions, while failing adequately to punish breaches of law. Another issue is the failure to maintain a coherent rule of virtue. This is the most complex failure, which involves a number of different factors ingredient in a legal and moral order that largely disabled the moral sense of many Chinese and enabled widespread hypocrisy. This failure to attending to the Confucian rule of virtue also undermines important Confucian moral practices and produces a surface understanding of human flourishing that is centrally hedonistic. The loss of an effective moral sense is tied primarily to the disordering of understandings of virtue and family that have been central to Chinese culture for millennia. Given that the Confucian commitments and their supporting practices have been obscured and disabled during the past half-century, it is essential to restore them in order to fill the moral vacuum in China with the substance of virtue.

14.5 Concluding Remarks

A methodological note is necessarily in order. This chapter does not defend the Confucian personality as perfect moral agency that should be drawn on to resolve any moral problem wherever it is found. Neither does it assume that traditional Chinese society was morally excellent when the Confucian personality was prevalent or dominant in one way or another. The issue is inevitably controversial in that the Confucian personality can be characterized in as many different ways as there can be different accounts of Confucian morality as well as of its deviations and distortions. As Confucianism has been the dominant moral tradition in China for millennia, what I have attempted to achieve is to provide a cultural account of the success of the recent Chinese reforms and point to a way to fill the moral vacuum in current China by drawing on the conception of the Confucian personality as well as its essential features that I have abstracted from relevant Confucian cultural
resources and the Confucian figures, especially its classical figures like Confucius, Mencius, and Xunzi.

As is clear, although I acknowledge Wang’s account as rich and heuristic, I nevertheless find it significantly under-developed. It fails to recognize that the core character of Chinese moral agency remains Confucian, as is evidenced by its appreciation of the importance of the family and of intrafamilial ties, its affirmation of material success, its openness to the rewards of the market, and its valorization of the interpersonal connections that support harmony, cooperation and market success. This foundation of Chinese moral agency accounts for the remarkable economic and technological successes of contemporary China.

Moreover, Wang’s concerns about the moral vacuum in China and the salience of hedonistic and egoistic individuals have their analogues in the West. Much of the dominant modern culture of the West gives an impassioned accent to human rights and equality. Its accounts of justice, fairness, and moral life have, in their pursuit of moral neutrality, evacuated their moral vision of the substance that can direct humans to a sense of the good and flourishing. Confucian reflection reminds individuals that the moral life begins in very particular circumstances. It begins and is nurtured in the family and in very specific relations to, and love of, family members. It leads us from those familiar circumstances to larger and more substantial concerns with the life of virtue. In this global moral crisis, help can come from the East.

No doubt, China is much more than just a great technological, economic, and political power. What gives Chinese civilization its real identity and vitality is its sense of morality as well as its representative moral personality. Indeed, what men and women honor, cherish, and pursue is the most dynamic element in human affairs, at least over the long haul. This chapter argues that China can only flourish by recovering the preciousness of its Confucian heritage in general and its Confucian personality in particular. It is time for Confucians to help China reclaim what is great in that heritage and restore a healthy Confucian moral agency so as to overcome the deformations of contemporary Chinese society and bring China to further success. What is remarkable at this juncture is the confidence of Chinese leaders in drawing on China’s own tradition – Confucianism – to formulate their policies, defend their way of governance, and respond to abuses. This turn back to the Confucian resources of China has been manifested in speeches by top leaders at diplomatic meetings in foreign countries, where other countries’ politicians have been asked to learn the Confucian classics for virtue and wisdom in handling international affairs. Since 1980, the traditionally annually-held Sacrifice Offering Ceremony for the Yellow Emperor (the common Chinese ancestor admired in the Confucian tradition) has been resumed. The Chinese, including leaders of the central and local governments with delegations from Hong Kong, Macao, and Taiwan, offer their sacrifices to the Yellow Emperor. Memorial sacrifices to Confucius have also been restored in his hometown, Qufu (曲阜). Although the Chinese Communist Party has not formally abandoned its “politically correct” slogans such as “socialist market economy” and “socialist democratic politics”, China is in fact moving to a future that is neither socialist nor liberal democratic. This circumstance can only be appropriately accounted for by the growing impact of Confucianism.
Appendix
Liberalism and Confucianism: A Disputatious Dialogue between Andrew Brennan and Ruiping Fan

Introduction

What follows is a critical examination, in dialogue form, of the question whether a communitarian ethic such as Confucianism can be made compatible with liberal individualism. It presents, in microcosm, a case for the claim that distinct configurations of values cannot readily be merged with each other. Further, it reveals how convergence in judgments over the rightness or wrongness of particular matters is compatible with profound disagreement on the basic commitments which underwrite such convergence. It presents evidence for believing that two incommensurate value perspectives can provide a basis for everyday communication and agreement while being incapable of being united within some more general, unifying perspective. If the case made through the dialogue is plausible, then there may be substance in the idea that “western” and “Asian” values cannot be readily assimilated within a single, all-embracing value perspective.

In the course of the discussion, the liberal voice – Dr. Lib (defended by Andrew Brennan) – attempts to persuade the Confucian – Mr. Con (defended by Ruiping Fan) – that a rapprochement between the two positions is possible. After reviewing some of the disadvantages faced by Confucian and individualistic societies, respectively, the liberal side attempts to suggest that a combination of the two views might produce an ethic which improves on both Confucian and liberal-individual morality. Mr. Con resists this “imperialist” conclusion, insisting that from his perspective any combination of the different positions would lose the core values upon which each is founded, and arguing instead that “liberal Confucianism” would be no more than a modified liberalism, not a form of Confucianism at all. In the final part of the dialogue, the participants consider whether their conversation may have been part of a transformative and interpretive process in which each side has subtly shifted its understanding of itself and the other. However, neither a Gadamerian account of conversation as transformation, nor a Quinean account of translation as indeterminate, is able to bring the two parties into agreement that they have been exploring a position that merges Confucianism and liberalism. While Dr. Lib remains moderately optimistic that liberalism, as he understands it, can incorporate elements of Confucian familism without losing its core commitments, Mr. Con is skeptical that
any “merging” between the positions can occur, although he maintains there will be benefits from respectful and sympathetic interaction between the two perspectives.

The dialogue restricts its attention largely to philosophical issues, illustrated by reference to questions about arranged marriage and female suicide in China. Nonetheless, it is intended to resonate with contemporary reflections on such matters as the clash of cultures or civilizations and to reveal some of the problems encountered in the search for universal agreement on matters of ethics and politics. ¹

The Scene

Mr. Con is walking by a river one day, when he encounters Dr. Lib fishing. After watching for a while, Mr. Con compliments Dr. Lib and an exchange of pleasantries follows. They decide to sit down to drink some tea from the flask Dr. Lib has brought.

The Dialogue

*Mr. Con:* This tea is indeed pleasant, just as it is delightful to encounter a Western scholar who comes from afar to fish in the local river.

*Dr. Lib:* As you saw, I was trying to glorify what was good in my technique while hiding the bad. You see, even as a liberal, I am willing to follow some of your Master Kung’s own teaching.

*Mr. Con* (giggles, and chokes on the tea): Very droll. You would have been a good student of his had you not been unsympathetically critical of tradition. But you have failed to understand that human values cannot be defended without appeal to tradition. Just as you respect me as your elder, you ought to respect the wisdom of the established Confucian tradition.

*Dr. Lib:* Actually, I do have some faith in tradition. You know, the values central to liberalism are ones that emerged from a European tradition which combined elements of Christianity, especially the Golden Rule, with a high regard for individuality, freedom and dignity. Despite the disagreements nowadays about ethics and politics—when it’s right to go to war, arguments about abortion, euthanasia, and so on, there’s an enormous amount of agreement about basic ethical issues in all the countries that call themselves liberal democracies.

*Mr. Con:* You are partly right, my doctor, and partly wrong. There may be agreement at formal levels—such as about the need for justice, fairness, the importance of maintaining appropriate standards. But there is no consensus at any level about

¹See, for example, Huntington (1996). We have no complaint with the UNESCO universal ethics project when it claims that there are “universal human ethical aspirations,” but the present dialogue is meant to encourage skepticism that there will ever be agreement on fundamental universal principles of ethics. See [http://unesdoc.unesco.org/images/0011/001126/112681eb.pdf](http://unesdoc.unesco.org/images/0011/001126/112681eb.pdf), accessed February 2009.
the matters of substance. There is no consensus at the international or national level. There is no consensus even at a local level in many so-called liberal democracies – dissenters about important ethical and political issues are always there. This is because the matters of substance are entrenched in diverse traditions, and liberalism is only one of them.

**Dr. Lib:** Of course there are dissenters everywhere, which is why liberalism is so widely supported in the globalized world. The liberal accepts that different people hold different conceptions of the good even within individual societies. The liberal insists that all individuals have a right to their preferred ways of life. Of course, this does not mean that anything goes, that good is entirely relative to point of view. As Richard Rorty – among others – has pointed out, pluralism should not be confused with relativism. According to him, the difference between philosophical pluralism and cultural relativism is the difference between a kind of tolerant pragmatic approach on the one hand, and a really inappropriate, and foolish, failure to stand up for what is right on the other. Liberalism supports pluralism, letting Confucians live alongside Christians, Muslims alongside atheists, without imposing some overarching standard on everyone.

**Mr. Con:** I don’t think we disagree about the need for tolerant and pragmatic approaches to resolving disagreements. Actually, all traditions carry their own packages of moral substance for social practice: they encourage certain characters, tolerate certain behaviors, and prohibit other conducts. So, let me point out a problem with your general claim on behalf of liberal pluralism. Liberals regard all other moralities as particular and parochial, but take their own moral principles as universally justified, ready for export to liberal and non-liberal societies alike. However, ethical substance must be understood in much more local terms than general liberal principles predicate, namely, the nuances of the particular ways of life – such as the rituals (li) of Confucian societies – lived by local people in specific contexts. In short, I don’t think liberalism has the moral resources to deal with Confucian disagreements with its general principles.

**Dr. Lib:** I fear you exaggerate the problems, just as you exaggerate the extent of substantial moral disagreement. In any case how can you seriously maintain that liberalism lacks the capacity for coping with ethical disagreements? You are well aware that the leading liberal thinker of the late 20th century, John Rawls, famously proposed a theory of justice to allow for the co-existence, under a fair system, of groups who profoundly disagree with one another. Whether you apply the theory at the international, or at the local, level, it allows for diversity and pluralism. What better method could there be for ensuring that each

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2 Rorty actually expresses the distinction as “the difference between pragmatically justified tolerance and mindless stupidity” (1999, p. 276).
3 Rawls envisaged “a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines” (1993, p. xviii).
4 Rawls claims that his theory of justice permits “a diversity of doctrines and the plurality of conflicting, and indeed incommensurable, conceptions of the good affirmed by the members of existing democratic societies” (1985, p. 225).
individual is able to live up – or indeed down – to whatever religion, morality, or a way of life she or he wants?

Mr. Con: Aha, you also know the problems with this theory as well as I do. Because it puts no emphasis on the substance of any ethics, religions, or ways of life, Rawlsian liberalism focuses ultimately on the individual as in authority to decide about issues of value. That inevitably results in emphasizing one special value – that of promoting individual sovereignty over oneself, together with self-fulfillment and self-satisfaction. What this emphasis on independence, autonomous choice, and self-determination means is that people are disconnected from any structures carrying a particular tradition and claiming special communal authority. If liberalism were successfully exported to a Confucian society, the very fabric of the society would be destroyed. In a liberal culture, one should seek one’s “own” values and make independent decisions according to one’s “own” view. A young person would be ridiculed for consulting with parents for a marriage arrangement or with teachers for a career plan.

Dr. Lib: Many people in Europe and the United States consult their friends and families, their parents and teachers over matters of career, marriage, medical treatments and so on. I remember asking my teachers – at school and at university – for help in choosing a career. Of course, consulting is not submitting. Liberals would object to people having to submit to marriages they don’t want, being forced into careers that they have no interest in, and being made to undergo medical procedures that their family chooses for them. So the point is that the individual should be left as the final authority to make her or his own choices, with all kinds of consultation encouraged. I would be surprised if you support female genital mutilation – still practised in many cultures today – simply on the grounds that families approved of it. Certainly if you believe girls should be made to submit to such practices, then your Confucianism is considerably less humane than my liberalism.

Mr. Con: It is tactful of you to mention genital mutilation rather than, say, foot-binding – a real Chinese case – to make your point. However, I don’t think one should pick out an odd or accidental example to attack the probity of a moral tradition. Bizarre cases occur in every tradition. Only focusing on such cases to evaluate a tradition would shortchange, mistreat and even distort the comprehensive ethical structure and rationality of the tradition. For example, the Chinese case of female foot-binding involved sophisticated esthetical, sociological and historical issues in addition to the issue of the approval or disapproval of the family. Most importantly, the fact that Confucian scholars were largely silent on the custom does not mean that Confucianism espouses it in principle. No doubt, the

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5The custom of foot-binding most probably took place in the Song dynasty (960–1278) and lasted until the early 20th century. See Gao (1995). The tiny femal feet produced by binding were generally taken to be a manifestation of femal beauty for a long time. They might be analogous to the “tight lacing” generated by squeezing the waist in the “Victorian corset” in Western history.

6Some Confucian scholars did object to the foot-binding custom. For example, one of the representative Neo-Confucian scholars in the Song dynasty, Cheng Yi (程頤, 1033–1107), insistently
Confucian family is *in authority* in determining its members’ important issues, such as education, marriage, and career. But the family is not *an authority* on moral standards – it is the entire Confucian community, the tradition as a whole, and the Confucian sages in particular that are the real authority carrying the Confucian moral standards, regardless of whether particular families follow them or not. It is a distortion to think that Confucianism would support anything insofar as it is approved of by the family.

**Dr. Lib:** All right – I admit my argument was *ad hominem* – the fact that some Australian liberals do not object to kangaroo hunting or massive clearance of native vegetation does not mean that liberalism in principle espouses hunting and land clearing. But I am intrigued to know how Confucianism can limit family determination. Can you explain just where in the Confucian tradition we find protection for the individual against harms that may be inflicted by the family? Actually, since – like many other traditions – Confucianism has been highly patriarchal, I should perhaps ask for evidence that Confucianism can deliver real protection of the individual from overbearing males – whether fathers, rulers, elder brothers, or teachers. The point is that foot-binding, like genital mutilation, is something that causes harm – physical and psychological – to the individual. And if liberal democracies can claim anything, it is their commitment to protecting the individual from these kinds of harm.

**Mr. Con:** Just a moment, my doctor! Let’s clarify your liberal point first. From my understanding, Confucians should object to foot-binding, no matter whether it is voluntarily chosen by women or imposed on them. This is because, from a Confucian moral view, foot-binding causes unjustifiable harm to the women. However, you, as a liberal, would hold a different position. Although foot-binding causes harm to women, you would not object to it if it is performed voluntarily by individual women, just as you would not object to women wearing harmful, high-heel shoes today. According to your liberal view, the individual is in authority to decide any value or choose any act as long as it does not harm others. So foot-binding would not be a problem for you if it is voluntarily chosen. What you really oppose is the foot-binding imposed on the child by the parents. So your liberal view is based on a sharp individualist distinction between “self” and “other” concerning who is in authority to make a decision, regardless of whether that decision is normal or good. From the Confucian view, this individualist distinction, together with its basic dichotomy between choice and circumstance, is a grave distortion of the nature of human lives. For Confucians, all humans are born into naturally “given” roles and relationships, such as father,

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7 Strange as it may seem, some women return to foot-binding and waist-squeezing in a contemporary Western “feminist empowerment” movement, the so-called “modern primitives,” for esthetical and other interests. See online http://foottalk.blogspot.com/2006/04/modern-primitives-foot-binding-and.html (access February 2009). Mr. Con would not support such movement, either voluntarily or nonvoluntarily.
mother, son, daughter, brother, sister… You became your parents’ child and your sister’s brother not through your individual choice or contract. Rather, these roles are naturally attached to or supervene on you – whether you agreed to them or not. And they generate natural “sympathetic” obligations on you – whether you find them burdensome or not.

Dr. Lib: Yes, I can sympathize – so to speak – with that. If we look for parallels in Western thinking, we can say that Confucianism is more Humean than Hobbesian. I always thought the Song Neo-Confucian Zhu Xi (朱熹, 1130–1200), as well as the classical master Mencius, had a rather Humean view – that we are born with a certain natural sympathy, a mechanism which is triggered by contact with people, especially those closest to us. For the Confucians, self-cultivation would be a means of nurturing that affection so that it could spread out beyond the family, and result in a more general altruism and benevolence.

Mr. Con: (chuckling) That’s right, although as a liberal I don’t suppose you would be a strong supporter of Master Zhu’s rewriting of Mr. Lü’s village compacts.\(^8\) Forgive me, my doctor – I should not engage in ad hominems after criticising you for making them! Back to my argument, then. Given the existence of families into which we are naturally born and the circumstances we did not choose, virtues and obligations arise from the very soil in which we find ourselves planted. For instance, the father should have a father’s natural virtues (such as kindness (慈) to his children), and the child should have a child’s natural virtues (such as filial piety (孝) to its parents). This is the Confucian principle of the “rectification of names.”\(^9\) “Father” and “child” are not just biologically descriptive terms; to be a father is already to be in a role to which responsibilities attach. A good father is not just one who is biologically fit, but one who fathers well in a moral sense.

Dr. Lib: I am not so sure about this. I might argue, after all, that “father” is a biologically descriptive term, and you and I simply have different moral expectations about fathers. However, I would not want to defend such a simplistic claim – and the fact-value distinction on which it depends – if you put pressure on me.\(^10\) Like you, I think the term “father” denotes more than a biological category, hence we can sensibly talk about the duties, cares, and importance of fathers in a way that goes far beyond their biological roles. So let me grant that when we talk about

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\(^8\) Mr. Con is here referring to Zhu Xi’s Zeng sun Lü shi xiang yue (The Lü family compact, with additions and deletions, 呂氏鄉約). The Lü brothers’ compact set out orderly regulations for conducting village life according to Confucian precepts. Zhu Xi’s extension of these was rather more hierarchical than the original, requiring that the compact leader be senior in years, and well-educated, and that the leader’s assistants should likewise be well-educated people. See Übelhör (1993). Thanks to Harald Bøckman for this reference.

\(^9\) “Tzu-lu (子路) said, ‘If the Lord of Wei entrusts enforcement of the correct to you, what will you do first?’ ‘Correct names, surely,’ the Master said. ‘If names are incorrect, saying is out of accord. If saying is out of accord, tasks are not fulfilled.’” (Analects, 13:3).

\(^10\) For considerations against putting much weight on the supposed distinction between facts and values, see Griffin (1996).
“fathers” we are talking about people with moral roles to play, although of course I don’t think we will share a view on just what those roles should be.

Mr. Con: Thank you. Now let me move to the main point. Distinct human traditions hold different philosophical anthropologies. These include different views regarding what proper roles individuals hold as well as what the basic entity is in human society, depending on their mutually incompatible understandings of the nature of human life. Since Confucians recognize the profound human need of the interdependence of the family rather than the independence of the self, they see the nature of human lives as family-role-based and thereby relationalistic rather than individualistic. While liberal individualists take the individual, and only the individual, as a basic entity of society, Confucians see the family also in that place. Such different metaphysical views lead to different, incommensurable moral standards regarding who is in authority on issues of value. For Confucians, although individual interests are taken into account, the family as a whole holds the natural obligation and authority to work out its members’ marriage arrangements and career choices. The ideal is to integrate individual interests and family values into a harmonious system. Accordingly, Confucians cannot accept the cardinal value of liberty or autonomy as self-determination. Instead, their cardinal value is family-determination. This constitutes a fundamental disagreement between liberals and Confucians in ethics and politics.

Dr. Lib: This is quite right. The self-governing individual and the harmonious family – these are the two core ideas around which two different accounts of human well-being are built. Many people who are not Confucians can understand the benefits and security that accrue when we belong to a caring and supportive family. On the other hand, the liberal recognizes that family harmony is an ideal that is not always achieved, or is achieved at too high a cost to the individual family members. So we need to distinguish the ideal from reality, and consider the best ethical and political means for protecting the individual from an abusive family, the family from an abusive local government, and so on. One moral theorist once remarked that we need ethics because things often have a tendency to go badly. Confucianism and liberalism are two of the many attempts to prevent things going too badly. However, if you force me to choose between the two perspectives, my choice would be for the one which respects and protects the individual most. Is this what you mean when you say that we liberals take self-determination as a cardinal value?

Mr. Con: You have hit the nail on the head. Actually I disagree strongly with the idea that liberalism can best protect the individual from abuses. The truth of the matter is that a liberal ethical and political environment also harms the individual, for example, by not protecting him or her from self-damaging behavior. Humans are not born to be capable of rational choices – they have to be trained, disciplined, and cultivated in order to act well. That is why Confucians recognize the importance of the rituals (li, 礼), the communally accepted good practices, to be educated by families for their children to observe in order to achieve the good life. Now the liberal self-determination for the individual is acquired at the cost of reduced freedom of families to do what is best for their members.
In an ideal liberal society, parents are not supposed to cultivate their children with their own faiths or values. Rather, they should provide multiple options to their children and encourage them to make their own choices and shape their own ways of life – whatever they may be (Buchanan and Brock, 1989, pp. 227–228). Children then confidently announce to their parents: “It is my right to do x, even if x is wrong!” Consequently, individual self-determination is often achieved at the cost of reduced freedom for families to do what is best for their members. You notice the evils of foot-binding in my traditional society or genital mutilation in other societies, but have not mentioned obvious evils in current liberal society: broken families, homeless vagrancy, loneliness, drug addiction, sexual promiscuity, alcoholism, and hooliganism... Many secondary schools now have difficulty functioning as effective educational institutions given the high levels of misconduct, violence, and drug use. My point is that these are not simply accidents, but reflections – so I would argue – of what you called the focus on the individual as the moral center: families are restricted from joining the decision-making of their individual members and so fail to offer effective assistance in their self-cultivation and development.

Dr. Lib: Hold on, hold on, my friend. I think I may be able to sharpen the point, or at least some of the points, you may be making. Let us pretend that each of us wants to focus primarily on one moral center. For me, as a liberal, the primary focus is on the individual, the center of beliefs and desires, surrounded by other similar centers. Society, for me, is a collection of such individuals, all equal in value, all with a right to self-determination, to education, to competition for office, to mobility, even – if they wish – to cut themselves off from their families. For you, let us suppose, the primary focus is the family, not the individual. The family is the center within which new life emerges, is cared for, is educated, and also in which people are cared for when they are young, distressed, ill or aged. The family may give stability to the life of the individual, but does so by drawing on forms of hierarchy and authority that are alien to the liberal. While the liberal seeks to maximize the autonomy of the individual, the Confucian might be thought to aim at retaining the autonomy of the family. The focus on these two different moral centers, in short, will inevitably involve support for rather different sets of underlying principles. Is that a good way of putting the matter?

Mr. Con: If we stick for a moment to your pretence, then yes – this is just how the matter stands. There are two sharply different types of autonomy: autonomy of the individual and autonomy of the family (Fan, 1997). Individual autonomy, you see, has its price. In the liberal state, families are discouraged from protecting, much less cultivating, their children from self-abuse. An American woman told me that she wished her parents had stopped her from getting cohabited at the age

11Meanwhile, children do not have a moral obligation to take care of their elderly parents in need. This is because, according to the liberal view, the parent-child relation is at best a friendship relation based on voluntary assistance to each other, and is at worst an ill-grounded contract relation, one whose terms do not include the requirement of looking after the elderly parents (see English, 1979; Daniels, 1988).
of fifteen, so that she could have at least finished her middle school! In Confucian states, however, individuals are discouraged from abusing themselves by family pressures generated by shared family decision-making on important individual issues. Since liberalism fails to recognize the depth of the interdependence of human lives in the family, it abandons the effective familist ways of protecting the individual from a possibly abusive self, overplaying the hand of protecting the individual from a possibly abusive family.\textsuperscript{12} The result is a soaring amount of broken and violent families which in turn abuse individuals, especially children, both physically and psychologically, in severe extents in modern liberal societies.

\textit{Dr. Lib}: Mmmmmhh... You are right in one important respect. This is that we often see the blight in other societies while being blind to the diseases in our own. Moreover, our favored theories of politics and ethics are often silent on their undesirable effects. Although I am very aware of the possibility of coercion of the individual under Confucianism, it was not until I talked to you that I became aware of how a liberal society could be regarded as coercing the family by the state! Since the family is not the moral center on which liberal theory focuses, this kind of coercion is often hidden from discussions of justice, freedom, and autonomy. But then, I suggest, a parallel point applies to your own theory. Since the individual is not at the center of our crude version of Confucianism, then his or her coercion is largely invisible within Confucian societies. Given these blind-spots, should we not, each on our own side, try to become aware of what is more visible, and of what is less visible, from our own theoretical points of view?

\textit{Mr. Con}: Of course we should. But the issue is deeper than that. Perhaps, at this point, we should first clarify a basic difference between liberalism and Confucianism – a difference that is involved in our dialogue but is not clearly spelled out. The difference, as I see it, is this. Liberalism is ethical individualism, which holds that only individuals ultimately count, while Confucianism is ethical familism, which holds that both individuals and families ultimately count. It is necessary to note that Confucianism gives weight to individual interests or values, such as individual life, enjoyment, and preference-satisfaction. At the same time, Confucianism also holds that there are intrinsic family values, such as the integrity, continuity, and prosperity of the family. These are holistic family interests and cannot be reduced to individual life, enjoyment, or preference-satisfaction. For Confucians, individuals should not pursue their individual interests in separation from the family values. Instead, they should set out to seek a harmonious unity of individual and family values and strive to have both of them gratified. That is why, as you know, Confucianism emphasizes virtue cultivation through ritual observation, in which shared family determination plays an essential function. In contrast, liberalism only focuses on individual interests.

\textsuperscript{12}In the dialogue, the terms “familism” and “familist” are used to refer to moral views in which the family unit (however demarcated) has a special role to play. This has nothing to do with the use of “familism” to refer to the 16th century religious sect “\textit{das Haus der Liebe}” or “family of love” in the West.
It takes family values as nothing but the sum total of individual interests – accordingly, the family, as somewhat instrumentally useful, is only a contract-based, “artificial” institution that is subject to reshaping, revision, dissolution, or rejection solely depending on relevant individuals’ desires or wishes. Compared to the two-dimensioned Confucian ethics, liberal ethics is one-sided, incomplete and imbalanced.

Dr. Lib: Thank you for the clarification. But as a liberal, I cannot conceive that there could, ultimately, be any intrinsic family values that transcend individual values, given that the family is composed of individuals. If the integrity, continuity, and prosperity of the family contribute to individual dignity, liberty, equality, or enjoyment, they are certainly instrumentally valuable. But if they infringe upon individual wellbeing, why should they still be preserved as values? “The harmonious unity of individual interests and family values” sounds beautiful, but I am more interested in knowing the real Confucian approaches to their tensions and conflicts. In order to realize a balanced ethics, what else can be better than treating every individual as an equal end, having mutual respect, peaceful negotiation and eventually self-determination to be secured in society, as liberal ethics proposes? So I have to reject your claim that “liberal ethics is one-sided, incomplete and imbalanced.”

Mr. Con: A balanced ethics cannot be an individualist ethics. The family is not a political unit based on individual contracts. On the contrary, the existence and flourishing of each member is inseparable from the continuity, prosperity and integrity of the family. The liberal political principle of self-determination prevails only after real, balanced ethics declines. Today’s ever increasing amount of indecent individual behavior and broken families are closely related to the one-sided liberal emphasis on individual liberty, autonomy, and self-determination. Self-determination makes the general affirmation of young people’s consensual sexual gratification the norm. Pre- and extramarital sex, abortion, and divorce become commonplace behaviors. Look at Norway, for example, the country that presently is top of the United Nations’ Index of Human Development. The same country also – according to a survey by Durex – leads the world in casual sex.

13 We appreciate Daniel Bell’s suggestion that Confucian ethical familism and liberal ethical individualism be clearly distinguished in the dialogue.
14 The United Nations Human Development Index for 1975–2005 is available online at http://data.un.org/DocumentData.aspx?id=32 (accessed February 2009). Mr. Con’s remark may refers to the fact that in the 2005 Durex Global Sex Survey, it was reported that 70% of Norwegians admitted to having one night stand – the highest level reported in the survey. See http://www.durex.com/no/gss2005results.asp (access February 2009).
the excuse of exercising one’s liberty or autonomy, one can easily get married this year, divorced next year, and abandon his spouse and children to join in a bizarre association the third year. In short, the liberal idea of self-determination, regardless of family interests, facilitates individuals – especially young people – to gratify their immanent physiological impulses and whims rather than cultivate proper moral habits.

Dr. Lib: You are more conservative than I am about marriage, premarital sexual relations, and single-parent families. Surely, though, I don’t need to remind you that abortion and divorce are by no means unique to liberal societies. I agree that it can be heartbreaking for parents when they find themselves powerless to stop one of their children getting involved with drugs or criminals, yet the law states that once our sons and daughters have reached adulthood, we cannot force them to live at home or give up bad company. So you are right that focusing on the self-determination of the individual in our political and legal arrangements does not always result in the enhancement of individual well-being. But instead of trading evils, and pointing to what is bad in one culture as a foil to what is bad in another, let’s return to our main philosophical theme. As you recall, my argument is that liberalism, with its focus on the autonomy of, and protection for, the individual, at least takes account of the fact that not everyone is born into happy circumstances. Liberal societies put limits on the ways families can dominate their members, or harm them, even if this means that on some occasions the family is hindered in its efforts to protect its members.

Mr. Con: Yes – so we are now agreeing, are we not, that there are two different ways of moral life, each with its own character. Central to the Confucian way of life is the question of what sort of person one ought to become in relation to one’s family. Still, Confucian familism does not mean that there are no limits on the ways families can dominate their members: Confucianism supports family determination, not parental domination. Family determination does not mean that the individual at stake does not have a say. For example, for a child’s marriage, it is not the imposition of parental authority on an unwilling child. Rather, an agreement must be formed between the child and the parents. This requirement of agreement is implicit in the meaning of the Confucian marriage ritual which includes a series of interactions between the two families, ending up with the final step in which the groom must personally bring the bride to his home from her parents’ home. That is, in practice, both the parents and the child have a decision power that is like “a veto right” in the modern terminology. The parents should not force the child to marry someone the child does not like. Similarly, the child should not be free to marry another person when the parents do not accept.

Dr. Lib: So you are half a liberal at least – you allow that it would be wrong for parents to coerce a child into marriage.

Mr. Con: No, I am not a liberal. I am a full-fledged Confucian! In fact, I am reporting the Chinese folk model of marriage: if a boy and a girl come to love each other, they will go back to ask their parents for approval; and the parents will appoint a matchmaker to contact the other family for agreement. Accordingly, a successful marriage reflects a harmonious coordination between the two families
as well as between the parents and the child in each family through a series of ritual behavior (Zheng and Hu, 2006, p. 170). You may call this model arranged marriage. But it is not that the parents coerce their child into a marriage that the child does not want. As you know, Confucian virtue calls for benevolent parents and filial children (fucizixiao, 父慈子孝). If parents practise the Confucian moral commitments to virtue and ritual, they should not coerce their children into marriage. Similarly, if a child is filial, he should not get into a marriage without his parents’ agreement. Even if we only consider individual well-being, not family values, once we recognize that individual well-being must be fulfilled through an appropriate, long-standing, and stable marriage, we would not want to move to a radical liberal strategy to assign the child a legal right to self-determination on marriage, depriving the parents of a veto right. Parents are more mature, more experienced, and more balanced in their reflections than their children regarding marriage issues. If parents don’t help their child decide and realize a good marriage, they have failed in their moral obligation to their child as well as to the whole family. Given the benefit to be drawn from the parents’ experience and wisdom regarding marriage issues, the Confucian family-based folk model of marriage will turn out to be more beneficial than the liberal self-determination model.

Dr. Lib: I wonder if your last statement is as empirical as it sounds. Would you give up the Confucian model if you discovered that its costs outweighed the benefits? You and I both know the kind of society that Confucianism has supported through history. The story of the Butterfly Lovers, for example, reminds us that at some times in China, the only “veto” – as you call it – which a young woman could exercise was to kill herself if she did not want to marry the man chosen for her by her parents.16 In theory, it sounds reasonable to say that decisions on marriage involve negotiation, agreement, and comparable veto powers on both sides. In practice, a society in which this theory was put into practice was impotent to stop the domination of children by their parents. The folk stories that are so popular, where lovers meet as ghosts, or daughters assert their individuality against their fathers’ wishes, represent a strain of resistance – as I see it – within Chinese culture, a resistance that has something in common with the liberalism I espouse, and to which you object. So let us try to uncover, by all means, just where the two kinds of determination – self and family – lead.

Mr. Con: It sounds that you are totally ignorant that your popular story of the Butterfly Lovers is the “iconoclastic” version that has been recast by the 20th century radical Chinese intellectuals in terms of the “revoluntary” themes of child

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16In the popular legend of the butterfly lovers, a young girl who disguised herself as a boy in order to become educated is promised in marriage to a rich man, because her classmate sweetheart comes from a poor family. The sweetheart dies from a disease after the woman’s family refuses his marriage proposal. On the day of her wedding, and faithful to her one true love, the young woman casts herself into the tomb in which her lover is buried. Shortly afterwards a pair of butterflies emerge, disporting themselves in the open air above the tomb – the spirits, perhaps, of the ever-faithful lovers.
resistance against arranged marriage as well as the class struggle between the poor and the rich. You don’t know that, however, the traditional version of the story that was spread over a thousand years in China and other Asian countries before the 20th century, was dramatically different. That traditional version more accurately reflected the Chinese marriage reality under the influence of Confucianism than the modern, distorted version. The two protagonists in the traditional version, Liang Shanbo and Zhu Yingtai, did not at all resist the Confucian family-based folk model of marriage. Rather, they attempted to follow the model as the proper procedure to fulfill their marriage wish. Neither were there such episodes as Zhu’s father forced her to marry a rich man instead of Liang. Their marriage wish failed, in the traditional version, primarily because Liang failed (due to his mistakes that did not suggest any moral defect or flaw in him, though) to come in time to Zhu’s parents for a marriage proposal. The tragedy was not one of the family-based marriage model, much less of the class struggle between the rich and the poor. The tragedy lied rather in and served as a wonderful illustration of an inevitable human imperfection in which both a normal institution and morally proper individual acts under the institution may bring about a tragedy. This is part of the fate of human finitude and the mystery of life in the Confucian understanding. The Chinese have for many centuries viewed the tragic beauty of this legend in a realistic and somewhat pessimistic way: they have been sensually accepting the unavoidable sorrows of reality and rejoicing in these sorrows with recognition of fate (ming, 命), without naively trusting the power of reason to unveil all of the mysteries of life or relying on the hope of revolution to build a perfect society that will eliminate all tragedies once and for all. Of course, there must have been some parents, though it is not Zhu’s parents, who have made wrong judgments on their children’s marriage issues. But it is unfair to over-emotionally generalize the problem and even monsterize the Confucian family-based marriage model as the radical Chinese liberals have repeatedly done since the May Fourth movement in 1919.

**Dr. Lib:** What you see as actions stemming from regrettable errors of judgment, I see as deeds marked by the moral stigma of injustice or unfairness. These are, of course, political categories as much as moral ones, in keeping with my earlier view that the family itself is a political entity. Not only are there political issues of justice that arise within the family, families themselves – as history shows – have played a considerable part in setting the agenda for national and international relations. Many of Europe’s wars have involved the political intrigues and powerful families, big business is often the province of family power, and the dynasties of China are a wonderful example of family power and influence.

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17 For an excellent exploration of these issues regarding the *Butterfly Lovers*, see Zhu Suli, 2003.

18 Aihwa Ong (1999) argues that the Chinese family is inextricably bound up with the politics of international relations and can be seen as itself an agent that is in negotiation with a number of nation states.
I agree that the *Butterfly Lovers* might be more sophisticated than what we modern Westerners have seen from the version that was exported to us from modern China. But I don’t think your realistic or pessimistic manner of viewing tragedy can get you away from the real moral issue in our debate. Seen in this way, suicide was – and maybe still is – a form of moral protest. Even though the 1950 Marriage Act in China permitted women freedom of choice in marriage, a very large number of arranged marriages still occur, particularly in the countryside. While 21% of the world’s women live in China, 56% of all female suicide in the world occurs in China. That suicide is a strategy of female resistance in a male-dominated society has been suggested by a number of independent studies (Lee and Kleinman 1997, 2000). You may know the figures as well as I do. How are you going to comment on the findings of a recent carefully prepared and very thorough research report, “Suicide rates in China, 1995–1999” (Phillips et al., 2002a), provided by scholars at Beijing Suicide Research and Prevention Center and the Department of Social Medicine of Harvard Medical School?

**Mr. Con**: All right. Let’s take these in turn. First, I doubt the reliability of the figure that as much as 56% of all female suicide in the world occurs in China – I wonder how the scholars you mentioned investigated in China to obtain this figure. Second, I think the Chinese communist government’s 1950 Marriage Act went to a wrong extreme – complete individual determination. That parental domination is wrong does not imply that self determination is right. Both extremes are deviations from what I claim is the Confucian ideal of judicious family determination – pursuing the harmonious agreement between the parents and the child and where each side has a veto power. As to the issue of suicide, the researchers at Beijing Suicide Research and Prevention Center found that rural suicide rates were an average of three-fold higher than urban rates - these differences held true for both men and women and in all age-groups. In particular, they found that suicide rates among elderly rural residents in China are among the highest reported for any country (ibid., p. 837). I think this finding demonstrates the miserable fate of the Chinese peasants in China’s process of modernization. You would probably share the researchers’ surprise over the high suicide rate among elderly people in China’s rural areas: “Given the high status accorded to the elderly in Chinese culture, this finding is particularly noteworthy” (ibid., p. 838).

**Dr. Lib**: That’s true. I was surprised about the rates of suicide among elderly people. I suppose this may be a reflection of how badly they feel when – for whatever reason – the status and care they expected to receive was not forthcoming. However, I am surprised to hear you denouncing two extremes as being alien to the Confucian ideal, as you call it. My point is that the ideal never has been close to what is practiced or what is practicable. And what have you to say about their second finding - that suicide rates among young rural women (aged 15–35 years) were 66% higher than rates among young rural men (ibid., p. 837)? I don’t think you will want to argue that it is simply the low status and limited opportunities of rural women in China that is responsible for the higher suicide rates for rural women as compared to rural men. The research you have been studying contends that this is insufficient to explain the unique characteristics of suicide in China,
because rural women in many developing countries have low social status but don’t have suicide rates nearly as high as those found in rural China.

Mr. Con: If you meant to hint that it is the family determination of their marriages that were accountable of their suicide, you forgot – or were unaware of – other findings by the same research group. In their other study (Phillips et al., 2002b), 519 Chinese suicide cases (mostly by rural residents) were investigated to explore the suicidal causes.\(^{19}\) Given that they found 87% of rural suicides could be attributed to economic difficulties and serious illness or injury, these are clearly much more significant risk factors than family conflicts – including those conflicts that might be generated by the family-determination model of marriage, as you would like to conceive. Moreover, they also found that, of the 108 women aged 15–34 years who killed themselves (presumably most of them were rural women), a small, but significant, proportion was associated with government policies to restrict population growth.\(^{20}\) You, my doctor, are well aware of contemporary Chinese politics, including the government’s birth-control policy. Based on all the information, should you not be arguing that suicide may be understood as a strategy of resistance by rural Chinese women who feel desperate in their contemporary economic and political situations? However, if you claim that it “is a strategy of female resistance in a male-dominated society” in general or a strategy of female resistance against the family determination of marriage in particular, aren’t you being prejudiced by your preconceived liberal ideas?

Dr. Lib: I doubt that looking at the statistics will settle our dispute. As I see it, the point is this. That 87% of the suicides in the second study are attributed to disease, injury, and “economic difficulties” does not explain the discrepancy between the lower rate of male suicides and the higher rate of female ones. If you forced me to make a conjecture, I might propose that women in rural China are victims of the tension between contemporary Chinese politics and traditional Confucian values – for example, the very tension illustrated in birth-control-related issues. Traditional, patriarchal values push women to produce more children, especially sons, for their families, while government policy forces them to accept sterilization after one child is born. The horror induced by this clash of commitments does not show that the traditional values are all well and good. You cannot deny, surely, that Confucian values are patriarchal and so play a part in supporting the mistreatment of Chinese women both now and in the past.

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\(^{19}\)“The two most frequent negative life events among the 519 people who killed themselves were economic difficulties (44%) and serious illness or injury (43%). . . 48 (9%) people . . . had had a severe marital dispute in the 2 days before death, 10 (2%) had had conflict with parents, 10 (2%) with children, and 17 (13%) with other relatives. Nine (2%) people had experienced an acute loss of face or social embarrassment and six (1%) had been beaten by their spouse” (ibid., pp. 1732–1733).

\(^{20}\)17 (16%) of the women encountered negative life events related to childbirth and pregnancy, “including unwanted pregnancy, fines for exceeding the birth quota, abortion, and sterilization” (ibid., p. 1732).
Mr. Con: I confess that I am not — neither are you — in a position to fully explain the higher suicide rates of rural women than men when so many factors could be involved. The researchers we are referring to carefully did not offer an explanation. I don’t think your “tension” account can settle the issue, either. If women are the victims of the tension between contemporary Chinese policies and traditional Confucian values, so are men. As everyone who knows the situation understands, the husband has to confront the pressure and deal with the difficulty as much as the wife — if not more than — the wife. The wife faces the risk of a forced sterilization, while the husband has to undertake all the relevant political, social, and economical responsibilities around the issue. This is because, under the Confucian “patriarchal” — as you mention — values, the husband is taken to be head of the family responsible for all family-relevant issues.

Dr. Lib: Yes, indeed, the values of what I would call the “patriarchal polity,” one that has been largely silent on women, although the Master supposedly praised Jing Jiang (敬姜) for her knowledge of the rites (Raphals, 2002). And I could always remind you of the apparently misogynistic remark that “only women and petty men are hard to rear” (Analects 17: 25). One of the most influential Neo-Confucian scholars, Cheng Yi (程頣), commented that poor widows should not get remarried even if they had to starve to death without remarriage. This is because, for him, it was a small matter to starve to death, but a large matter to lose “integrity” (jie, 節) (Yishu 22, 遹書 22), a concept that would not be intelligible outside a particular kind of patriarchal framework.

Mr. Con: All right! I would not deny that Confucian values are patriarchal. And I cannot see what is wrong with that! Even a liberal like youself can appreciate the benefit of a family order where the father bears primary responsibility for the well-being of the family. I trust that you would not want to propose cancelling family names. Would you? And you would not want to toss a coin to decide which family name your child should take. It is a misunderstanding to hold that the necessity of a family order — the very essence of the Confucian patriarchy — implies rankings of personal dignity between man and woman. Confucianism holds that the husband and the wife possess the same moral dignity with different familial functions. Regarding the saying you took from the Analects, there has been a careful study showing that the original Chinese phrase “nuzi” (子女) used by Confucius in his time referred to maids only, not women generally. So the correct translation of the sentence is “only maids and petty men are hard to rear” Li, C. (2000b). On the issue of a widow’s remarriage, Cheng Yi made a mistaken judgment. He was wrong to hold that a widow’s remarriage violated her moral integrity. But he is hardly idiosyncratic in arguing that moral integrity is more important than physical existence. At least most non-utilitarian moral systems hold a similar view, as you know well. In any case, Confucius never said that the widow should not marry again.

Dr. Lib: How interesting! You admit that in fact the traditional Confucian values have been patriarchal, even though you earlier insisted that the Confucian ideal is “family determination” as you put it. Let’s not be distracted by arguing about the exact meaning of certain sayings or indeed about the context of their introduction
to the Confucian corpus. 21 I am more concerned with the basic character of
the entire Confucian morality with regard to women and children. You have
not answered my earlier question; namely, how Confucians are able to protect
children from abusive parents, or wives from abusive husbands. 

Mr. Con: I don’t think there has to be a contradiction between family patriarchy
and family determination. Confucian family patriarchy takes the grandfather or
the father as head of the family, who should possess virtue, bear responsibility,
and undertake hard work in taking care of the well-being of the whole family,
every member included. It was not the case that head had the power of imposing
his decision on everyone. Instead, a systematic set of Confucian family rituals or
rites (li, 礼) directed every member, including head himself, to achieve harmo-
nious agreements within the family. In the case of problems or abuse, a series of
formal and informal “appeal” institutions was available for everyone – women
and children included – to turn to: from the great grandparent of the family to
meetings at the family temple, from a prestigious Confucian scholar in the vil-
lage to a whole village meeting, and all the way up to the formal court set up by
the government. This is what I meant earlier when I said that Confucianism has
procedures that recognize the ethical significance of the private sphere, instead of
allowing anything short of cruelty to be practiced in the name of “self-perfection.”
These procedures may not satisfy Rorty’s ideal for democratic decision making,
but they ensure that what happens within the family is subject to ethical scrutiny,
rather than being confined to a “private” sphere. For Confucians, even when they
are alone, the ethical is not absent. 22

Dr. Lib: This is all very well in theory, and as usual you reply to my concerns about
facts by appeal to ideals, procedures, and principles. But I maintain that in the
past the Confucian moral establishment has, in fact, condemned people to life
within a system of human relations that are asymmetrical, unequal, and hierar-
chical in nature. Think, for a further example, of the authority of the ruler over
the minister, the father over the son, and the husband over the wife – the so-
called “Three Bonds” (san gang, 三纲). I suspect you don’t want to deny that the
Three Bonds constitute an essential element of the Confucian tradition, even if
the term was initially proposed by Legalists (fajia, 法家). In any case, the author-
itarianism of the Three Bonds has dominated Chinese society for more than two
thousand years. You face a real dilemma here: if you cut the doctrine of the

21 As has been argued by some scholars, the Analects is likely a text which contains a core of
sayings attributable to Confucius, together with later accretions which often reflect political and
moral understandings different from those of Confucius himself. The remark from Analects 17.25
is very likely one such later accretion (see, e.g., Brooks and Brooks 1998). Whether the details
of the Brooks’ analysis are right or not, the Confucian tradition is, like many other traditions, an
“accumulated record of a series of individuals who struggled to interpret a shared set of texts in
light of their different circumstances and times” (Ivanhoe, 2002, p. 129).

22 Mr. Con is in mind the Confucian remark that the gentleman “must be watchful over himself
when he is alone” while “there is no evil to which the mean man, dwelling retired, will not proceed”
Three Bonds from the Confucian tradition, how can you maintain the logic of Confucian ethics? On the other hand, if you want to defend the Three Bonds, how can you treat children and women as equal elements in the Confucian family?

Mr. Con: I certainly don’t deny that some Confucian principles and rituals were misinterpreted, misused, or otherwise abused in Chinese history, such as restricting the remarriage of the widow after the Song dynasty. No history is all bright or dark. But isn’t our disagreement primarily one of principle or ideal – self-determination versus family-determination – in directing human lives? I think you mistake what is essential to the so-called Three Bonds in the Confucian doctrine. You read them far too narrowly, forgetting that they were first established when Chinese society was marked by very severe economic scarcity. Whether the character of the “Three Bonds” in the past was a regrettable, unavoidable adaptation to circumstances or an instance of avoidable moral abuse does not matter for the discussion we’re having. Here it is enough to point out that the “Three Bonds” should be understood as cardinal dimensions of social interconnectedness. They are examples of central social ties that bind people into networks and institutions marked by responsibilities and virtues. As bonds of social interconnectedness, it would be a mistake to interpret them as necessarily involving rankings of personal dignity or commitments to personal inequalities. Instead, the Three Bonds represent the net of most important relationships (between government and citizens, husbands and wives, parents and children) that should be appreciated as proper and central ways in which we pursue human flourishing. Now if you are unable to appreciate these cardinal elements of social embeddedness, this would reflect something of great significance; namely, that liberal individualism fails to appreciate the essential nature of the familial interdependence and social interconnectedness of individuals. The result – as you and I surely both agree – is the very disconnectedness and anomie we have already mentioned. For instance, do you not admit that there are enormous social costs imposed on persons and families by the weakening, if not the collapse, of familist social structures?

Dr. Lib: Very clever, my friend, but I can’t let you get away with this. At the heart of the Three Bonds were relations of power or authority. But now you try to sidestep this fact by claiming that they are just dimensions of social interconnectedness. You can’t have it both ways.

Mr. Con: You should refer to Legalists, such as Han Fei (韓非), for such accounts of the Three Bonds as the relations of power. Their accounts have been used by past despotic emperors to maximize their selfish interests. I don’t want to deny that the Confucian doctrine of the Three Bonds has been distorted by the Legalist view in Chinese history. For example, some Confucians, including the famous Han Confucian Dong Zhongshu (董仲舒, c.179 – c. 104 BCE) in explicating the Three Bonds, failed to distinguish their accounts clearly from the Legalist accounts. 23 I would argue that the Confucian Three Bonds must be reconstructed

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23 A careful reading of Dong Zhongshu’s work would disclose two different accounts of the Three Bonds: one in terms of a relation of power or authority (like the Legalist accounts), the other in
from a correct Confucian perspective – a perspective that can offer the most complete, least one-sided, and most powerful portrayal of the Confucian reflections on proper ways in which we must pursue human flourishing. The true meaning of the Three Bonds is the characters of the profound reality and the foundational human relations that are not only irreplaceable for individual well-being, but are also intrinsic values to be pursued by individuals. They guide us about which way of life we ought to lead, what kind of persons we ought to become, and what type of humans we ought to procreate. For example, since the husband and wife relation is profoundly real and morally normal, it would be wrong to procreate homosexual, bisexual, or neutrasexual individuals, even if it becomes biotechnologically possible.

Dr. Lib: For my part, I believe that not only are we nested in moral communities – the family being a clear example of such a community – but also I would go so far as to claim that our capacity to say the things we say, and even think the thoughts we think, depends on the existence of networks that bind human beings together into social, moral, and cognitive communities. I too share the worry that excessive individualism threatens social and familial bonds. Now, by admitting all these things, as well as making other concessions in today’s conversation, it seems to me that I have been like the Confucian you described at the start of the conversation, to the extent that I have been flexible and compromising in our discussion. Yet my view has been predicated – and still is predicated – on the basic ideals of liberal individualism. Is it not time for you to follow my lead and practice what you preach by showing some of that local flexibility you mentioned earlier? Why not admit that liberalism can combine to some extent with Confucianism and that we can therefore forge a kind of ethics that blends each with the other, building on the best features of the two philosophies?

Mr. Con: The problem is your attempt is not really an attempt at compromise of any genuine sort. On the contrary, you want to appropriate the fundamental insights of Confucianism – that humans are beings oriented to sustaining and flourishing within a set of bonds expressing social interconnections, virtue and status responsibilities, and ritual propriety. Confucian familism will then become a new cure for the ailments of liberal society. Worse, once you have appropriated these elements from Confucian thinking, you will want to proclaim the pluralistic terms of equal, complementary relations manifesting the proper ways of human existence. Both accounts are based on his doctrine of yin-yang (陰陽). The former account involves unequal rankings of personal dignity in the relations: ruler is the authority of minister, father the authority of son, and husband the authority of wife. But the latter account does not involve such rankings. Rather, ruler and minister, husband and wife, and father and son are metaphysically and morally complementary to each other to form profound social unities and central human relations. See Dong (2002) (especially, pp. 349–352). Mr. Con is arguing that Dong’s latter account is the correct Confucian account of the Three Bonds.

24For a defence of a form of “social holism” see Pettit (1993). Jeff Malpas has argued, following Alasdair MacIntyre, that the unity and content of an individual life presupposes a broader place, including other people and things, within which the narrative of that life is located (see Malpas, 1999, Chapter 3).
tolerance and richness of the liberal tradition in terms of equal individual entitlements, rights or liberties—this is, as I see it, the very purpose of so-called “global ethics” today. But I see this not as a compromise but as a kind of imperialism, admittedly gentle and subtle, because it does not sustain the basic Confucian concerns with virtue, ritual, and family. If the Three Bonds and the social holism they involve are absorbed into the mainstream versions of liberalism, this will not entail a primary focus on the family, or a recognition that the individual is not solely in authority regarding moral values.

Dr. Lib: As I’ve already pointed out, the authoritarianism of the Three Bonds would not fit well with the kind of liberalism I’m espousing, so I have to reject your claim of imperialism! Moreover, many Confucians themselves are more flexible and pluralist than you. You know the works of the contemporary Neo-Confucians. In their arduous intellectual struggles against past feudalism and contemporary Marxism, they have attempted to restructure Confucianism as a moral theory that stands in no contradiction with liberal ethics. Indeed, they have accepted liberal values such as liberty and democracy as the ultimate social ideals that Confucianism must embrace. Think of their dominant view regarding the Confucian thesis of “sageliness inward and kingliness outward” (neishengwaiwang 内聖外王). The “new external kingship” (xinwaiwang 新外王) they took pains to develop from the Confucian internal virtue appears to be nothing but liberal democracy! The issue for them is no longer whether the basic ideals of liberal individualism and democracy are to be resisted. Rather it is how the Confucian tradition could generate and adopt such ideals so as to establish a modern polity and society to which a selection of Confucian moral concerns—such as family values—can still contribute in some way.

Mr. Con: I have a great deal of respect for and sympathy with the Neo-Confucians you mention. They made strenuous efforts to develop the Confucian tradition at a period of the 20th century that was most hostile to Confucianism, especially in mainland China. Unfortunately, they failed to recognize that Confucianism is incommensurable with liberalism: the Confucian way of life would be fundamentally changed if core Confucian commitments (such as ren and li) are recast in terms of liberal concerns (such as liberty and democracy). The essence of the Confucian individual resides in values like family-interdependence, the Three Bonds, rites, and harmony, not values like individual independence, equality, rights, or self-determination. In short, the contemporary Neo-Confucians, in attempting to reconcile the Confucian commitments with the liberal values, have substantially downplayed and even distorted the Confucian conception of rite-based and family-oriented individuals. I hope you will appreciate some recent

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25 See, for example, Peter Singer’s assessment of claims on behalf of family members as being akin to racism, and his recommendation that “we should raise our children to know that others are in much greater need, and to be aware of the possibility helping them, if unnecessary spending [within the family] is reduced” (2002, p. 180).
26 For the most influential Neo-Confucian works in this direction, see Mou (1985), (1987), and (2000).
vigorous criticism of the contemporary Neo-Confucianism: Confucian ethical principles should not be abstractly formulated without reference to substantive Confucian rituals, and Confucian politics cannot be adequately developed without primarily relying on its own resources.27

Dr. Lib: It surprises me that you should defend the Confucian tradition in quite this way. As I see it, your fear is that if we start from the liberal conception of the individual, free and equal to all other individuals, and then add Confucian insights to this picture, we have not really reconciled the two views. Rather, the liberal has simply stolen – as it were – materials from Confucianism to help with some of the problems that liberal societies face nowadays. On the other hand, you would say that if we put the harmonious family and the Three Bonds at the center of our ethical thought, then we see clearly why isolation and anomie unavoidably mark a liberal, individualistic society. If Confucian thinkers, for their part, now modify some of the traditional doctrines – for example, giving children power over their own lives and marriage choices – then this, by parity of reasoning, would not be a reconciliation of Confucianism with liberalism either. Rather this would produce a new position which no longer honours and holds sacrosanct the fundamental Confucian commitments to humanity, family, and harmony. So we seem to have a stand-off, at least as long as we pretend that we are examining the collision of two very different moral worldviews: one which puts the self-determining individual at the center of a morally pluralist universe while the other puts the family at the center of a settled structure of rites and commitments. Have I expressed your fears correctly?

Mr. Con: So it seems. But I think maybe we can be more sophisticated in how we put our positions. For you have admitted that many elements of the Confucian conception of the moral agent in relation to other – situated – agents can be made intelligible within the liberal tradition. And, as you delight to point out, I have been happy to permit what you would call the “rights” of children to resist parental choices on occasion. Yet we must not imagine our two traditions are close enough to converge. We see incommensurable values and commitments in the traditions at the very early stage of their history. For instance, while Aristotle regarded the gentleman as a lover of self – he loves a friend because a friend is another self, aspiring to a life of rational deliberation – Confucius regarded the ideal agent as a lover of relatives, one whose self-cultivation is integrated with concern for others and with fulfilling the duties and rites appropriate to his or her station.28 We know that moral situations are complex, involving many different rites, interests, and conflicts. It is not that Confucians believe that only the family matters. Neither is that liberals do not care about relatives at all. None the less,

27For a critique of contemporary Neo-Confucians in their ignorance of essential Confucian rites, see Chen, Guo, and Zhou (1998). For a vigorous critique of contemporary Neo-Confucianism for its overlooking and/or distorting the essence of political Confucianism, see Jiang (2003).

28For a comparative study of Aristotelian and Confucian views of love and human relations, see Fan (2002). For more discussion of the relation between Aristotelian and Confucian self-cultivation, see Tao and Brennan (2003).
our traditions, in thinking about and treating individual and family, have begun
from distinct points of departure and held different and incompatible values,
emphases, and core commitments.

Dr. Lib: You are right. We have surely reached the point where we can go beyond a
simple reductive position. Neither of us wants to reduce, and simplify, all moral
considerations to ones primarily focused on the individual alone, or on the group
alone. Notice how different theorists, such as Michael Walzer and David Miller,
disagree about matters such as the distribution of goods within a society, or the
degree of concern it is right to have for people in other societies.29 So liberal the-
orists will disagree among themselves just as much as you and I will. Actually, as
a liberal I have no problem in recognizing the situatedness of the individual in a
family and a social context. And you, as a Confucian, are aware that families are
made out of individuals, just as towns and societies are built from families. We
have also made, I think, an important discovery; namely, that each has the capac-
ity to borrow from the other, without having to lose its own identity. During our
conversation, each of us has emphasized some of the bad aspects of the other’s
value orientation, the extreme cases, where – for example – a focus on individu-
alism can lead to selfishness, self-harm, and hooliganism, or too much cultivation
of the familial self can lead to oppression, alienation, and self-sacrifice. And that
means, doesn’t it, that each tradition can act as a mirror to the other, forcing it to
reflect on what is good and bad in the tradition itself?

Mr. Con: Excellent metaphor, my doctor. But each tradition has its own starting
point and its own conception of values. Just as a mirror cannot reflect object in
every dimension, a tradition has no way to comprehend another tradition in all
respects. The significant moral of your mirror metaphor, to me, is that by looking
at another tradition, we can clearly find the irreplaceable identity and character
of our own tradition – as they say, one cannot really understand one’s moth-
erland until one has lived abroad for some time. The attempt to “modernize”
Confucianism by bringing it within the ambit of liberal ethics would be a way
of destroying it. Likewise, if I tried to colonize your liberal view by placing the
family and already situated individuals at the center of the moral canvas, then the
resulting Confucianized system would no longer be liberal. For in that system,
the individual would find him- or herself born into a world and a network of rela-
tionships that already involve constraints on action that are intolerable according
to the liberal view. To be truly Confucian, this new system would recognize the
rational agent as not merely connected, but as “already connected” (J. Chan,
1999; Di Stefano, 1996) – first and foremost in the familist way – so as to mani-
fest a familist intrinsic value that goes beyond the merit of individuals. So, I rest
on my earlier contention: that Confucianism can never accept the cardinal value
of liberty or self-determination as understood in the liberal tradition, while still

29For example, while Walzer thinks we only have minimal responsibilities to people living in
societies different from our own, Miller argues that we have substantial obligations to people in
other societies. Neither holds that it would be morally appropriate to eliminate all economic and
retaining its identity as a distinctive moral tradition that carries both individual and trans-individual values.

**Dr. Lib:** I wonder if you are rather too much “at rest” – anchored to absolute ideals that have little relation to what is actually being practiced in China or elsewhere. You need not be so essentialist in your defence of the Confucian tradition. Let me suggest that all traditions evolve, and that you and I are both participating, right now, in the evolution of our own traditions. Remember what Gadamer said about conversation – that in any exchange the parties do not remain what they were (Gadamer, 1992, p. 378). We did begin our conversation from very different starting points, you from within one configuration of values, me from within another. Yet we communicated from the beginning using terms like “individual”, “parent”, “abuse”, “right” and other terms which, surely, draw their meaning from the relations and contrasts they have with other terms in our language. We were thus like two people trying to communicate with each other across two different dialects, hoping that there was enough overlap between our two worldviews to enable genuine communication to take place. At the same time, each of us has understandings – say of individuality, or of the parent-child relation – which are anchored in our own system of beliefs and values. So we faced a problem about translation...

**Mr. Con:** Aha – forgive my interruption – but I think this is an important point. My worry all along has been about what is in danger of being lost in translation in a cross-tradition dialogue! Would you not agree that we are like the linguist in the situation that Quine describes as “radical translation”? We can have agreement – say in rejecting foot-binding – while yet the very terms in which we express that agreement are not determinately translatable from the one language to the other. This is why you accepted, earlier in our conversation, that terms like “father” or “child”, are more than biological descriptions, yet you also wanted to disagree with me about the roles associated with these terms, roles that are central to the Confucian understanding of what is valuable and important in human life. Put in another way, Confucianism can be thought of as a theory in which a number of connections are made between concepts such as parent, child, husband, wife, ritual, wisdom, filial piety, self-cultivation, self-deception, and so on. Now each of these concepts, or the terms that express them, also occur in your theory. But the connections between them are very different in your theory from the connections between them in mine. A map of the two theories would depict two very different moral landscapes. As Wittgensteinian points out, the meanings of these concepts are determined by a kind of grammar, which covers all the rules regarding how these concepts can appropriately be use in specific contexts. That grammar determines, and is determined by, a shared particular way of

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30 W.V.O. Quine puts the point in terms of a general thesis of indeterminacy of all translation (see Quine, 1960, Chapter 2). Mr. Con is suggesting that agreement in what might be called “moral observation sentences” still leaves alternative translations of moral terms indeterminate.
life.\textsuperscript{31} As a result, our agreement about some statements hides deeper divergence about the configurations of concepts – the webs of beliefs and meanings – from which these statements draw their full sense.

\textit{Dr. Lib:} Of course that is true to a point. But consider also this, my friend. We are communicating, and making sense of what we are saying to each other. So, however much theoretical indeterminacy exists in translation, there seems to be a clear sense in which we are also in agreement on the meanings of the concepts we use during our conversation. And that is part of what I think Gadamer had in mind when saying that conversation means transformation. You said a while ago that liberalism just did not have the resources to deal with the very substance of Confucian disagreements with the liberal position. Yet I think we may both agree, now, that this whole question of resources, of the identity of a tradition, is itself subject to the very indeterminacy you have mentioned. Conversation of a productive kind is like a successful dance, one where the partners do not stand on each others’ toes. Instead, each partner accommodates the movements of the other, so that co-ordination is achieved. To the extent that we can communicate like dancers, then there is a mutuality in our interactions, not a hijacking of the one by the other. There is creativity, not the dominance of one partner by the other.

\textit{Mr. Con:} I see what you are driving at, though I – conservative and inflexible as I appear to you – would be more comfortable with a modification of your analogy. From a Confucian view, a traditional dance is a ritual, which represents that tradition’s understanding of the meaning of life, its relation to the divine as well as the root of its civil conoduct. Two different traditions carry incommensurable rituals. You cannot create a third type of rituals neutrally covering all the important dimensions of the original rituals from both traditions. That “the partners do not stand on each others’ toes” is far from being a sufficient condition for a genuinely successful dance. As an Australian liberal, if you ever joined in an Australian aboriginal dance, I am afraid that your dance couldn’t be successful in any profound, more than entertainment sense, because you do not share their basic beliefs, feelings, or their taken-for-granted commitments and interactions. It seems to me that our cross-tradition conversation can best be likened to a series of musical variations in which each player responds to the other. The possibility of continuing the performance – the conversation – implies that we respond to each other, yet the fact that we can keep our parts – our voices – distinct shows that each of us has our own distinct set of motifs. The Confucian configuration of values brings one voice to the composition, the liberal another. Do you really mean to suggest that even this conversation may have changed what Confucianism means for me, or what liberalism means for you? Is that what you think?

\textit{Dr. Lib:} Something like that may be true. But not all conversations need necessarily involve transformations. Some are just dialogues of the deaf, and many are

\textsuperscript{31}“Essence is expressed by grammar” (Wittgenstein, 1963, para. 371). More specifically, Wittgenstein contends, “[Human beings]... agree in the language they use. That is not agreement in opinions but in form of life” (para. 241).
not as respectful and co-operative as ours has been. Worse, not all dialogues aim to avoid domination, and you are right, in my view, to be suspicious of liberals who claim that their view has the capacity to accommodate all others. Although we can think of each of our traditions in terms of “value configurations,” such a way of speaking may be misleading – suggesting something static and fixed on each side. Yet, as we both know, there are varieties of Confucianism and varieties of liberalism. Each tradition faces challenges not only from outside but also from within. Your own appeal to Quine’s doctrine of indeterminacy now makes me wonder about the extent to which the core values of any moral system are well-defined at all. As Quine once put it, “indeterminacy of translation begins at home” (Quine, 1969, 46). Each conversation of the kind you and I have been having today makes its contribution to the evolution of each tradition, the reinterpretation of its values, even to the definition of questions as yet unsolved. Some of our arguments, maybe, are like this: attempts at reaching understanding about duties, bonds, values – understanding which is still subject to interpretation, revision and negotiation within each of our own traditions. Our previous disagreement about the moral role of fathers was also like this. Perhaps we are both still trying to understand what fatherhood, or parenthood, is – from a moral point of view.

Mr. Con: I think you, in criticizing the “static” or “anchored” view, exaggerate the possibility of indeterminacy of a moral tradition. The development of a moral tradition should not be understood from the indeterminacy of its core values. You may be right that the core values of a moral tradition cannot be well defined even in its native language. Perhaps, due to the particularity of moral practice and the infirmities of the human faculty of articulation, core values can never be fully conceptualized and formulated as general principles. For example, while Confucians agree that the virtue of ren is a core value of the tradition, it is inevitably controversial regarding how to spell it out as a general principle – is it a principle of love, or ritual, or both? Nevertheless, even if such disagreements are always existent even within a moral tradition, the core values of the tradition are still practiced and embodied in the tradition – in the people’s actual way of life, especially in the commonly conducted practices, like the Confucian li. This is to say, there is the determinacy of core values embedded in practice, not in theory. I would stress that it is the priority of praxis over theory that distinguishes one tradition from another. For Confucians, the moral role of fathers, for example, is well determinate in the ritual practices that the fathers must undertake in the community. It cannot, and should not, be transformed in a simple conversation.

Dr. Lib: You are saying that core values are theoretically indeterminate, but practically determinate. From my view, they are also practically indeterminate. You are well aware how Confucians themselves “practice” differently in contemporary

32 See Chapter 11 for an exploration of the Confucian view on the relation between general principles and specific ritual rules.
society. We face the situation of double disagreement – disagreement between Confucians and non-Confucians as well as disagreement between Confucians themselves. Then why should you emphasize only cross-tradition disagreement to the overlook of intra-tradition disagreement? Wouldn’t it be more reasonable and beneficial for a tradition to learn from the challenges of another tradition and attempt to transform, improve, and develop itself, just as it must be doing so from the challenges and problems it faces from within the tradition?

Mr. Con: I don’t deny that traditions learn from each other. But I am not yet convinced by your attempt to persuade me that our conversation may be contributing to the simultaneous reinterpretation of liberalism and Confucianism. What I am prepared to admit, though, is that your liberal critique of the Confucian parental dominance of the child’s marriage does push Confucians like myself to reconsider the meaning of the Confucian virtues like ren (humanity) and he (harmony) and the practice of the Confucian rituals regarding marriage arrangement. When pushed in this way, I do not become a liberal. Rather I stay within my own value configuration, and consider whether that configuration may allow us to come to the conclusion that family determination is more true than parental domination in the Confucian tradition. It is not that we should overlook disagreements inside a tradition. It is rather that individuals within a tradition participate in a series of taken-for-granted patterns of behavior – or procedures, if you wish – to attempt to resolve their disagreements, while cross-tradition procedures for such purposes are dramatically different. The point is that all such reflections as what we are making in this conversation should first be played out through a reconstruction of the core values in a tradition itself, without being forced to dilute or compromise its fundamental moral commitments. It is theoretically groundless and practically imperialist to insist that everyone accept a liberal moral framework by calling it “universal” or “global.”

Dr. Lib: I think that – yet again – we are in condition of partial agreement and partial disagreement. I have no more desire to claim universality for my liberal individualism than you would claim it for the Confucian humanity or righteousness. The Gadamerian conception of conversation certainly tempts me to think that each of us may have been transformed by today’s meeting. Time and reflection will show whether that is so or not. Our conversation today will no doubt lead me to reflect once more upon my own values and how to interpret them in the light of your challenges. To that extent we are both in the same position, I think. Such indeterminacy is not itself a bad thing. Think of it like this, my friend. If enough of these creative conversations occur, who knows what effect they will ultimately have on each of the traditions we see ourselves belonging to? They may well evolve in ways that lead to greater separation, or again they may inspire some new understandings and reinterpretations of a kind that we cannot at present foresee. At least we have found some forms of agreement today.

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33 See Chapter 12 for more detailed analyses of this issue.
Mr. Con: Yes – we agree to disagree on fundamental human values – Confucian familist versus liberal individualist. We also agree that cross-tradition dialogue should not be made by a dominance of one over the other in the name of “global ethics.” Finally, we agree that friendly conversation can stimulate each side to reflect on its own position and develop its argument. These are great achievements. Aren’t they? However, if you are speculating that one day our two different themes may fuse to produce something that is neither one nor the other, neither Confucian nor liberal, I cannot take that as right. The Confucian tradition takes itself following the Mandates of Heaven (天命). The authentic familist way of life through ritual performance and virtue cultivation cannot, and shoult not, be changed. A tradition develops through reconstructing, not changing, its core values. Reconstruction is needed because a tradition often faces incomplete interpretation, misinterpretation, malpractice, or even distortion of its core values, just as what has happened to the Confucian tradition. However, reconstructing is not changing – if the core values of a tradition are changed, the tradition is ended. Yet I agree that there is a possibility for more interaction between the liberal and Confucian perspectives, one that avoids the effective hijacking of one by other. I hope we can meet some other day – after we have both reflected on today’s discussion – to see if we can make more achievements on these matters. It has certainly been an interesting meeting today and I have enjoyed the stimulation of playing my theme against yours and engaging in mutual understanding.

Dr. Lib: I agree, old friend. Even if we have failed to make a synthesis between our two views, we have benefited from the exchange. And it has been a pleasure to find some agreement despite our diversity. Next time, perhaps, you can supply the tea, and I will try to be more successful in my fishing, so that we can enjoy some food together as well.

Mr. Con: And we will surely continue our humane – that is, our musical – endeavours. For remember that the Master said, “If a man be without the virtues proper to humanity, what has he to do with music?” (Analects 3:3).
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