

### Chapter III

## Confucian Ethics and the Limits of Rights Theory

*“if, in serving his parents, he can exert his utmost strength;  
if in serving his prince, he can devote his life;  
if in his intercourse with his friends, his words are sincere –  
although men say that he has not learned, I will certainly say that he has.”*  
-- *The Confucian Analects*

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Confucian ethics focuses on the structure of human relationships, and in particular on the core relationship of the family which provides an idealized model for all other relationships. Social and political philosophy is modeled on a family model and is more hierarchical and paternalistic than contemporary Western approaches. Western political philosophy is distinctive for its individualism and emphasis on basic human rights. As a result, there has been significant Asian opposition to the individualism of Western rights-based approaches to ethics and political philosophy. Indeed, some argue that the “rights pollution” of Western moral political philosophy fundamentally distorts and destroys naturally harmonious human relationships. Confucian ethics is also a natural law tradition that has been significantly influenced by Taoism. Taoism is more metaphysical than Confucian thought but it provides a philosophical background for the more worldly pragmatism of Confucianism.

We will thus begin our discussion with the ancient Taoist elements of Confucianism. We will next examine Confucian ethical principles, including the “five basic relationships” that are at the core of day to day moral life. We will then turn to issues in moral psychology and the contemporary Confucian critique of rights theory. Although the critique of rights theory is controversial, the Confucian emphasis on the centrality of relationships and responsibilities is often missed by more individualistic approaches to human rights. In Chapter V, section 30, we will build on these conceptual issues, apply them to medical ethics, and develop a more relationship-based, and family-centered, model of the physician-patient relationship that better balances individual autonomy with relational responsibilities.

## 10. The Confucian Worldview: The East Asian Paradigm

Confucian philosophy has had a definitive impact on East Asian thought and culture. Indeed it is the common and central element in the otherwise diverse world views of Chinese, Japanese, Korean, Vietnamese, and other East Asian societies. It is not the only influence, of course. Confucianism, Buddhism, and Taoism are the famous “*Three Teachings*” of Chinese thought and similarly Confucianism, Buddhism, and Shinto are the three major influences shaping Japanese culture. Taoism and Shinto are the original spiritual traditions of China and Japan, respectively, and Buddhism, which spread across Asia from India, is a rich and diverse tradition that is also crucial to an understanding of East Asian thought. Confucian ideas, however, have had the greatest impact in shaping the culture, the day to day personal, social, and political lives of the people of East Asia.

Confucius lived from 551-479 BCE, but the “Confucian” principles reflect and unify even older Chinese traditions.<sup>1</sup> The Confucian tradition is aimed primarily at forming and maintaining harmonious social relations, civil order, and good government. The ancient Shang Dynasty (1766-1050 BCE) provided the original basis for the Confucian model of good government and also of state protocols. Indeed Confucius emphasized the importance of the earlier classical traditions, and particularly of classical learning. He championed sustained education with an emphasis on idealized role models as essential to social virtue. The idealized role models are the mythic Sage-Kings: the wise and benevolent rulers of the ancient past.

Confucian discipline, and cultural socialization, focuses on intense and difficult academic study, and this study focuses on idealized models of goodness in government, culture, and society. What really distinguished the later Confucian model of government in particular was its organization into a system of education that was necessary for all public officials. Confucianism became the official State ideology of the Han Dynasty (206 BCE-200 CE) and as early as 165 BCE an official examination system was introduced as a requirement for official government positions. Importantly, the examination system introduced a meritocracy that required years of disciplined academic training and also shared, public standards of intellectual achievement and expertise. The new political system was based on merit rather than “noble birth” and political influence. Without denying the obvious advantages of wealth and influence, the resulting system replaced a more classic system of feudal nobility with elements of a more egalitarian meritocracy, thereby introducing more competence, ideological consistency, and also stability into the overall system of government. In addition as a qualification for office, this system of education aimed at, and institutionalized, a shared conception of virtue into a vast and diverse nation state. Over time the core cultural value of self-development, and in particular intellectual and moral development, and a conception of Nobility rooted in virtues of character came to be shared by the educated and uneducated alike. Confucian thought provided a clear model of virtue and excellence, and a shared communal goal to become Jun-zi (the ideal Confucian person).

An additional pre-Confucian influences is a deep “Natural Law” tradition. In the Shang Dynasty moral and political authority were attributed to “The Lord on High.” This

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<sup>1</sup> For a basic introduction to Confucian thought, see Jennifer Oldstone- Moore, *Confucianism* (Oxford, 2002). Also see *A Source Book in Chinese Philosophy* translated and compiled by Wing-Tsit Chan (Princeton, 1963).

is a model of authority that is derived from personal power. During the Zhou (Chou) Dynasty that followed (1050-256 BCE), however, “The Mandate of Heaven”, as the source of social power and order, replaces talk of the “Lord on High.” The Zhou justified their rise to power by emphasizing the corruption and tyranny of the previous Shang Dynasty, and in the process, popularized the idea that there are moral constraints that limit and authorize the power of the rulers.

The idea of the “Mandate of Heaven,” unlike “The Lord on High,” is a Natural Law conception of moral authority; it includes at its core the idea that virtue and benevolence are prerequisites of political authority and of the right to rule. Natural law standards of right rule become necessary for the right to rule. This introduced the idea of a Moral Law that is above the rulers, and it thus introduced into the ancient Chinese system of government the idea of the “rule of law,” with no person above the law, in place of the “rule by men” through the power of coercive law. In the West, the Catholic Theologian (and Saint) Thomas Aquinas (1225-74 CE) is widely known for his version of Natural Law. Human Law, he argues, if it is to have any true authority, must be subordinate to a higher Moral Law that is revealed by reason to be inherent in the nature of things. We must distinguish the mere counterfeit laws that are simply the coercive commands of a sovereign power from Laws properly so called, that oblige in conscience because they represent the good of the community and are promulgated by a person (or persons) charged with the care of the people. The conception of the moral law as both the basis of and guide to sovereign political authority is the first part of Natural Law theory. The other half is the naturalistic understanding of the higher moral law itself. For Aquinas, the naturalistic understanding of morality is based on Aristotelian philosophy and Catholic theology. The moral content of Confucian Natural Law is rooted in its Taoist elements and equally in its conception of the family as the model for properly ordered human relationships. We will first take a brief look at the Taoist ideas that influenced Confucianism and then, in the next section, we will focus on the Confucian conception of the nature of the family and Five Basic Human Relationships.

Taoism is based on Lao-tzu’s *Tao Te Ching*, the *Classic of the Way and its Power* (written in the 6<sup>th</sup> or 4<sup>th</sup> Century BCE). Lao Tzu is supposed to be a royal archivist disillusioned with court life who set off for the western mountains. He was stopped along the way by a frontier guard and questioned on the reason for his travels. His mystical and highly illusive teaching, the *Tao Te Ching*, is said to be his response. Although the true origin of Taoism is lost to history, it developed along with Confucianism during the “Warring States Period” from 403-221 BCE. The central idea is that of the Tao (or Dao), which means simply The Way. The Tao is the universal all inclusive power that is the source of the eternal cycle of being and non-being, of existence and non-existence, of creation and destruction, of life and death. Living in accordance with The Tao involves recognizing and harmonizing with Nature itself. In practice this is understood as living in harmony and balance with the natural world, and the natural hierarchies, built into all things. The Tao is reflected equally in the physical universe and in the vitality of living organisms. In the Tao, the microcosmic body mirrors the macrocosmic universe.

We will resist an extensive exploration of the metaphysical mysteries of Taoism, but a brief sketch of the basics will be helpful in understanding Confucian naturalism. First, according to Taoism, *Ch’i* (also translated *Qi*) is the essential vital substance of all things. *Chi* is manifest in two complementary forces ***Yin and Yang***:

- *Yin* represents feminine, dark, moist, inert/passive, cold, soft, and cloudy. *Yin* substance is conceived of as heavy and sinking down.
- *Yang* is masculine, bright, dry, growing/active, warm, hard, and clear. *Yang* substance is light and ascends.

All things consist of both yin and yang in various proportions. In the human realm, Taoism emphasizes the equal importance and centrality of the feminine (*Yin*), and the importance of a balance of feminine (*Yin*) and masculine (*Yang*) in all things and thus all people. On the other hand, although it can thus easily embrace the necessity of feminine virtues, it also identifies the feminine with passivity and body, and masculinity with activity and intellect – which provides the classic philosophical basis for gender inequality, East and West.

Although yin and yang constitute the basic binary relation at the bottom of all being and becoming, basic Taoist metaphysics also posits Five Elements (or Five Phases) which are manifestations of *Yin* and *Yang*. The Five Elements are:

- Fire (greater yang),
- Wood (lesser yang),
- Metal (lesser yin),
- Water (greater yin),
- Earth (balanced yin/yang).

Although such a simple explanation is hardly helpful in providing a sense of the explanatory role of these concepts, the basic idea of a balance of complimentary forces, elements, and substances is at the heart of Taoism, Confucianism, and, of course, Chinese (and Tibetan) traditional conceptions of health and disease. On a final note, Taoism also maintains that the person has two types of soul:

- The *hun* soul is made of yang and is identified with the spiritual and intellectual self and ascends at death.
- The *p'o* soul is identified with the bodily animating principle and descends and is absorbed into the ground at death.

This dualist metaphysics of the person, from a philosophical point of view, is especially congenial to the contemporary conception of brain-death as the irreversible loss of the capacity for consciousness. Nonetheless East Asian countries, and especially China, have been the most resistant to the redefinition of death as brain-death. The explanation for the slow acceptance of brain-death is not to be found in the metaphysics of the self; it is rather in the Confucian conception of filial piety discussed below. (For more on Brain-Death, see Chapter VI, “Defining Death Giving Life”)

The reach of Taoism in Chinese society is broad. Taoism emphasizes health through inner balance, and its practice often emphasized the pursuit of longevity (and even a striving for immortality). Taoist concepts serve as the philosophical and conceptual basis of traditional Chinese herbal medicine and acupuncture. (Ironically, the endless experimentation in search of an Elixir of Immortality led to the early Chinese discovery of gunpowder – the great elixir of mortality) Taoism also is the medical-spiritual basis for the wide daily practice of T'ai Chi. It also provides the philosophical basis of the martial arts of Shao-lin and Wu-tang. The art of Feng Shui (“wind and water”), which involves the auspicious location of things (including graves, buildings, cities, even furniture) so that they are in harmony with the environment, is a direct reflection of Taoist ideas of balance and harmony; and so too is the unique and exquisite

nature of Chinese Fine Arts, especially landscape paintings, calligraphy, and poetry. Taoist ideas are the soul of Chinese medicine and deep Taoist sensibilities are reflected in the aesthetics of daily life and high art of the Chinese people.

Taoism however is not just metaphysics and aesthetics, the *Tao Te Ching* was in fact a treatise on government and statesmanship. Recall that Lao Tzu is supposed to be a royal archivist disillusioned with court life. Government and society must also reflect the Tao, or society will not be harmonious and well-ordered. For Taoism the key to good government is taking no action contrary to the deeper nature of things. This is the core Taoist ethical concept of **Wu-wei**, which is a fundamental principle of non-interference with Nature (which is the Tao). Wu-wei involves a principle of engagement with others, and the world, that is essentially receptive rather than confrontational; that is indirect and accommodating; that is essentially flexible and fluid in its responsiveness, rather than fixed, rigid, or uncompromising. The ideal of Wu-wei is one of an effortless, even spontaneous, action that is thoroughly integrated with, and thus makes full use of, the forces already in play. The universe has a deep normative order and so human action is best when it is attuned to this order. Conversely, when one is faced with disorder, the goal is to reinforce the inherent natural tendency towards balance and harmony. An essential part of this flexibility involves accepting and even embracing one's fate or destiny. One should accept success with humility and loss with calm and patience. This however is not understood in a passive fatalistic way. When it comes to the Tao that shapes our lives, we must first accept the limits of the human will and the will's essential connection with the rest of nature. From this perspective, active engagement and willful action must always work with nature to achieve harmony and maintain inner peace; we can not willfully impose order, no matter how hard we try, on an otherwise recalcitrant nature. Asian holistic environmental ethics, of course, reflects these ideas.

The same principles hold for good government. Social harmony cannot simply be imposed on an unruly people through the sheer force of coercive power. The ruler must be in harmony with the society, and thus must rule so as to advance the common good of the people; and this in turn requires being attentive to the interests and concerns of the people. The good of a society, like all things, involves a proper balance of its elements, and this constitutes the inner harmony of the society. The good ruler must first discern the proper balance of elements and then work to encourage and facilitate the natural harmony of society. When so ruled, the nation will flourish and the ruler will have served essentially as a conduit between the People and the Tao – or in Confucian thought between the people and the “Mandate of Heaven.” In the spirit of Taoist Wu-wei, the Confucian **ideal ruler**, the perfect Sage-King, does not need to rely on the force of punitive laws to maintain social order, because the societies institutions have been so well-ordered that the parts are functioning in harmony and the people are themselves virtuous. Indeed, significant disorder and crime are signs of disharmony in society and of a lack of virtue in the people. The problem can only truly be solved by reforming institutions and reshaping the practices of the people; punitive criminal law is often necessary as a check to ever greater disorder, but like the amputation of a limb, it is never truly a cure for what ailed the republic.

By focusing on society and good government, we have moved back into the province and particular focus of Confucian thought. Taoism is universal in scope, deals with the deeper nature of all things, and even the eternal itself, and it is thus deeply

metaphysical, and even mystical. Confucianism is narrowly focused on human social life and good government, and thus it is essentially practical and “this worldly” in its orientation. Although Confucianism is originally embedded in a Taoist metaphysics, Confucian philosophy is itself unconcerned with the abstract essence of things. Yet it does nonetheless presuppose and take for granted in important ways the basic ideas of nature and harmony that are the core of Taoism. We turn now first to the specifics of Confucian Ethics, and then to its broader model of a relational (non-rights based, non-individualistic) ethics.

Let us summarize the points so far:

- Confucian philosophy emphasizes self-development, both (i) academic study that trains the intellect, requires discipline and restraint, and that provides idealized models of virtuous rule (the Sage-Kings which are the wise rulers of the distant past), and (ii) moral development which emphasizes and internalizes the virtues of character, and that is focused on becoming Jun-zi; that is the ideal Confucian person.
- Confucianism was institutionalized through a system of education and examination that was a necessary requirement for public officials. The examination system increased the level of competence of the officials, created a shared national culture, and opened the ranks of governments, in principle and often in practice, to all classes of society. Academic study thus becomes a clear path to social advancements, and it was also valued in-itself as essential to becoming Jun-zi, the ideal person.
- Good government essentially involves promoting and maintaining social harmony. The key to social harmony is the discernment and wisdom of rulers in designing the social institutions that encourage the natural virtues of the people.

It follows, quite naturally, that Confucian morality includes all of the customs, manners, habits, conventions, and indeed all of the ordinary behavior of daily life. In Confucian philosophy this is characterized as the following of *Li*, which is protocol, etiquette, propriety, and ritual. Most simply, *Li* is simply acting in accordance with conventionally recognized right behavior. Following *Li* involves self discipline, inner calm, and an internalization of good habits. Acting rightly is not always easy and indeed can often require discernment. *Li*, of course, also includes the appropriate behaviors of rulers and subjects, and thus the principles of good government and citizenship. An interesting and related Confucian doctrine is the Rectification of Names: “Let the ruler be a ruler, the subject a subject, the father a father, the son a son” and the state will also be well order (Analects XII 11). Persons who manifest *Li* fulfill their role specific responsibilities and display characteristic virtues. A teacher, for example, has a specific role which includes distinct responsibilities and excellences of character, and students also have specific responsibilities and distinct virtues. When students and teachers both realize their natures, when each is what it is, the class is harmonious and successful. We must each be what we are, for society to flourish.

The other Prime Virtue of Confucian thought is *Ren* (or *Jen*), which is benevolence and humaneness. The cultivation of *Ren* is essential to human virtue and excellence. *Ren* and *Li* are intimately connected: *Ren* as humanness and benevolence guide and shape social conventions and the principles of propriety (or *Li*); and, on the other hand, *Ren* as

humanness/benevolence, in one’s dealings with others, is only realized through all of the daily practices and rituals of life. *Li* is blind without *Ren*, and *Ren* is empty without *Li*.

Closely related to *Ren* (humanness/benevolence) is the Confucian principle of Reciprocity. We have already seen that proper social relations involve mutual benefit. Indeed, like all of the major religious traditions, Confucians have a version of the “golden rule:” “What you do not want done to others, do not do to others.” It is interesting that the principle is not focused on one’s self but on what one does not want done to others, and here we perhaps see a deeply relational, non-individualistic element in Confucian thought – treat others, as you would want them to treat others – which we will discuss below.

### 11. The Five Basic Relationships

A final ancient (Shang Dynasty) influence that shapes Confucian thought is ancestor worship. Under Confucian influence primitive rituals of ancestor worship, however, evolve into the central Confucian virtue of **Filial Piety**: respect for ancestors, parents, and elders generally. More specifically, within the context of the broad principles of *Li* and the prime virtue of *Ren*, the ideal Confucian person (Jun-zi) is further defined in terms of idealized social relationships that include a “natural” hierarchy that is part of (all) social relations. At the core of Confucian Ethics are the following Five Relationships:

<b>Five Relationships:</b>	<b>Distinctive Virtues:</b>
○ Father and son (Parent and child)	– affection, filial piety/respect
○ Husband and wife	– separate gendered roles
○ Elder brother (sibling) and younger	– order, propriety
○ Ruler and minister/subject	– righteousness, justice, loyalty
○ Friend and friend	– faithfulness, fidelity

These five basic relationships are the natural social relationships that essentially constitute human social life. The traditional Five Core Relationships are strongly gendered leaving out daughters and sisters, and including only wives. The first relationship can be expanded to Parent-Child and third can be recast as Siblings, but the husband-wife relationship is clearly conceived as defined in gendered terms. Altering it to Spouse-Spouse is thus a substantial change, and thus it will receive a more substantial discussion below. Internal to each relationship are specific roles, responsibilities and virtues that are based directly on the nature of the particular relationship:

- *Parent and Child*: A parent owes a child affection and care, an education that promotes intellectual and moral development; a child owes a parent obedience, respect, and care in old age and after death. The parent-child relationship naturally and spontaneously includes an emotional bond of love. The authority of the parent is rooted in wisdom and aimed at the good of the child. A child’s respect for parents, and family elders, is essential to social order and virtue. Filial Piety is thus the core virtue that defines and shapes most of one’s life. (Filial piety includes respect for one’s ancestors and in classical Confucian thought is clearly related to the more ancient tradition of ancestor worship.)
- *Husband and Wife*: The husband is to lead, provide for, and protect the family; and the wife is to maintain the household and defer to her husband. The family is lead by the father. Gender relations involved ritualized and clearly defined

- female subordination, and this leads to a cultural preference for sons over daughters. The ideal Confucian woman is deferential, silent, and, of course, fertile. Her virtues are inner strength, forbearance, and a calm restraint.
- *Siblings*: The older brother/sibling is to look after the younger and to help the younger to obey and internalize his social roles and to fit well into the overall life of the community. The younger supports, shows deference, and respects the older.
  - *Ruler and Subject*: The ruler is like a benevolent parent and the subjects owe obedience and loyalty. Unlike the parent-child relation, the natural bond is not affection and love; instead, it is a sense of justice and righteousness. Since the Rule of Law cannot be arbitrary or lawless, the subject should be able to respectfully express dissent when appropriate. Ideally the Ruler should command obedience by example rather than by coercion and force. The resort to force always signifies failure. If the state is well ordered and the ruler is upright, obedience is natural. “Lead the people with administrative injunctions and put them in their place with penal law, and they will avoid punishments but will be without a sense of shame. Lead them with excellence and put them in their place through roles and ritual practices, and in addition to developing a sense of shame, they will order themselves harmoniously.” (*Analects* II, 3) Rulers should always pick the most able, virtuous and qualified to succeed them, and not their own eldest sons or family members. In this case, State piety is higher than any filial obligation.
  - *Friendship*: Mutual loyalty aimed at mutual virtue is the essential virtue of friendship. Friendship is based in virtue and contributes to self-development. Friends are akin to brothers: “When at home, you have your brothers; when abroad, you have your friends” “For men with no brothers, there are none who have established themselves who have not had friends to help them.” “True friendship is a plant of slow growth, and must undergo and withstand the shocks of adversity” (*Analects*)

Friendship is the anomaly here. The central place of *filial piety or respect*, honoring and deferring to paternal authority, is the central and distinctive virtue of Confucian thought and, it clearly provides the hierarchical model for the other relationships. In addition to husband and wife, and ruler and subject, other basic social relationships like employer-employee or teacher-student, and, of course, doctor-patient are understood to have a similar hierarchical, paternalistic but benevolent structure. In addition, the deference to elders and superiors is recognized in all relations through a respect for a hierarchy of age and accomplishment that must always be shown respect.

Although the emotional bond and mutual commitment of friendship is essential to it, in later neo-Confucian thought the pure reciprocity and equality of friendship is often minimized, and indeed a hierarchical element is added or emphasized. The neo-Confucian Wang Youliang (1742-1797), for example, in “Correct Friendship” claims that brothers, like a family of geese, naturally fly one behind the other, and so too the same hierarchical harmony should apply in the case of friends. Friends are also thought of as akin to teacher and student: “When three people move together, surely there is one who can teach” (*Analects* 7:22). These points, however, are not inconsistent with an egalitarian conception of friendship: friendships founded on equality and reciprocity are

fully compatible with the fact that friends often learn from each other (as teacher and student) and that it is often best for one friend to lead the others (breaking the way like a geese flying one behind the other). In a friendship of equality it is simply the case that the roles of teacher and student are fluid and changing with circumstance. I may teach you philosophy and you may teach me art history. I may teach you to sail a boat and you may teach me how to fly fish. You may teach me patience and I may teach you courage. Similarly, like geese or bike teams, we may alternate leaders of the flock thereby taking turns breaking the wind for the mutual benefit of all.<sup>2</sup>

Friendship also stands out from the other relationship because it is a voluntary relationship, and unlike filial bonds, particular friendships are not “decreed by heaven.” The relationship of children and parents, and siblings are largely unchosen roles that come with responsibilities. The relationship of husband and wife also seems to have clear elements of a “natural” relationship, and there is a “natural” basis in child bearing and nursing for a division of social roles and responsibilities. The hierarchy of authority and deference, emphasized in traditional conceptions of marriage, however, is not in fact a necessary aspect of even gendered parenting. In addition, particular spouses are no more decreed by heaven than are friendships. Of course traditional arranged marriages are often decreed by parents, and thus are also unchosen relationships with responsibilities. But these conventional social practices, however common, again are not in fact part of the natural order of things. So even if nature is supposed to be normative, these are essentially social relations requiring additional justifications, if they are to be justified at all.

It is worth emphasizing, that the reciprocity and equality of friendship strikes many as an inherent and natural reflection of the nature of the friendship relation. Furthermore, friendship is essential to a flourishing human life; it is a truly deep and essential aspect of human existence. More generally, it is in the nature of things for equals to treat each other with mutual respect, not asymmetrical deference – an attitude of deference to one’s equal is itself unnatural. Friendship, with its robust equality, mutuality, and reciprocity, is a core and natural human relationship that lacks the characteristic paternalistic authority of the parent-child “Paternal Relationship.” For lack of a better term, let us call the core elements of the friendship relation an “Egalitarian Relationship.”

## 12. Progressive Confucianism

Let us grant that paternal authority, paternalist benevolence, and deference, is natural and appropriate to Paternal Relationships. Similarly, equality, reciprocity, and mutual respect are natural and appropriate to Egalitarian Relationships. The question is thus whether paternal model is also appropriate to the Spousal Relationship and the Political Relationship, as assumed in Classical Confucian thought? Or do they instead naturally partake of core elements of the equally natural model of the Egalitarian Relationship, or perhaps some other model particularly suitable to their particular nature? As we shall see, more progressive Confucian thought still focuses on relationships and

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<sup>2</sup> See Norman Kutcher “The Fifth Relationship: Dangerous Friendships in the Confucian Context.” *The American Historical Review* 105.5 (2000); August 9 2005.  
<http://www.historycooperative.org/journals/ahr/105.5/ah001615.html>

responsibilities, but also rejects the Paternalist model of political and domestic relationships.

Why think that the hierarchical Paternal Relationship is the paradigm for all relationships (so that the friendship relation is the anomaly)? Here is the most common argument for the primacy of the parent-child relationship:

“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 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.” (Fan 61)<sup>3</sup>

This argument begins by quite rightly emphasizing the importance of the parent-child relationship to the psychology of moral development. The argument further assumes, however, that if moral development begins with familial love, then this model of love must also be the basis of all social relations, and thus the inequality of status and the hierarchical paternalism definitive of parental love must also characterize all other social relations. But why does this follow? It is clearly the case that moral development begins in the unequal and hierarchical relation of parent and child, but it does not follow that moral development also ends here; and it thus also does not follow that this distinctive primary inequality characterizes ideal social relationships. Indeed, the parent-child hierarchy and inequality is most obviously based on the lack of capacity of infants, children, and adolescents. Similarly, as people develop from children to adults, the relations change to reflect the increased capacity and realization of human potential. Without the actual distinction in realized capacity, and the original need to nurture moral development, the paternalistic hierarchy would not be justified at all. So from the inequality at the start of moral development, a presumption in favor of an inequality of citizenship *status*, between mature and competent adults, simply does not follow.

Progressive Confucian thought thus maintains that the Classical Confucian, and also of course Classical Western thought, that models the ruler-subject relation on the model of hierarchical paternal relationships essentially involves the false infantilization of adult citizens. Of course, in the contexts of widespread illiteracy and lack of widespread access to education that has existed for most of human history, perhaps the assumption of the greater competence and wisdom of the educated ruling classes may have been justified. Indeed the Confucian examination system provided a clear basis for deference based on education, training, and expertise. But in a modern society with a widely literate and comparatively well-informed public, this model distorts reality (and thus is not in harmony with nature of its subjects) by treating adults of roughly equal capacity as unequals.

The model of paternal, hierarchical, political authority is thus often no longer justified, however deeply rooted in ancient traditions it may be. The contrast here importantly is not one of Eastern and Western thought. The West also has a long tradition of political authoritarianism combined with class inequality and aristocracy. The Western philosophical tradition embraced similar ideas with Plato’s idealized Republic of Philosopher-Kings (“Sage Kings”), Aristotelian Aristocracy, and the Divine Right of Kings modeled on paternal authority. Even the West’s more recent recognition

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<sup>3</sup> Ruiping Fan “Rights or Virtues? Towards a Reconstructionist Confucian Bioethics,” p. 61, in *Bioethics: Asian Perspectives*, edited by Ren-Zong Qui (Kluwer, 2004).

of the “Inalienable Rights” long coexisted with slavery, paternalistic colonialism, racial segregation, landed gentry, and the legal subordination of all women. The doctrine of universal human rights marks a break from the classical past and a distinctly modern conception of the nature of citizenship.

When it comes to children, it is indeed fitting that parents and older siblings should look out for the younger. As adults, however, although some of the hierarchy of the original relationship may play an interpersonal role, equality and mutual care and mutual respect will replace the once natural inequality. The Husband-Wife relationship with its traditional gender relations raises more controversial issues. It is important to divide two issues: the gendered division of labor and the hierarchy of authority. Whether the traditional division of labor surrounding childcare and domestic life is originally and naturally rooted in the biology of child birth, and breast-feeding, or arises from socialization and patriarchic power is a controversial issue that we will not pursue here. The inequality of authority, however, is less complicated. The ideology and rationalization of male authority is inevitably linked to empirical beliefs about female inequality, and indeed the infantilization of women, that are now widely recognized in the East and the West to be empirically baseless. Whenever, and wherever, the legal and social barriers to women’s education and self-development are removed, we see clearly that the ideology of inequality is patently false and indeed it was only the elaborate barriers to women’s self-development that limited the potential and possibilities of women. It is clear that past claims of a natural female intellectual inferiority were baseless.

We have seen above, in discussing the friendship relation, that mutual respect and reciprocity is a natural and indeed an ideal relationship between equals. This is true for friendship and it is also true for the relationship of citizenship. Similarly, in the Marriage Relationship, even if there is a natural gendered division of domestic roles, Confucian naturalism simply does not lend any support to patriarchy with its relationship of domination and submission. This is not to deny the strongly gendered conception of marriage that is accepted in traditional Confucian culture. The point is first to emphasize that patriarchy characterizes many traditional cultures, and that it was just as dominant in Western culture. We have not explored the basis of traditional gender inequality. We have instead emphasized that if one rejects arguments based on a supposed natural female inequality, then a more egalitarian conception of the marriage relationship naturally follows. There is nothing inherent in Confucian naturalism with its specific emphasis on roles and relationships that implies that all relationships should be hierarchical. This is a powerful cultural tradition in Confucian societies, but it is not rooted in any deeper philosophical insights of Confucian thought.

To sum up, we have seen that Confucian ethics rightly emphasizes that healthy moral development depends on the family in particular and on relationships in general. Classical Confucian ethics, however, has also embraced hierarchy and inequality, including the subordination of women, and here we have seen that according to Progressive Confucian thought this is mistaken as an ideal of human relationships, and that it is also inconsistent with the naturalistic basis of Confucianism itself.

### 13. Responsibilities and Human Rights

Confucian ethics rightly emphasizes relationships. Contemporary Western ethical theory, on the other hand, is focused on individual rights. Rights theory is intimately linked with individualism and the priority of liberty over other social goods. Indeed, western liberal theories often define themselves in terms of the priority of the right, which means the priority of individual rights, over considerations of value and the overall social good. Without diminishing the importance of claims for the equal dignity and humanity of all persons, the alleged universality (and superiority) of a fundamentally rights-based conception of morality appears to be a contemporary liberal conceit. Human rights claims clearly have their proper place in moral and political philosophy, but it is noteworthy that even Kant, the patron saint of liberal rights theorists, focuses on *our duties* before our rights. For Kant, it is through our sense of duty and moral responsibility that we become conscious of the dignity of humanity.

Confucian ethical theory, with its emphasis on relationships and responsibilities, provides a striking counterpoint to contemporary rights theory. In particular, it helps us see clearly the point and place of rights claims. The five basic relationships clearly involve responsibilities and duties, and we have seen that ideal human relationships are characterized by mutual care and mutual respect. When these relationships are functioning properly the individuals will naturally make claims on each other and have legitimate expectations about how they will be treated, but they need not appeal to individual rights in pressing these moral demands. Indeed, in many normal social contexts, rights claims seem out of place because of their individualistic emphasis.

For example, rights-claims are particularly out of place in certain social contexts like team sports and dance troupes.<sup>4</sup> In these contexts, participants have roles that are typically assigned on the basis of talents and abilities, and they must coordinate their behavior in order to accomplish a shared goal or activity. On a basketball team players have specific roles and tasks, and thus clear grounds for *complaint* when a player does not act appropriately. The point guard may be responsible for getting the ball inside to the center, and the other players may be critical if the guard keeps shooting from outside, but it would be a mistake for the center to object that she is being denied her right to the ball. The failure here does not involve the violation of individual rights. The responsibility is to the team as a whole and the violation involves not doing one's role specific part. Since the failure may also undermine the center's ability to successfully do her task, she indeed may have special motivation to complain. She might also feel slighted and insulted if another player routinely ignores clear opportunities to pass her the ball. But none of these is naturally thought of as a violation of her individual rights. To conceptualize the failure in terms of rights, actually fundamentally mischaracterizes the activity so as to make the individual basic, rather than the team.

Similarly, if a member of a dance troupe forgets his part or otherwise fails to perform adequately, there is grounds for criticism, but it is inappropriate and out of place to apply the language of rights violations. Here too each member has a specialized role in a coordinated and shared activity, and this gives rise to distinct individual responsibilities and legitimate expectations of others. If a dancer is lifted awkwardly or

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<sup>4</sup> Craig Ihara, "Are Individual Rights Necessary?" in *Confucian Ethics*, ed. Shun & Wong (Cambridge, 2004).

if a partner is out of step, then there is grounds for complaint and criticism, but the language of rights would again misconstrue the complaint by treating a shared activity in individualistic terms. In coordinated, shared, communal activities, rights talk is typically out of place. Success in dance and team sports depends on a coordinated effort, and importantly individual success is essentially dependent on the success of the group as a whole.

Another context where we find rules and legitimate expectations but no rights, are in ceremonies and rituals. Here too we find specific rules and distinct roles and responsibilities that give rise to legitimate expectations from others. Indeed etiquette and protocol generally specify symbolic ritualized actions with social meanings that convey respect, and can result in shame, without any thought of rights. Of course here it does make sense to say, for example, that parents have a right to be treated with respect by their children. Yet when children are disrespectful, it would be strange to say that they had violated their parent's rights. They clearly acted wrongly, but the wrong involves a fracture in relationships and a failure of responsibility. So although parents have a "right" (in the sense of a legitimate expectation) to expect better of their children, this epistemic right, this legitimate expectation, is not based on a prior conception of individual human rights that must be respected. It is based instead on the basic (unchosen) relationships and responsibilities that constitute much of human life.

Rights however have their proper place too. If a responsibility-based ethic is embedded in a network of interconnected relationships, and presuppose a common commitment to shared ends, or a shared conception of the good, it in turn will itself be out of place in contexts that markedly lack these characteristics. One clear case, recognized by proponents of Confucian ethics is that "when a community breaks down, when there is no common goal, and when the desire for individual advancement or other forms of competition dominate, then each person will want and need individual safeguards or rights."<sup>5</sup> In addition, within the framework of Confucian ethics, the Natural Law conception of government authority, explained above, implies that civil law is to serve the good of the subjects. Even authoritarian government, which is not government *by* the people, is still *for* the people. This constraint on legitimate power gives rise to an institutional requirement for a *consultation system*; that is some mechanism for the government to hear from the people. And you cannot hear the voice of the people if they cannot speak freely. It should be clear that an open and candid consultation of the people is advanced by freedom of political speech and the right of dissent.<sup>6</sup> Even an authoritarian system of government that is truly dedicated to the people, and not to the mere preservation of its own power, should accept the conservative maxim of political obligation: "criticize freely and openly, but obey promptly."<sup>7</sup>

We have also seen, however, that the strongly paternal authoritarian ethic of Classical Confucian thought should be replaced by the more egalitarian ethic of contemporary political philosophy. In the context of a more egalitarian conception of society, human rights express the equality status and dignity of all persons.

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<sup>5</sup> Ihara p. 27.

<sup>6</sup> For a discussion of freedom of expression in Confucian ethics, see David Wong, "Rights and Community in Confucianism" in *Confucian Ethics*, ed. Shun & Wong (Cambridge, 2004)

<sup>7</sup> Compare Kant's discussion of the right to rebel in *Perpetual Peace and other Essays*.

These basic human rights include:

- rights to basic goods, including adequate nutrition, clothing, shelter, and public health and basic health care services;
- basic security rights and protection from assault and intimidation, including freedom from arbitrary arrest and seizure as defined by the rule of law;
- the right to education and to equal status in the economic and civic life of one's society;
- freedom of conscience, of religion, and of thought;
- freedom of speech and expression, including freedom of association, and assembly;
- rights of political participation, including a system of political representation (usually a system of voting rights), the right to peacefully petition one's government, and the eligibility of all citizens for public offices.

To say that these are rights is simply to say that these are basic goods that society should protect, provide, and secure for its citizens in so far as it is able. The first three classes of basic rights are comparatively uncontroversial and recognized throughout the world.

Freedom of conscience and expression are more controversial, and in many cultures these rights are subject to significant restrictions. Although these freedoms are not universally recognized, they nonetheless have a clear basis and universal justification. Contemporary societies are characterized by deep and unresolvable disagreements about religious, spiritual, and philosophical conceptions of the good. These disagreements are rooted in the fact that modern nations are composed of many minority communities. It is also rooted in the disagreements that are the inevitable result of education and the irrepressible human quality of free thought and reflection. Respect for the equal status and dignity of persons requires that we recognize that reasonable people can disagree on these fundamental issues of conscience. There should be no coercion in matters of religion. Freedom of thought and liberty of conscience thus show respect for the reasonable disagreements that are characteristic of modern pluralistic societies.

The extent and nature of the rights of political participation are even more complex in their specification. John Rawls has argued that non democratic states must at a minimum have a "consultation hierarchy" that provides a reasonable means for the subjects to express their interests to the state.<sup>8</sup> Even a hierarchical paternalistic state, if it is to truly serve the interest of its people, must have a system for hearing the voice of the people. A more classical and hierarchical Confucian society could also be modeled on a bicameral legislature with a House of Representatives, elected by the people, and a "Confucian Senate" based on a modern version of the classical examination system. There are multiple possibilities here for choosing the Senators under such a system. For example, the top performers on the examinations could automatically qualify for the Senate. Alternatively, once the Senate is initially established, the Senators could be chosen from the class of high performers on the examinations through nominations by the Chief Executive and then confirmed by the Senate. Alternatively, a democratic election could determine the Senators from the top qualifiers. These are just a few of the many possible models blending Confucian and democratic systems. Of course, we cannot here work out the difficult details involved in resolving conflicting conceptions of political

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<sup>8</sup> See John Rawls, *The Law of Peoples* (Harvard, 1991).

rights. These details are important matters of concrete political theory, but the basic idea is to respect the equal status and dignity of persons as subjects of political authority and the ideal of Confucian culture.

### **Conclusion**

There are clearly important differences between Western and Confucian approaches to ethics. We have seen, however, that these different ethical systems are engaging the same moral problems. In addition, rather than being irreconcilable systems of ethics, we have seen that Confucianism rightly emphasizes relationships and rights theory emphasizes the equality of persons and principles of mutual respect in relationships. Despite the apparent disagreement, it seems rather that both theories are partially right. Confucian ethics provides a model for relationships based on shared ends and common goals and of the responsibilities that come with our distinct social roles. Rights theory is especially appropriate when, instead of an organic community, we have individuals or social groups with plural and distinct conceptions of the good that need to live and work together. Rights also check power in relationships and express the respect that is due each person. In the chapters that follow, we will look more closely at the Confucian relational approach to ethics as it applies to the patient-physician relationship (sect 30), organ transplant practices (sect 37-40), and hastening death (sect 52).

The analogy of the figure that resembles a duck or a rabbit, depending on how one looks at it, seems appropriate here. Confucian ethics and rights theory focus on a different aspect of a shared social life. It is true that when one focuses on rights alone the nature of social roles and relationships is obscured. It is also the case that when one focuses on organic social relationships the structure of power and inequality is obscured. Basic rights are needed to protect individuals and groups in relationships, but the claim of rights alone clearly misses the nature of responsibilities in core human relationships. Here we see perhaps the most fundamental problem with a simple conception of moral relativism. Despite cultural differences, we all share the same fundamental human condition and our distinct cultures evolve and improve from cross-cultural interaction.

### **Appendix: Confucian Opposition to Human Rights**

Although Progressive Confucian thought is increasingly popular, there is also a lively contemporary Confucian opposition to the idea of universal human rights. Sakamoto, Tao, Hui, and Fan have argued forcefully against “Western” conceptions of human rights.<sup>9</sup> “Rights pollution” they argue has soiled the moral landscape and undermined human relationships. These more abstract and philosophical arguments have taken a central place in Asian Bioethics discourse. There is a counter-current as well, however. Many Asian philosophers maintain, that despite the importance of relationships and responsibilities, rights also have their proper place, especially when individual interests come apart and when power needs to be restrained. By considering and responding to three Confucian objections to rights theory below, we shall see more clearly the proper balance of rights and responsibilities in a more progressive but still distinctly Confucian conception of ethics.

*First objection:* The Confucian philosophers Tao and Fan claim that “the language of rights cannot provide the resources for building mutual concern and cooperative relationships between opposing parties in a situation of competing interests ... 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 different parties involved.” (Fan 58-59 & Tao 15)

We have seen that individual rights are appropriate in contexts where there is *not* a shared end between parties. A respect for rights reflects an acceptance of the equal status of all the participants. A system of rights provides a social guarantee protecting the interest of each person. Rights thus do provide a shared starting point, a background of agreement and point of mutual respect, in a context where there is not a shared conception of the good. Rights also provide clear procedural and substantive constraints on outcomes, and thus they clearly do provide the resources for resolving conflict when there is not an antecedent basis of mutual concern or agreement on outcomes.

Of course, asserting one’s rights often does emphasize the divisions within society and thus doing so can be socially disruptive. Indeed, that is often the point of asserting one’s rights. The appeal to rights is most common and most appropriate when pushing the claims of the oppressed, and of disenfranchised groups, who are resisting institutionalized injustice: women’s rights, the rights of workers, the rights of the Dalits (or “untouchables” in India), equal rights for oppressed racial or ethnic groups, these are all disruptive of “social harmonies” that are built on long standing systems of inequality. When rights are used to undermine inequality and oppression, they are indeed viewed by the powerful as disruptive. So as a progressive tool, they do emphasize the division between the parties that has been previously masked and hidden by a false ideology of natural differences that supported the previously *unequal but harmonious* social roles. It is a mistake, however, to argue that rights undermine cooperative relationships. Rights undermine relationships of oppression and thereby set out the ground rules for truly cooperative relationships of mutual concern and mutual respect.

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<sup>9</sup> See Sakamoto, “The Foundations of a Possible Asian Bioethics;” Tao, “Confucian and Western Notions of Human Nature and Agency;” Hui, “Personhood and Bioethics: Chinese Perspectives;” and Fan “Rights or Virtues? Towards a Reconstructionist Confucian Bioethics” all in *Bioethics: Asian Perspectives*, edited by Ren-Zong Qui (Kluwer, 2004).

*Second Objection:* Tao and Fan also argue that “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.” (Fan 59 & Tao 16)

Even if Confucian models are appropriate for teams, dance troupes, and the loving relationship of parents and children, the paternalistic, communalistic model is especially inappropriate for the relationship between bureaucratic officials and citizens. Indeed, individual rights are especially important in securing cultural and religious identities in the context of pluralistic societies. Freedom of conscience, religious freedom, and freedom of association actually secure and protect one’s social identity from State tyranny and oppression. Rarely are individuals targeted for repression except in association with a group with which they identify. Freedom of conscience protects *minority and group rights*; although it does so through the protection of the particular individuals who collectively constitute the social groups. The primacy of the individual is only truly central in the individual’s right to endorse or reject a social, group, or religious identity. The *right of exit* is really the only right that puts the individuals prior to their social identity. Rights theory does emphasize that mature persons have a fundamental right of individual autonomy and self determination, and thus a right to escape from identities that they find oppressive or inauthentic.

*Third Objection:* Tao and Fan further argue that “a major difficulty of such an emphasis [on individual autonomy and self-determination] lies in its underlying notion that individuals can be abstracted from relationships, social contexts, and even 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.” (Fan 59 & Tao 19)

This recurrent theme is puzzling. Why should a focus on rights deny or minimize the unquestionable importance of community, connectedness, and relationships? The right of autonomy actually emphasizes the centrality of the need for connectedness by freeing individuals from relationships that are oppressive and exploitive. Such relationships do not reflect a shared and mutual interdependence based on mutual care. Furthermore, in so far as rights theory encourages mutual respect and not simply mutual care; it redefines, rather than denies, the importance of relationships and community. It is in large part because our identities are largely constituted by our social relationships that inequality and oppression are internalized in psychologically debilitating ways. The background of individual and group rights (including the right to education and rights of access to the civil society) in fact functions to undermine systematic inequality and social oppression. Equal civil rights clearly express that all subjects are equal citizens of their society, and this is a mark and indication of full inclusion and connection. It is the violation of rights that reinforces separation and isolation. The right of self determination is a right to endorse or reject social identities, and as such it in no ways denies or diminishes the importance of one’s social identity.

As mentioned above, human rights protect communal groups, including religious groups and ethnic minorities. They also reinforce the right to form economic and social associations, like guilds, labor unions, farmers’ cooperatives, which act for a shared set of ends or goals. Human rights provide the essential social guarantees that lead to a vibrant

civil society of distinct social groups. Indeed, here we see that background rights enable the formation of communities that truly reflect shared goals, and thus they do contribute to the building of cooperative relationships and that they are often based on the essentially connected nature of human beings. This is why the most influential Western political philosopher, John Rawls, defends his ideal of social justice as embodying the ideal of a “social union of social unions.” Modern states are made up of many communities and associations. The challenge is thus to describe a basic structure of social, economic, and political institutions that embody fair terms of social cooperation between groups that do not all share a common way of life and conception of the good. The principles of justice, if they are to win the allegiance of all, must provide a framework for a “social union” of groups that do not share the same ethnic and cultural identity, religious beliefs, philosophical worldview, or class identity. All of these smaller social unions must be brought together into a larger shared social union. Since this larger union cannot simply assume a common identity, set of ends, or conception of the good, it must provide social guarantees for the basic rights of its members. It is only the background of civil, economic, and political rights that provides the framework for trust, a shared sense of social justice, for a shared national identity to take root and grow.

In response to Western communitarian critics, pressing the same objections as the Confucian critics, Rawls has emphasized that his liberal egalitarian theory of justice is a “political ideal” and not a comprehensive moral outlook. It is to provide a shared basis for political life for disparate communities (and thus individuals) with distinct comprehensive conceptions of the good. The social circumstances of justice in modern pluralistic societies involve deep and irreconcilable differences in comprehensive religious and moral outlooks, and thus the goal is to construct a shared civil life that takes seriously these differences. Despite deep and unresolvable differences with other groups of people, we share with them the goal of living together in peace and mutual respect. It is this shared commitment by people with otherwise diverse conceptions of the good that is the basis of fundamental rights and liberties, including liberty of conscience, political rights, and of the basic rights of persons to security and welfare.<sup>10</sup>

We have seen that there is no fundamental or deep opposition between a Confucian naturalistic, relationship-centered, ethic and contemporary rights theory. The points of opposition are over the justification of paternalistic and authoritarian conceptions of society, and over the idealization of hierarchical relationships in general. We have suggested instead that a more egalitarian Confucian ethic, modeled on the relationship of friendship, provides the more apt ideal of human relationships. On the other hand, Western rights theorists are well served by recognizing the primacy of relationships and also the importance of the family to the psychology of moral development. Relationships are at the heart of our moral life, and they are constituted by

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<sup>10</sup> Here we also need to avoid a very basic confusion about the motivational postulates defining Rawls famous hypothetical contract device, the Original Position, as opposed to the moral psychology of citizens of a well ordered society. Contrary to the claim of Fan, and others, Rawls has never argued that actual people or ideal citizens are “mutually disinterested” (Fan 64). The Original Position is simply a hypothetical choice situation, an imaginary device, and it is not an idealization of human nature. Rawls also stipulates that we set aside all knowledge of our conception of the good, status in society, age, and natural abilities under a “veil of ignorance.” It is surely clear that Rawls is not suggesting that people do not know these things. So too he is not suggesting that people are or even should be mutually disinterested.

a focus on responsibilities not rights. Basic human rights, however, provide the background conditions limiting and defining the nature of basic social relationships and social roles so that they embody mutual respect and reciprocal benefit. Rights talk also expresses a shared end, a shared commitment to oppose socially reinforced inequality and oppression. Rights define the basic shape of social unions, and also the larger political association that is a “social union of social unions,” but in a just society relationships are indeed the source of the responsibilities that constitute the bulk of our moral lives.