JUSTICE AND HARMONY AS COMPLEMENTARY IDEALS:
RECONCILING THE RIGHT AND THE GOOD
THROUGH COMPARATIVE PHILOSOPHY

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ABSTRACT

In contemporary moral and political philosophy, a wide gulf often divides justice from harmony – a gulf related to the division of the right from the good in moral theory, liberalism from communitarianism in political theory, and neutrality from perfectionism in governance. This dissertation asks if these rifts can be reconciled and if justice and harmony can be made conceptually compatible. This question takes on geopolitical importance since American ideology identifies with justice and Chinese ideology identifies with a harmony. If these two ideals are incompatible, does that mean American and Chinese goals are necessarily in conflict?

To enter into a productive dialog, we first must recognize important differences between western conceptions of justice and harmony and their Chinese counterparts, zhengyi 正義 and he 和. Despite initial philosophical differences, this dissertation identifies alternative conceptions of justice and harmony which can help us put the western and Chinese ideas into a fruitful conversation.

Following an elaboration of the split between the right and the good across various levels of discourse, this dissertation identifies several attempts to situate the right and the good in a complementary relationship rather than in opposition. Paul Ricoeur’s argument incorporating teleology and deontology in pursuit of practical wisdom provides a framework for reconciling justice and harmony. Using this tri-level framework, this dissertation reconstructs the ideals and their interrelationships as 1) fundamental harmony; 2) harmonic justice, heyi 和義; and 3) just harmony, zhenghe 正和. These reformulations honor our emotional experience and our social embeddedness, our critical capacities and expanding awareness, and our ultimate ambition to achieve the most good by the best possible means in particular morally fraught situations.

The dissertation concludes by incorporating these reformulated ideals into the practices of restorative justice, and suggesting that understanding justice and harmony as complementary can help overcome crises caused by one-sided adherence to one or the other.
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CHAPTER 1
JUSTICE AND HARMONY FROM METAPHYSICS TO GEOPOLITICS

“Justice has been done!” – President Barack Obama, 2 May 2011.

“We will build a harmonious society.” – President Hu Jintao, 5 March 2005.

INTRODUCTION

Socrates famously argued that justice was a condition of harmony in which each part of the soul or each group in the city took care of its own business so that the whole soul or society functioned according to a proper order. While Socrates gave a definition of justice directly in terms of harmony, in modern times the concepts of justice and harmony have largely gone their separate ways.¹

In contemporary ethical and political philosophy we find long-standing divisions between theories of the right and the good, between liberalism and communitarianism, and between state neutrality and paternalism. We find an analogous division between fa 法 and li 礼, law and reverent propriety, in the Chinese tradition. Justice and harmony, rather than being closely associated terms which help define each other, have come to occupy opposite sides in these dichotomies.

This split is further manifested in the opposition of East and West. Justice stands as a foundational goal of the United States,² while harmony is a stated aim of the contemporary Chinese government.³ Emerging global dynamics indicate that the engagement between the United States of America and the People’s Republic of China is becoming (or has become) the most significant international relationship on the planet. The size of these countries and the

¹ A notable exception from 500 hundred years ago is in the writings of Jean Bodin, who put forward his own notion of “Harmonic Justice” which combined arithmetic and geometric justice. The influence of this idea was limited by Bodin’s associating it with monarchy and by Hobbes’ subsequent rejection of geometric justice.
² “We the people, in Order to form a more perfect Union, establish Justice...”
³ Hexie shehui 和谐社会, the harmonious society.
magnitude of their economic and military might ensure that they will both play a powerful role in shaping the foreseeable future of geopolitics. Because of their huge influences, questions about their ability to communicate and cooperate in working together to solve global predicaments are among the most pressing questions of our age. To create a peaceful and collaborative international environment, there are significant cultural and philosophical differences with which we must wrestle.

A clear example of the potential conflicts we face because of the different conceptions of moral and political ideals appears in an international incident known as the Hainan Island collision. A congressional report summarizes the incident:

The serious incident of April 2001 between the United States and the People’s Republic of China (PRC) involved a collision over the South China Sea between a U.S. Navy EP-3 reconnaissance plane and a People’s Liberation Army (PLA) naval F-8 fighter that crashed. After surviving the near-fatal accident, the U.S. crew made an emergency landing of their damaged plane onto the PLA’s Lingshui airfield on Hainan Island, and the PRC detained the 24 crew members for 11 days. Washington and Beijing disagreed over the cause of the accident, the release of the crew and plane, whether Washington would “apologize,” and the PRC’s right to inspect the EP-3. In the longer term, the incident has implications for the right of U.S. and other nations’ aircraft to fly in international airspace near China.4

We can see the countries’ different concerns in those last two sentences. China wanted an apology and the U.S. wanted to insist on its legal rights. An apology appeals to relationships. It is an acknowledgement that injuries occurred, that international harmony was disturbed, and that a relationship needs repair. This shows a concern for the consequences of the incident and how the particular relationship can be made whole again. It has nothing to do with universal laws. In contrast, the appeal to the legal right of nations to occupy certain airspaces regardless of the consequences is a deontological appeal. This shows a concern for principles and rights that will hold in all cases. It has nothing to do with the strife between the nations, and nothing to do with the dead pilot, Wang Wei. In other words, China sought the restoration of harmony in this particular situation, while the U.S. sought the affirmation of legal justice as a universal right. The intensity of the disagreement and the tension surrounding this incident show us what can happen when we appeal to different ideals in the geopolitical arena.

Justice and harmony have been two of the most powerful ideas in world politics for millennia. Should the ideals of justice and harmony remain on opposing sides of an unbridgeable divide, the

prospects for genuine global partnership are frightfully diminished. Therefore, understanding these two concepts in relation to each other has philosophical, social, and geopolitical implications. This dissertation asks: Is the pursuit of an American ideal of justice compatible with a Chinese ideal of harmony?

My hypothesis is this: We can indeed overcome the philosophical divides and render these aims compatible, and placing them in the proper relationship will be important for ensuring both domestic progress and international cooperation in the near future. I argue that there can be no genuine harmony in China without justice, no deep achievement of justice in America without a renewed pursuit of harmony, and only by absorbing the best of each other’s ideals can there be genuine global cooperation.

NOT POLITICS AS USUAL

First, we should consider the geopolitical backdrop in which these conceptual issues are becoming ever more relevant.

From the end of the cold war to the present, the United States has enjoyed unchallenged global supremacy in economic and military affairs. After the collapse of the Soviet Union, America’s position was so strong that certain political thinkers thought it prudent rather than hubristic in the late 1990’s to consider plans for a “New American Century.” With huge global increases in market liberalization, deregulation of financial systems, and broad privatization largely driven by the US dominated IMF, World Bank, and United Nations under the banners of democracy and freedom, the global order for the past 25 years can be reasonably described as operating under the “Washington Consensus.”

During that same time frame, a transformation unprecedented in human history has unfolded in China. The economic reforms and opening up to the outside world instituted by Deng Xiaoping have taken the world’s most populous nation from deep poverty and isolation to the second largest economy on earth, and now China is on a trajectory to overtake the American economy

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5 PNAC’s website has gone offline. Descriptions, both sympathetic and hostile, of their ideas are easy to find by searching for Project for a New American Century on the internet.

6 The man who coined this term thinks it is most often misused. I am using it here in the looser, less technical social and political as well as economic sense. See Williamson, “A Short History of the Washington Consensus.”
sometime in the next five to twenty years. In a dozen years between 1999 and 2011 total imports and exports grew tenfold. Estimates are that since 1980 GDP has risen from 200 billion USD to over 6 trillion USD. Urban population has now passed total rural population, a thirty year trend which by raw numbers is the largest population movement in human history. Military spending has more than doubled and likely tripled in the past 15 years. Somewhat less boast-worthy, China is now the global leader in total CO2 pollution emissions. Though in a couple of key measures China is nowhere near America’s league, such as per capita income and total military expenditures, the rise of China has been rapid and dramatic. In so many dimensions China’s wealth and clout have multiplied at a historical pace. The impact that China’s rise will have on the world is hard to over-estimate. With their apparently skillful navigation of the post-2008 global financial woes, China’s geopolitical maneuvers are having and will continue to have an ever greater impact on the broad dynamics of international relations.

During his leadership, Jiang Zhemin described China’s international policy as “to conceal one’s strength and bide one’s time.” During its transformation and rise, China has generally been content to go along with the prevailing international order while developing into a modern state. While it has often lined up against the US in such arenas as the UN Security Council and the G20, it has generally gone about its business like one nation among the many in global affairs and commerce. However, implied in Jiang’s slogan is that there will come a time to step out of the dark and reveal new strength in the light. For much of recorded history, China was the most advanced civilization on earth. Large and influential segments of its citizens and leadership believe that a prestigious place rightfully belongs to the Chinese civilization. After a century of

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7 These kinds of projections are contentious because they depend on different measurements and assumptions about continuing trends. Some even claim that China has already passed the American economy in total output. See, for example, “The New Global Economy,” or “Catching the Eagle,” or Rapoza, “By The Time Obama Leaves Office, U.S. No Longer No. 1.” or “China Set to Overtake U.S. as Biggest Economy in PPP Measure.”

8 Exports from 194 Billion to 1.904 Trillion, Imports from 166 Billion to 1.743 Trillion “China - Exports - Historical Data Graphs per Year.” “China - Imports - Historical Data Graphs per Year.”

9 “China GDP (official Exchange Rate) - Economy.”

10 Givens, “The Greatest Migration.”


12 Boden, Marland, and Andres, Global, Regional, and National Fossil-Fuel CO2 Emissions.

13 America’s per capita GDP outpaces China’s, by 2012 estimates, $49,000 to $8,500 “GDP - per Capita (PPP) - Country Comparison.”, and America’s military expenditures top China’s, approximately $645,700,000,000 to $102,400,000,000 USD in 2012 “U.S. Defense Spending vs. Global Defense Spending.”. You see differences between this estimate and the DoD’s estimate in note 11; there are disagreements on what counts as military spending, and a general lack of transparency.

14 韬光养晦.
humiliation by foreign invaders and raiders, many Chinese are keen to assert their growing power on the global stage and demand a restoration of face in the eyes of the outside world. Former U.S. Ambassador John Huntsman writes, “China is every bit as exceptionalist as America, and has been for centuries. It is a country prepared to make rather than accept new rules, and one that will compete with the United States for Asian and global hegemony.” While the suggestion that the Chinese seek global hegemony is probably hyperbolic, the rapid military buildup, the recent threatening posture in the South China seas, the territorial disputes with Japan, the aggressive pursuit of trade contracts and resources in Africa, South America, and even Canada are perhaps indicators that China won’t be forever content to cede the global order to western domination of governance and finance. Chinese interests and Chinese values will increasingly shape the world, not through global dominance, but by osmosis as Chinese people and Chinese values travel and communicate around the planet. Additionally, China is seeking to expand its influence through soft-power methods, such as proving funding for Chinese language education and promoting Chinese culture. Already, developing nations around the world are looking to China for inspiration and guidance in transforming their economies and societies. There is an increasing effort to understand, define, and replicate the economic and social conditions that could be called a “Beijing Consensus.”

Given the recent trends, we can anticipate that the time will soon come when Chinese political ideals will compete with western political ideals for influence over the direction of international governance. Incorporating Chinese values into the global institutions established by the western powers will be one of the great challenges of the next few decades. This is why understanding the foundations, aims, and compatibility of those ideals is a pressing task.

**DOMESTIC MESSES**

Considering the myriad problems faced domestically by both America and China, some will wonder why either of these countries should be in a position to impose their ideals and institutions on others. Why should anyone want an American-style economy when our housing markets bubble and pop, our banks overextend and implode, and our jobs are exported faster than

15 “How To Play Well With China | CHINA US Focus.”
17 Jeffrey, “The Promotion of Chinese Language Learning and China’s Soft Power.”
18 Ramo, The Beijing Consensus.
our manufactured products? Why would anyone want an American-style politics where billions of dollars are wasted on attack ads and partisan polling, where legislative gridlock prevents common sense solutions from becoming law, and where representatives represent party interests and corporate donors over the public welfare?

Likewise, why would anyone want a Chinese economy in which corruption is a standard line-item cost for every business, where lack of regulation allows poison baby formula and steroid-soaked pork onto the supermarket shelves, and where airports are built in triplicate while indoor plumbing is an unaffordable luxury for millions of citizens? Why would anyone want a Chinese-style politics where critics simply disappear, where personal relations outweigh professional qualifications, and where governors are judged by dollar figures rather than human satisfaction?

There are serious internal problems facing these two major powers. Cleaning up these domestic messes will go a long way toward legitimating the ideals that are supposed to underlie the positive contributions these two countries claim to make. If America expects China to take seriously the issues of justice, it must prove that an emphasis on justice benefits America and Americans. And if China expects the West to take the “Harmonious World” seriously, it must prove the benefits of having a “Harmonious Society.” I will argue that until harmony informs American justice, and until justice constrains the pursuit of Chinese harmony, neither country will be able to demonstrate the true power of its ideals.

CONTRASTING IDEALS

In many ways the traditional Chinese world view differs sharply from the world view that emerges from the traditional western canon. Whether recognized or not, there are fundamental assumptions which form the cultural common sense, and if the differences at this base level are not made clear, miscommunications can all too easily occur.

A.C. Graham offers us the helpful distinction between “Truth-seekers” and “Way-seekers.” This is a way of defining the different goals that underlie most philosophical thinking in the two traditions. Western philosophy for most of its history has been occupied in a search for unchanging principles, for foundational truths, and for absolute certainty. In contrast, Chinese philosophy has generally sought the best way to navigate the ever-changing world. Rather than seeking an unmoved mover or the divine logos, China’s thinkers have been concerned with the cycles and rhythms of human life within the dynamic flux of nature. These different beliefs about
the nature of reality and the purpose of inquiry have led to differences in the traditional Chinese and western world-views. These different world-views generate different ideas about what the ideal human condition looks like and what we can aspire to.

This difference in world views is encapsulated by the different emphasis placed on the concepts of justice and harmony. From Plato onwards, the dominant western narrative has claimed justice as its most exalted moral and political aim. And from Confucius’s time and even earlier, the Chinese have held up harmony as the highest political aim. I will show that these concepts reflect a basic difference in metaphysical understanding, which is manifested in the two cultures’ basic conceptions of selfhood and society.

The traditional western notion of justice has its foundations, like most philosophy, in ancient Greek religion and metaphysics. Plato’s philosophy of the forms (eidos) provided justice with an eternal and universal basis. “Justice Itself” was the unchanging ideal that informed every particular instance of justice on earth. Justice Itself is part of the universe’s logical order. Often, the intellectual search for this ideal and formal justice had priority over the realization of particular instances of justice. Likewise, in the Christian tradition human justice was but a pale reflection of divine justice. Divine justice was eternal, absolute, and universal, and this was the standard for faithful humans to aspire to. These foundations of western philosophy have influenced all later conceptions of justice.

The “West” is of course a short-hand generalization for a many-headed hydra of thinkers and cultures. Notions of justice across the western traditions are multivocal and have a long and contentious history, but I will argue that the mainstream concept of justice that we now encounter is a kind of procedural justice, and is associated with universal rights and enforcement of the law. John Rawls’s influential theory of justice and his later works have claimed justice as a key principle of a deontologically grounded contractualist theory which gives priority to principled ideas of what is right. I take this as the starting ground and the meaning most people intend when they speak of the modern western pursuit of justice. Though it is rare to find full-throated endorsement of Platonic forms or divine law in the modern academic discourse on justice, the idea that there are foundational principles of justice which are rational, absolute, and universal remains in force.

In China notions of harmony arose out of sensual experiences of flavors and sounds. Harmony is part of an aesthetic order, incorporating such notions as beauty, balance, timing, poise, cooperation, sensitivity, etc. Pursuing Chinese harmony is not a matter of rational discernment as
in the Platonic pursuit of the Form of Justice, but rather is a matter of feeling one’s way in particular circumstances and adjusting to the surroundings. Harmony is found in the world through unique configurations of diverse parts encountered in specific contexts. Ideas about cosmological, personal, social, and political harmony spring from a metaphorical extension of our basic sensual lived experiences. As an ideal, harmony is both a condition to be achieved in a consequential or teleological sense, as well as the constitutive process of dynamic harmonization in ever-changing situations.

There is a long and rich Chinese tradition in which harmony is held up as the highest good and the mark of overall success. In modern times, harmony has re-emerged as a socio-political goal with the promulgation of the ideas of “harmonious society and harmonious world.” These slogans recall the traditional concept of harmony, though with a host of new concerns.

While I take justice as the dominant political ideal in most western narratives and harmony as the guiding ideal in the East, there are strong currents in American philosophy advocating harmony, and likewise there are trends that emphasize certain types of justice in Chinese philosophy. The internal debates surrounding these contested minority trends have paved a way for us to enter into a new dialog with what initially seem to be foreign ideas. In exploring these countervailing trends, I hope to find the common understandings that can be used to establish cooperation, support, and a vocabulary for each other’s ideals.

While searching for compatible understandings, I also hope to highlight the ways in which a facile translation of justice into zhengyi 正義 and harmony into he 和, and vice versa, actually increases the dangers of miscommunication and talking past each other. Western harmony and Chinese he demonstrate the differences between the underlying metaphysical presuppositions, differences we must acknowledge if we are to make progress in reconciling our understandings. Chinese zhengyi and western justice certainly have some overlapping meanings, but there are subtle connotations and deep conceptual dissimilarities that must be made explicit for clear communication to occur in translation.

With an analysis of these two concepts in hand – from their metaphysical underpinnings, through historical developments, and to their daily practice – I will show how justice and harmony come to represent the opposition between the right and the good on the level of moral theory, the opposition of liberalism and communitarianism on the level of political systems, and the

19 和谐社会, 和谐世界
opposition of neutrality and perfectionism on the level of governing policies. In China a similar, 
though not identical, split is framed in terms of *li* 礼 and *fa* 法, or reverent propriety and law. 
These binary oppositions are usually seen as the sources of intractable conflict and argument in 
ethical and political philosophy.

Throughout this paper I will suggest that the typical view of these binary terms as opposites rather 
than as correlative pairs in dynamic cooperation has in many ways hindered the achievement of 
justice or harmony, whether in America, China, or elsewhere.

**ESTABLISHING COMPLEMENTARITY**

Recognizing a relationship of complementarity rather than opposition between deontology and 
teleology will give us an entry point to consider the relationship between justice and harmony as 
two integrated and necessary aims of social and political practices. To this end, I adopt from Paul 
Ricoeur’s “little ethics” a three-step framework in which 1) a fundamental teleological conception 
of a good life is 2) constrained by deontological considerations of rightness, and thus 3) informs 
practical decisions in dynamic situations.

Reinforcing this framework, Chung-ying Cheng introduces an explicit East-West comparative 
dimension in analyzing peace and justice along similar lines. Taking Kant and Confucius as his 
exemplars, he formulates the relationship between *ren* 仁 and *yi* 義 to show how the different 
ideals can and must work together. I find another model of integration in the history of *li* 礼 and 
*fa* 法 in the Chinese tradition. Briefly, *li* are the communal manners and social grammar of local 
customs, while *fa* are the impartial laws that apply nation-wide. Typically these two notions are 
held to be in opposition. However, Qu Tongzu in his *Law and Society in Traditional China*, 
describes the “Confucianization of law” by which the *fa* comes to embody the practices of *li*, that 
is, the law is used to realize the community’s traditions. This historical reconciliation between the 
local and the universal shows us another way that we might develop the interdependence of our 
concepts of harmony and justice.

These frameworks allow us to see the ways in which a one-sided pursuit of either justice or 
harmony fails to bring either of them about. For all of America’s talk of justice, injustice is 
rampant. For all of China’s talk of harmony, disharmony abounds. The three-step process will 
make clear some deficiencies that sabotage our best efforts to pursue our ideals.
Working our key concepts into this framework, I will develop the notions of “harmonic justice” and “just harmony” in which (1) a dynamic notion of harmony is (2) filtered through a more capacious notion of justice, so as to (3) guide the design and implementation of practices which offer swift amelioration of blatant injustices, thus paving the way for deeper social harmony. This (1) fundamental harmony is a felt sense of positive relations based in experiences of family and community practices. This (2) harmonic justice springs from a sympathetic rejection of injustice and a process of critically reflecting on relationships and the persistence of undue suffering. This (3) just harmony is the refined social condition in which all parts are afforded just consideration, enabling a higher quality harmony to form. My analysis constitutes a critique of the dominant contemporary models of justice and harmony, yet offers a plausible reformulation that overcomes the strict oppositions that have led to unbridgeable fault lines.

PRACTICE AND APPLICATION

Amartya Sen criticizes Rawlsian scholars for seeking to perfect a theory yet not putting boots on the ground to stop everyday injustice. My ambition is not just to reconcile concepts and imagine a perfect world, but to help us bring about daily practices that contribute to our ideals. Those ideals are not preformed and waiting to be instantiated, but are developed out of our daily practices. Our concept of justice takes shape as we eliminate injustices. Our concept of harmony becomes clearer as we participate in fruitful relationships.

To make these ideas more concrete I point to a model where they can be reconciled in practice. There is a growing movement in the criminal justice system based on practices of restorative justice. This is a fine example of the three step interaction of harmony and justice in action. In restorative justice proceedings, all persons affected by a crime as well as community members come together to search for appropriate sentences and penalties that both promote the overall harmony in the community and offer restitution for injustices suffered. Taking this as a model, I will show how holding our two ideals in a dialectical relation is indeed possible and can contribute to meliorating particular predicaments.

With this restorative model in hand, I suggest that reflecting on the incorporated concerns of justice and harmony gives us a way to understand various crisis points in contemporary American and Chinese societies. Understanding these problems as caused by a one-sided pursuit of either justice or harmony recommends a theoretical solution, which is to supplement one-sided justice
with renewed emphasis on harmony, and to supplement one-sided harmony with renewed emphasis on justice.

Finally, returning to geo-political relationships, if China’s rise is not to create untenable strife in a world structured by western institutions, Chinese values must be smoothly incorporated into existing structures, structures which must transform to accommodate them. The notions of “harmonic justice” and “just harmony” suggest ways in which we can not only reconcile conceptual conflicts, but also define practical geo-political goals.
HARMONY IN THE WEST: THE MAINSTREAM AND ITS DIVERSIONS

As a starting point for understanding a potentially beneficial relationship between justice and harmony and zhengyi 正義 and he 和, in Chapters 2 and 3 I will describe some historical understandings of these four terms. With this broad background in hand, I will then turn to an analysis of the four terms, enumerating where their conceptual compatibilities and conflicts lie. With a grasp of the traditional understandings and the clarity of conceptual analysis, we can then work through the issues that divide them and find where they may intersect.

I begin with an exploration of harmony as broadly understood across the history of western philosophy. To organize the diverse traditions such as we find across the ages and geographic distances of the western canon, I make a somewhat artificial distinction in dividing conceptions of harmony into “mainstream” and “alternate” understandings. This division is a heuristic anticipation that I believe will help us make comparisons with Chinese harmony in later chapters.

Mainstream Harmony in the West

In ancient Greek, *harmonia* (άρμονία) meant the concord of sounds, and came from the root word for joining or fitting together, as in the way a good boat is put together. Joining and fitting suggests multiple parts forming a larger whole, coming together in such a way that shows there is some compatibility among the parts.\(^\text{20}\)

Harmony became a term associated with music, though Greek harmonies were not what we think of as harmony today. Greek harmonies were more about the sequence of notes than the immediate

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\(^\text{20}\) In imagining the planks that form the deck of a boat, we can recognize that the individual planks are only externally related to each other, in that they do not affect or change each other by being joined. The planks remain exactly the same despite their incorporation into a larger structure. As well, the planks may be nearly identical, and in fact a diversity in sizes and shapes may cause more problems than if the shipbuilder had indistinguishable pieces to work with.
blending of multiple notes. Pythagoras first had the insight that harmonious sounds were a matter of numerical ratios. As the story goes, Pythagoras was walking past the blacksmith’s shop when he heard hammers ringing upon anvils, ringing in a most melodious way. He inquired inside and saw that the hammers were of different weights. When the hammers ringing out blows had weights in simple proportions to each other, i.e., 2-to-1, 4-to-3, 5-to-4, their ringing combined to form harmonies. He then figured out that these same ratios produced harmonies when the lengths of the strings on an instrument followed them. Thus Pythagoras was able to account for the sensual experience of felt musical harmony by referring to an underlying mathematical expression.

Once he realized that even music had a numerical and mathematical basis, Pythagoras leapt to the conclusion that all of nature was ruled by an invisible math, a conclusion that persists in the modern field of physics. Aristotle reports that for the Pythagoreans, “all other things seemed in their whole nature to be modeled on numbers, and numbers seemed to be the first things in the whole of nature, they supposed the elements of numbers to be the elements of all things, and the whole heaven to be a musical scale (harmonia) and a number.”21 For Pythagoras and his followers, not only music but all phenomena in the universe are governed by implicit numerical relations. Since numbers more than anything exhibit order and logical relations, so too the universe which they structure is an orderly and logical place. Pythagoras is thought to be the first person to refer to the world as a kosmos, which meant order in ancient Greek. As every number and numerical relation has a set place and a logical relationship, likewise everything in the kosmos is intelligibly arranged. This cosmic arrangement and the relationships within it can be understood as logos. Logos, a word with many meanings (including “word” and “meaning”), can refer to the intelligibility of the relationships between all the things in the kosmos. All things are arranged so that human intelligence can understand them, just as we can understand numbers and mathematical necessity.

This belief that hidden numbers structured the kosmos in a perfect intelligible order gave rise to Pythagoras’ conclusion that the celestial bodies must also move according to numerical principles. As Aristotle noted, “they supposed… the whole heaven to be a musical scale (harmonia) and a number.” The concept of “the harmony of the spheres” was first proposed by Pythagoras. The harmony of the spheres suggests that the celestial bodies travel around the earth in orbits of the same ratios that create musical harmonies, and that as they move they produce divine music, inaudible but mathematically perfect.

The Pythagorean project of personal cultivation was also understood as a process of harmonizing body and soul. Pythagorean disciplines were meant to bring one’s own body and soul into the same kind of alignment that was pre-established by the form of the larger universe. Each person was part of a great hierarchy of harmonies: musical harmony, harmony of body and soul, social harmony, and celestial harmony. On all these levels, Pythagoreans found the ordering principle of harmony throughout the kosmos.

The Pythagorean concept of harmony fits perfectly with a broader picture of a logical order in which fixed ratios and fixed orbits are perfect and unchanging, where whole numbers form an intelligible basis for worldly phenomena, and where the apparent chaos and diversity can be reduced to abstract universal formulas which provide clarity, unity, and order. Harmony is a mathematical form that orders the kosmos according to rational logos.

Plato was a great admirer of Pythagoras. Plato claimed the education of a philosopher must begin with the study of arithmetic and geometry and even harmonics, a la Pythagoras, so that one would begin to turn away from the sensible world and towards pure intelligibility. He has Socrates say to Glaucon, “It’s likely that, as the eyes fasten on astronomical motions, so the ears fasten on harmonic ones, and that the sciences of astronomy and harmonics are closely akin. This is what the Pythagoreans say, Glaucon, and we agree, don’t we?”

While Plato didn’t agree with the Pythagoreans on everything, Plato certainly shared the idea of a logically ordered and intelligible universe, and his theory of the forms sometimes relies on the analogy of pure numbers in relation to a number of particular objects. He explicitly associates harmony with numerical values, saying that we need to, “put an end to the conflicts there are among opposites, making them commensurate and harmonious by imposing a definite number on them.”

While there is no Platonic dialog “On Harmony,” harmony is a common term throughout Plato’s work. It often occurs in the context of discussing music, usually paired up with rhythm, and it is also common in discussions of contradiction or statements that negate each other. When someone’s argument contradicts a previous statement, Socrates says the speaker is not in harmony with himself. When considering an argument, Socrates asks if it harmonizes with what

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22 It is rumored that Pythagoras drowned a follower for proving that there were irrational numbers and that harmonies were not whole number ratios.
23 Plato, Republic 530d. All Plato citations taken from Plato, Complete Works.
24 Philebus 25e.
25 Protagoras 333b; Gorgias 482c.
has already been said. This use extends the concept from musical relationships to more general relationships in which different elements are in agreement, or at least not contradictory.

Plato directly discusses the idea of harmony in an argument about the immortality of the soul in the *Phaedo*, in a very important part of *The Republic*, and in the cosmogony of the *Timaeus*.

In the *Phaedo*, Simmias, a Pythagorean, suggests that perhaps the soul is like a harmony produced by the operations of the body, and when one dies the soul disappears, much like when a lyre is broken the music disappears. However, Socrates argues against this, saying that musical harmony doesn’t exist until it is brought about by the wood, strings, and notes of the lyre. Until the lyre exists, the harmony cannot form. Relying on his argument about recollection (anamnesis) in the soul, Socrates argues that the soul must pre-exist the body, but that harmony cannot preexist the composite elements that create it: “But you must change your opinion… if you still believe that a harmony is a composite thing, and that the soul is a kind of harmony of the elements of the body in a state of tension, for surely you will not allow yourself to maintain that a composite harmony existed before those elements from which it had to be composed.”

Harmony here is a combination of several previously independent elements, for example the wood and the strings and the notes of the lyre. In this example, the elements have external relationships with each other; the body of the lyre can exist without the strings and vice versa, and strings can exist both before and after the notes sound out. Subsequently they can be separated again and the harmony disappears but the parts remain. That they combine to make harmony does not change the elements in any way. It is the whole of harmony that is the novelty in their union, not any change in the parts. Socrates says that a harmony can be more or less harmonious and composed of more or fewer subsets of harmony, while no soul is more or less of a soul. Further, Socrates claims that harmonies can be nested and occur at different levels, and that no harmony can have any share of disharmony within it.

While Socrates says a harmony does not preexist the elements which combine to make it, the theory of forms in the *Phaedo* suggests that this argument must only apply to a particular instance of harmony, and not to the Form of Harmony or Harmony Itself. The absence of a single instance of harmony doesn’t extinguish the very eidos of harmony. In a Platonic sense, Harmony Itself does preexist the combination of the wood and the strings the notes. Li Chenyang notes this: “Plato’s harmony is established on the Forms. The Forms are prior to harmony in the state and the

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26* Cratylus* 415 b; 416b; *Laches* 188d; 193e, *Clinias* 691a.
27* Phaedo* 92b.
In *The Republic* Plato uses the analogy of harmony to characterize the healthy and orderly soul, indeed the “just” soul. Harmony in the soul is in the way the three aspects of the soul – the rational, the willful, and the appetitive aspects – interact when all is in correct order. When the soul is in harmony, the rational part rules and enlists the willful part to control the appetitive part. Harmony here is understood as each part playing its proper role, complementing the others by fulfilling its role in right proportion. Plato does not invoke the numerical ratios of musical harmony, but seems to have extended the concept to mean the relationships between parts in which they work together in an optimal arrangement. We can subsume the harmony of numerical ratios under this definition, in that if the relationship of the musical tones is a perfect ratio, the arrangement of the various elements is in an optimal formation, and we call this harmony. Those ratios express the correct form that tones must take if they are to be in harmony. Likewise, the soul has a correct form, and only when the parts are arranged according to that form is there harmony. The just society is analogously a harmonious society in which different segments of the population fulfill their own roles so that the whole is sustained in proper order. Finally, as the parts of society and the soul represent the different cardinal virtues, wisdom, courage, and temperance, these virtues too must be in harmony such that they work together to constitute the whole virtuous person or state. Thus Plato metaphorically enlarges the concept of harmony to include relationships that match a correct form and are beneficial to the larger whole, but which are not necessarily numerical or musical.

Plato also characterizes the virtue of temperance as resembling harmony:

> Then, you see how right we were to divine that moderation resembles a kind of harmony?

> How so?

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29 Since in *The Republic* justice is defined in terms of harmony, rather than harmony in terms of justice, we will look at this more closely when we consider justice below.
Because, unlike courage and wisdom, each of which resides in one part, making the city brave and wise respectively, moderation spreads throughout the whole. It makes the weakest, the strongest, and those in between—whether in regard to reason, physical strength, numbers, wealth, or anything else—all sing the same song together.\textsuperscript{30}

Here the analogy to harmony is in the multiplicity of elements, connected by a unifying thread. Moderation can apply to a diversity of qualities, as its presence is distributed through the whole system. As well, we see that the musical metaphor is neatly applied to a more abstract collection of classes of people who all “sing the same song.”

One other important place to see Plato’s concept of harmony is in the \textit{Timaeus}. Plato describes the creation of the world soul in which the great creator (Demiurge) makes a mixture of the Same, the Different, and Being. The Demiurge divides this mixture into seven portions, then breaks off some of the seven portions to fill in the intervals between the main portions. Translator Donald J. Zeyl includes a note at this point to reinforce the idea that the number of portions is meant to ensure harmonious proportions. He writes that the parts were divided “in order to establish in the soul, through connected geometrical proportions, the source of the harmonious order it needs to impart to the three-dimensional body of the world, and in particular to the heaven and the bodies it contains.”\textsuperscript{31} These intervals are created according to a strict mathematical formula, which ends up creating intervals whose relative sizes match the ratios of harmonious tones: 3/2, 4/3, and 9/8. These are the intervals into which the seven celestial bodies known by the Greeks were placed. Thus Plato’s cosmology carries forward Pythagoras’ harmony of the spheres, building their perfect ratios into the fabric of the world soul.

Not only is harmony built into the world soul, but “because it shares in reason and harmony, the soul came to be as the most excellent of all the things begotten by him who is himself most excellent of all that is intelligible and eternal.”\textsuperscript{32} Plato’s lionization of reason is well known, but here reason is set right beside harmony and together they make the world soul the most excellent thing. Plato in other places praises harmony for the beneficial effect it has in bringing order and balance to people through musical education, even restoring peace to their souls, but here harmony’s value is even higher, as high as possible really. It is what provides the world soul with its majesty and greatness. While the cardinal human virtues of a human soul are courage, temperance, wisdom, and justice, it appears that the cardinal virtues of the world soul are reason and harmony.

\textsuperscript{30} \textit{Republic} 431e.  
\textsuperscript{31} \textit{Complete Works}, p1239, n.14.  
\textsuperscript{32} \textit{Timaeus} 37a.
Plato expounds andtransmits the idea that harmony is a fundamental feature of the cosmos, a structure built into the eternal world soul. It is a matter of mathematical ratios and proportions that are devised by the all-powerful intellect of the primal creator. Harmony is a product of the Demiurge’s divine reason, a characteristic of *logos*, and an organizing feature of the orderly and beautiful *kosmos*. Harmony demonstrates the perfect order and rational design of the whole universe on the microscopic and macroscopic scales.

A question that remains is whether the arrangement of the harmonious soul involves mutual benefit to each of the parts that comprise the harmony. Regarding the tri-partite soul, there is an argument to be had about whether the appetite is benefitted or harmed by the control rationality exercises over it. Plato does not spell out an answer in his discussion of harmony, so we are left to wonder whether the concept of harmony is such that harmony must be beneficial to all of its composite parts, or whether some parts may be stifled for the sake of the overall harmony.

Recalling from the *Phaedo* that no harmony may have any share of disharmony—“for harmony is surely altogether this very thing, harmony, and would never share in disharmony”33—we might suspect that there is strife between the appetite and the reason which would control it, introducing disharmony into the system and degrading the whole thing. Plato might reply that a properly controlled appetite does not create strife, but submits willingly to the rightful control of reason.

Could this same argument apply to people in the producer classes who have to labor and toil for the harmony of the city? Could they really live in such a system without rebelling? Additionally, we can wonder if the celestial bodies actually benefit each other by their harmonious relationships, or if they merely don’t cause strife with each other as they pursue their own orbits. I think it is still an open question for Plato whether harmony must contain mutually beneficial internal relationships, or if there may be mutual disinterest among the externally related parts of a harmonious system, or even harm to some for the sake of the harmonious whole. Plato certainly advocated (ironically?) silencing some voices and lying to some people to keep them in subservient positions. Whether we can see these measures as compatible with harmony will be part of our later discussion.

Harmony has not been a great part of the philosophical discourse since the ancient Greeks. From the Middle Ages until today the connections between math and harmony have been maintained (many of the great musical compositions of history have demonstrated sophisticated numerical patterns) while developments of the concept of harmony were more practical than philosophical. As a matter of making music, the perfect whole number ratios of Pythagorean harmony gave way

33 *Phaedo* 94a.
to more precise measurements of frequencies in terms of megahertz (Hz). Now tones in “perfect harmony” have ratios that are irrational numbers, and instruments are tuned according to these new scales. And as mentioned before, Greek harmonies were primarily about the sequence of notes, rather than the harmonious chords we now hear. While the practice of making harmony has changed, there has not been much theorizing about the meaning of harmony. Of course, harmony is a common term in our languages and it shows up in many philosophical works. Especially in aesthetics, where it is a quality that contributes to beauty, it is a frequently recognized virtue. And it is not uncommon for philosophers to speak of two or more things or ideas being “in harmony,” as, for example, Hegel writes of “The harmony of morality and Nature.”

And yet, whether in aesthetics or as the word for things that work together or don’t contradict each other, an understanding of harmony is not really the point. It is assumed that we have a working grasp of the concept, and it is employed to describe the real topic under consideration. It is almost exclusively used as ordinary language rather than as the object of conceptual reflection.

The harmony of the spheres continued to be an influential idea in astronomy. Though corrections were made to the orbits of the celestial bodies and new planets were discovered, the Christian idea that the universe was formed according to God’s reason helped maintain the idea that the heavens exhibited a rational order. The planets and stars were thought to move according to a plan, and that plan, it was thought, must be rational. Even afterCopernicus moved earth out from its central place, Johannes Kepler made harmony an important part of his astronomy, even naming his famous book The Harmony of the Worlds (Harmonice mundis). For Kepler, the mathematical order of the celestial bodies was created by God according to His perfect plan so He could enjoy its perfect beauty. Even when the earth was no longer believed to be the center of the universe and the orbits of the celestial bodies no longer perfect circles, there was still a persistent belief that the cosmos maintained a pre-destined order according to the mathematics of harmony. Kepler identified new harmonic ratios in addition to the Pythagorean ratios and he sought these ratios in movements of the planets and in natural phenomena. Kepler wrote: “The chief aim of all investigations of the external world should be to discover the rational order and harmony which has been imposed on it by God and which He revealed to us in the language of mathematics.”

Thus the Pythagorean idea that the cosmos was a harmony expressible in numbers persisted despite the inklings of chaos introduced by more precise observation of astronomical irregularities. Kepler was quite clear that his work carried on the line of Pythagoras and Plato,

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34 Hegel, Phenomenology of Spirit, 367.
35 Kepler, Astronomia Nova de Motibus.
describing his opus as, “a work on the harmony of the heavens, with its savor of Pythagoras and Plato.”

Under the influence of Pythagoras and the Greek astronomy of celestial spheres, throughout the history of astronomy there was an assumption that the cosmos was orderly, perfect, and preordained, and that this arrangement could be sensibly referred to as a harmony.

Gottfried Wilhelm Leibniz was a key early modern theorist of harmony. His idea of the pre-established harmony is well known, and his use of harmony in other contexts was widespread. Pre-established harmony is the contention that all individual units, monads, are driven by internal causation and are not affected by any relationship with forces or objects outside of them, yet they all fit together perfectly because their harmonious cooperation is pre-established by God’s divine plan. The apparent interaction of monads is the result of masterful design in which all events occur simultaneously with the surrounding monads, but do not actually interact. Pre-established harmony is a strategy for overcoming the mind-body problem, such that the mind and the body do not have a causal relation but perform their own actions independently yet with precisely the perfect timing to seem related. It is that perfect timing set up by God which is the pre-established harmony. It makes everything seem to be in contact, when actually they are just in temporal and spatial proximity. This is what makes every monad a mirror for every other monad: it must take all others into account as it pursues its own course because it must fit its actions into the pre-planned actions of everything else. The pre-established harmony is a function of God’s rationality, a perfectly ordered plan cognizable by divine intelligence.

Leibniz used the idea of harmony much more widely than just in the pre-established movement of independent monads. Laurence Carlin has analyzed Leibniz’s understanding of harmony in a paper called, “On the Very Concept of Harmony in Leibniz.” In it he addresses Leibniz’s own various definitions, and then provides an analytic definition deduced from Leibniz’s related ideas. Carlin writes: “We find Leibniz defining harmony as ‘a similitude in dissimilar things’ (similitudo in dissimilibus) and referring to that which is harmonious as ‘uniformly difform’ (harmonicum est uniformiter deffome). Yet he most frequently defined harmony as ‘diversity compensated by identity’ (diversitate identitate compensate) or as ‘unity in variety’ (unitas in varietate).” Leibniz himself expands a bit on these brief definitions, writing,

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38 Ibid., 100.
Harmony is unity in variety. . . . Harmony is when many things are reduced to some unity. For where there is no variety, there is no harmony. Conversely, where variety is without order, without proportion, there is no harmony. Hence, it is evident that the greater the variety and the unity in variety, this variety is harmonious to a higher degree.\(^\text{39}\)

It is clear in all these ways of describing harmony that it is a matter of bringing a multiplicity into a unified and orderly unit. Many are made one orderly whole, and harmony is there. Carlin distils this into the following definition:

\[(\text{H}) \text{ For any set } S \text{ of entities, and some relation } R \text{ which holds among the members of } S, S \text{ is harmonious if and only if:}\]

\[\begin{align*}
(i) & \text{ } S \text{ contains more than one member;} \\
(ii) & \text{ } R \text{ unifies the members of } S \text{ above a certain standard of order.}\text{\textsuperscript{40}}
\end{align*}\]

This seems to be clear enough and incorporates the main features of multiplicity in an orderly unity. The rest of Carlin’s paper is devoted to understanding Leibnizian epistemology and the “standard of order” which qualifies the relations between the various parts. He ends up with a much less elegant but much more specific definition:

\[(\text{H}) \text{ For any set } S \text{ of entities, the concept } C \text{ of } S, \text{ and some relation } R \text{ which holds among the members of } S, S \text{ is harmonious if and only if:}\]

\[\begin{align*}
(i) & \text{ } S \text{ contains more than one member;} \\
(ii) & \text{ } R \text{ is such that:} \\
(a) & \text{ It is not a substantially real entity but exists only in a mind;} \\
(b) & \text{ It is grounded in objective qualities of the members of } S; \\
(c) & \text{ Its reality and truth are grounded in the divine mind;} \\
(d) & \text{ It results from the members of } S \text{ being considered together (being concogitabilitas);} \\
(e) & \text{ It is a way of considering together the members of } S \text{ such that one can resolve the concept } C \text{ of } S \text{ into the concepts of its members;} \\
(iii) & \text{ One can infer, as a result of (e), a range of properties of } S.\text{\textsuperscript{41}}
\end{align*}\]

I will briefly mention the main concerns that bring Carlin to this point. First, for Leibniz order is a matter having distinctive parts and being cognizable. For some elements to be in order it must be

\[\text{\textsuperscript{39}}\text{Leibniz, } Textes Inedits, 12.}\]
\[\text{\textsuperscript{40}}\text{Carlin, “On the Very Concept of Harmony in Leibniz,” 101.}\]
\[\text{\textsuperscript{41}}\text{Ibid., 121.}\]
possible to distinguish the elements from each other. Leibniz writes, “Order is the relation of several things, through which any one of them can be distinguished from any other.”\(^{42}\) While there is a unity in harmonized things, those things must all still remain distinct from each other. They have not lost their identity or been subsumed in the harmony, but continue to be intelligible objects in their own right. The ability to make distinctions is an intellectual ability, a matter of cognition, and so Leibniz further writes that, “Harmony is the perfection of cogitability.”\(^{43}\)

Because harmony is a kind of order, and because order is a matter of making distinctions, and because distinctions are made by cognition, harmony is the arrangement of elements such that they can be maximally understood by rational cognition: hence it is the perfection of cogitability. A harmony has its parts in intelligible order.

For Leibniz, harmony is a product of the mind which understands how objects stand in relationship to each other. It is based on objective facts about the objects, but the relation is produced by the mind and is not in the objects themselves. The mind recognizes the order which the objects exhibit. The objects exhibit order for minds to perceive because they are established by the divine mind of God. We might say that we can understand harmony because God has pre-established the harmony. It is the rational product of the divine mind, and so our human minds can understand it in small pieces through rational cognition.

Carlin’s final points are about Leibniz’s idea of “distinct” versus “confused” cognitions and the role of definitions. Basically, to be distinct a definition must be able to identify properties of the defined object. So, for a harmony to be comprised of distinct objects, the properties of every component object must be identifiable. The unity of the harmony must be able to be resolved into the identifiable components and their individual properties by acts of cognition.

Our takeaway from Leibniz’s concept of harmony is that metaphysical harmony is a rational and intelligible order pre-established by God, and that human awareness of harmony is the product of rational cognition of the order of relationships that obtain between distinctive parts, parts which are united by recognizing their relations. The parts do not affect each other in any way, but are externally related through the order they exhibit. Harmony is transcendently established, rational, orderly, and recognized by the mind.

In the philosophies of Pythagoras, Plato, and Leibniz, we find frameworks of logical order. Their conceptions of harmony, the most influential conceptions in the western tradition, fit well into

\(^{42}\) Leibniz, Die Leibniz-Handschriften Der Königlichen Öffentlichen Bibliothek Zu Hannover, 124.

\(^{43}\) Leibniz, Textes Inédits, 12.
this logical order. Harmony is part of the static foundation of the universe according to a rational and intelligible plan. It exists for all time and has a universal validity, a mathematical form which can be recognized by all rational beings. Harmony is the epitome of clear order, even numerical precision. It is the greatest expression of the universe’s ultimate intelligibility, order, and inspired creation.

An Alternate Harmony in the West

While the dominant model of harmony in western thought is that of a pre-established rational order among externally related parts, there have been exceptions. In ancient times Heraclitus, in what we can gather from his fragments, differed with Pythagoras and Plato about harmony, as he did about many things. The music theorist Aristoxenus argued against Aristotle, claiming that the ear, and not the intellect, understood harmony. In more recent history, Alfred North Whitehead and John Dewey have also advanced philosophies in which a more aesthetically recognized order was central and harmony was an important feature.

Heraclitus is perhaps best known for his idea that the entire universe is in constant flux, and that nothing remains the same forever. In this ceaseless transformation, opposites such as hot and cold, day and night, light and dark, and life and death constantly alternate and give way to each other. In the unending progression there is strife as one state gives way to the next – one moment must die for another to be born. Yet amidst this strife there are moments of harmony, the harmony of a perfect balance between coming and going, between growth and decay. A fragment written by Heraclitus reads, “Opposition brings concord. Out of discord comes the fairest harmony.”44 This harmony is conditioned by the logos, the unseen order behind all phenomena.45 In this context harmony is both an expression of the eternal logos, and of the dynamism of ever-changing phenomena. In one sense, it is a logical harmony since the perfect structure of the cosmos demands a balance between growth and decay. In their eternal unseen foundation, every phenomenon fits into a system that cannot be otherwise. In another sense, it is an aesthetic harmony as every particular situation entertains a sensitive adjustment of contrasting forces. Heraclitus uses the metaphor of the tension of strings pulling against the frame of a bow or a lyre.

45 In fact, Heraclitus refers to this background of strife within the logos as Dike, as justice. Within this just logos, for every death there is a birth, for every pain a pleasure, for every fire extinguished one is kindled. This is a notion of justice in which everything balances out by being in order.
to invoke harmony. “People do not understand how that which is at variance with itself agrees with itself. There is a harmony in the bending back, as in the cases of the bow and the lyre.”

William Harris gives us the image of the bow springing back and reverberating around its center line when the arrow and string are released, or the string of the lyre vibrating back and forth when plucked. Two different and contrasting yet complementary parts are required for harmony. Without the other, neither the string nor the frame could fulfill its function; through their tension they provide each other with a proper place and role in the world, and between them the possibility of harmony comes to exist. What’s more, creating a harmonious tension between the strings and the bent frame is a matter of feeling the springiness of the particular bow and the material tension of those strings. It requires the delicate sensitivity and skill of the craftsman who would shape the lyre to determine where the harmonious balance is. While Pythagorean harmony is a matter of repeatable numerical precision and sequential progress, Heraclitian harmony is a matter of balancing particular complementary elements. As it appears to humans, harmony is a brief feeling of balance between opposing forces or an equilibrium of strife-ridden elements. Yet at another level, beyond the ken of mortals, there is a “hidden harmony” where all the senseless strife in the world actually fits into a perfectly orderly *logos*. Heraclitus’s fragmentary and obscure philosophies seem to encompass both a logical and an aesthetic harmony on different levels.

Aristoxenus is another ancient thinker who put forward a more aesthetic concept of harmony. He was a student of Aristotle’s and was recognized as the great Greek authority on music. He directly challenged the Pythagorean doctrine that harmony was a mathematical concept which could be understood directly by the intellect. Instead, he insisted that harmony was a matter of hearing and could be comprehended by the ears. Translator Henry Macran says that Aristoxenus contributed, “The conception, then, of a science of music which will accept its materials from the ear, and carry its analysis no further than the ear can follow.” Believing that music is as music does, Aristoxenus made a careful empirical study of melody, rhythm, and harmony, defining these as the impressions they made upon the auditory sense. Because in listening to music no precise mathematical calculations were needed, he dismissed the theoretical extravagances of the Pythagoreans and trusted in the abilities of musicians to determine what was or was not in harmony according to the feel of the experience.

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47 Ibid., 54.
48 Aristoxenus and Macran, *The Harmonics of Aristoxenus*, 89.
It would be a long time before another significant theory of harmony in an aesthetic order appeared in western philosophy. Musical theory would seem to be a good place to look for an aesthetic notion of harmony, and harmony was indeed a hugely important part of aesthetic beauty in a musical piece. Nonetheless, the understanding of musical harmony remained highly logical as new means of measurement ensured that harmony was more precisely connected with numerical values. Harmony was subjected to the broadly scientific drive to measure, quantify, and classify all phenomena, that is, it was held to the standards of a logical order.

Alfred North Whitehead in the early 20th century saw that there were two types of order referenced by the idea of harmony. He described these as logical order and aesthetic order.\(^{49}\)

Whitehead expressed a faith that there is an ultimate order to nature, and that having faith in this order means, “to know that detached details, merely in order to be themselves demand that they should find themselves in a system of things: to know that this system includes the harmony of logical rationality.”\(^{50}\) He thought that the laws of science were discovering the necessary order of nature, and that this logical order was a kind of harmony. This notion of harmony is the insistence that anything that exists must be compatible with the laws governing existing things. Any particular occasion must be compatible with the order of nature. “The logical harmony involved in the unity of an occasion is both exclusive and inclusive. The occasion must exclude the inharmonious, and it must include the harmonious.”\(^{51}\) This is a metaphysical notion which insists that any single thing (occasion) must necessarily coexist in the same logical order as other existing things:

This reasonable harmony of being, which is required for the unity of a complex occasion, together with the completeness of realization (in that occasion) of all that is involved in its logical harmony, is the primary article of metaphysical doctrine. It means that for things to be together involves that they are reasonably together.\(^{52}\)

Logical harmony is the necessary compatibility of existing things in their mutual observance of general laws.\(^{53}\)

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\(^{49}\) Following David Hall and Roger Ames, I too have taken these as basic distinctions that characterize what I have called the mainstream and the alternative understanding of western harmony. More on logical and aesthetic order appears in following sections.


\(^{51}\) Ibid., 27.

\(^{52}\) Ibid., 26.

\(^{53}\) Logical compatibility is Cheng’s lowest level of harmony. See section 2.2.
Besides this logical harmony, Whitehead claimed that there was an aesthetic harmony to nature, and it is this type of harmony that occupied most of his attention. He claims with the same faith that there is a “harmony of aesthetic achievement” and also “that, while the harmony of logic lies upon the universe as an iron necessity, the aesthetic harmony stands before it as a living ideal moulding the general flux in its broken progress toward finer, subtler issues.”\(^{54}\) Not only is there a logical level of necessity, there is a subtler harmony of beautiful interactions. This is the kind of harmony I want to focus on here. Whitehead’s conception of aesthetic harmony is a major contribution in bringing harmony back as a philosophical idea. While acknowledging the productive Platonic understanding of harmonies as mathematical notions, he also declares harmony’s ongoing relevance as an antidote to highly abstract speculations, such as those that dominate formal mathematics, in stating: “The Greek doctrine of Composition and Harmony has been vindicated by the progress of thought.”\(^{55}\) The harmony he considers vindicated is that which affirms the interrelatedness of occurring things and events.

We should first look at Whitehead’s understanding of Plato’s harmony. Whitehead lists harmony among the key ideas of Plato’s mature philosophy, and identifies these ideas as history’s most important concepts for thinking about civilization. He describes the Greek concept of harmony as the beautiful proportions in composite things: “beauty belonged to composite things, and … the composition is beautiful when the many components have obtained in some sense their proper proportions. This was the Greek doctrine of Harmony, in respect to which neither Plato nor Aristotle ever waver.”\(^{56}\) Whitehead says the leap of genius made by the Greeks was to connect pleasing proportions with mathematics, which we noted in the above discussions of Pythagoras and Plato. Especially in Plato’s work, the deep connections between harmony and math spring from the same source on a higher level of abstraction: “The notions of Harmony and Mathematical Relations are only special exemplifications of a yet more general philosophic concept, namely, that of the general interconnectedness of things, which transforms the manifoldness of the many into the unity of the one.”\(^{57}\) Whitehead here draws a different lesson than Plato from the association of beautiful proportions and pure math: where Plato concludes that every harmony has a mathematical basis and therefore a rational order, Whitehead thinks that these don’t have a relationship of foundation and manifestation, but rather are two ways of exemplifying a basic ontological interconnectedness. This underlying connection is Plato’s *khora*,

\(^{56}\) Ibid., 148.
\(^{57}\) Ibid., 149.
“The Receptacle” in Whitehead’s terms, which even in the most extreme cases of individuation provides a background which all things share. That background is the faint membrane that ensures abstract unity of all things, so that all seeming multiplicities actually can be seen as whole on a higher plane, e.g. as making up the same one universe.

The internal and constitutive relations of parts to a whole is key to the presence of Whiteheadian aesthetic harmony: “in so far as the qualitative characteristics of the whole and the parts pass into the subjective forms of their prehensions, the whole heightens the feeling of the parts, and the parts heighten the feeling for the whole, and for each other. This is harmony of feeling; and with harmony of feeling its objective content is beautiful.”\(^5^8\) In aesthetic harmony the parts do not remain the same but are transformed by their participation in harmony. The whole qualitatively changes the subjective form of the parts. As opposed to the mere joining of externally related parts which remain the same within the higher order they contribute to, internal relations of parts and wholes means that the presence of other parts and the larger whole actually helps determine what the parts are and what qualities they display.

There are several other ways Whitehead describes this whole-part dynamic. One is as foreground and background. “This is the habitual state of human experience, a vast undiscriminated, or dimly discriminated background, of low intensity, and a clear foreground.”\(^5^9\) The clear foreground is the distinct parts under immediate consideration, while the background is a context which can extend as far as the known universe. Similarly, this can be described as Appearance and Reality. What appears is what a person can focus perception on, while Reality is all that supports the availability of that Appearance. Another way Whitehead describes it in *Process and Reality* is “harmony is this combination of width and narrowness.” Width here is the extent of background data held dimly in the faint penumbral consciousness which contributes to the character of feeling in any specific prehension. Narrowness is the limitation of attention to one factor in the environment, the restriction of consideration to a single discernible entity. This structure could also be called a focus and field model, which is one way David Hall and Roger Ames, with a Whiteheadian inspiration, have described Chinese philosophy. The relationships inherent in these ways of conceptualizing the situation – whole/part, foreground/background, Appearance/Reality, narrowness/width, focus/field – are the major structural constituents of harmony.

\(^{5^8}\) Ibid., 268. This echoes the definition we will encounter in the Chinese conception of harmony.

\(^{5^9}\) Ibid., 260.
Harmony requires diverse parts related to each other and to a larger whole, which is what each of these pairs of terms suggests. The parts must be clear and distinct, strong in their individuality, yet supported by extensive connections. The stronger and more intensely individuated the foreground elements, and the more embracing and significant the connections, the greater the harmony. “Thus, the basis of a strong, penetrating experience of Harmony is an Appearance with a foreground of enduring individuals carrying with them a force of subjective tone, and with a background providing the requisite connection.”

Regarding individual parts Whitehead writes, “For the understanding of Harmony and Discord it is essential to remember that the strength of the experience, in massiveness and in intensity, depends on the substratum of detail being composed of significant individuals. Appearance has been constituted fortunately when it has simplified the welter of occasions, individually insignificant, into a few significant individual things.” By narrowing focus to a few significant individuals, the intensity of the experience is heightened: “Intensity is the reward of narrowness.” This focus on a few clear individuals also makes it possible to see the contrasts between them, and between each of them and the background. This contrast is important to the power of harmony because “Contrast elicits depth.” When we speak of the parts that contribute to harmony, to create the best harmony those parts must contribute intensity, contrast, and depth.

The background which contributes to harmony can be split into two layers: the local background relevant to the occasion, and the deep background which is not immediately relevant, but is nonetheless part of the Reality which conditions the occasion. As Whitehead puts it:

> According to this account, the background in which the environment is set must be discriminated into two layers. There is first the relevant background, providing a massive systematic uniformity. This background is the presupposed world to which all ordinary propositions refer. Secondly, there is the more remote chaotic background which has merely an irrelevant triviality, so far as concerns direct objectification in the actual entity in question. This background represents those entities in the actual world with such perspective remoteness that there is even a chaos of diverse cosmic epochs.

The first layer gives the occasion a general context in which it can make sense. It is uniform because nothing is distinct; everything is flat and even in the hazy background. This background has vagueness, which is an absence of clear distinctions and differences in individual occasions.

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60 Ibid., 281.
61 Ibid., 263.
63 Ibid., 114.
64 Ibid., 112.
At the same time, this indistinct background contributes an emotional tone: “In the background there lie a mass of undistinguished occasions providing the environment with its vague emotional tone.”65 Whatever becomes distinct brings with it the emotional color of all that surrounds it, even when the surroundings go unnoticed in explicit awareness. Beyond this worldly background, the remote chaotic background hardly registers in everyday awareness. For example, the formation of our solar system is a fact of Reality, and every day we walk on planet Earth it affects us. But, because it is so remote and its effects so stable, there is no need to register it consciously. Such distant facts are so disconnected from us that they remain trivial in our experience, and do nothing to organize the events of our lives. Because they stand outside of explicit consciousness, they remain undefined and unorganized, bits of chaotic information that don’t enter into the neat stories we tell about our lives. Nonetheless, this distant background together with the more local background connects the myriad occasions that do come into Awareness. The connectivity of the shared background along with the vibrant presentation of individuals in the foreground is the hallmark of Whiteheadian harmony. As he puts it, “The great Harmony is the harmony of enduring individualities, connected in the unity of a background.”66

As Plato and the Greeks noticed, harmony is strongly associated with beauty. Whitehead agrees, writing, “The perfection of Beauty is defined as the perfection of Harmony; the perfection of Harmony is defined as the perfection of Subjective Form in detail and in final synthesis.”67 In reverse, what we see is that detail and final synthesis (more terms that correlate with the part/whole structure) generate the subjective experience of harmony which is valued as beauty. However, the details do not always accord with a final synthesis, and the parts are not always well connected to the whole. In these cases there is an excess of triviality or vagueness which inhibits beauty. Triviality is when a single entity has slight connection with anything else. When nothing is connected, there is no order and chaos is present. An entity may boldly be its own individuated self, but if it makes no impact on others it has no meaning beyond its own simple existence. It is trivial because, having no relationships through which to affect anything, it is unimportant. Vagueness is when the details are washed out and no single entity stands out from any others. Without any particular entities to appear prominent, there is no contrast. Everything is washed out, mild, vague, and uninteresting. Bold individuals reduce vagueness, provide contrast, and enhance intensity. Extensive connections reduce triviality, enhance coordination, and give

65 Whitehead, Adventures of Ideas, 281.
66 Ibid.
67 Ibid., 253.
rise to deep emotions. Thus harmony at its strongest has a balance of intensity, contrast, massiveness, and coordination.

Strong harmony requires both triviality and vagueness, but they must be in balance. “The right chaos, and the right vagueness, are jointly required for any effective harmony.” Harmony is not easy to achieve, and because “harmony requires the due coordination of chaos, vagueness, narrowness, and width,” where that coordination is absent or disrupted we are liable to end up with a weak form of harmony. “A mere qualitative Harmony within an experience comparatively barren of objects of high significance is a debased type of Harmony, tame, vague, deficient in outline and intention.” Debased harmony can lack tight coordination among its elements, or may have parts that lose their individuality by being incorporated into the whole. Whitehead is adamant that we should not value harmony if it is not a high quality harmony. Intensity and progress are more important than the maintenance of a stale version of harmony. Because the world is dynamic and ever-changing, there is no final harmony where all can finally rest. Harmony is a kind of perfection, but no perfection is final: “there are imperfect occasions better than occasions which realize some given type of perfection. There are in fact higher and lower perfections, and an imperfection aiming at a higher type stands above lower perfections.” Discord, felt as an imperfection, is often painful, but it is also a spur to progress. “Progress is founded upon the experience of discordant feelings. The social value of liberty is in the production of discords. There are perfections beyond perfections.” Instead of the lower perfection of a mediocre harmony, “even Discord may be preferable to a feeling of slow relapse into general anesthesia, or into tameness which is its prelude.” Where harmony has come to rest at a low grade intensity, something has to change and it takes the introduction of discord to shift the dynamics of a weak harmony: “Thus the contribution to Beauty which can be supplied by Discord – in itself destructive and evil – is the positive feeling of a quick shift of aim from the tameness of outworn perfection to some other ideal with its freshness still upon it.” Discord is especially valuable in making individuals stand out, which is a necessary ingredient of bold harmonies. “Again, the value of discord arises from this importance of the forceful individuality of the details. The discord enhances the whole, when it serves to substantiate the individuality of

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69 Ibid.
71 Ibid., 257.
72 Ibid.
73 Ibid., 263.
74 Ibid., 257.
the parts. It brings into emphatic feeling their claim to existence in their own right. It rescues the whole from the tameness of a merely qualitative harmony.” Where harmony is flat and tame, some individuation of the parts is necessary to enliven the whole. Discord between those parts heightens the contrast and supplies the intensity needed, so long as discord doesn’t overwhelm and introduce triviality or full destruction. While discord to the extent of destruction is felt as evil and can interfere with harmony, some degree of discord is necessary in the same sense that harmony requires a degree of both triviality and vagueness. Where harmony is absent or debased by excess triviality in the details or vagueness in the whole, discord and disharmony may ultimately be preferable to tamely middling along.

Whitehead claims that different societies and different historical epochs have emphasized one side of this harmony/discord dichotomy or the other. He writes,

> Strife is at least as real a fact in the world as Harmony. If you side with Francis Bacon and concentrate on the efficient causes, you can interpret large features of the growth of structure in terms of ’strife.’ If, with Plato, you fix attention on the end, rationally worthy, you can interpret large features in terms of ’harmony.’ But until some outline of understanding has been reached which elucidates the interfusion of strife and harmony, the intellectual driving force of successive generations will sway uneasily between the two.

The interfusion of philosophies of strife and philosophies of harmony finally came about when the belief that free competition could lead to social benefits took hold: “The political, liberal faith of the nineteenth century was a compromise between the individualistic, competitive doctrine of strife and the optimistic doctrine of harmony.” This seems to embrace both the pessimistic idea that people are selfish and ever in strife, and the optimistic idea that a better world is possible without radically changing human nature. However, “The early liberal faith that by the decree of benevolent Providence, individualistic competition and industrial activity, would necessarily work together for human happiness had broken down as soon as it was tried.” Despite this failure, Whitehead is still convinced that “civilization is nothing other than the unremitting aim

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75 Ibid., 282.
76 Ibid., 32.
77 Ibid., 33.
78 Ibid., 35.
79 Large segments of the American population and the global business community refuse to acknowledge that this experiment has been tried and has been a tragic failure. Libertarianism is resurgent in our times.
at the major perfections of harmony.” While the perfection of harmony can never be permanent, it is still an aim of civilization:

Decay, Transition, Loss, Displacement belong to the essence of the Creative Advance. The new direction of aim is initiated by Spontaneity, an element of confusion. The enduring Societies with their rise, culmination, and decay, are devices to combine the necessities of Harmony and Freshness. There is a deep underlying Harmony of Nature, as it were a fluid, flexible support; and on its surface the ripples of social efforts, harmonizing and clashing in their aims at ways of satisfaction.

Though strife is necessary for social progress, progress need not to be brought about by instigating competition. Instead it can be inspired by the majesty of art, with the understanding that “art is the education of nature” and “art is civilization.” If good art makes the individual and particular details stand out with distinctive power and intensity, then these strong individuals are the kind of parts needed to form a new or higher harmony. “Thus civilization in its aim at fineness of feeling should so arrange its social relations, and the relations of its members to their natural environment, as to evoke into the experiences of its members Appearances dominated by the harmonies of forceful enduring things. In other words, Art should aim at the production of individuality in the component details of its compositions.” Civilized societies should aim to be great works of art themselves to inspire citizens to experience harmony, helping them realize the value of forceful individuals united by strong connections and solidarity. Turning strife into new and higher harmonies is one of the functions of art, especially where “art is civilization.”

Whitehead makes a last grand claim relating to the concept of harmony. Having addressed four major ideals of civilization – Truth, Beauty, Adventure, and Art – he wants to add one more. He writes, “We are in a way seeking for the notion of a Harmony of Harmonies, which shall bind together the other four qualities…. I choose the term ‘Peace’ for that Harmony of Harmonies which calms destructive turbulence and completes civilization.” While not forgetting the indispensable role of discord, this vision of harmonies in harmony, deep and abiding peace, is one of humanity’s great moral ideals. Whitehead considers it, along with love for individuals, as the highest generality informing all particular moral codes: “it is natural to seek for some highly general principles underlying all such codes. Such generalities should reflect the very notions of the harmonizing of harmonies, and of particular individual actualities as the sole authentic

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80 Whitehead, Adventures of Ideas, 271.
81 Ibid., 286.
82 Ibid., 271.
83 Ibid., 282.
84 Ibid., 285.
reality…. The first means ‘order’, and the second means ‘love.’” He remarks that while order and love are seen as oppositions, they can be reconciled by assessing different types of order according to how they promote love, and assessing individuals on how much they contribute to order. Whitehead thinks we can hold these two ideals, harmonic order and love for individuals, as the most general principles to be instantiated in any moral code.

While Whitehead acknowledges the important contribution the Greeks made in connecting mathematical precision with natural observation, he does not think that the only sense of harmony is a matter of logical order, but maintains that harmony is more relevantly a qualitative feeling and not a deducible truth. He remarks, “Harmony is more than logical compatibility, and Discord is more than logical incompatibility. Logicians are not called in to advise artists.” Instead, harmony registers in the feelings of satisfaction, balance, and beauty. “Undoubtedly, the Harmony is finally a Harmony of qualitative feelings.”

John Dewey also employed the concept of harmony to explain order in human experience. He connects harmony with the ideas of consummation, fulfillment, equilibrium, and delight. Like Whitehead, Dewey understands nature to be a dynamic process. This process is marked by change, and these changes have a certain rhythm. He writes: “All interactions that effect stability and order in the whirling flux of change are rhythms. There is ebb and flow, systole and diastole: ordered change.” In this ordered change, moving parts can crash into each other, but there are moments when everything finally fits together. These are the rhythms of strife and achievement, of crisis and resolution, of tension and release. “Because the actual world, that in which we live, is a combination of movement and culmination, of breaks and re-unions, the experience of a living creature is capable of esthetic quality. The live being recurrently loses and reestablishes equilibrium with his surroundings.” The moment of reestablishing equilibrium is felt as a consummation where the tension of imperfect relationships is finally released. This experience is a pleasure. “In a world made after the pattern of ours, moments of fulfillment punctuate experience with rhythmically enjoyed intervals.” This enjoyable sense of consummation and fulfillment where tension turns to peace is what Dewey refers to by “harmony,” and harmony is among life’s most powerful experiences: “The moment of passage from disturbance into harmony

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85 Ibid., 292.
86 Ibid., 261.
87 Ibid., 281.
88 Dewey, Art as Experience, 16.
89 Ibid., 17.
90 Ibid.
The intense feeling is satisfaction at the way everything has come together to fit without remainder. Nothing is out of place, nothing is absent, and nothing is extraneous. This mutual fulfillment of all parts together is harmony, and it punctuates the aesthetic experience of the rhythmic ebb and flow of experience.

Achieving inner harmony is only accomplished by dealing with the external world. “Inner harmony is attained only when, by some means, terms are made with the environment.” In fact, the distinction between internal and external is blurred in Dewey’s philosophy, as neither can be isolated from the other or considered in abstraction from the shared context in which they mutually influence one another. Without the individual accommodating himself to the environment, the individual cannot be in harmony because the environment cannot be disregarded as a constitutive factor in the individual’s experience. As well, though external factors can’t be ignored, they don’t determine the order of a harmonious system: “Order is not imposed from without but is made out of the relations of harmonious interactions that energies bear to one another.” Harmonious order is not imposed externally, nor does it conform to a predetermined pattern. It is formed out of the constitutive relations that comprise particular individuals as those individuals fit into the wider environment. Regarding the perception of a painting, Dewey says, “Hence lines and color crystallize in this harmony rather than in that. This especial mode of harmonization is not the exclusive result of the lines and colors. It is a function of what is in the actual scene in its interaction with what the beholder brings with him.” The scene in combination with the beholder results in an experience of harmony, which would not be present were the painting or the perceiver considered in isolation.

As well, in discussing the formation of “an experience” as differentiated from continuous experiencing, Dewey says, “In such experiences, every successive part flows freely, without seam and without unfilled blanks, into what ensues. At the same time there is no sacrifice of the self-identity of the parts.” Here we have a consummatory experience in which all the elements comprising the experience are seamlessly united, yet do not lose their individuality. This fits very well with descriptions of harmony we’ve seen in Whitehead and will see in Confucian philosophy. This is not an intellectual understanding of harmony, but a feeling: “interaction of the two constitutes the total experience that is had, and the close which completes it is the institution of a

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91 Ibid.
92 Ibid.
93 Ibid., 14.
94 Ibid., 87.
95 Ibid., 36.
felt harmony." Further, Dewey speaks of beauty in nature and art as "unity in variety," which is precisely Leibniz's definition of harmony as we discussed above. However, for Leibniz, harmony was order understood according to standards of reason. Dewey speaks of unity in variety as a matter of beauty, and considers harmony as part of the aesthetic experience of humans living in a dynamic world. In one discussion, though not specifically referencing Leibniz, it seems Dewey must have him in mind when he so flatly contradicts a key Leibnizian doctrine in saying: "There is no preestablished harmony that guarantees that what satisfies the need of one set of organs will fulfill that of all the other structures and needs that have a part in the experience, so as to bring it to completion as a complex of all elements." Preestablished harmony, in the Leibnizian mode, is the rational order established by God, but Dewey in rejecting this is addressing the fit of particular objects with their surroundings. This is a standard of aesthetic beauty rather than rational order. For Dewey, not only artistic beauty, but moral behavior is also a matter of aesthetic quality: "The Greek identification of good conduct with conduct having proportion, grace, and harmony, the kalon-agathon, is a more obvious example of distinctive esthetic quality in moral action." He explicitly contrasts this with a morality of duty founded on rational standards: "One great defect in what passes as morality is its anesthetic quality. Instead of exemplifying wholehearted action, it takes the form of grudging piecemeal concessions to the demands of duty." Harmony, whether in art, morals, or any other experience (since he argues that all experience is art) is not determined by meeting rational standards, but by the aesthetic feeling that oneself and the environs have come to a moment of fulfillment and are in perfect accord.

When a person and his or her environment come into accord, Dewey distinguishes this deep satisfaction from simple and fleeting pleasure: "Pleasures may come about through chance contact and stimulation; such pleasures are not to be despised in a world full of pain. But happiness and delight are a different sort of thing. They come to be through a fulfillment that reaches to the depths of our being — one that is an adjustment of our whole being with the conditions of existence." This coordination between one’s depths and the surrounding conditions creates a tremendous feeling that everything is in place and connected for the benefit of all. This is an experience of satisfaction that burns deep into the memory, an unforgettable

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96 Ibid., 44.
97 Ibid., 161.
96 Ibid., 115.
99 Ibid., 39.
100 Ibid.
101 Ibid., 17.
sense of peace: “But, through the phases of perturbation and conflict, there abides the deep-seated memory of an underlying harmony, the sense of which haunts life like the sense of being founded on a rock.” 102 Though the rhythms of life bring struggle and stress, the deep-seated memory of harmony remains in our hearts and stands as an ideal, founded in experience, which inspires us to continually seek to reclaim it.

Dewey speaks specifically of harmony in the context of an individual’s aesthetic experience, but his social philosophy describes ideal communities in terms very reminiscent of harmony. He writes, “Society is individuals-in-their relations. . . . Individuals develop not in a remote entity called ‘society’ at large but in connection with one another.” 103 Here we see distinct individuals, parts, connected to each other to form society, the larger whole. Dewey insists that society does not stand apart in abstraction from people, but is constituted by the relationships of the individuals. As well, these relationships are mutually beneficial for the individuals and for the larger society: “Society means association; coming together in joint intercourse and action for the better realization of any form of experience which is augmented and confirmed by being shared.” 104 Individuals connected in relationships associating to better realize a shared society – Dewey’s idea of a community is very much like familiar definitions of harmony which emphasize mutually beneficial parts connected in the larger whole. Sor-hoon Tan has directly connected Dewey’s idea of community with a Confucian notion of a harmonious community. He writes, “I shall try to show that, though harmony in Western thought and he in Chinese thought may mean different things, there is enough resonance in the way Dewey understands harmony and some Confucian understandings of he in the context of community for us to bring the two together.” 105

Tan reiterates what we saw above, that harmony is present in those moments of consummation in the rhythms of tension and release: “As consummation, community is achieved when there is a quality of harmony in human relationships.” 106 Beyond this she concludes that Deweyan harmony requires diversity and dynamism, that is, a diversity of parts interacting over time. Harmony cannot remain static nor can it simply be a combination of similar elements: “For Dewey, harmony is not uniformity, or homogeneity, or instantiation of universals in particulars….Harmony is dynamic instead of static; it is ordered change….In its rhythmic character, harmony requires not only diversity and contrast but also tension and resistance.” 107

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102 Ibid.
105 Tan, Confucian Democracy, 75.
106 Ibid.
107 Ibid., 75–77.
Social harmony requires diversity in tension as people come together to solve social problems. Working through those problems is the preparatory phase, while the successful implementation is the consummatory phase of harmonious community. This suggests that harmonious communities are not constantly harmonious, but they have structures and procedures that consistently promote repeated realizations of harmony. Tan identifies some of these important features, including communication, shared meaning, inclusiveness, and growth:

In harmony, diverse constituents are ordered in a focus achieved through previously developed organized responses....Social harmony is the quality that pervades a social situation when shared meanings and values achieved through communication and participation focus the associative experience with sufficient intensity. In social harmony, each participant contributes to the preparatory phase and enjoys the consummatory phase to the best of her abilities.... Social harmony in Dewey’s philosophy must contribute to personal-communal growth if community is to be a regulative ideal.\(^{108}\)

Communities which tend towards harmony maintain these kinds of structures. As well, communities that experience harmony are more likely to produce constituent members who are better able to realize future harmony. This is because, “The experience of social harmony leaves behind a deposit in the character of its participants that disposes them to create harmony in future situations.”\(^{109}\)

Because Dewey’s conception of aesthetics extends to all areas of human experience, we find in Dewey’s aesthetics a notion of harmony that offers an ideal of moral behavior and of democratic community. Those beautiful moments when the rhythms of life bring the diverse elements of experience into a harmony yield such a satisfying feeling that they establish an ideal in the minds and hearts of all who know them. Getting back to that harmonious experience is a driving motivation that inspires individuals to organize their environments, and inspires communities to work towards peace. The aesthetic order in which a consummatory moment beautifully integrates dynamic individuals for mutual enhancement is a Deweyian harmony.

**Conclusion**

As we have seen, harmony is a widely employed concept across the history of western thought. However, direct reflection on the concept itself has been relatively limited. Whitehead’s analysis helps us see that those philosophers who made harmony an important part of their work reveal

\(^{108}\) Ibid., 77–78.
\(^{109}\) Ibid., 78.
two basic philosophical orientations in which harmony figures: logical order and aesthetic order. These appear to generally characterize the mainstream and alternative conceptions of harmony, respectively. Understanding the alternatives provided by these two orientations will help us to find a vocabulary with which to engage the Chinese conception of harmony, to which we now turn.

HARMONY IN CHINA: FROM GOOD SOUP TO SOCIAL UTOPIA

Having considered the concept of harmony as enumerated by thinkers from the western canon, we turn now to the Chinese concept of \( \text{he} \) (和), typically translated as harmony. The Chinese concept of harmony is an ancient notion that encompasses people’s most primitive experiences and their highest ideals. Li Chenyang notes, “\( \text{He} \) (harmony, harmonization) is probably the most cherished ideal in Chinese culture.”

In China the early associations we have of \( \text{he} \) are with food and music. From there it was observed in the cosmos, developed in oneself, and pursued in society. Ultimately, in its most comprehensive expression the Chinese ideal is a harmony of harmonies as the harmonious cosmos, harmonious individual, and harmonious society form a grand harmonic unity.

The Basis of the Chinese Concept of Harmony

Consider that incredible gustatory sensation when you first bite into a steaming slice of fresh-baked pumpkin pie. At first, the overwhelming deliciousness of pie inundates the mouth, making you swoon with pleasure. Yummmmm! But then, if you care to reflect a moment before bolting down the next bite (and the next and the next), you can notice that the tongue, that lucky little muscle, is awash in the surging awareness of cinnamon, sugar, nutmeg, cloves, and rich creamy buttery pumpkin. If you are especially blessed, the soft custard will be complemented by a crisp graham cracker crust, which melts into the pie as you chew. The honey is enhanced by the pinch of salt; the cinnamon twang is calmed by the splash of cream. Together these ingredients produce that beautiful rush of flavor that together bears the name “pumpkin pie,” yet the spices each maintain their own distinctiveness and can be appreciated for their particular contributions. This

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is harmony. And when you add a dollop of vanilla ice cream, it in no way detracts from that symphony of flavors, but in fact produces a richer and fuller harmony.

Consider, too, that incredible auditory sensation when the entire symphony swells towards a soaring crescendo. From the tender, tentative first notes the music builds with layers of complexities joining the rising excitement as new instruments and new rhythms enter the piece until the whole production reverberates through the concert hall engulfing your ears with sensual waves of musical gratification. The notes blend together, ringing, humming, booming, whirling their way from your aural canal to your vibrating sternum. But as they play on, the discerning ear can pick out the clarinet from the oboe, the trumpet from the trombone. Together these instruments produce that grand symphonic sweep that surges through you, yet the instruments maintain their distinctiveness and can be appreciated for their particular tones. This is harmony. And when you add a tenor to sing an operatic piece, this in no way detracts from the beauty of the music, but in fact produces a richer and fuller harmony.

Considering one’s own experiences of harmony in flavors and in music should, I expect, go a long way in demonstrating that we recognize harmony first through sensual perception. Because humans share similar biological abilities of hearing and taste, these basic sensual experiences of harmony are naturally available to us. We can hear the difference between instruments that are in tune and those that are discordant. We can taste the difference between flavors that complement each other and those which clash distastefully. In these corporeal experiences, these deep pre-reflective impressions on our basic senses, we come to recognize harmony as a feature of the phenomenological world.

The sensual basis of the concept of harmony is further demonstrated through an etymological investigation of the Chinese characters related to 和. Li Chenyang traces the meaning of harmony to three related characters, all pronounced “he.” They are 和, 盃, and龢. At various times in the classic corpus, all three are used interchangeably. Each contains the 禾 radical, which depicts a seed on top of a wheat stalk, and which lends its pronunciation to the characters.

The first character to show up in written records was龢, appearing in the very early forms of writing on the Oracle Bone Scripts. The Shuowen jiezi defines龢 as tiaoye 調也, to blend or intermingle. Guo Moruo 郭沫若 suggests that the yue 魁 part of the character represents a type of bamboo flute, and that the meaning of “blending” was derived from the melodious intermingling

111 Li, “The Ideal of Harmony in Ancient Chinese and Greek Philosophy.”
of this flute’s tones. This is a conjecture based on the iconographic presentation of the character, which in the absence of other evidence forms at least a speculative starting point for thinking about the origin of meaning.

The character 鼎 appears in the Bronze Scripts, and the Shuowen jiezi defines it as tiaoweiye 调味也, blending flavors. Wang Guowei claims that it originally refers to the instrument used for mixing wine and water to moderate and balance the flavor and intensity of the brew.

The character 和 also appears in the Bronze Scripts, and is defined by the Shuowen jiezi as xiangyingye 相营也, mutually resonating or responding musically to each other. Li follows Guo in supposing that 和 is a simplification of 鼎. At the same time, 和 clearly shows a wheat stalk next to a mouth, and thus calls to mind the gustatory experience.

All three of these related characters have associations with our basic sensual experiences of hearing and tasting. Li summarizes his etymological understanding of 和, writing:

> From the musical instrument that produces various sounds comes the meaning of mingling various sounds; from the utensil that mixes wine with water comes the meaning of mixing different flavors. The early meaning of 和 as mixing or mingling, comes from words of these instruments. This is consistent with the conjecture that, in the earliest times in human history, words for concrete objects were formed before words for abstract ideas, at least for pictographic languages like Chinese.¹¹²

The instruments that combine musical notes and mix edible flavors lend themselves to the language and help lay a conceptual foundation for harmony as a mixing of diverse aspects to create a unified product.

One other feature to note about the language of he 和 in the classical texts is that depending on context, it could function as a noun like harmony or a verb like harmonize. He 和 can be both a condition and the process of bringing about that condition. In the example provided by 鼎, the stir-stick, the stirred wine, and the stirring all contribute to the fullness of this concept of harmony.

An early and insightful exposition of harmony in terms of both music and food is given by scholar-minister Yan Ying 晏婴 sometime before 500 B.C.E. He wrote:

> He is like making soup. Use water and fire, vinegar sauce and salted plums, to cook the fish and meat. Heat them on the burning firewood. The cook harmonizes them all,

¹¹² Ibid., 84.
balances them according to the flavors, adding support to cover deficiencies, removing any excesses. The exemplary person eats this to set the heart-mind at peace.

Sounds are also like flavors. One vitality, two styles, three types, four instruments, five sounds, six measures, seven notes, eight winds, nine songs: these complement and complete each other. Clear and cloudy; great and small; short and long; harsh and gentle; grieving and joyous; hard and soft; slow and speedy; high and low; going out and coming in; contained and scattered: these are mutually supportive. The exemplary person listens to this to set the heart-mind at peace. The heart-mind at peace, then one’s capacities are harmonious.113

Yan Ying describes how harmony is a matter of combining diverse elements, mixing them in right proportions, using them to fill in each other’s deficiencies and mitigate each other’s excesses to create a unified experience of balanced pleasure. Those musical and edible instances in which separate elements mingle and reinforce what is beautiful and delicious in each other are felt as harmony. This corporeal experience is engaged by the encounter of our senses with the empirical world.

Repeated experiences of flavorful and musical harmony enable us to make generalizations about the circumstances that give rise to them. We can come to recognize a structure common to these instances, a structure that appears in many other aspects of life. Chung-ying Cheng highlights this extended application:

The experience of musical harmony awakens our common sense feeling of harmony as an agreeable totality of agreeable parts, and we do as a matter of fact experience this feeling of harmony in colors, numbers, movements, natural objects, man-made things, human behaviors, human writings and poetry, human thinking and design, even human management and organization... All concrete harmonies share the core structure of harmony and yet form different harmonious situations with unique characteristic to each own.114

Seeing what is common in diverse situations of concrete harmony is the beginning of forming an abstract concept. Cheng walks us through this process, analyzing the experience of harmony in music to delineate the basic characteristics of the concept. He writes, “(1) The musical harmony is a totality of parts; (2) Each part of the totality is related to other parts in the totality; (3) All

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113 Zuo Zhuan, Duke Zhao, Year 20.
parts contribute to the formation of the totality in the sense of wholeness… (4) Relating parts to totality in music is a dynamic process consummated in a process of movement of time.**

The basic concept of harmony comes across as a matter of relationships among wholes and parts. Hall and Ames have suggested that we replace the language of part-whole with a focus-field concept to account for the relational constitution of particulars in the Chinese world-view. A focus is the dynamic location in which various relationships are coordinated, while the field is the whole range of relevant foci and their relationships. The field is constituted by the innumerable foci, and the foci are distinguished by their positions in relation to the rest of the field. Harmony then is a characteristic of a field in which foci are mutually attuned in beneficial relationships, and a characteristic of foci when they contribute simultaneously to other foci and to the field.

Harmony so considered entails both the integrity of the particular ingredient and its ease of integration into some larger whole. Signatory of this harmony is the endurance of the particular ingredients and the aesthetic nature of the harmony. Such harmony is an elegant order that emerges out of the collaboration of intrinsically related details to embellish the contribution of each one.

Mutually-enhancing integrated ingredients producing an elegant wholeness: this concept is general enough to cover our experiences of hearing symphonies and eating pies, and also seeing colors in paintings, playing sports with teammates, participating in a local ecology, and so on. What emerges from our repeated experiences is a general concept of harmony that we can recognize again and again throughout our lives.

Our fundamental experiences of harmony in food and music open up the possibility of a metaphorical extension of the concept into less concrete areas of consideration. Because of its broad range of application and its pervasively positive connotation, it becomes a key term in Chinese discussions of cosmology, personal development, and social thought.

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115 Ibid., 11.
116 Hall and Ames have suggested that we replace the language of part-whole with a focus-field concept to account for the relational constitution of particulars in the Chinese world-view. A focus is the dynamic location in which various relationships are coordinated, while the field is the whole range of relevant foci and their relationships. The field is constituted by the innumerable foci, and the foci are distinguished by their positions in relation to the rest of the field. Harmony then is a characteristic of a field in which foci are mutually attuned in beneficial relationships, and a characteristic of foci when they contribute simultaneously to other foci and to the field.
117 Ames and Hall, *Focusing the Familiar*, 66.
Cosmological Harmonics

The Chinese version of the beginning of the world, cosmogony, and the fundamental features developed therein reveal how harmony is part of the basic vocabulary of cosmology.\textsuperscript{118} To come to grips with the Chinese cosmological concepts, it will be necessary to explore some of that vocabulary. The Chinese terms discussed below are ancient and evocative, rich with connotations and associations. They resist simple translation, yet with some introductory explanation we can start to understand how they relate to a Chinese conception of harmony. However, these initial translations are tentative approximations to begin the conversation. To engage with the subtle relation of harmony to these other concepts, we must begin to take Chinese philosophical vocabulary on its own terms.\textsuperscript{119}

While there are several versions of the beginnings of the world in the Chinese classical tradition, a general pattern across the \textit{Daodejing}, the \textit{Liezi}, and the \textit{Huainanzi} conforms to the following description: There is a swirling indistinct inchoate condition which begins to move in a certain direction – the basic thrust of the \textit{dao}. This faint beginning gains momentum and the vital energy, \textit{qi}, is aroused and active. The \textit{qi} manifests in two forms, \textit{yin} 陰 and \textit{yang} 陽, which fall and rise, respectively, to produce the earth and the sky. The continued interactions of \textit{yin} and \textit{yang} give shape to the myriad processes and things in the world, and existence as we know it has arrived.

These accounts demonstrate a genealogical account of cosmogony, whereby generation is akin to a process of birthing and growing. Rather than creation of something out of nothing or the immediate imposition of order upon chaos, these Chinese accounts reveal a process of transformation. The world takes on a progressively more distinct shape across stages whose boundaries are not at all clear. Moving backwards in time towards an unspecified beginning, there is less distinction, less detail, less clarity available. Moving forward we have a constantly

\textsuperscript{118} I might have said harmony is part of the basic vocabulary of “metaphysics,” but “cosmology” suggests the structures and patterns of the existent space and matter, while metaphysics suggests a transcendent order which the Chinese tradition does not endorse, and so I aver the use of the term metaphysics. As well, Ames makes the point that \textit{Kosmos} in Greek suggests a logically ordered system, which makes the use of “cosmology” for the Chinese view of nature somewhat anachronistic. He argues that the Chinese view is a-cosmotic, because it has no such logical order. With this caveat in mind, for lack of a good alternative I use cosmology to refer to the whole of existence.

\textsuperscript{119} For more on the differences in vocabulary, see the following section, “Is harmony 和?”
renewing, regenerating, re-birthing creativity. While there are other accounts,\textsuperscript{120} this type of genealogical origin stories are the most influential, and we can look at them to see how these primal features generate the traditional conception of harmony.

The Alternations of Yin and Yang are Called Dao\textsuperscript{121}

\textit{Dao} 道 is the process of the cosmos as it proceeds through time. Originally understood as a path or a directional heading, \textit{dao} becomes a rich metaphor for the way things actively proceed, especially when they are going in the right direction. Typically translated as “the way,” it has a broad range of meanings. For now, let’s take its cosmological meaning as the whole path charted through time by the natural processes of the cosmos. It this sense it is all encompassing, including \textit{tiandao} 天道, \textit{didaod} 地道, and \textit{rendao} 人道, the ways of heaven, earth, and humanity.

\textit{Qi} 氣 is what the cosmos is made out of, yet cannot be reduced to simple substance. It is notoriously hard to translate, and in different contexts it might be energy, vital spirit, breath, hylozoistic matter, and so forth. \textit{Qi} is omnipresent, appearing as flowing things and events through time in various grades of substantiality and refinement. The complexities of \textit{qi} cosmology are extensive and abstruse, and this is not the place for a long digression. It should suffice for now to say that \textit{qi} describes the continuously manifesting energy of the cosmos.

In Chinese cosmology \textit{yin} 隠 and \textit{yang} 阳 describe alternating shapes and characteristics of dynamic processes in the world. These two forces together represent the appearances of moving \textit{qi} energy, whereby \textit{qi} shows up as \textit{yinqi} 隱氣 and \textit{yangqi} 阳気. These two terms express the characteristics of earth and sky, rising and falling, growing and shrinking, hot and cold, masculine and feminine, and so on, in correlative pairs. In this sense hot \textit{yang} and cold \textit{yin} are not contradictory opposites, but complementary extremes on an unbroken continuum. All things and processes that appear in the world have a proportion of both \textit{yin} and \textit{yang}. In the realm between the pure, light \textit{yangqi} that forms the sky, and the turbid, heavy \textit{yinqi} that forms the earth, human

\textsuperscript{120} Paul Goldin collected various cosmogonic accounts to argue that the Chinese do have cosmogony similar to western accounts. Ames makes the distinction between genealogical cosmogonies and metaphysical cosmogonies, and argues that it is the type of cosmogony, rather than the fact of recorded accounts, that introduces a contrast with dominant western narratives. In contrast to the genealogical account just characterized, metaphysical cosmogonies posit a single transcendent creator which stands apart from creation, a one behind the many, and who brings about creation or order through directed agency. See: Ames, \textit{Confucian Role Ethics}, 225.

\textsuperscript{121} \textit{Yijing}, “Xici” 1. 一陰一陽之謂道.
beings and all the objects and processes we experience are in some balance along the continuum of the two aspects.

Robin Wang points to the following three basic themes that underlie the concepts of yin and yang across the diverse formulations in Chinese philosophy: “(1) yinyang as the coherent fabric of nature and mind, exhibited in all existence, (2) yinyang as jiao (interaction) between the waxing and waning of the cosmic and human realms, and (3) yinyang as a process of harmonization ensuring a constant, dynamic balance of all things.”

This description of yin and yang as the fabric of nature and this fabric as a process of interaction and harmonization suggests that harmonization is a cosmological process that pervades nature through the complementary interactions of yin and yang as they interact and advance the all-encompassing dao.

Yin and yang are the dynamic expressions whose alternation, interaction, and interweaving generate the higher order unity of the dao. This is clearly expressed in the Yijing: “The alternations of yin and yang are called dao.” With just these few basic terms, we have the Chinese concept of harmony. Yin and yang have an internal relation, such that the presence of more or less yin affects the character of yang, and vice versa, and their mixture and union creates something greater than their simple sum. The basic and pervasive understanding of traditional Chinese cosmology is that the overarching dao progresses through the cyclic harmonization of yin and yang. Another way of saying this might be that experience contains diverse processes and dynamic tensions. Yin and yang are ways of describing the continuum of apparent characteristics that show up in experience, understanding experience in the broadest possible sense.

The Daodejing is explicit in describing the interaction of yin and yang as constituting a harmony: “The myriad things and events carry yin and embrace yang, swirling qi to make harmony.”

Because things and events are a combination of yin and yang, these two forces stand in relation to each other, and their union constitutes the harmonization of energy in that thing or event. The Zhuangzi, too, asserts this pattern of yin and yang in harmony: “The extreme of yin was barren and chill. The extreme of yang was roiling and enflamed. Barren and chill energy fell from the heavens. Roiling and enflamed energy burst forth from the earth. These two interweaving became harmonious, thereby engendering all things.”

Though without the other they are extreme and unstable, when there is interaction between the two forces, harmony ensues. Yin and yang are the fabric of the cosmos, and thus we see that the cosmic fabric is woven as a natural harmony.

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122 Wang, “Yinyang (Yin-Yang).”
123 Daodejing 42. 萬物負陰而抱陽, 沖氣以為和.
124 Zhuangzi, “Tianzifang.” 至陰肅肅, 至陽赫赫; 肅肅出乎天, 赫赫發乎地; 二者交通成和而物生焉.
While much of the early cosmological thinking was made explicit in the Daoist tradition, the *Zhongyong* offers some of the early Confucian ideas about cosmological harmony: “As for equilibrium, it is the world’s great root; as for harmony, it is the world’s advancing way. Achieving equilibrium and harmony, the heavens and earth are properly positioned and the myriad things and events can flourish.”\(^{125}\) With equilibrium as the starting point, harmony is the characteristic of the *dadao* 达道, the emerging way, the shape in which the cosmos naturally moves. Here at the very beginning of the *Zhongyong* harmony is established as the cosmological ideal.

Xunzi developed Confucian philosophy by adding detail and argument to the brief and sometimes cryptic foundational texts. He writes, “With *yin* and *yang*’s great transformations and wind and rain bountifully bestowed, the myriad things and events each receive the harmony that engenders life and the nourishment that makes them grow.”\(^{126}\) Here the interactions of *yin* and *yang* as basic forces are the basis on which all complex things are harmonized. *Yin* and *yang*, as distinctive aspects of experience that give way to each other, give shape to the overall harmony of the world.

Despite the many philosophical differences between different schools in ancient China, this cosmology of harmony was part of their common aspiration. Mozi, founder of the Mohist school, which along with Daoism and Legalism was a main rival of Confucianism, wrote that, “Of all that abides between the heavens and earth and within the four seas, none lacks the feelings of sky and soil or the harmony of *yin* and *yang*. Even great sages cannot change this.”\(^ {127}\) The pervasive conception of the cosmos as a harmony of *yin* and *yang* speaks to the shared world-view underlying the multitude of arguments about other issues.

This conception of harmony was carried forward in the Song-Ming era of philosophy. The Neo-Confucian Zhang Zai explicitly equated *dao* with the “grandest harmony” (*taihe* 太和):

The grandest harmony is called *dao*. In its midst it contains floating and sinking, rising and falling, moving and stilling, all expressing the nature of mutual realization. This generates entangled *yin* and *yang*, together flowing, the very beginnings of success and failure, bending and straightening. In its coming it is small, tiny, easy, simple. In its extending out it is vast, huge, firm, solid. That which starts with knowing the easy is *qian* 乾. That which follows the model of simplicity is *kun* 坤. What is diverse and differentiated but can take shape is *qi*. What is pure and unobstructed but cannot take

\(^{125}\) *Zhongyong* 1. 中也者，天下之大本也；和也者，天下之達道也。致中和，天地位焉，萬物育焉。

\(^{126}\) *Xunzi*, "Tianlun." 陰陽大化，風雨博施，萬物各得其和以生，各得其養以成。

\(^{127}\) *Mozi*, "Ciguo." 凡回於天地之間，包於四海之內，天壤之濁，陰陽之和，莫不有也，雖至聖不能更也.
shape is spirit (shen 神). If it is not like the flowing air or entangled yin and yang, it is not sufficient to be called the grandest harmony.\footnote{128}

In this characterization we have several important elements brought together. First, \textit{dao} is identified with harmony on a grand scale. The elevation of harmony to “grandest harmony” suggests that we are not dealing with a particular instance of harmony, but with an emerging cosmological achievement on par with the \textit{dao}. Second we have the mutual realization of complementary pairs, rising and falling and so on, whose mutuality is the entanglement, intertwining, interpenetration of yin and yang. Third, \textit{qian} and \textit{kun}, as the starting point of the \textit{Yijing} and demonstrating unadulterated yang and ying, represent the cosmic polarity. Finally, as we have seen repeatedly, it is the interaction of yin and yang that establishes harmony, since without their entanglements we do not have Grandest Harmony. Zhang Zai’s that the cosmological forces collectively constitute the Grandest Harmony. This conception of yin and yang forming the harmonious \textit{dao} was a consistent backdrop throughout Chinese philosophy.

\section*{Wuxing}

The cosmology of \textit{wuxing} 五行, five phases,\footnote{129} arose during the early Han dynasty and was part of the drive to systematically categorize basic phenomena. Scholar officials defined relationships between five senses, five colors, five flavors, five organs, five directions, five mountains, and so forth. The \textit{wuxing} are fire 火, water 水, earth 地, metal 金, and wood 木. They are continuously transforming into each other, and every phenomenal process is a dynamic mixture of these characteristic forces.

A good example is Zhou Dunyi’s Song Dynasty cosmology, which relies on the \textit{wu xing} in addition to yin and yang as the fundamental shapes that qi takes. Wing-Tsit Chan describes the impact of Zhou’s \textit{Explanation of the Diagram of the Great Ultimate}, writing, “This Explanation has provided the essential outline of Neo-Confucian metaphysics and cosmology in the last eight hundred years. Few short Chinese treatises like this have exerted so much influence.”\footnote{130} Harmony among the five phases is an indispensible aspect of this cosmology. Zhou writes, “Yang

\footnote{128} Zhangzai, Zhengmeng. 太和所谓道, 中含浮沉、升降、动静、相感之性, 是生絪緼、相激、胜负、屈伸之始。其未也几微易简, 其究也广大坚固。起知于易者乾乎, 效法于简者坤乎。散殊而可象为气, 清通而不可象为神。不如野马、絪緼, 不足谓之太和.
\footnote{129} Often translated as “five elements,” which implies static elements rather than dynamic processes.
\footnote{130} Chan, \textit{A Source Book in Chinese Philosophy}, 464.
transforms in union with yin, thus giving birth to water, fire, wood, metal, and earth. These five phases of material energy follow a proper distribution, and the four seasons proceed in order. These five phases form one yinyang, and yin and yang form one great expanse.\footnote{Zhou Dunyi, Taiji Tu Shuo. 陽變陰合，而生水火木金土，五氣順布，四時行焉。五行一陰陽也，陰陽一大極也.} The four seasons running their course indicates that all is well, that an ideal state has been reached when the five phases are in order. All five interact in mutual accommodation with the others, creating a dynamic system. As the characteristic appearances of yin and yang, the five phases do not cease to be five discernible phases but retain their character within the larger organization. Likewise, yin and yang cannot be collapsed into each other, but they form one larger whole through their interactions.

The interactions of the wuxing form a harmony. Their harmony is the beautiful and enjoyable experience of proper balance throughout the dynamic whole. Appropriately hot in Summer; appropriately cold in Winter; baby animals in Spring, harvest in Fall – these are the manifest signs that the five phases are in harmony. When every phase gives way or advances in proper order according to their natural relationships – when water suppresses fire, when fire burns wood, when wood crumbles into earth – then these five cosmological characteristics are in harmony.

\textbf{Li}

The concept of \textit{li} 理 first referred to the practices of shaping and working raw jade into ceremonial objects, and this sense of having orderly shape later became part of the cosmological vocabulary. In neo-Confuian philosophy it became the central cosmological notion as Zhu Xi made the relationship between and \textit{li} and \textit{qi} a fundamental question. Like our other terms, \textit{li} is difficult to translate directly and has been rendered in many ways, including principle, pattern, law, order, form, intelligibility, and coherence. A.C. Graham describes \textit{li} as:

\begin{quote}
a vast three dimensional structure which looks different from different angles. In laying down the lines along which everything moves, it appears as the Way (\textit{dao}); in that the lines are independent of my own personal desires, it imposes itself on me as Heaven (\textit{tian}); as a pattern from which my own viewpoint spreads out from the sub-pattern of my own profoundest reactions, it appears to me as my own basic Nature (\textit{xing}).\footnote{Graham, “What Was New in the Ch’eng Chu Theory of Human Nature?,” 426.}
\end{quote}
This captures the sense that *li* is fundamental to the shape of the world and the way it appears to people. Graham most frequently translates *li* as “pattern,” in that it refers to the shape, regularity, and order in the appearance and movements of phenomenal processes. However, whereas patterns are generally understood as fixed and repeatable arrangements, *li* is part of a dynamic cosmology and so we must keep in mind the uniqueness and particularity of every arrangement and appearance. The *li* give recognizable order to the world, but do not impose a standard or unchanging form. For this reason, Brook Ziporyn, following Willard Peterson, prefers the term “coherence” to pattern. Ziporyn identifies four characteristics of *li*, understood as coherence: “Coherence, in Li, must cover at least these four senses: sticking together of parts, sticking together with the environment, intelligibility and value.”\(^{133}\) Coherence implies that things fit together, and that there are distinctions but also unity. Further, coherences can be nested, such that the parts or aspects of one object can cohere together, and the object can cohere with the wider environment. As well, anything coherent has intelligibility. The term “coherence” captures well the intelligibility of the world, because like patterns coherences can be recognized and reasoned about. Yet more than patterns, coherence can maintain an intelligible ordering in a dynamic flow where relationships are modified and rearranged. Finally, *li* is not just about sticking together or being intelligible; *li* are intimately connected with human orientation to the world and with human values. *Li* have a subjective aspect in that they are related to how humans see and interact with the world. There is a normative dimension such that people should operate according to *li*, and phenomena should conform to *li* because the *li* naturally line up in the most valuable arrangements. “Li is not just any togetherness: it is a valued togetherness… The intelligibly coherent thing must cohere with certain human inclinations, which must themselves cohere with other inclinations in a valued way—i.e., ‘harmoniously.’”\(^{134}\) When all is properly placed according to *li*, this is a pleasurable condition, a feeling that all is in place and in alignment, and this pleasurable sense of order is captured by the deeply positive connotation of harmony. The aesthetic pleasure of phenomena fitting together in accordance with human values is captured by the concept of harmony, and this becomes central to Ziporyn’s definition of *li*: “Li is a harmonious coherence, which, when a human being becomes harmoniously coherent with it, leads to further harmonious coherence.”\(^{135}\) *Li*, as the underdetermined foundations of an ever-transforming unity of diverse phenomena, is well-understood through the concept of harmony.

\(^{133}\) Ziporyn, “Form, Principle, Pattern, or Coherence?,” 30.
\(^{134}\) Ibid., 31.
\(^{135}\) Ibid., 36.
Steven Angle takes up a similar vocabulary and emphasizes that *li* is an intelligible and normative coherence to the world which inscribes a harmonic order on the cosmos. He writes, “we can think about the coherence (*li*) of our nature as the way we fit in with all other things harmoniously.”\(^ {136}\) *Li* guides everything to an optimal place so that they can best respond to and support each other. When all manifest phenomena, the ten thousand things, participate most thoroughly with *li,* harmony is realized. Angle summarizes the connection of *li* and harmony in neo-Confucian thought like this: “Neo-Confucians characterized this norm (*li*) in many ways… but the essential idea is a harmonious, organic unity. Each thing is different as arms are different from legs, but each is part of the whole. Harmony involves seeing that each element receives its due weight at each point in time.”\(^ {137}\) He concludes quite clearly, “So harmony is the realization of coherence.”\(^ {138}\) The close association of *li* and harmony comes from the idea of diversity in unity. Not only must there be diversity, but each diverse aspect must be accorded due weight so that the fit is not imbalanced. *Li* provides a way of understanding both the different places and relations, as well as their coherent unity. Instead of a static set of numerical relations or a preset formula, the dynamic and subtle coherence of *li* provides a criteria for establishing harmony. As Zhou Dunyi succinctly wrote, “they all achieve their good order (*li*) and are subsequently in harmony.”\(^ {139}\)

From the above discussions of *yin* and *yang,* the *wuxing,* and *li,* we see that the idea of harmony remained central and indispensible across broad traditions in describing the cosmic order in a Chinese vocabulary.

**New Ideas of Cosmic Harmony**

In the modern era, Chung-ying Cheng has again taken up the ontological significance of harmony. Cheng claims that, “We shall see that the philosophy of the *Yijing* illustrates this ontology of harmony and this dialectics of harmonization.”\(^ {140}\) Using the resources provided by the *Yijing,* Cheng reflects on harmony as a principle, a process, and a product. Cheng’s argument identifies harmony on several levels, and then incorporates these intermediary harmonies into a grand and encompassing harmony.

\(^ {136}\) Angle, *Sagehood,* 34.
\(^ {137}\) Ibid., 65.
\(^ {138}\) Ibid., 66.
\(^ {139}\) Zhou Dunyi, *Tongshu* 13. 各得其理然后和.
Cheng argues that harmony is an over-arching principle that provides a sense of order to the cosmos, and also that the process of harmonization is the dynamic movement of the cosmos through time. Cheng first deals with the apparent opposition of harmony and strife as recognized both by Heraclitus and in the *Yijing*. He recognizes four levels of harmony and strife. These can be quickly recognized in the following chart:

<table>
<thead>
<tr>
<th>Level of integration</th>
<th>Harmony</th>
<th>Strife</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>Coexistence</td>
<td>Logical incompatibility and negation</td>
</tr>
<tr>
<td>Low-mid</td>
<td>Interaction</td>
<td>Alienation</td>
</tr>
<tr>
<td>High-mid</td>
<td>Mutual support</td>
<td>Hostility</td>
</tr>
<tr>
<td>High</td>
<td>Creative interpenetration</td>
<td>Intimate resistance</td>
</tr>
</tbody>
</table>

In the dynamic world, harmony and strife in all four levels give way to each other in endless transformations so that, for example, resistance gives way to alienation, which gives way to way to interaction, which gives way to hostility, which gives way to coexistence, which gives way to resistance again, etc. Cheng recognizes harmony and strife as opposites which are in tension as they transform into each other at various levels of integration.

Despite the mutual transformations of harmony and strife, Cheng maintains that “harmony is to reign as the ultimate ordering principle of the world.”\(^{141}\) Harmony can be one pole in the cyclic reversals of harmony and strife, but it also transcends this dynamic in the overarching unity of opposites. This unity of opposites is expressed in the *Yijing* through the basic categories of *yin* and *yang*. Just as “the alternations of *yin* and one *yang* are called *dao,*” harmony and strife form a *yinyang* unity in their alternation and transformation. The process of strife becoming harmony and harmony becoming strife and back around again and again is an encompassing whole which represents a higher order harmony. “This alternation suggests a totality and a unity that has two opposite aspects that complement each other.”\(^{142}\) This way of understanding harmony and strife as related aspects of a larger dynamic whole accords well with our basic concept of harmony, and so we find harmony in the overarching sense while not denying the existence or proper place of strife in the world.

\(^{141}\) Ibid., 14.
\(^{142}\) Ibid., 33.
This overarching sense of harmony as a principle, a process, and a product all at the same time is the highest order harmony, or the dao. Cheng goes so far as to purposely translate dao as “the supreme and ultimate harmony.” Since the dao is routinely presumed to be the cosmological concept of Chinese philosophy, this direct equation of the dao with the highest possible form of harmony again points to the importance of the concept of harmony in understanding the Chinese conception of the cosmos.

The forgoing exploration of the idea of cosmological harmony in various philosophies throughout Chinese history is intended to show that harmony is a basic, pervasive, and indelible element of Chinese thinking about the world. Harmony constitutes a fundamental fabric of the cosmos and it is impossible to think of the basic structures of the world without acknowledging the role of harmony.

**Personal Inner Harmony**

As the Zhongyong makes clear and Daoist philosophy consistently maintains, people are not separate from the larger processes of the cosmos. Harmony is a cosmological feature, and Chinese philosophies generally conceive of every person as expressing analogous features as a microcosm of the larger reality. As the cosmos is naturally in a harmonious condition, each person should ideally pursue harmony within himself or herself so as to be in accord with the larger macrocosm. This notion of personal inner harmony was the aim of self-cultivation practices, as well as Chinese health regimens.

The Daoist admiration for the initial state of harmony can be seen in Laozi’s metaphors of the newborn baby and the uncarved block of wood. These metaphors suggest that people should return to a primal state, a state in which they have not yet been distorted from their original condition. The baby and the uncarved block both exist without understanding their distinction from the rest of nature – they have not yet been pulled away from the condition of nature, a condition which we have shown in the previous section is spontaneously harmonious. Though harmony is the natural condition, Daoists see most of human life as having diverged from the natural state. Returning to that kind of harmony is the aim of Daoist practice. As Li points out, “It is evident that in the Zhuangzi, he or harmonization is a guiding philosophy for the

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143 Ibid., 16.
enlightened.”

Enlightenment in this sense is bringing oneself into an inner harmony which is harmonious with the spontaneous state of nature.

Recognizing cosmic harmony is a first step. Subsequently recognizing that one is a participant in the cosmic unfolding and that one both shapes and is shaped by the broader contexts introduces a normative inducement to pursue harmony through one’s own behavior. We can see the practice of wuwei 無為, non-striving action, as a way of preventing oneself from stepping out of natural harmony. Wuwei practice reduces strife with the natural processes. It enables one to go along the path of least resistance, so that the spontaneous and natural dynamics offer support. Just as the dao proceeds through wuwei — “The dao is always without striving action, yet nothing is left undone” — so too the sagacious person proceeds in the same way: “Sages attend affairs with non-striving action.” Li points out the prevalence of this view in the Zhuangzi: “Abundantly, he in the Zhuangzi is used in describing and prescribing the practice of human agency. As such, it is closely connected to the concept of wuwei or effortless action. In the Zhuangzi, wuwei does not mean doing nothing as sometimes the notion has been interpreted. Rather it means to take a path that harmonizes with the world.”

Pursuing wuwei in one’s self brings one into harmony with the larger natural processes.

The field of medicine is another place to find a conception of harmony at the personal level. The Yellow Emperors Inner Canons (Huangdineijing 黃帝內經), China’s first and most authoritative ancient medical book, consistently refers to harmony: 160 mentions by my count. It describes the importance of harmonizing yin and yang: “As for what is necessary for yin and yang… these two not in harmony is like spring without fall, like winter without summer. This is the reason why when you harmonize them, it is called having sagely manner.” In other places it refers to the harmony of muscles and veins, harmonious qi, harmony of flavors, harmony of heaven and earth, eating harmonious medicine, harmony of upper and lower, harmony of disobedience and obedience, and so on. The body is seen as an integrated system and not just a collection of individual organs. Conceived along the lines of the wuxing, the five phases discussed above, the five main viscera maintain a dynamic harmony in which each supports the others to create the whole of a healthy person. As an interconnected system of foci within the field of the body,

144 Li, “The Ideal of Harmony in Ancient Chinese and Greek Philosophy,” 89.
145 Daodejing 37. 道常無為而無不為.
146 Daodejing 2. 聖人處無為之事.
147 Li, “The Ideal of Harmony in Ancient Chinese and Greek Philosophy,” 88.
148 Huangdi Neijing, “Shengqitongtianlun.” 凡陰陽之要，陽密乃固，兩者不和，若春無秋，若冬無夏，因而和之，是謂聖度.
cooperation among the organs is understood as a harmony. Harmony is a hugely important concept in the traditional practice and understanding of Chinese medicine and healing.

Updating this understanding of health and the body using contemporary terms, Herfel et al describe Chinese medicine through the vocabulary of complex system dynamics. In contrast to western biomedicine, which understands health as stasis and numerical regularity, Chinese medicine works within a framework of constant change. Instead of aiming to restore homeostasis, Chinese medicine aims to regulate the ever shifting relations among focal aspects of the biological system. In other words, Chinese medicine seeks harmony for patients. Herfel writes, “The aim of restoring harmonic balance to biological rhythms makes Chinese medical practice unique.”

Because there are different systems in play which affect a person’s health, including the calendar cycle, the seasonal cycle, the daily weather, one’s diet, one’s family life, the functioning of internal organs, etc, all these various factors must be considered together. A harmony is the best way to describe the condition in which these factors combine in healthy relationships: “‘Harmony’ in this context means that the patterns observed reveal that the elements of the system stand in the right dynamic interrelationships. Of course these relationships are themselves dynamic: what is the right relationship itself evolves over time.” The physician’s goal is to bring harmony to a person by regulating the relationships that make up a unified system. Chinese medicine, through consumption of herbs and foods, acupuncture, massage, and breath manipulation, tries to relieve the imbalances that disrupt the body’s harmony. These imbalances can be internal to a person, or imbalanced with respect to the surrounding environment. When health is conceived as a smoothly flowing process of complex interactions instead of a static condition, personal harmony is the medical goal.

Self-cultivation (xiushen 修身) is a key concern of Confucius and his followers. Li Chenyang, reflecting on the issue of personal pursuit of longevity, links Confucian moral cultivation to harmony. He writes, “by investigating the link between the Confucian ideal of longevity and moral cultivation, I argue that Confucian moral cultivation is founded on the ideal of harmony, and, in that connection, it promotes a holistic, healthy life, of which longevity is an important component.” This self-cultivation is pursued in many dimensions, but much of it is aimed at strengthening and balancing one’s personal qi: “In the Confucian view, a person’s ability to manage blood-qi depends on the level of her self-cultivation, which is primarily moral in nature.

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150 Ibid., 690.  
This close association of moral cultivation and the cultivation of qi is consistently presented in major classical Confucians. When one behaves morally, qi is accumulated and concentrated and contributes to one’s capacity to affect one’s surroundings. This is explained forcefully and famously by Mencius in describing his “flood-like qi” (haoranzhiqi 浩然之氣):

This is qi: most vast, most firm, if it is directly nourished and unharmed, then it fills the space between the heavens and the earth. This is qi: attending appropriate behavior and conforming to the proper path. Without it: starving emptiness. It arises from consistent appropriate behavior, but not by occasional forays into decency.

It is through proper behavior, yi 義, that qi expands. And not just any randomly proper behavior will do; it must be intentional behavior as a product of self-cultivation. This cultivated qi acquired through yi behavior is connected to harmony because harmony allows qi to flow smoothly. Summarizing his survey of ancient Confucian literature, Li writes, “From the above we can say that early Confucians in general and Dong in particular saw personal cultivation as the means to harmonize one’s person. The harmonization of the person improves one’s moral as well as physical life. A well-cultivated person is in a state of harmony, heart-mind in peace and body sustained by a constant, smooth flow of blood qi.” There is a connection between one’s own qi and the dao, a connection that is strengthened by moral and physical self-cultivation. Li cites Han scholar Dong Zhongshu to demonstrate this: “Dong said, ‘because the Dao of Heaven and Earth culminates in harmony, all living things value their qi and nurture it’ (Twenty-Two Masters: 805). To nurture one’s qi is to harmonize it in accordance with the Dao.”

Thus we can see that the personal dimension of harmony is vitally important. Because a person is living well when living in concert with the dao, and since the dao is harmonious, one must pursue harmony within oneself, principally through cultivation and regulation of one’s qi. Self-cultivation, both moral and physical, is cultivation of harmony.

Practicing self-cultivation through exercise, meditation, proper behavior, and qi manipulation increases one’s de 德. De is another complex concept which doesn’t have an easy equivalent in English. It has often been translated as “virtue” as in one’s overall excellence at living and ability to inspire others, or “power” as in one’s power to accomplish objectives. Ames and Hall in their Daodejing translate it as “this focus” or “insistent particularity” to emphasize that it is a

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152 Ibid., 27.
153 Mencius 2A2.
155 Ibid., 31.
concentration of singular capacities in an enabling field of relations. *De* inspires admiration in others. One with great *de* has the ability to accomplish one’s aims, to influence the situation, and to project one’s agency into one’s environment. In the Outer Chapters of *Zhuangzi*, *de* as the capacity for specific virtues is connected with harmony: “When wisdom and quietude are united for mutual nourishment, then harmony and good order will issue from one’s depths. As for these capacities (*de*), they are harmony; as for *dao*, it is this good order.”  

One’s personal capacities and virtues bring about harmony. And moving in the other direction, when one is in harmony with the surroundings, one’s influence and personal capacity are at their peak. Personal self-cultivation of *de* is a process of achieving harmony with the *dao*.

Finally, we can recall Yan Ying’s description of harmony in music and flavors, and his final comments in the quote from above: “The exemplary person eats this to set the heart-mind at peace….The exemplary person listens to this to set the heart-mind at peace.” The ideal here is to participate in musical and culinary harmony as a way of bringing one’s own heart-mind (*xin* 心) into balance. Sensual harmonies are enjoyed in large part for their contribution to self-harmony. A self in harmony internally and with external circumstances is the ideal pursued through *wuwei* practice, medical practice, self-cultivation, and moral behavior.

### Social Harmony

Harmony is not only realized in the cosmos and in oneself, but also in human relationships. Members of a family, partners on a project, workers in an office, and citizens in a state can all be described as harmonious when their individual contributions all support the other members and the larger dynamic. Harmony among people has a longstanding pedigree as a way of conceptualizing social conditions. Li Chenyang reflects on the concept in ancient history and writes, “The fact that (harmony) is used in ancient literature to describe a highly desirable state of affairs suggests that it stands for a social ideal of that time.” This notion of people in collective harmony is an ancient ideal which the Chinese government has revived in the current era.

One early example of harmony held up as an ideal for human relations is in the *Book of Songs* (*Shijing* 詩經) where we find an early description of a happy family: “Wife and children in loving union is like the music of lutes and harps. With brothers in agreement, harmony and joy are

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156 *Zhuangzi*, “Shanxing.” 知與恬相養, 而和理出其性. 夫德, 和也; 道, 理也.

lasting and deep. This brings comfort to your home and family and brings joy to your wife and children.”

Note the simile which compares people to musical instruments and their union to music, which reinforces the metaphorical transition from basic experiential harmony to its extended meaning. The Book of Songs is one of the earliest documents to reveal the details of people’s lives and values, and such poetic tribute to harmony between people indicates the basic and powerful appeal of the metaphor of social harmony.

The Confucian tradition consistently and explicitly advocated for harmony between people. Li concludes that, “Confucianism puts tremendous weight on interpersonal harmony, such as the harmony between ruler and minister, between parent and child, between husband and wife, between siblings, and between friends.”

Ames and Hall reinforce this in writing, “In the Analects, this sense of harmony is celebrated as the highest cultural achievement.” The pursuit of harmony was not limited to interpersonal interactions, but also included harmonious interaction between different communities and kingdoms. The focus on harmony makes sense given the conditions in which the classical Chinese thinkers lived. We call their time the “Warring States Period,” because war, violence, and discord were ever present. Among the literati and peasants there was a pervasive exhaustion with the constant strife among the warring parties. Wistful longing for a prior peaceful golden age and a return to harmony are a reasonable reactions to life in violent times.

To understand the Confucian sense of social harmony, it is important to understand several other concepts through which Confucians thought about social conduct. To help situate the meaning of social harmony, let us first look briefly at the concepts of xiao and li, and the embodiment of these ideals in the junzi.

Xiao encapsulates the customary duties and norms of behavior expected between social classes and between young people and their elders. Chinese society was organized according to functional differentiations, both on the large state-level scale of peasants, nobles, and the emperor, and on the smaller family-level scale of children, parents, grandparents. Xiao governed these deferential relationships, guiding the behavior and defining certain obligations within the relationship. At certain times in China’s history xiao became an overbearing demand for complete

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158 *Shijing*，“Changdi.” 妻子好合, 如鼓瑟琴。兄弟既翕, 和樂且湛, 宜爾室家, 樂爾妻帑。
159 Li, “The Confucian Ideal of Harmony,” 588.
161 I use this term “functional differentiation” instead of the more familiar “hierarchy.” Hierarchy has both technical meanings and connotations that I believe mischaracterize the Chinese society.
obedience to one’s parents or superiors, however at its purest it is a formalization of the natural affections that grow out of family roles and does not imply domination or imposition. As people occupy different roles in the family and in society, the directions of xiao should provide clear roles and responsibilities, enabling the different family members and community members to live together with a minimum of strife. Xiao is described as the root of consummate conduct, ren 仁, the highest of Confucian virtues. Behaving in accordance with xiao habituates people to being considerate, respectful, and caring. Confucians believe that the way people are raised establishes their capacity to care for others and their understanding of harmonious relationships.

The Xiaojing 孝經 clearly proclaims this connection between xiao and harmony. Speaking to his advanced disciple, Master Zeng, Confucius says:

> The first kings had the greatest capacities and the very center of the proper way. They used these to organize the world, so that the people engaged in harmony and peace, and those of higher and lower status did not have resentment. Do you know how this was so?... It is xiao, the root of excellence from which education grows.¹⁶³

Confucius tells Master Zeng that the great kings of old were able to create social harmony because xiao was the root of their exceptional abilities. As well, the Xiaojing tells us that the high nobles also have a role in creating harmony for the people, and that it is xiao that enables them to do this. “When wealth and honor do not depart them, then they are able to protect the alters of land and crops, and harmonize their people. This is the hereditary lords’ xiao.”¹⁶⁴ It is through following the guidance and duties of xiao in regard to the spirits and ancestors (altars) that the lords ensure harmony for their people. What holds for the lords also holds at different levels of society, as the village leader engaged in xiao behavior brings harmony to the village, and the older brother modeling xiao behavior promotes harmony among the younger brothers.

Li 礼 is a notoriously difficult concept to translate into English since it is a distinctly Chinese way of engaging in relationships and activities. It has been translated as rituals, customs, manners, etiquette, norms, morality, propriety, and more, and in some sense it means all of these. Roger Ames and Henry Rosemont, Jr. explain the term as stemming from the proper attitude of reverence and respect one has when performing ritual sacrifice, the implication being that our daily interactions should bear such depths of meaning. Li also establishes normative expectations.

¹⁶² Analects 1.2.
¹⁶³ Xiaojing 1. 先王有至德要道，以順天下，民用和睦，上下無怨。汝知之乎? ...夫孝，德之本也，教之所由生也。
¹⁶⁴ Xiaojing 3. 富貴不離其身，然後能保其社稷，而和其民人。蓋諸侯之孝也.
that guide behavior according to social roles. A minister of state behaves ministerly before his
lord. This may mean standing in a certain place, bowing in a certain way, speaking at a certain
time, wearing certain attire, and so forth. These traditional guidelines for proper behavior in
various social situations are, like xiao, meant to give people clear directions for how to fulfill
their own role, so that all roles are filled appropriately and the various people together create a
smoothly functioning whole. That is, li is meant to facilitate social harmony.

Connecting li and harmony, Confucius’ disciple You Ruo 有若 says, “Of li’s functions,
harmonizing is the most valuable.” As li occupies such a central place in Confucian morality
and social thought, the fact that harmonization is its most precious function indicates that
harmony is a great aim of social behavior. Xunzi reinforces the point that the practices of li bring
about harmony, writing, “If one acts from li, then there will be harmony and concord”
Following li at all times is the Confucian ideal of social behavior, and if the outcome of following
li is harmony, then harmony is an ideal outcome. The corollary to this point is that not only is
harmony the result of following li, but for Confucians social harmony cannot be achieved without
following li.

The idea of behavior guided by these appropriate conventions is one of the main tenets of
Confucianism, and one of the main sources of conflict with rival social theories. This role for li in
achieving harmony is a major point of contention for the Confucians with both Daoists and
Legalists. Daoists contend that li controls interpersonal interactions and impedes natural
spontaneity, preventing one from dynamically harmonizing with the ever-changing circumstances.
Legalists suggest that the mere force of social convention and shame is not enough to regulate
people’s behavior, and that the force of legal penalties is required to prevent people from sowing
discord with bad behavior. Responding to the Daoists, the Confucian tradition can maintain that li
need not be an imposition but can be personally appropriated as acceptable and even cherished
norms, and that in making the li one’s own one has the freedom to express appropriate behavior
with some flexibility according to circumstances. Confucians could reply to the Legalists that
suppression of disharmony is not the same as the genuine achievement of harmony, and that
recourse to the law already implies that there is underlying strife. These arguments circulated for
generations. In any case, since Confucian influence set the terms of discourse throughout Chinese
history, the central place of li in the tradition has shaped the concept of social harmony.

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165 Analects 1.12. 禮之用，和為貴.
166 Xunzi, “Xiushen.” 由禮則和節.
Confucius elevates the status of the *junzi* 君子 from its traditional and commonplace meaning of a lord’s son\(^{167}\) into a virtuous ideal. The *junzi* lives according to *xiao* and *li*, always does what is *yi* or appropriate, and exemplifies *ren*, consummate behavior. Ames and Rosemont translate *junzi* as “exemplary person” to emphasize that this person sets the best example for the community to follow. Being a *junzi* is a matter of how one relates to others, how one finds the appropriate ways of behaving and treating people in every situation, and how one brings about harmony in all one’s relationships. For Confucius the *junzi* embodies all the qualities one needs to be successful in the human community. While not quite up to the immaculate level of the sage (*shengren* 圣人), the *junzi* is everything most people could ever want a person to be. The portrait of the *junzi* offers a model of how to cultivate harmony in social relations.

In the *Analects* Confucius says that the ability to harmonize is one aspect that distinguishes the *junzi* from the petty person (*xiaoren* 小人): “The *junzi* creates harmony but not sameness, whereas the *xiaoren* creates sameness but not harmony.”\(^{168}\) In the *Zhongyong* Confucius says, "the *junzi* harmonizes but is not wishy-washy."\(^{169}\) The *junzi*’s harmony is not from being overly accommodating or weak, but from actively managing relationships. James Legge in translating this phrase adds the idea of friendliness to harmony, which indicates that he saw harmony here as about relations among people. Thus it should be clear that the ability to create harmony in relationships is the mark of a superior person. Confucius constantly exhorts his students to become such a person.

Further, harmony is to be pursued beyond interpersonal relationships and extended throughout the kingdom or society. Mencius explicitly invokes harmony among people as the best condition for a ruler in saying, “Proper timing is not as important as the advantages of good terrain, and the advantages of terrain are not as important as having people in harmony.”\(^{170}\) Mencius makes it clear that successful leaders must strive for social harmony.

This central importance of social harmony was echoed by the neo-Confucians. Turning again to Zhou Dunyi, we see that the hoped-for outcome of social arrangements and conventions is harmony. He writes,

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\(^{167}\) I think “lordling” is a delightful translation for the pre-Confucian meaning.

\(^{168}\) *Analects* 13.23. 君子和而不同, 小人同而不和.

\(^{169}\) *Zhongyong* 10. 君子和而不流.

\(^{170}\) *Mencius* 3B1. 天時不如地利, 地利不如人和.
Reverent propriety is good order, and music is harmony. If yin and yang are in good order, then there will subsequently be harmony. When a lord lords, a minister ministers, a father fathers, a son is a son, brothers treat each other as brothers, and husbands and wives fulfill their roles as spouses, they all achieve their good order and are subsequently in harmony.\textsuperscript{171}

Here Zhou shows connects harmony with the important social ideas of music, ceremony, and the five relations, as well as the cosmology of li 理. Musical harmony is part of a social milieu. Harmony is not just a quality of music, but a social outcome of music. Enjoying music with others creates social bonds. Consider how concert-goers sway together, bob their heads together, raise their hands and their voices together. Ceremonies coordinate people’s behavior so that diverse people interact smoothly, which recalls You Ruo’s statement in the Analects about the harmonizing function of li 禮. By invoking the five relations, Zhou connects his notion of harmony with the social order of classical Confucianism. Finally, Zhou associates harmony and li 禮 with li 理, good order and coherence, which we mentioned above in connection with harmony. When the social relations are appropriate, there is coherent order, and this is harmony.

Additionally, Zhou characterizes the ancient ideal society created by the legendary sage-kings as a harmony: “In ancient times the sage kings established proprieties and laws, and cultivated education and growth. They made the three primary social relations firm and arranged the nine classes, and the people created a grand harmony and all things were gathered together.”\textsuperscript{172} The sage-kings were able to achieve harmony by clarifying the divisions of society and organizing them into mutually supporting relations. Until there were orderly relations, there was no harmony because the people couldn’t effectively work together to constitute a unified whole. Ultimately Zhou clearly affirms that harmony is the social ideal, and its realization depends on good governance: “If the government is good and the people peaceful, then the hearts of all under heaven will be in harmony.”\textsuperscript{173} The level of harmony in a society is a reflection of the quality of governance, and the purpose of governance is to realize harmony in the society.

A further point to mention here is that harmony is not only a consequent state of affairs brought about by a great ruler or a junzi following xiao and practicing li, but it also means engaging in a process of harmonization. The junzi must actively harmonize with his or her neighbors and seek

\begin{itemize}
\item \textsuperscript{171} Zhou Dunyi, \textit{Tongshu} 13. 禮, 理也; 乐, 和也, 阴阳理而后和. 君君臣臣, 父父子子, 兄兄弟弟, 夫夫妇妇, 各得其理然后和, 故禮先而樂后.
\item \textsuperscript{172} Zhou Dunyi, \textit{Tongshu} 17. 古者, 圣王制禮法, 修教化. 三綱正, 九疇叙, 百姓大和, 万物咸若.
\item \textsuperscript{173} Zhou Dunyi, \textit{Tongshu} 18. 政善民安, 則天下之心和.
\end{itemize}
out the appropriate behavior which brings people into accord. We do not simply rest in harmony, but continually practice harmonizing in dynamic circumstances.

Finally, achieving social harmony is not just a matter of avoiding conflict or living and letting live. We do not achieve harmony merely by tolerating our neighbors, nor by giving way to any untoward behavior. Conflict avoidance is not the same as harmony, for in seeking harmony diverse positions and perspectives must be reconciled rather than disregarded. In fact, according to the ancient tradition, part of achieving broad social harmony is to balance out punishment and tolerance:

> When the government is lenient then the people grow bold, their boldness must be rectified with harshness. The people suffer from such ferocity, and due to their suffering, they must be treated with leniency. Leniency balances out harshness, and harshness balances out leniency. This is the way for government to achieve harmony. 174

This balance between harshness and leniency is aimed at securing the overall functioning of society. Harmony is not quite the same as universal peace (taiping 太平). As Cheng emphasizes, harmony does not simply eliminate strife but incorporates it into a higher level of harmony. An undisturbed peacefulness is more akin to a kind of tong 同 society, one in which pervasive sameness eliminates all conflicts.

*Tong* was invoked by Mozi as an ideal for society. In his chapters on “Esteeming Sameness” (shangtong 尚同), Mozi suggests that one should adopt the same views and attitudes as one’s superiors. “What the leader approves, all must also approve. What the leader thinks wrong, all must also think wrong.”175 Repeatedly, Mozi advocates bringing the standards (yi 義) of the subordinate classes into accord with the standards of their superiors. Ultimately, the highest standards are those of tian 夭, so that if the emperor is in accord with tian, and the lords are in accord with the emperor, and the commoners are in accord with their lord, then all will share identical values and disagreement will be eliminated. With disagreement eliminated, a kind of peace is established.

Mozi also speaks of harmony, *he*, but because of his emphasis on shangtong and on love without distinctions (jianai 兼愛), his notion of harmony is different from the Confucian one. Li recognizes this and writes, “In comparison with the Confucian ideal of harmony, which stresses

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174 From the *Chronicles of the Spring and Autumn Period*. Quoted in: Delury, “‘Harmonious’ in China.” Delury’s translation.

175 *Mozi*, “Shangtong” 2.3. 上之所是, 必亦是之, 上之所非, 必亦非之.
the dynamic nature of tension and diversity within harmony, Mozi emphasizes the aspect of accord in harmony. He was one of the earliest philosophers to promote the notion of *hehe* 和合, namely harmony and unity. 176 Mohist harmony and *hehe* 和合 articulate a social philosophy that aims at *tong* rather than *he* 和. This was a basic point of contention between the Moists and the Confucians, one which Confucius was clearly concerned about in emphasizing that, “The *junzi* creates harmony but not sameness, whereas the *xiaoren* creates sameness but not harmony.”

Yan Yi also defends the Confucian view of the value of harmony in diversity over uniformity. He argues that a minister who simply agrees with the ruler has little value, like the flavorless addition of water to water:

> The ruler and minister are also like this. What the ruler calls acceptable, but has wrongness in it, the minister should reveal this wrongness, and use it to improve what the ruler accepts. What the ruler calls wrong, but has some worth in it, the minister should reveal this worth, and use it to dismiss this wrongness. Like this the government is even and not in opposition, the people will be without contentious hearts.

> Now, Minister Ju is not like this. What the ruler calls acceptable, Ju also says is acceptable. What the ruler calls wrong, Ju also calls wrong. This is like using water to enhance water. Who would drink it? This is like the harp maintaining only one note. Who would listen to it? The unworthiness of uniformity is like this. 177

This is a vivid description of the importance of diverse elements interacting, and why that is to be preferred to constant agreement among identical views.

The imposition of uniformity through coercion recalls some of the most disastrous totalitarian attempts to reform society. From eugenics to re-education to extermination of minorities, attempts to create a population uniform in thought and appearance have resulted in great tragedies. Sorhoon Tan reflects on the differences between harmony and sameness, and explains why Confucian harmony is to be preferred:

> The difference between the harmony of a community created by ritual and the indoctrinated homogeneity of a totalitarian society lies in the flexibility and creativity individuals are able to exercise within the shared semiotic structures. Confucianism is not restricted to a totalistic, closed conception of its ideal and a rigid semiotic structure of.

176 Li, “The Ideal of Harmony in Ancient Chinese and Greek Philosophy,” 90.
177 Zuo Zhuan, “Duke Zhao,” twentieth year. 君臣亦然，君所謂可，而有否焉，臣獻其否，以成其可，君所謂否，而有可焉，臣獻其可，以去其否，是以政平而不干民無爭心....今據不然，君所謂可，據亦曰可，君所謂否，據亦曰否，若以水濟水，誰能食之，若琴瑟之專壹，誰能聽之，同之不可也 如是.
Enforcing uniformity is indeed one strategy for eliminating social conflict, but it does not provide the creativity and dynamic productivity of unifying diverse elements through harmony. While adding water to water might be preferable to adding arsenic to water, it can never match the potential greatness of adding sugar to spice (recall the pumpkin pie). This represents at most the first and second of Cheng’s four grades of harmony, coexistence and interaction, but does not approach the higher levels of interpenetration. As recognized in most traditional Chinese theories of social harmony, we need people to play different roles whose differences complement and fulfill each other. Interactions and relations between unique participants generate a creative and productive social union.

Harmony in the 21st Century

Throughout most of the 20th century in China, Confucianism and traditional ideals were questioned, criticized, and rejected. From the early century calls for science and enlightened critical thought to the May Fourth Movement to the Cultural Revolution, the wholesale rejection of traditional culture included rejecting the notion of harmony as an explicit social ideal. This was especially true of the Mao era: “Born of revolution, the People’s Republic of China (PRC) emphasized struggle over harmony. The latter, with its Confucian connotations, was considered by the Chinese Communist Party (CCP) a ‘feudal’ remnant of a class-structured society.”

While some communist thought may ideally aim at a kind of harmony by overcoming the strife of class struggle, (this might be associated with the datong 大同, great unity, rather than he 和), positive references to a traditional notion of harmony all but disappeared from Chinese discourse.

However, in the past thirty years within China and internationally there has been renewed interest in the resources of Chinese intellectual history. Some of this renewal began with overseas scholars contributing to a new neo-Confucian movement. Some of it sprang up as a search for some meaning in the phrase, “socialism with Chinese characteristics,” and an attempt to define those unique characteristics. And some of it emerged from a growing sense that some kind of moral compass and social glue was needed to stabilize the rapidly changing society. In discussing

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178 Tan, “From Cannibalism to Empowerment,” 61.
this renewed legitimacy of traditional concepts, John Delury points out that, “Beginning in the late 1980s, the concept of a ‘harmonious society’ (hexie shehui) rose steadily from keyword to buzzword to paradigm.”\(^{180}\) This concept of the harmonious society reached the pinnacle of political legitimacy when it was invoked by Hu Jintao to represent his governing legacy\(^ {181}\) as Chairman of the People’s Republic of China, and was adopted as a party platform by the Central Committee of the CCP in 2004.

The notion of the harmonious society was and continues to be invoked specifically in response to the inequalities generated by the transformation of the economy since China’s opening up. The radical drive for economic growth under Deng and Jiang was pursued with little concern for its effects on social bonds, national unity, individual happiness, or the health of the environment. Yongnian Zheng and Sow Keat Tok describe the conditions in which Hu Jintao assumed the leadership of China in 2002:

> During the first two stages, other national concerns were superseded in favour of attaining rapid economic development and realigning China in the international community. Indeed, China has been so successful in these pursuits that by the late 1990s, the country was labeled the ‘economic miracle’ of the late twentieth century, but it has had little success in managing the social and political ills that came with economic achievement.\(^ {182}\)

The ethos of “to get rich is glorious” and “get rich first,” led to many social fault lines, especially between the wealthy and poor, city dwellers and rural people, coastal areas and inland areas, eastern provinces and western provinces, and between special economic development zones and the rest of the country. Instead of these diverse interest groups working in concert towards a unified whole, their opposing interests threatened terrible discord and fracture. “The rapid pace of development has disrupted the formation of the pluralistic yet cohesive society that Beijing had hoped for; instead, a highly divided society has emerged. Interests exploded across different strata of society.”\(^ {183}\) The policy of building a harmonious society took shape in the face of this social division and instability.

\(^{180}\) Delury, “‘Harmonious’ in China.”

\(^{181}\) However, it was the slogan of “the scientific outlook on development” (kexue fazhan guan 科学发展观) that was selected to stand in the pantheon of party orthodoxy. Delury speculates on the possible controversial resonances of “harmonious society” that were avoided by choosing the alternate slogan.


\(^{183}\) Ibid., 3.3.
The official governmental promotion of “a harmonious society” as a policy goal was first approved by the Central Committee in 2004. In 2005, Hu Jintao made the case for harmony in a major speech. Hu invoked the Chinese traditional admiration of harmony, as well as Marxist and socialist visions of harmony, and presented harmony as a global value across history which all good people could embrace.\textsuperscript{184} At the Third Session of the 10th National People's Congress, Hu described a harmonious society as, “a socialist society that is democratic and law-based, fair and just, trustworthy and friendly, full of vigor and vitality, secure and orderly, and in which man and nature are in harmony.”\textsuperscript{185} Hu’s description of the harmonious society rather dramatically echoes western ideals like democracy, law, and justice. However, as we shall see later, while the Chinese use terms like “democracy” (\textit{minzhu} 民主) and “justice” (\textit{zhengyi} 正義) to translate the concepts from English, they have different connotations and resonances in Chinese, so that when Hu calls for “\textit{minzhu}” it might not be completely accurate to infer that he is advocating western-style democracy.

The official call for a harmonious society initiated a more practical search for policies that could increase harmony. The 16\textsuperscript{th} Central Committee’s Sixth Plenum meeting in 2006 put forth a formal resolution set of priorities intended to address “major issues concerning the building of socialist harmonious society.” As summarized by Alice Miller they are:

- Provision of adequate social services and legal processes in rural areas, under the rubric of “building a new socialist countryside” (a priority enshrined at the National Work Conference on Agriculture and Rural Policy in December 2005), to stem incidents of rural dissatisfaction and unrest.

- Redressing imbalances in regional development after two decades’ emphasis on fast economic growth in China’s coastal regions, by directing accelerated central revenue transfers to the central and western provinces.

- Redressing income disparities and labor dislocation resulting from the steady dissolution of China’s state-owned industries and collectivized agriculture and from the resulting creation of a national labor market.

- Renewed emphasis on expanding education and a new focus on ensuring access to educational opportunity in China’s less developed regions through enhanced central allocation of resources.

- Reconstruction of China’s medical and public health services debilitated by the dissolution of the formerly state-owned and collective work unit economy.

\textsuperscript{184} Delury, “‘Harmonious’ in China.”
- Recasting Party guidance of China’s cultural life according to the criterion of “social benefits” (xiaoyi 效益) rather than the longstanding emphasis on “social effects” (xiaoguo 效果) and control over media that for the past two decades have been driven increasingly by market demand rather than Party directive.

- Enhanced emphasis on the environmental impact of economic development rather than a lopsided focus on economic growth. 186

These priorities aimed to close the gaps and fractures in society that resulted from market reform and the unevenly growing economy. By promoting services for the lower classes and disadvantaged groups, the hope was to eliminate the kind of frustration that boils up when people watch their former comrades achieve wealth and comfort while continuing to struggle themselves. Overturning decades of Marxist ideology, the new rich enjoy tremendous privileges, especially because the rule of law is not yet strong and money can often buy legal and political privileges. The vast disparities in wealth and influence make people question whether they are part of the same system, and whether their interests are the same as their countrymen and women. By alleviating crisis points like mass regional unemployment, lack of basic health services, and disparities in educational opportunities, the government hopes to eliminate the issues that make people question whether different segments of society are mutually benefiting each other and whether the government is genuinely concerned with the welfare of all its people.

While Hu has invoked a very broad and ambitious idea of harmony, the promulgated policies that have followed in the wake of his pronouncements have chiefly aimed at reducing economic inequality. Perhaps reflecting an underlying Marxist belief that changing the material basis of society is the most effective way to make changes in the superstructure, a range of initiatives have been implemented to improve the lot of economically disadvantaged segments of society. These include cuts to agricultural taxes, increased financial support for rural areas, subsidies for low-wage manufacturing regions, improved education and vocational training for migrant workers, better enforcement of workplace safety and wage laws, expanded health-insurance, expanded pension systems, investments in primary education in impoverished areas, and so on. 187

While there has been an undeniable surge in development funds for certain regions and elements of safety nets have taken shape, Litao Zhao and Tin Seng Lin remind us that, “While policies are being put in place to build a harmonious society, it is important not to take policy statements at face value. As is well known, law enforcement and policy implementation can be a serious

186 Miller, “Hu Jintao and the Sixth Plenum,” 5.
187 Zhao and Lim, China’s New Social Policy Initiatives for a Harmonious Society.
implementation of harmony-building policies is further hampered by the continued use of economic markers to evaluate local officials, and because many national mandates are not funded by the national government, leaving local governments without resources to make required changes. Later I shall argue that the intense focus on building a harmonious society seems to have done little to increase actual harmony. Besides the practical issues just mentioned, I will point to conceptual problems and the resultant one-sided policies that have hampered the achievement of social harmony.

The policy of building harmony is meant to create consensus as an ideal that nobody can reasonably argue against. Indeed, an alternate translation of hexie 和谐 could be “consensus.” Delury draws attention to the way the positive feelings aroused by harmony can lead to consensus around the idea:

President Hu Jintao’s definition in terms of democracy, justice, fraternity, vitality, stability, and environmental sustainability is inclusive enough to be a platform for an über-coalition of Liberals, Social Democrats, Conservatives, Neo-Liberals, Neo-Authoritarians, and Greens (were the PRC a European-style multi-party system). The promise of a more harmonious society reaches out to farmers angry about rural poverty and corruption, middle classes anxious about social conflict, and everyone suffering from environmental degradation. It offers an olive branch to critics of authoritarianism while simultaneously indicating to CCP hard-liners a willingness to be tough, brutal even, if ‘harmony’ demands it.  

While the social consequences of a focus on harmony remain in doubt, the rhetorical consequences are clear. Delury points out that, “The number of articles featuring “harmony” in their titles has increased from around 30 in 2003 to 6,600 in 2005.” Harmony is appealed to by both the government’s most ardent supporters and its harshest critics. Part of the appeal of the concept of harmony in modern Chinese discourse is that it invokes different dimensions of harmony to people in diverse segments of society. Even within the government there is an ongoing debate about the meaning of harmony. Leftists emphasize the advancement of working class and marginalized groups to form a harmonious national society, and rightists emphasize capitalistic and democratic reforms to maintain stability and harmoniously incorporate China into the world community. Beyond this simple division of political left and right, Delury further enumerates the various resonances that the term calls up across the many interest groups in Chinese society:

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188 Ibid., 4.
189 Delury, “‘Harmonious’ in China.”
190 Ibid.
The “harmonious society” ideal, like many effective political platforms, says different things to different people. To those who are benefiting most from China’s sizzling economic growth, “harmony” implies social stability and status quo gradualism that will protect assets acquired and ensure their future enjoyment. To those on the sidelines of the boom, “harmony” sounds like a renewed socialist commitment to the welfare of the rural masses and urban poor. To educated elites chafing at restrictions on speech, media, assembly, and a variety of civil and political liberties, “harmony” hints at the toleration of dissent and gradual implementation of democracy and the rule of law. To nationalists and cultural conservatives, “harmony” is a vehicle for the revival of Chinese traditional thinking and values. To party loyalists and neo-authoritarians, “harmony” signals the leadership’s mastery of the alteration between leniency and harshness, and reassures the political elite that the party intends to maintain its monopoly of force and philosophy. In the end, after all, the CCP positions itself as the sole entity capable of maintaining peaceful coexistence among the winners, losers, and critics of reform.\(^{191}\)

Different interest groups understand harmony differently. Thus in contemporary society “harmony” is a contested concept. With its ancient pedigree it invokes the Chinese tradition, but it also demonstrates the way that tradition must stretch to meet the complex demands of the modern world. The idea is as popular as ever, or even more so, but its meaning is more ambiguous. The proliferation of an official discourse of harmony has led to a great cynicism about harmony. Young internet users, “netizens,” refer to censorship of their blogs as “being harmonized,” and call the censors “river crabs” (*hexie* 河蟹), a homonymous play on the word for harmony, (*hexie* 和谐). If genuine harmony is to be achieved and cynicism about official harmony overcome, then these different understandings and interests must be integrated into a mutually supportive system – they must be harmonized.

**Conclusion**

Harmony has been a basic concept throughout Chinese history. While in the modern world the meaning has become convoluted and even ironic in many discourses, the traditional meaning helps explain the Chinese world view through cosmology, personal fulfillment, and social relations. In all of these spheres Chinese harmony was a dynamic interrelation of diverse phenomena which affected each other and whose mutual support gave rise to a beautiful and orderly whole. It is this elegant connotation of harmony that the modern CCP wishes to draw upon and that, despite the rise of the river crabs, remains an ideal of Chinese philosophy.

\(^{191}\) Ibid.
Given harmony’s prominent place in Chinese philosophy, culture, and politics, it is imperative that we understand what the Chinese mean when they promote a harmonious society and a harmonious world. It is possible that by simply translating 和 and 和谐 into “harmony” and taking this to be the familiar western concept we are missing much of the subtlety and richness of the Chinese concept which has been elaborated and refined in a multitude of discourses over thousands of years. It is to this possibility we now turn.

**IS HARMONY 和?**

Looking at the classical Greek notion of harmony and the classical Chinese narratives surrounding he 和, we can find remarkable similarities. Both are understood through a primary metaphor of music, but also extend to other areas, especially cooking and human relations. Both involve the unity of diverse contributions. Both have deeply positive connotations. It makes sense that harmony and 和 are typically used as equivalents in translation. However, while these can serve as useful translations and better alternatives are hard to come up with, I contend that they are not equivalent expressions. The facile translation of one to another often obscures important conceptual differences that arise from the different philosophical backgrounds in which the concepts developed.

The crux of the background differences is in that the concept of harmony comes from and presupposes the ancient Greek metaphysics of an eternal logos, transcendent forms, and pure mathematics, while 和 comes from and presupposes the ancient Chinese cosmology expressed in the *Yijing*, characterized by constant flux, organic accretion, and aesthetic patterns. While these generalizations of Greek (and more broadly western) and Chinese philosophy are not without controversy, I take them as fair starting points for the discussion. True, there are counterexamples to be acknowledged, such as Heraclitus’ description of ontological flux or Mozi’s seeming insistence on universal standards, but these exceptions serve to reinforce the dominant trends which they stand against. The presence of logical reasoning in the “Later Mohist Canons” or of sensual aesthetic standards in Aristoxenus musical theory are rarely emphasized. John Dewey, noting the revolution brought on by Darwin’s evolutionary theory, describes the characteristics of philosophy going back to the Greeks:

> The conception of *eidos*, species, a fixed form and a final cause, was the central principle of knowledge as well as of nature. Upon it rested the logic of science…. Genuinely to
know is to grasp a permanent end that realizes itself through changes, holding them thereby within the metes and bounds of fixed truth. Completely to know is to relate all special forms to their one single end and good: pure contemplative intelligence.

Science is compelled to aim at realities lying behind and beyond the processes of nature, and to carry on its search for these realities by means of rational forms transcending ordinary modes of perception and inference.\(^{192}\)

Following this line of thinking, the majority of western philosophy can be reasonably characterized as a search for the truth behind appearances, for permanent and unchanging laws, and for first or fixed principles which can be relied upon with absolute certainty. In contrast, sinologist A.C. Graham characterizes the presuppositions and aims of Chinese philosophy as a search for the best way of living in the dynamic world and how to manage the environment that surrounds and includes people. This is echoed in his distinction between “truth-seekers” and “way-seekers.” Anthropologist Judith Fahrquar also notes this fundamental difference when she writes that the Chinese traditions conceive of “a world of unceasing transformation. This condition of constant change, this fluidity of material forms, stands in sharp contrast to a (modern western) common sense world of discrete entities characterized by fixed essences, which seem to be exhaustively describable in structural terms.”\(^{193}\) Likewise, from the perspective of medical science Herfel et al claim that Chinese medical practice “rests on a cosmology presupposing change, not constancy, as ontologically primary. In this way the ancient Chinese worldview is the antithesis of that of the ancient Eleatics.”\(^{194}\) Philosophers Hall and Ames borrow from Whitehead the distinction between logical and aesthetic orders to characterize the key differences between classical western and early Chinese philosophy.

Two fundamental understandings of order are possible: one requires that order be achieved by application to a given situation of an antecedent pattern of relatedness. This we might call "rational" or "logical" order. A second meaning of order is fundamentally aesthetic. Aesthetic order is achieved by the creation of novel patterns. Logical order involves the act of closure; aesthetic order is grounded in disclosure. Logical order may be realized by the imposition or instantiation of principles derived from the Mind of God, or the transcendent laws of nature, or the positive laws of a given society, or from a categorical imperative resident in one's conscience. Aesthetic order is a consequence of the contribution to a given context of a particular aspect, element, or event which both determines and is determined by the context.\(^{195}\)

In necessarily reductionist logical orders, we find such features as unidirectional causality, external relations, substitutability, unity, universality, closure, creative acts, necessity, and so on.

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\(^{193}\) Farquhar, *Knowing Practice*, 24.


\(^{195}\) Hall and Ames, *Thinking Through Confucius*, 16.
Logical orders encourage the pursuit of truth, certainty, apodictic knowledge, static foundations and forms, and ultimate principles. In contrast, holistic aesthetic orders emphasize mutual interaction and complex causation, internal relations, uniqueness and particularity, plurality, contextual sensitivity, disclosure, emergent processes, contingency, and so on. Aesthetic orders encourage the pursuit of understanding, affective engagement, situational awareness, dynamic navigation, and local values. As we looking back again at the background of Greek harmony and the assumptions built into the Chinese 和, some of these differences will become apparent.

To repeat, while these two orders are general characterizations of features we find as we survey philosophical theories, they are not exclusive categories. There are certainly aesthetic considerations that appear across the vast history of western philosophy, and we can find logical characteristics in Chinese works. These classifications are not absolute, but generalizations which admit occasional exceptions. Indeed, aesthetic orders as holistic can contain logical characteristics as one of a number of possible organizing structures within the broad cast of experience. We can see that it was overly stark for previous generations of sinologists to strictly divide West from East along the lines of rational vs. metaphorical, or logical vs. aesthetic, or scientific vs. mystical. We need not be blinded by orientalism, or reverse-orientalism, or what has been called “cultural essentialism.” Still, through a study of the doctrines and ideas expressed in classics texts, there are distinctions we can make that highlight important contrasts in the deep background assumptions that attend the traditions that make reference to the Yijing and the traditions that make reference to Plato or Aristotle. In particular, these deep background assumptions shape the conceptions of harmony that dominate the philosophical traditions. Let’s briefly recall and compare the Greek and Chinese metaphysics in terms of the origins, the constituents, and the appearance of harmony.

As we read above, Pythagoras connected the ancient Greek notion of harmony to a mathematical concept of ratios. When he extended the concept to the relation of soul and body and up to the heavenly bodies, this numerical precision was maintained. Pythagorean doctrine held that Number was primordial, and that manifest harmony was a subsequent achievement in which objects appeared in the same order as the harmonious numerical relations. Harmony, then, is a matter of conforming to a pre-established form, a form that never changes. This gives rise to the idea of “tuning” oneself to match up with the set form. The practice of tuning is to come to an

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196 I refer to Michael Puett’s misnomer of “cultural essentialism.” Puett fails to see that those who recognize actual differences in the concerns attended to by people from different cultures need not posit any “essence” to those cultures. See my someday forthcoming article.
ever more narrow range, until at last one finds the awaiting point of perfect fit. This metaphor of
tuning contrasts with “attuning” which we will consider below.

The formal nature of the numerical basis of harmony was carried forward by Platonic eidos. For
Plato, harmony describes the perfect order of the just soul or the just state, such that the relation
between reason, desire, and appetite has one correct form and any deviation from this order is
pathological. A soul in harmony brings the eternal order into time, and to be out of order is to
deny any possibility of one’s own perfection. The harmonious soul has an order dictated by the
natural functions of its constituent parts, and these functions are determined prior to any manifest
achievement of harmony. Likewise, in line with the theory of forms, Harmony Itself, or the Form
of Harmony, does not depend on any actual instances of harmony, but actual instances must
conform to the Platonic eidos. The eternal and perfect eidos of harmony is fundamental while any
particular harmony is derivative.

Further, when Plato uses the idea of harmony more colloquially in his dialogs, it most often
signals a question of logical compatibility. His typical question is whether one statement is in
“harmony” with a prior statement. This use of harmony invokes the law of non-contradiction and
implies that there is a definite and logical criterion for when harmony is present or absent.
Harmony is present when there is a logical compatibility or relation between parts, but is absent
when there is a logical contradiction. This is Socrates’ favorite tool for tripping up his
interlocutors, pointing out that their statements don’t harmonize, by which he means that they
cannot logically coexist.

In contrast, Chinese 和 originates in the mutually responsive interaction of various particular
constituents without appeal to an antecedent fixed order. The Yijing’s early reference to 和 in the
baby crane’s calling out in response to its mother suggests a natural occurrence rather than an
abstract mathematical foundation. It is not a question of whether the baby crane replies with a
perfect fourth ratio to its mother’s call, but whether there is an interaction and recognition
appropriate to mother and child between the two calls. Regarding the practice of stirring together
wine and water, there is no unchanging formula for the recipe. As far as we know, ancient
Chinese cooks didn’t use recipes with precise measurements, like ¼ tablespoon sugar for every ½
tea spoon salt. Instead every dish was a unique creation whose 和 was established by tasting it, not
by conforming to a set formula. In this context, the achievement of 和 depends upon unique
features of the occasion, the people drinking together, the quality of the wine, and so on. These
early Chinese conceptions of 和 are natural and empirical rather than abstract and mathematical.
As Herfel remarks, “Harmony is not a ‘number’, but instead is a characteristic of a process.” Chinese 和 is created along the way, arising spontaneously when certain interactions realize aesthetic criteria. The origin of 和 is not a preset and transcendent form, but rather 和 emerges from sensitive and creative interactions. We can see this is a matter of “attuning” in contrast to “tuning” according to numerical harmony. To attune is to give attention, be aware, and be receptive to the contributions of others. Unlike tuning, there is no set position to reach; attuning is a process of continual adjustment to stay alignment with another.

Along the same metaphysical lines, there are important differences in the conceptions of the constituents that make up any harmony. Greek harmonies are composed of distinct and externally related objects. An object is defined by its essence, existing without reference to anything outside of it. As Ames puts it, “the substance ontology of early Greece thus establishes a doctrine of external relations among discrete ‘things’ that each have their essential integrity.” The object’s identity is already established by its essence, and that essence does not change just because it becomes part of a group. To have integrity in this sense is to maintain self-identity. Any relations that a self-same object with a persisting essence enters into are external relations, playing no role in constituting the object, for the object has already been sufficiently defined by its essence. Circumstances may shift and relationships may change, harmonies may form and dissolve, but the object’s essence and identity are not affected by this. These relationships are external to the object’s constitution and identity. They are accidental, merely appended to the object for a time.

This ideal of independent self-sufficient identity is demonstrated by Plato’s insistence that the parts of the city or soul be free from infringement from the other parts. Only when there is no outside interference can one part do its own job. The parts together form a harmony, but the functions of the parts are defined prior to the harmony, and remain the same throughout. Likewise, objects in harmony are self-sufficient and only need to be arranged in the right form, free from interference or outside influence, to generate a harmony that transcends them.

This is in contrast to the components of Chinese 和, which are very much defined by their relationships and their place among other existing things. Ames describes this aspect of Chinese “metaphysics,” writing, “the processual metaphysics as it is expressed in the ‘Great Tradition’ commentary on the Book of Changes and as it is implicit in the early Confucian texts treats

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198 Ames, “Reading the Zhongyong ‘Metaphysically.’”
phenomenon as coterminous events that are constituted by their internal relations.” Instead of speaking of “things” or “objects” or “beings” or “parts,” which all identify solitary entities which can be isolated in space and time, the Chinese metaphysics is better expressed by dynamic concepts such as “process” or “event” or “becoming” or “focus.” These terms capture a sense that everything is embedded in the dynamic advance of space and time and no single piece can be extracted from its situation and defined without reference to what surrounds it. Such putative “objects” are defined by internal relations, by how they interact with their surroundings and fit into the environment. This constitution by internal relations means that the identity of the thing in question is determined by what is prima facie outside of it. In fact, the relationship between outside and inside is not as sharp as in Greek thought. The field which surrounds an object is implicated in the character and expression of that object.

In envisioning a relational alternative to the “being” of substance ontology, Peter Hershock looks to a doctrine of intrinsic, constitutive relations that makes “objects” simply the product of a mental abstraction from lived relations. As Hershock observes:

>This amounts to an ontological gestalt shift from taking independent and dependent actors to be first order realities and relations among them as second order, to seeing relationality as first order (or ultimate) reality and all individual actors as (conventionally) abstracted or derived from them.\(^{200}\)

The relationships within the whole of experience are primary, and only by a secondary cognitive process are they isolated and identified as distinct individuals. This conception of the emergence of objects is related to a key distinction Hershock makes between variety and diversity. Variety is the simple coexistence of different things, whereas diversity implies productive relationships and mutual influence: “‘variety’ and ‘diversity’...point to two distinct qualities and directions of differentiation processes, with variety indicating only the minimal relationship of coexistence, and diversity the realization of a certain quality of interdependence or mutual contribution.”\(^{201}\) A Greek harmony is possible when we have a variety of parts; the parts need only stand together in proper arrangement, coexisting but having no influence on each other. A Chinese harmony, on the other hand, must involve diversity in which there is differentiation yet interdependence. Taking Hershock’s ontological point, an object cannot be isolated from relations, and those relations are valuable when they contribute to diversity rather than simple variety.

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199 Ibid.
200 Hershock, *Buddhism in the Public Sphere*, 147.
In the classical Chinese environment we identify an object not by its essence, but by the roles it plays and how it fits in with its surroundings. An object in this sense loses its identity if it is deprived of context, for the context provides constitutive relations that influence the character of the object. We might say that the objects in Chinese 和 are co-constitutive, both of each other and of 和. In a Greek ontology of essences and attributes, relationships are attributes which can come and go without changing the essential identity of a thing. However, in a relational ontology that doesn’t posit an unchanging essence, changes in the attributes actually change the identity of the object in question. Entering into a harmonious relationship changes the character of the object. It does not simply layer an accidental characteristic on to an unchanging essence, but infuses the object, changing its character. 和 in this Chinese context is a co-creative event in which the mutual influence of various constituents brings about an aesthetically beautiful unified shape.

Greek harmonies appear as repeatable configurations of independent parts. If one can find strings of the right lengths, one can create the same harmony today, tomorrow, and any time in the future. In fact, one need not even have actual strings on hand, for it is enough to know that certain lengths will produce harmony whether or not any musical instrument is present. Once we know the form of harmony, the logical order that determines the standard, we know that any repetition of the transcendent form will be in harmony. Harmonies are expressions of a fixed order, a transcendent ground, and linear causality. They have an order that is analyzable into component parts and static relations.

Chinese 和 appears as unique achievements of creative collaboration. It is only because of these particular ingredients coming together at this time and mutually responding to each other that 和 happens to arise. There is no necessity to 和, but in certain moments a configuration of causal forces interact in such a way that a kind of order shows forth. People recognize 和, not by rationally analyzing its formal structure, but by feeling its aesthetic qualities. It takes sensitive and empirically attentive perception to identify 和. When it is present, not only is the whole in general displaying 和, but with regard to the components, “each shines more brilliantly in the other’s company.” 和 is written into the still-identifiable components as they take on the cast of the harmonious whole. A dynamic unity pervades the situation and all involved contribute in accord with the unique needs of the moment.

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202 Zhang, Transforming Emotions with Chinese Medicine, 51.
The concept we have had passed down from Greek harmony suggests a transcendent numerical form in which externally related objects identified by their static essences appear in a standard order. In the Chinese concept of 和 we have unique interactions between natural components that contribute to each other’s identity and co-create a pleasing arrangement. Though there are similarities, these concepts are different enough to give us pause when we want to translate Chinese 和 into harmony.

Li Chenyang has also addressed this difference in comparing Greek and Chinese notions of harmony. He, too, acknowledges the similarities but finds the differences to be as or more significant:

Like their Chinese counterpart, the Pythagoreans saw music as a prototype of harmony. But unlike the former, they went to the point to equate harmony with numerical ratios and abstract mathematical formulas. As such, their understanding of harmony had a strong quantitative tendency since the very beginning. The Chinese understanding of harmony, on the other hand, starts with a strong qualitative characteristic, namely it focuses on what kind of elements (e.g., different and opposed) situated in what kind of relationship (e.g., balanced and mutual enhancing)....

The Chinese notion of harmony is multidimensionally dynamic rather than rigidly structured in a linear sequential pattern as in the Pythagorean numeric model; it does not admit a fixed formula and it is open-ended and continuously self-renewing. 203

Li identifies the Greek preference for numerical clarity and fixed quantities as opposed to the Chinese preference for dynamic qualities and open ended relationships. These differences are rooted in the Greek metaphysics of antecedent transcendent perfection and the Chinese cosmology of dynamic creativity, as we noted above. Whereas the Greeks begin from the abstract identity and mathematical formula, the ancient Chinese began from the particulars at hand. Recalling the edible metaphor of harmony, this is the difference of cooking to match a recipe, and cooking to create a dish out of the ingredients available. This is the difference between cooking, or generating harmony, as a science or as an art. When we simply translate harmony and 和 into each other, we miss out on these subtle complexities that make the two concepts distinct.

A key point mentioned above is again hinted at by Li’s parenthetical mention that Chinese harmony is “mutually enhancing.” In Greek harmony we find a unity of externally related parts, while 和 is a unity of internally related parts. Externally related parts are defined in advance of their incorporation into a harmony, and do not subsequently change their character in the

203 Li, “The Ideal of Harmony in Ancient Chinese and Greek Philosophy,” 94.
harmony. In a harmony with internal relationships the parts lend their own flavor to each other, and each part is transformed by being in relationship to others. Incorporation into a harmony changes the constitutive character of the parts. While the internally related parts are still distinctly identifiable and do not simply blend into each other, their identity is affected by the relations they enter into. Hence, they are mutually enhancing.

Li makes a further point that these two concepts have different modes of realization and we cannot simply substitute one for the other and carry on as if nothing had changed.

These differences between the Pythagorean and Chinese conceptions of harmony may have a significant influence on people’s attitude toward how harmony is to be realized. If harmony is founded on a linear, logical, inherent structure of the world, we need to discover this reality and conform to it; if harmony is a multidimensional, inclusive, and dynamic creative process, we need to participate in a proactive way to generate it through collaboration. Different approaches can result in different patterns of action in practice. 204

The difference is whether we discover an existing structure or whether we create an arrangement tailored to the relevant circumstances. I think this difference is especially important when we consider the modern Chinese promotion of a “harmonious world” (hexieshijie 和谐世界). The difference is in whether we simply have to identify and implement the right institutional structures, or whether the shape of relationships must be constantly adjusted along the way in response to the circumstances. Under a Greek-inspired idea of harmony, a unity of nations might be considered harmonious if they each go about pursuing their own interests without interfering with each other, without contributing to each other, and without absorbing any influence from the others. However, a harmonious world in the Chinese model would mean that each member nation is affected by the character and fortunes of other nations. Each nation would receive positive or negative influence based on the mutually affecting participation of other nations, and so each has a stake in the others’ success and ability to contribute to the harmonious whole. Instead of assuming that nations standing next to each other in the right order will produce harmony, it would require nations to actively create harmony by their contributions to each other. A difference in the metaphysical or cosmological underpinnings of our concepts can generate an important difference in how we conceive of our political challenges. Is the pursuit of harmony a matter of finding institutional structures that prevent one nation from imposing on another, or is it a matter of engaging in a creative ways across borders to realize novel mutual enhancements?

This distinction may be obscured if we are too quick to assume we mean the same thing when we are discussing和谐世界 as global harmony.

204 Ibid.
In this section I have, for the most part, avoided translating 和 into harmony. At this point, I don’t have a word to replace harmony as a translation, but because the philosophic assumptions of the English word “harmony” fail to capture the full context of 和 and lose its resonances with 仁, 禮, 五行, 理, 隠陽, 道, and so forth, it is a good practice to start treating these terms as having their own distinct semantic value, and not as stand-ins for our more familiar terms. If there are genuinely different connotations between a harmonious world and a 和谐世界, then it would be nice if we could use both of those distinct terms to invoke our desired meaning. It has been said that there is no translation without a loss. If we forget this platitude and carry out facile translation, removing 和 from its context in a non-analytic, poly-connotation evoking language that often relies on paronomasia for definition and lacks many of the familiar metaphysical assumptions about predication, we will fail to take the Chinese concept on its own terms. Unless we are clear about what changes during translation, the possibility of misunderstanding and unnecessary conflict increases dramatically.

Though harmony as bequeathed by Pythagoras and Plato and carried forward by the mainstream of western philosophy has these crucial differences with Chinese 和, those thinkers I have identified as alternates to the mainstream show that there are bridges available to help western and Chinese philosophies find common ground. Whitehead’s notion of aesthetic harmony moves away from the Greek model, emphasizing mutual interrelations, qualitative criteria, and ceaseless dynamism. Dewey’s notion of harmony is similar in that there is no antecedent standard and all harmonies are organically composed out of empirical relations. He describes harmony as a consummatory moment in an ever-moving stream of aesthetic experience. These alternate conceptions demonstrate ideals that can fit more easily with the Chinese ideal of 和. While I believe we must remain vigilant in recalling the possibilities of miscommunication in translation, they give us hope that we may find cross-cultural agreement that a “harmonious world” can be a 和谐世界.
CHAPTER 3

TRADITIONS OF JUSTICE

JUSTICE IN THE WEST: FROM DIVINE VENGEANCE TO HUMAN RIGHTS

Having considered harmony in both western and Chinese philosophy, we turn now to explore the concept of justice. I begin with the tradition of justice stretching from ancient Greece to contemporary America. Given the central place of justice across multiple strands in this tradition, no single chapter can capture the breadth of thought that philosophers and others have poured into it. In this chapter, I hope to capture the main ingredients of a contemporary philosophical common sense understanding of justice.

Justice is a rich polysemous concept. One key difficulty in defining justice is that it has been used in so many ways and has so many subspecies. In any extended discussion of justice we must discern whether we are talking about criminal justice, distributive justice, divine justice, procedural justice, restorative justice, social justice, etc. Below I will concentrate on the following aspects of justice which I think must be dealt with in any consideration of the broad concept of justice: the thirst for vengeance as part of the natural order; the clash between local justice and universal justice; the contemporary dominance of procedural justice based on John Rawls’s work; and those responses to procedural justice which fall under a broad notion of restorative justice.

Divine Vengeance

Though philosophers and academics don’t often dwell on it, the desire for revenge is a major component of a colloquial notion of justice. When Usama Bin Laden was killed and President Obama sternly said into the camera, “Justice has been done,” he was certainly not referring to procedural justice or distributive justice. Popular cries for justice often demand that someone pay

205 “Osama Bin Laden Dead | The White House.” Obama ends his speech with the pledge of allegiance, that most American of statements, “one nation, under God, indivisible, with liberty and justice for all.”
a price. This sense of justice as vengeance was present in the very earliest conceptions of justice written down by the ancient Greeks.

In ancient Greece, Justice was a vengeful Goddess. Divine Dike was fathered by mighty Zeus and birthed by Themis, the Goddess of divine order and sometimes a symbol of justice herself. Sister to the Horai, the seasons, as well as Eunomia (Good Order) and Eirene (Peace), Dike has had a close relationship with order and peace, and the regularities of seasonal progression. She would sit by Zeus and when any injustice was done on earth it would cause her pain. Suffering, she would entreat Zeus to take vengeance on the wrongdoer. She was portrayed as a beautiful girl, virginal and pure, but capable of brutal vengeance.

She appears as a key figure in Aeschylus’ Oresteia plays, as the themes of justice and vengeance drive the story. In the Libation Bearers, the chorus characterizes Justice, singing:

Justice is vigilant—
    she tips the scales.
With some she's quick,
    striking by light of day,
for others sorrows wait,
    delaying until their lives
are half way sunk in twilight,
    while others are embraced
by night that never ends….

For Justice, as she turns the scales
    exacting retribution, cries aloud,
"Hostile words for hostile words—
    let it be done. One murderous stroke
is paid off by another lethal blow.
The one who acts must suffer."207

Justice here is clearly a force for vengeance. Every aggrieved party calls upon Justice to aid them, claiming that their own brutality is motivated and sanctioned by Justice. Aeschylus questions the value of justice as vengeance, yet Dike is still a sacred deity. The Chorus in the Eumenides sings,

To sum up everything about this case,
    I'll tell you this—Justice has an altar.
Give that full human reverence.
    Don't trample it profanely underfoot
because self-interest sees advantages.208

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206 Hesiod, Homeric Hymns, 145.
207 Aeschylus, The Oresteia.
Remember punishment will come—
that outcome's fixed and permanent.\textsuperscript{208}

Full reverence is due to the altar of divine justice. A central theme among the ancient Greeks thinkers was the pursuit of a divinely ordained cosmic balance and an equilibrium among natural forces. Human wrongdoing shifted the scales, and only suffering by the wrongdoer could balance it back out. The infliction of vengeful punishment was meant to restore the background condition of stable order. Dike’s job was to bring order back to a world where it had been broken through violence. Only a violent counter-reaction could do that. Calling upon Dike’s punishment lightly or out of personal insult was a frivolous invocation of justice, but the ultimate reckoning and rectification of terrible acts was a genuinely divine task of restoring balance and order. The vengeance associated with justice was not simply returning violence for violence, but was a holy task of restoring the world to its natural condition.

By the time of Plato’s Athens, justice (dikaiosyne) had taken on a much more civil cast. Not only is Socrates’ justice in the Republic an idea of original metaphysical order, but even the interlocutors in the Republic suggest definitions that have to do with public order and respect for law and society. However, the hint of violence is never eradicated from the concept of justice. Punishment and violent reprisal are the most common mechanisms for maintaining orderliness in society and for discouraging those who impede social justice. Across history, the threat of violent retribution has been a primary tool for maintaining social order and keeping behavior within legal bounds.

Leaping ahead to contemporary practices, Paul Ricoeur notes that modern criminal justice has contained this violent drive within the notion of justice by opening up a reflective distance which distinguishes it from the immediate rush to violent vengeance. He writes,

\begin{flushright}
The great conquest... consists in separating vengeance and justice. For the short-circuit of vengeance, justice substitutes creating a distance between protagonists, where establishing a difference between the crime and the punishment is the symbol of penal law. How can such a difference be instituted, if not through the addition of a third party who would not be one of the protagonists.\textsuperscript{209}
\end{flushright}

Courts and judicial instruments impose punishment on wrong-doers, but not in the form of blood-thirsty revenge. Rather, retribution is meted out in the deliberate and calculated manner of impartial judges who stand between the conflicting parties. This imposition of a judicial apparatus

\textsuperscript{208} Ibid.
\textsuperscript{209} Ricoeur, The Just, xi.
between the aggrieved and the object of retribution is meant to ensure that justice is not merely revenge, but is clearly a tool for social order and stability. In this sense, modern criminal justice repeats the ancient Greek interest in both punishment and maintenance of order, though through the institution of courts and judiciaries rather than through personal revenge or divine interventions. Justice, both ancient and modern, is connected with forcefully punishing those who bring chaos to social, moral, or cosmic orders.

**Universal Law and Particular Laws**

The ancient Greek philosophers closely associated justice with the notion of law and being true to the law. Because of this, throughout history disputes over the extent and breadth of law have affected the conception of justice as well. The key question is whether the law is universal and somehow built into the structure of the world or of humanity so that it is the same for anyone at any time, or whether the law is a local matter based on historical customs and circumstances. This question came to the philosophical fore as Athens became a global center of learning and commerce and the encounter with other civilizations challenged the idea that only the Greek way of life was a worthwhile life. Alasdair MacIntyre points to this historical moment as reflected in Aristotle’s description of the dual character of justice as both universal justice and particular justice. MacIntyre writes:

> The pressures of the time not only make *agathos* unstable in meaning, they also raise doubts about the nature of *dikaiosyne*. *For the idea of a single moral order has broken down. It has broken down partly because of the breakdown in formerly unified social forms…. But dikaiosyne… is of all notions the one that appears most to be put in question by the discovery of rival social orders. Different cities observe different customs and different laws. Does and should justice differ from city to city? Does justice only hold within a given community between citizens? or should it hold also between cities?* \(^{210}\)

Plato’s foundational argument in the *Republic* was firmly on the side of a universal conception of justice. The *Republic* was known, for much of its history, as “On Justice,” because its grand theme is a defense of the just life. This dialog, and the theory of forms set out in it, set a standard for the western philosophical understanding of justice. Plato sets out to prove that it is better to be just than unjust, and along the way he must try to define what exactly justice is. To do this, Plato first addresses several conceptions of justice that he believes are false. He says (via Socrates) that justice is not a matter of fulfilling obligations, nor it is a matter of helping friends and harming

\(^{210}\) MacIntyre, *A Short History of Ethics*, 7.
enemies as they deserve, nor is it merely a convention to keep the stronger from exploiting the weaker, nor a tool by which tyrants control the population, nor the product of social agreement, nor an instrumental good. In the dialog Plato dismisses traditional lay conceptions, the innovations of the sophists, and the probing attempts of his young friends.

In Plato’s own elaboration of justice, two key characterizations stand out. The first is that justice is a harmonic order of specialized functions, and the second is that Justice Itself is a formal ideal (eidos). Midway through the Republic, having described many details of the ideal city and the shape of the human soul, Plato finally comes to a fairly clear statement about the meaning of justice:

the principle that it is right for someone who is by nature a cobbler to practice cobblerly and nothing else, for the carpenter to practice carpentry, and the same for the others is a sort of image of justice—that’s why it’s beneficial.

Apparently.

And in truth justice is, it seems, something of this sort. However, it isn’t concerned with someone’s doing his own externally, but with what is inside him, with what is truly himself and his own. One who is just does not allow any part of himself to do the work of another part or allow the various classes within him to meddle with each other. He regulates well what is really his own and rules himself. He puts himself in order, is his own friend, and harmonizes the three parts of himself like three limiting notes in a musical scale—high, low, and middle. He binds together those parts and any others there may be in between, and from having been many things he becomes entirely one, moderate and harmonious. Only then does he act. And when he does anything, whether acquiring wealth, taking care of his body, engaging in politics, or in private contracts—in all of these, he believes that the action is just and fine that preserves this inner harmony and helps achieve it, and calls it so, and regards as wisdom the knowledge that oversees such actions. And he believes that the action that destroys this harmony is unjust, and calls it so, and regards the belief that oversees it as ignorance.

That’s absolutely true, Socrates.

Well, then, if we claim to have found the just man, the just city, and what the justice is that is in them, I don’t suppose that we’ll seem to be telling a complete falsehood.

No, we certainly won’t.

Shall we claim it, then?

We shall.

So be it.\textsuperscript{211}

\textsuperscript{211} Plato, Republic 1075c.
Plato here brings to a close his discussion of justice among the parts of the city and the parts of the individual soul. He suggests that justice flows from a proper order of relationships among component parts so that they don’t interfere with others or go beyond their boundaries. It is not just a quality of acts as suggested by Socrates’ interlocutors, but an expression of the interactions among various elements. In the city, justice is the right relationships among the guardians, auxiliary class, and the peasants. In the soul, justice is the right relationships among reason, spirit, and appetite. Among the virtues, justice is the right relationships among wisdom, courage, and temperance. In each case justice is not a particular action or attitude, but a structural organization of the relevant elements.

The metaphor of harmony is prominent in Plato’s description of justice. Harmony here means that different parts fit in a predetermined order forming a unified whole. Though the parts are united, they do not “interfere” with each other. They fulfill their own functions and together they create a moderate and orderly whole. Preserving this fixed harmonious order is justice.

Justice for Plato is a metaphysical concept, an idea of everything being in order according to a preset structure. Indeed, in seeking the meaning of justice Plato is reinforcing his metaphysical theory of the forms. While the Republic’s general theme is justice, it is also where we find the most important elaboration of Plato’s theory of forms, eidos, in the well known allegory of the cave, the divided line, and in his insistence that we find “The Just” rather than describe particular just acts. The justice he wants to find is the formal idea of justice which stands as the essence of every particular act of justice. That is why he rejects any example of someone acting justly; he seeks the formal structure that makes an act just. The Form of Justice pursued through the Republic is an unchanging abstract idea available to rational intelligence. It is the same Justice that appears in the city, in the soul, among the virtues, and in any act of justice enacted by a person.

The Platonic theory of forms is important to the rest of western philosophizing about justice because it establishes several fundamental characteristics of justice. In accordance with the nature of forms, Justice Itself is universal, eternal, unchanging, foundational, divine, absolute, and intelligible. Justice Itself is not found by seeking examples of justice on earth but by recollecting the pure essence of Justice. It is not understood through the senses or the sentiments, but through the pure intellectual faculty of the similarly incorporeal and eternal soul. It is not

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212 Ibid., See especially "Republic" and "Phaedo."
something we discover in observing just acts or just people, but by searching for an essential
definition. We will find these kinds of characteristics repeatedly in the later theorists of justice.

The justice put forward by Plato is an objective structure built into the (transcendental) world. It
is a universal feature of the cosmos, such that any particular instance of justice must match up to
the same form of justice. This is the first gauntlet thrown down over the question of whether
justice is a universal law or whether it is equal to the laws of a certain place and time.

Aristotle, as he typically does, offers up more empirically grounded considerations and
establishes familiar categories and distinctions in types of justice. Aristotle recognized that there
are two primary senses in which justice is invoked. One is along the lines Plato drew – justice as
the virtue of following the universal laws of nature. The second is justice as making right
according to the situation, including both fair distribution and appropriate punishment. This
second aspect allows for the influence of local customs, circumstantial exigencies, and particular
interests to be considered in determining what is just. This second kind of justice requires a
magistrate to judge the particulars of the situation, a magistrate who knows the local laws and can
perceive the needs of the people involved.

Within particular justice, a further division can be drawn between the two ways Aristotle
recognizes of calculating just distributions. The first is arithmetic equality, where every share is
the same and, regardless of circumstantial irregularities, the fixed and immutable ratio of shares is
1 to 1. The second is geometric equality, where only by examining the contributions of each party
and weighing their relative merits can the distributive ratio be determined. In this case there may
be any number of factors of different virtues that enter into the equation. Similarly, the meting out
of punishments and the exaction of restorative reimbursements depends on the circumstances and
people involved. This kind of rebalancing is not a matter of universal law, but of local custom and
particular interests.

Aristotle looks at the concept of justice and describes two senses of justice: one that preserves the
traditional cosmic role of justice as the Goddess Dike’s maintenance of a primal law-like order,
and one that acknowledges that different people may have different customs and particular needs.
Aristotle addresses this nascent controversy by acknowledging two meanings of justice, but this is
a question that will follow the concept of justice throughout its subsequent history: Is justice
cosmic, universal, and absolute or social, local, and relative?
Across the long arc of philosophy, this question has received contradictory answers, inspired fierce debate, led to imaginative reconciliations, and driven much of the discourse on justice. Roman politicians developed the idea of justice as accordance with the particular codes of Roman law until Cicero insisted that human laws were a reflection of the natural law. The Christian conception of Divine Justice enumerated by St. Augustine put the emphasis back on a universal standard of justice, because the one true God had one law for all of humanity. Aquinas, as a close reader of Aristotle, also saw two types of justice, one to sort out humanity’s petty social conflicts and one that followed God’s Divine Law. Hobbes denied the presence of justice in the natural world but found it in the social contracts created among people, while Locke looked to natural law for inspiration in creating just laws for humanity. Hume called justice an artificial virtue pursued for its expediency, while Kant considered it an absolute demand of practical reason. And that’s just the tip of the iceberg.

The issue of the universality or particularity of justice is among the longest running debates in the history of philosophy. And it continues to be a key question today. In the modern age we find ongoing contention over relativism and multiculturalism in terms of justice, and in the questions of universal values and human rights. As we shall see in the next chapter, this was a main point of contention in the liberal-communitarian debate. In reflecting on the meaning of justice, we find this conceptual argument across the tradition from ancient Greece to modern politics. Despite, or because of, mighty efforts by famous champions on both sides of the debate, it remains an issue we must consider when thinking about justice.

**Rawlsian Principles and Procedural Justice**

John Rawls is the major voice in the modern philosophical discussion of justice. In the mid-20th century Rawls’s theory of justice brought political philosophy back to the fore after a period of neglect. He has been at the center of theorizing about politics and justice ever since and new responses to his work continue to appear. Here I will give a general overview of Rawl’s theory to establish the ways in which his ideas have formed the common sense about justice.

Rawls claimed that justice was “the first virtue of social institutions.” Justice in the institutional sense is a matter of setting background conditions of distributive justice ensuring the fair distribution of rights and resources. Rawls understands society as a means for people to

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cooperatively satisfy their individual interests in living a good life. Justice in society ensures that society is an ongoing fair system of cooperation which allows people to seek their own conception of happiness. Justice grounds a framework of how to structure society and what kind of institutions should exist to enable people to find their own good lives.

Identifying justice with social institutions, Rawls put the conception of justice as a personal virtue into the background. He was not looking for what makes a just person or a just soul, but what makes a just society. Rawls ends up defining individual justice as living up to the demands of just institutions, so that the personal virtue is derivative from the initial instance of justice in the social body. Thus, with Rawls the discussion of justice turns into a question about how to organize political society and how to design institutions so that they are just, rather than how one ought to act or what virtues to display.

Rawls calls his theory a constructivist theory of justice to indicate that justice is not a metaphysical structure or essence that people discover, but one that is generated by people through a process of construction and definition. Justice is not a form built into the world soul or a divine law commanded from on high; it is an idea that people develop to improve life together and to satisfy their sense of fairness. The idea of a contract or a constitution which establishes certain guarantees highlight this process of committing to unbreakable oaths. What people construct in Rawls’s set-up are principles. These principles are the guarantees that undergird all other decisions. A principle in this sense is a foundational and unbreakable rule that both guides and constrains the choices we make.

The Rawlsian conception of justice is anchored by two principles. In his later work, Rawls made slight modifications to his original formulation of the two principles. While he says that changes in the second principles are mostly stylistic, they also reinforce the priority of equally opportunity over the difference principle. Changes in the first principle are meant to emphasize that the basic liberties are multiple and specified in a list, rather than appearing as an single abstract value called “liberty.” The revised principles are:

(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
(b) Social and economic inequalities are to satisfy two conditions: first they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society.

\[214\] Rawls, *Justice as Fairness*, 42.
Rawls says that there is a lexical ordering to these principles, such that the first must be realized before we can pursue the second. This makes the individual’s claim to basic liberties the primary aim of any institutional set up, with fair access to positions and support for the poor as a latter but still imperative principle.

Rawls argues that these principles are fair because they are derived from a fair procedure beginning with fair conditions. Rawls’s unique method deriving the fair principles employs the theoretical device of the original position behind the veil of ignorance. Behind the veil nobody knows the particular details of their lives and their circumstance, nor their personal quirks and values. In this way, everyone has a kind of flattened out equality. No person and no class of people has any special priority; no form of life or particular value is preferred. The veil of ignorance is meant to show that when we don’t know if we will be winners or losers in life, we choose fairness as the highest value because that gives everyone a chance to succeed no matter who they are or what they value. Built into the original position is absolute disinterestedness in determining social advantages, and this disinterest guarantees that the principles derived from this process are equally fair to all.

Because he hopes that a liberal, pluralistic society will have room for many comprehensive doctrines, Rawls wants his theory of justice to be independent of any one moral doctrine, and so it must be justified by the procedures that establish it rather than the values that inspire it. This is why the device of the original position is so important: it begins the procedure of identifying just principles by starting from a fair condition. The conditions are fair because they do not privilege any social role or value system. From this fair starting point, principles chosen in such a process will be fair principles. Because Rawls thinks that his two principles of justice are what any reasonable and rational person would choose from the original position, these can form the basis of a just society.

In his later explanations of justice as fairness, Rawls emphasizes that it is a conception of a political order, and not a comprehensive vision of moral or ethical life. Those comprehensive visions are supplied by overarching philosophical theories or religious traditions, whereas his justice is only an ideal of political institutions which enables people of different beliefs to live together in cooperative society. This restriction of justice to the more narrow domain of politics is an important move in the contemporary concept of justice. Justice for Rawls is not a personal virtue, nor a cosmic order, nor a divine law, but a condition in which people can live together without infringing on each other’s ability to pursue their own ideas of a comprehensively good
life. Justice is the fair opportunity and rights afforded to all regardless of race, creed, or class to autonomously pursue their own values. It often takes the form of prohibitions against interference, such that nobody can impose their own ideas of the good onto others. In this way, justice governs political institutions which are charged with setting up the basic structures of society, and justice ensures that these structures are not unfairly biased against anyone’s comprehensive beliefs.

The Rawlsian vision casts justice as establishing rights (indefeasible claims) rather than promoting valued outcomes. Because people in the original position don’t know what particular values they endorse, they will not choose to structure society in ways that promote certain values over others. Instead, they will ensure that as individuals all people have the right to choose for themselves, so that when the veil is removed and they are aware of their own particular vision of the good life, they have the freedom and the right to pursue it. Rawlsian justice ensures the provision of equal rights; it does not promote any particular conception of the good.

Justice as fairness occupies an enormous territory in contemporary political philosophy. Not only are there volumes of work supporting, refining, and advancing the major premises, but any alternate vision put forth must contend with the Rawlsian positions and be clarified in distinction to them. The impact of *A Theory of Justice* has turned the broad majority of political theory towards procedural justice, which assumes abstract equality among citizens, laws that are indifferent to the particular identities of the people they cover, and government neutrality towards people’s deeply held values. Instead of a personal virtue, justice becomes a collection of impersonal organizing principles that establish background conditions of society. This is to conceive of justice as a fair starting point and as a set of principles that regulate the institutional foundations from which people can make their own free choices.

In contemporary ethical and political philosophy, it is impossible to reflect on justice without grappling with the Rawlsian conception of justice as fairness. While fairness has always been part of the concept of justice, Rawls has made distributive fairness, in the sense of limiting arbitrary inequalities, the first consideration in our philosophical common sense understanding of justice.

### Doing Justice to Restorative Justice

The final consideration I want to include in our rough survey of the meanings of justice is the notion of restorative justice. While this phrase, “restorative justice,” has a specific meaning in the field of criminal punishment and rehabilitation, which we will deal with in a later chapter, here I
want to use it in a very broad sense. I take my broad starting point from Roger Ames’s suggestion that a conception of justice can spring from the common use of the phrase “doing justice to” some particular person or situation. To do justice in this sense is to give a particular person or situation full consideration, to account for its unique needs, and to come through in providing adequate resources. I see this focus on the particular problems at hand as underlying two important rejoinders to the Rawlsian conception of justice, rejoinders that I think cast justice as a restorative force: Amartya Sen’s “Idea of Justice” and Robert Solomon’s “Passion for Justice.”

**Realizing Improved Capabilities**

Justice is deeply entwined with the idea of equality, but Amartya Sen has prompted us to ask, “Equality of What?” Instead of equality providing an unequivocal criterion of justice, equality itself can be measured in many different ways. Justice could be equality of outcome, or equality of initial distribution, or equality of opportunity, or equality of legal status, or equality of moral status, or equality of whacks with a stick. The bare concept of equality tells us nothing without a tradition of meaning to guide our standards of evaluation. Here Sen echoes some of the communitarian critiques of Rawls, which argue that local values and priorities set the meaning of justice for particular historical communities. We will see more about this communitarian stance in the next chapter. Sen’s answer is that people must pursue the equality of capability to realize the functionings (states of being and activities of doing) that one chooses. The functionings that one chooses are likely rooted in one’s local values, and so Sen has been adamant in not specifying a universal list of capabilities, instead insisting that each situation be giving its own consideration.

Sen, while admitting his great admiration for Rawls, takes issue with the Rawlsian focus on justifying principles of perfect justice and envisioning a perfectly just structure of society, as these take away energy and efforts from the enactment of substantive alleviation of injustices in the world. He makes a distinction between “transcendental institutionalism” and “realization-focused comparison,” and says that the main body of recent philosophical work on justice pursues transcendental institutionalism. He identifies the tradition of transcendental institutionalism with the work of Hobbes, Locke, Rousseau, and Kant. In modern times, he says Rawls, Ronald Dworkin, David Gauthier, and Robert Nozick carry on this approach. These

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217 Sen, “Equality of What?”.
theorists fall into the categories of contractualists, deontologists, and rights theorists. In contrast, he identifies key contributors to realization-focused comparison as Adam Smith, the Marquis de Condorcet, Jeremy Bentham, Mary Wollstonecraft, Karl Marx, John Stuart Mill, and also situates his own contribution in this tradition. These are often categorized as consequentialist theorists. Beyond calculating the good of the consequences, Sen’s notion of realization implies that the manner of realization counts in the final evaluation, and that it is not simply the isolated results that have moral standing.

Realization-focused comparisons seek to identify actual social problems that can be alleviated, and to identify better and worse outcomes. This focus on alleviating the injustices visited on particular people and realizing better lives leads me to include Sen as a restorative justice proponent, though he does not use this term. Building upon his notion of capabilities, the realizations Sen aims at are realizations of individual capabilities, such as access to education and health care, opportunities to travel, ability to have a family and home life, etc. Where these capabilities are absent, capabilities approaches insist that they be restored. This does not mean people have to take advantage of their opportunities or realize particular functionings, but that the capability to realize them is present. One of the challenges of capabilities approaches is identifying the presence of capabilities and prioritizing tradeoffs among capabilities where full realizations are not possible, but this is why the approach demands consideration of the particulars in any situation.

Though respectful of the motivations of the transcendental institutionalists, Sen is quite critical of their preoccupation with identifying universal forms of justice and the structure of perfectly just institutions. One problem with this approach is the impracticality of theorizing about a perfect society that will never exist. Sen implies that institutionalists make the perfect the enemy of the good. Not only is perfection unobtainable, but the mechanisms for finding universal principles, such as the Kantian categorical imperative or Rawls’s original position, do not in fact produce uncontroversial results that can secure universal agreement. Another problem is what Sen calls the redundancy of transcendental institutions. Even if we have a model of such a perfect society, if we are to make improvements to an actual society we need to measure the improvements against other actual or possible conditions. To further compare the improvements with an ideal is redundant and does not contribute any useful evaluations beyond those provided by concrete comparison. Sen argues that evaluating one option as “closer” to the ideal is not actually helpful because there are many aspects that have to be compared and some may be closer while some

\[^{219}\text{Ibid., 7–8.}\]
may not, and sometimes coming close but not fully succeeding is worse than putting one’s efforts elsewhere in the first place. The idea of an ideal society is not so helpful when it comes to evaluating which actual arrangements and policies are better or worse.

Instead of trying to nail down a precise formulation of universal principles of justice or theorizing about a perfect institutional setup, Sen says that we should be trying to eliminate the all-too-obvious injustices that surround us. This is the main thrust of a realization-focused approach. It aims to bring about a better state, better on a relative scale. It seeks to meliorate suffering and encourage enjoyment directly. Crafting good institutions does make a difference between suffering and enjoying, but theorizing about perfect institutions isn’t making the actual evaluations about better and worse upon which to act.

In contrast to social contract theories and those that focus on institutions, Sen brings the question of justice back to individual lives.

The need for an accomplishment-based understanding of justice is linked with the argument that justice cannot be indifferent to the lives that people can actually live. The importance of human lives, experiences and realizations cannot be supplanted by information about institutions that exist and the rules that operate. Institutions and rules are, of course, very important in influencing what happens, and they are part and parcel of the actual world as well, but the realized actuality goes well beyond the organizational picture, and includes the lives that people manage – or do not manage – to live.\(^\text{220}\)

Reflecting on justice frequently means looking at individuals and the lives they are living. We see poor people, crippled people, trapped people, dominated people, and we know they could be living better lives. We need not spell out just what institutional structure would be perfectly fair to them or what their perfectly realized lives would look like, but we still understand that there is injustice in their inability to choose better lives and justice in improving their options. A common sense understanding of justice is found in how we evaluate the unequal capabilities and unequal opportunities that people can be trapped by. In such cases we make relative evaluations, understanding justice as making things better, and injustice as perpetuating what is worse.

For Sen, positive realization means increasing human capabilities along the lines of his own capability theory. Whether or not there is justice is determined by whether people are able to exercise their capabilities to live a fulfilling life. Injustice is the diminishment of individual capabilities; justice is their restoration. In this sense, Sen asks us to do justice to those who do not

\(^{220}\) Ibid., 18.
have the chance to realize the basic functionings that they wish to enjoy. We do justice to them by working to restore their basic capabilities.

A Passionate Response to Undue Suffering

Robert Solomon also brings the concept of justice back to the individual and away from institutions and abstract theories. But whereas Sen maintains that reason is the arbitrator of just and unjust, Solomon focuses on emotions as the primary evaluators of justice: “justice is not a utopian plan for the perfect society but a personal sense of individual and collective fellow-feeling and responsibility. It is not an abstract theoretical ideal but a constellation of feelings and a perfectly ordinary virtue of character.” Solomon recognizes that these are not typically associated with the noble ideal of justice: "One of the more controversial aspects of my argument is the idea that ‘negative’ emotions such as vengefulness, outrage and resentment have an essential place in the cultivation of justice." Solomon takes justice out of the realm of cool rational reflection and brings it into the churning mix of emotional life. Indignation and anger make us want to see changes, and thinking about the improvements made to an intolerable situation of suffering brings up the more positive feeling associated with the restoration of justice and the reduction of suffering. Justice then is the emotional experience of things working out for the better. When undue suffering is eliminated, when undeserved rewards are reduced, when violence and crime are punished, that satisfaction deep inside our hearts is the feeling of justice.

Such feelings are brought about by concrete considerations and particular experiences. Thus justice is not a matter of universal principles, but of local issues: "Justice claims are always

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221 Solomon, A Passion for Justice, 3.
222 Ibid., 34.
contextual and presuppose a local set of conditions and considerations.”223 In the face of suffering, people respond in the moment emotionally and the desire for justice is piqued. But, what counts as suffering is not measured according to a universal standard, but is based in local values and beliefs. In a society where every family has a color television, one may feel resentment on behalf of a family that is denied a television and may demand justice for them; in a society where children obey parents unconditionally, one may feel resentment on behalf of the old couple whose kids ignore them and then one may be moved to demand justice. These conceptions and justice claims only make sense in relation to the local values.

Justice is this feeling that things must be made right because they have gone wrong. This is doing justice to people’s suffering and our connection to others. Cultivating our emotional responses and our feelings of justice by extending them to more and more subtle forms of injustice is to become more and more virtuous. Engaging with the world emotionally and with deep passion and correcting injustices on a personal scale is an important aspect to recall when we think about our common sense meanings of justice.

Conclusion

As Sen and others have pointed out, the principled, procedural, institutional approach spearheaded by Rawls has been the dominant mode of thinking about justice in contemporary political philosophy. But, the search for other meanings and bases of justice by philosophers seeking a more capacious notion of justice has been fruitful too. Since ancient times the concept of justice has stretched to cover a lot of ground, and if we are to recognize the deep meaning it has in western culture, we must consider many dimensions at once. While not an exhaustive list or thorough analytic dissection of the concept, I believe that when we speak of justice we have to consider the issues discussed in this section as part of the background of meanings it carries. To begin with, we should recall justice’s roots in vengeance, its association with law and the distinction between universal and local applicability, the vision of fair principles governing society, the question of equality, and the importance of making lives better by doing justice to individuals. Though there is certainly more to say about justice, this brief survey of some key concerns wrapped up in a general concept of justice can serve as a basis for the critical reflection

223 Ibid., 18.
carried out in following chapters. We can hold these ideas in the back of our minds as we next turn our attention to issues surrounding a Chinese conception of justice.

JUSTICE IN CHINA: CONSTRUCTING A CONCEPTION

Among scholars, the existence of a “Chinese concept of justice” is still controversial. Given that throughout most of its history China lacked a single term to express “justice” and lacked many of the important concepts that surround discussion of justice in the west, some have said that China lacked a concept of justice. Nonetheless, I think we must look to the content of their concerns as much as to their language if we are to investigate whether or not the ancient Chinese understood justice. In this section I will first consider some of the classical Chinese moral concepts that appear to cover similar functional terrain as “justice.” Second, I will consider how Chinese ideas and practices dealt with the issues that are typically dealt with under the heading of justice in the west.

The Language of “Justice” in China

In modern times justice translated into Chinese becomes zhengyi. Often the way to gain a deeper understanding of a Chinese word is to examine the individual characters that comprise it. I propose to begin with these two characters, zheng 正 and yi 義, and then expand our exploration to some other ideas that seem to fill justice’s role in China.

Yi 義

We start with yi, the more difficult and more widely recognized of the two terms. Yang Xiao had made the case that yi, with its wide range of meanings, does sometimes function in the same way that “just” functions in English: “Notice that it does not require the word ‘yi’ always behaves like

224 H.C. Lee writes, “One of the most important characteristics of Chinese social philosophy is its conspicuous lack of one word that we can readily translate as ‘justice’” (Lee, “The Idea of Social Justice in Ancient China,” 125). Randal Peerenboom echoes this in writing, “There is not even a term for ‘justice’ in the classical lexicon of Confucius” (Peerenboom, “Confucian Justice,” 17).

225 Rosemont, A Reader’s Companion to the Confucian Analects, 17.
the word ‘just.’ The fact that sometimes it behaves like ‘just’ is enough for proving that there is a concept of justice in ancient China.”\footnote{Xiao, “Trying to Do Justice to the Concept of Justice in Confucian Ethics,” 531.} Xiao is not trying to prove that $yi$ equals justice in every way, but that the ancient Chinese have concerns that overlap with some western concerns for justice, and so have a concept of justice. He tries to shows that $yi$ is a likely place to find something that approximates justice. He specifically refers to $yi$ as used in the context of giving and taking and questions of property. Distributive justice is a matter of who gets what property or who deserves what goods and privileges. Because $yi$ is used in the context of addressing similar questions, frequently as a contrast with excessive interest in profits ($li$ 利) and gain ($de$ 得), it can be sensibly translated as justice in many sentences. A main function of $yi$ in the Analects is in contrast with the rapacious pursuit of profit ($li$).\footnote{See Analects 4.16, 7.16, 14.12, 14.13, 16.10, 19.1.} The Mencius, in a prominent position in the very first paragraph, also contrasts profit with ren and $yi$. Profit gained by illegitimate or unscrupulous methods is $bu$ $yi$ 不義, and it takes strength of character and devotion to proper conduct to remain $yi$ in the face of easy but unethical profits. Here we find some connection with notions of social and economic justice as expressed in the west. The rejection of unfairly gained or undeserved wealth is something we see from Aristotle to Rawls and beyond as a matter of justice.\footnote{Some have claimed that we see it in other primates as well. (Brosnan and de Waal, “Monkeys Reject Unequal Pay.”)} Where $yi$ stands in contrast to undeserved wealth, it fills a role associated with distributive justice.

But, as Xiao acknowledges, this is to limit the meanings of both justice and $yi$ to the economic sphere to find an overlap in these two extremely polysemous terms. While acknowledging this intersection of application, it is important to get a richer and fuller sense of what $yi$ means beyond an opposition to material greed.

The Shuowen jiezi, the first Chinese dictionary, defines $yi$ as “one’s dignified and reverential comportment.”\footnote{己之威儀也. Huaiy Wu interprets the Shuowen definition as “the dignity, majesty, or respectable countenance of the self.” (Wu, “The Way of Heart,” 321.) Notice also the close association in the characters between gift giving, $yi$ 儀 and the appropriate conduct suggested by $yi$ 義.} This is to say that one who is $yi$ is behaving properly, with dignified bearing, and fulfilling the expectations of the situation. Ames traces the etymology of the character to ritual sacrifice of sheep, a solemn and dignified act that bestows honor on the person carrying it.
From this image of an honorable and reverential person handling sacred duties with dignity, yi become a broad term of approbation, and a designation of virtuous behavior.\textsuperscript{231}

Chung-ying Cheng reminds us that the disciples recorded in the \textit{Analects} never asked Confucius about the meaning of \textit{yi} as they do about \textit{ren}, as if \textit{yi}'s basic meaning were not in question. It seems uncontroversial to say it is basic term of approval for people’s behaviors. And yet \textit{yi} has been the subject of much difficulty for western interpreters. It has most often been translated as “righteousness,” but also as “rightness,” “morality,” “duty,” “appropriate conduct,” and even directly as “justice.” In a related sense, it is also used to mean “meaning” or “significance.” In fact, \textit{yi} has a tremendous semantic range and can be used in a multitude of contexts. Yang Xiao refers to a study by Chen Daqi, who found the following in reviewing the 108 instances of \textit{yi} in the \textit{Mencius}:

> What came out was an amazing classification: a) \textit{yi} of respecting the elderly and obeying the elder brothers, b) \textit{yi} between the ruler and the ministers; c) \textit{yi} that has to do with taking and giving; d) \textit{yi} of the heart/mind of shame; e) \textit{yi} that is said to be the human path or way; f) \textit{yi} that conflicts with profits; g) \textit{yi} that is said to be internal; h) \textit{yi} that is said to be common \textit{yi} of the world. And this list can go on and on.\textsuperscript{232}

Thus we are warned about taking \textit{yi} to be the simple equivalent of any one English term. Cheng says that \textit{yi} is the general term of approval which must be understood by a competent moral actor in any situation: “A man of \textit{yi}, therefore, must be a man of creative insights who is able to make appropriate moral judgments in particular situations,”\textsuperscript{233} and “\textit{Yi} can be understood as that which fits a situation and thus characterizes the situation.”\textsuperscript{234} Doing what is \textit{yi} in any situation is doing the appropriately moral thing for that place and time, doing what fits that unique situation. Ames also highlights this situational relevance of \textit{yi}, and further ties it to the way one is related to others. He writes, “\textit{Yi} is ‘achieving an optimal appropriateness in one's relations’- that is, the satisfaction of moral uncertainty through an acquired sense of what is most fitting in the situation.”\textsuperscript{235} Being aware of the situation and the needs of those particular people involved and affected allows one to

\textsuperscript{230} Ames, \textit{Confucian Role Ethics}, 202.
\textsuperscript{231} For Aristotle justice is the perfection of all virtues in relation to other people. Thus is it a very general term, and in this sense inspires people to take it as parallel to \textit{yi}.
\textsuperscript{232} Xiao, “Trying to Do Justice to the Concept of Justice in Confucian Ethics,” 535.
\textsuperscript{234} Bontekoe and Stepaniants, \textit{Justice and Democracy}, 186.
\textsuperscript{235} Ames, \textit{Confucian Role Ethics}, 201.
behave in the way most productive to everyone’s benefit. Confucius brings this contextual aspect of yi to the fore in saying, “the junzi’s approach to the world has no preset agreements nor preset denials; they are yi’s followers.” Junzi do not have fixed judgments or principles; rather, they identify yi as what is suitable for the situation at hand and go with that.

In some contexts, yi can also mean “meaning.” We can see a link between these two senses of the term in that acting appropriately for all involved in a situation generates shared meaning and significance. Yi actions are meaningful in developing the available relationships by accommodating to the particular needs of the moment. Because they enhance people’s experiences and enable moral growth in relationships, yi actions optimize the possibilities of significance inherent in any situation. Ames highlights this link, writing, “By extension, since appropriateness in relations is the ultimate source of meaning itself, it should not be surprising that yi also has the import of ‘meaning’ as it is expressed and comes to reside in one’s personal relations and conduct. Over time, yi becomes the aggregating significance invested by a living tradition in the observance of the various gestures of propriety.”

The ethical significance implied by yi invests meaning into actions. Thus it is available in an extended sense to refer to the notion of meaning in general.

Hall and Ames try to locate the meaning of yi in the context of an ancient Chinese worldview. They describe yi as the distinctively human expression of moral selfhood that both invests meaning in and derives meaning from harmony-enhancing behavior within a particular situation. Yi describes the creative expression of a unique person in a novel situation, an expression that invests meaning for others to appreciate and recognize as worthy of praise and emulation. Hall and Ames further emphasize the creative function of yi acts as those acts that simultaneously express and establish the individual by most fully realizing the possibilities of his or her situation. Yi acts are the foundation of ritual and religious ceremony since they express the heights of meaning and nobility that humans can achieve, qualities which inspire the trust and admiration of the community. In this sense, an “optimally appropriate” act is one that takes account of the entirety of its surroundings as well as the intimate details so that it will provide the moment with a majestic wholeness and elegant unity. The sensitivity to context needed to actually engage in

Further reinforcing this situational aspect, yi 義 is closely linked to the homophonous character yi 宜, meaning suitable, or fitting, or proper. This character is also related to ritual sacrifice and shows an eye, signifying a person, between the roof and the floor, which is the proper place for a person to reside.

Analects 4.10. 君子之於天下也，無適也，無莫也，義之與比。

Ames, Confucian Role Ethics, 205.
the most fitting or appropriate behavior is a masterful skill. It is a cultivated ability that only the best of people, junzi and sages, can achieve.

This authoring of creative acts which invest meaning in life is akin to artistic production, and so yi has an aesthetic function. “For Confucius, ‘rightness’ has a distinctly aesthetic connotation.”239 Something yi is appropriate and fitting in that it complements and completes the situation just beautifully. Yi acts have beauty, grace, elegance, style, refinement, balance, poise – all characteristics of artistic achievements. Yi is a key concept in the moral vision of Confucianism,240 a vision that is distinctly aesthetic throughout. To be yi is a personal expression of creative moral artistry in that it makes life beautiful, harmonious, delicious, and meaningful by appropriately attending to the needs of all involved in any situation.

Zheng 正

Zheng by itself does not present quite the same range of difficulties that interpretation of yi does. The Shuowen jiezi defines it simply as shi 是 where shi can mean what is so, or what is approved, or what is correct. The character suggests stopping 止 at a line 一. The basic meaning of zheng is to be straight as opposed to bent, able to stand up straight, and by extension upright in behavior or correct in meaning. It can also mean the adjustments that straighten and bring order.241 As a moral concept it suggests that one does not stray beyond boundaries, that one’s behavior is not crooked or deviant, and that one can stand straight and proud in the face of temptation and and pressure. It describes one whose behavior is unswervingly proper.

In the Analects, zheng is mostly used as a common verb, as in arranging one’s sitting mat or straightening ones robes, or even as standing up as opposed to sitting. However, there are a few places where a more noble meaning is intended. In 12.17 zheng is equated with the proper function and aim of government. In 13.6 and 13.13, zheng is connected with shen 身, implying that one can zheng oneself and one’s own conduct, and having been zheng-ed is a better position to be in because then one has inherent authority to govern. In 14.15 zheng seems to mean

239 Hall and Ames, Thinking Through Confucius, 105.
240 We will see discuss the role of yi in Mohism in the next section.
upstanding behavior, especially in contrast to being crafty, devious, or sneaky (jue 譎). The idea of straight behavior contrasts with the shiftiness of a devious person.

Mencius more frequently uses zheng in places where “correct” or “proper” seems to be an appropriate translation. Most relevant to the moral sense of zheng, in 7A20, Mencius lists it in parallel with ren and yi when he lists the qualities of a good ruler, elevating it to a very high status as a primary virtue.

In the Xunzi, the use of zheng as a virtue multiplies exponentially. While it still functions as a common verb meaning to straighten or to be correct, it is often used to mark the behavior of someone with superior character. At 1.6 Xunzi says that the junzi draws close to zhong 中 and zheng.242 Both of these suggest something straight down the middle, not leaning or erring to one side. This is the upright and balanced character of superior people. At 4.9 Xunzi says that zheng is something that should be cultivated.243 At 6.13 and 6.14 he attributes the characteristic of zheng to the revered ancient scholars and says that good people should be intent on bringing zheng to themselves.244 In these ways and in many other instances, Xunzi insists that one should zheng oneself, correct one’s own behavior, straighten one’s own bearing, and be morally upright.

Two prominent uses of zheng in the Xunzi are in his chapters “Zhenglun” 正論 and “Zhengming” 正名. In the first, to zheng is to offer replies and corrections to the incorrect arguments of other thinkers to straighten out their mistakes. Xunzi, like any good philosopher, enumerates his opponents’ positions and then offers arguments to correct, zheng, their errors. In “Zhengming,” by engaging with Mohist ideas about language and logic, he adds to and clarifies something said by Confucius. While Confucius mentions zhengming only once, it became an important concept for later Confucians, and its development owes much to Xunzi’s efforts.245

In 13.3 Confucius says his first task, were he governor, would be to zhengming 正名. This is probably the most prominent classical use of zheng. Confucius takes zhengming to mean repairing the use of certain important words, using words properly, establishing agreement about the meaning of terms, and bringing behavior in line with the normative demands of certain named

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242 所以防邪辟而近中正也 Therefore the junzi must carefully choose his residence, and in traveling must engage scholars, and by this keep away from evil and draw close to balance and uprightness.
243 修正治辨矣 (someone) cultivated straightness and brought order to distinctions.
244 古之所謂處士者...修正者也...端然正己 What the ancients called recluses... were ones who cultivated straightness...thoroughly straightened themselves.
245 Other relevant mentions of zheng occur at: 1.15; 2.1; 2.10; 8.21.
roles. It has often been translated as “rectification of names,” but I will argue in the next section that this phrase has some misleading connotations. We might rather say, “using words properly,” where proper use depends on the union of historical precedent, immediate needs, and future consequences. For words to be zheng is for them to stand strong with clear meaning and not go beyond their appropriate domain.

Daoists also make wide use of zheng as a common term. In the Zhuangzi it is used in seemingly contradictory ways, as we might expect from Zhuangzi. He questions whether blue is the zheng color of the sky,246 or if there is such a thing as a zheng place for animals to sleep,247 or whether using tools to cut something to shape gives it a zheng shape.248 In these cases where zheng implies that there is one right answer, the Zhuangzi implies that there is no such standard. But there are other places where zheng is used in the sense of normal or proper according to nature without manipulation. Emphasizing the meaning of zheng by repeating the character, Zhuangzi writes, “These zheng zheng ones do not lose the core sense of natural character and tendencies.”249 Here zheng is what accords with natural tendencies. As a natural and spontaneous virtue, zheng is contrasted with Confucian yi, which Zhuangzi sees as artificial: “In the time when vital capacity was full, they did not esteem the worthy, and did not employ the able; superiors were like high tree branches, while the people were like wild deer. They were thoroughly zheng but did not consider this to be a matter of appropriate behavior (yi).”250 This is echoed in the claim that abandoning worldly entanglements leads to a zheng mind and an even (ping 平) temperament.251

This kind of spontaneous zheng in accord with nature is the way of proper governance: “As for a sage’s governance, does he govern externally? He is zheng, and subsequently the government proceeds. Indeed, he is one who can handle his business, and that is sufficient.”252 Examples are abundant, but let’s examine one final place in the Zhuangzi where zheng is strongly emphasized. Speaking of those who cling to desires as opposed to those who can freely move with the dao, the Zhuangzi has Laozi saying, “Blaming, favoring, taking, giving, admonishment, instruction, creating, and killing, these eight are the tools for straightening behavior. Only those who follow the great transformations without blockages can make use of them. Therefore it is said

246 Zhuangzi, “Xiaoyaoyou” 1.
247 Zhuangzi, “Qiwulun” 11.
248 Zhuangzi, “Pianmu” 2.
249 Zhuangzi, “Pianmu” 1. 彼正正者,不失其性命之情.
250 Zhuangzi, “Tiandi” 13. 至德之世,不尚賢,不使能;上如標枝,民如野鹿;端正而不知以為義.
251 Zhuangzi, “Dasheng” 1.
Laozi here says that following the natural flow of life enables one to use the proper means to help others get their behavior straightened out. These eight methods are not to be disregarded, but are to be welcomed for what they naturally provide, which is a proper living in natural accordance with the *dao*.

Of course, this is the Laozi of the Outer Chapters of the *Zhuangzi*, a character giving voice to later ideas. The Laozi of the *Daodejing* has a much less favorable understanding of *zheng*. While he does say that “Clarity and stillness are the world’s proper mode (*zheng*),” in other places he suggests that *zheng* is not quite the ideal others make it out to be. He says that “The normal (*zheng*) will again become abnormal, the good will again become uncanny,” as well as, “Straight (*zheng*) words appear twisted.” These suggest that to be *zheng* is not an ultimate or sustainable achievement, and that being straight or correct is just another moment in the progression through various modes of existence. What is straight becomes crooked, what upright will crumble; *zheng* is not privileged over the not *zheng*.

In the classical sources *zheng* has a range of uses, from the simple action of adjusting one’s hat into proper position, to embodying the undeviating moral commitment that Confucian ideals demand. In general, as a moral concept, it suggests that one is being straight, behaving appropriately, within the boundaries of decent conduct, and maintaining an unerring sense of what is proper in any situation.

### Associated Moral Terms

While *yi* and *zheng* cover a lot of ground in discussing ethical behavior, there are other important terms that round out the kinds of functions that justice fulfills in western philosophies.

Three terms that cannot be avoided when referring to ancient Chinese ethics are *ren* 仁, *li* 礼, and *de* 德. Because they are covered in great detail in many places (as well as briefly in the previous chapter) and have less to do with the role of justice than with other dimensions of morality, I will only mention them briefly here. *Ren* is the consummate conduct that builds relationships through

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253 *Zhuangzi*, “Tianyun” 5. 怨、恩、取、與、諫、教、生、殺，八者，正之器也，唯循大變無所湮者，為能用之，故曰：正者，正也.

254 *Daodejing* 45. 清靜為天下正.

255 *Daodejing* 58. 正復為奇，善復為妖.

256 *Daodejing* 78. 正言若反.
heartfelt care. It is often translated as benevolence, but goes beyond psychology and refers to the whole of concern and conduct. We will return to the role of ren in Chapter 5 when we see how Chung-ying Cheng relates it to yi 義. Li is the reverent enactment of social behaviors, covering all the area between polite manners and ritual ceremonies. It often means following specific behavior patterns and fulfilling prescribed roles. We will encounter it again in greater detail in the next chapter. We considered de a bit in the previous chapter, and we can recall that it is an encompassing notion of personal quality that inspires and attracts people. It is a general ethical quality that others admire.

One term that fills a role filled by justice is jun 均, which the Shuowen jiezi defines as “even or flat all over,” (pingbianye 平徧也). Something flat has no particulars that stand out as different from others, so that there is a kind of equality to all things. This idea is specifically mentioned by Confucius as indicating an interest in material equality among the people.

Another is gong 公, which is often used as an honorific title along the lines of a Duke.257 Because the Duke is a public figure, gong also means public matters, and therefore become associated with fairness and equality among all members of the public. The Shuowen jiezi defines it as “evenly divided,” (pingfenye 平分也). It is also the opposite of private self-interest si 私, which makes it useful for suggesting a broader perspective and a wider circle of moral concern that honors all equally.

As we see in the Shuowen jiezi definitions for jun and gong, ping 平 is an important part of this vocabulary. Ping means flat, level, or even. It also implies equality, as nothing stands out above anything else. Mencius holds up ping alongside jun as distributive goals for a ren leader to aim at, saying “as for ren government, you must begin by laying down boundaries. If boundaries are not laid straight, the wells and fields will not be equal and the crops and prosperity will not be even.”258 Further, because nothing untoward is poking out, ping suggests that there is peace and calm.

Thinking beyond oneself with a sense of reciprocity is suggested by shu 恕. To shu is to take another’s perspective and to consider how one impacts upon them. It comes to mean mercy or forgiveness, in the sense that the superior passing judgment considers the interests of the

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257 Duke is an approximation of a hierarchical title. In other hierarchies, another title might fit the approximate rank.
258 Mencius 3A3. 夫仁政，必自經界始。經界不正，井地不鉤，穀祿不平.
suppliant. More generally, Ames writes that, “shu is a matter of correlating one's own conduct with the behavior of others.” This implies anticipating the needs and intentions of other people. It is a key concern of Confucianism, and is associated with Confucius’ formulation of the golden rule \(^{260}\) when he says, “Is this not shu!? What one does not desire, do not do to others.” \(^{261}\) This sense of what is appropriate for others and what other people need contributes a foundational concern to the moral sphere.

The word bao 报 is associated with repayment or return in kind, in regard to both favors and harms. It is a way of making things even, of settling the score, and of returning balance. Confucius, when asked if one should repay (bao) harm with admirable character (de 德) counseled, “use uprightness to repay harm, use admirable character to repay admirable character.”\(^{262}\) Bao gives a sense of making good and returning like for like.

The word fen 分 refers to acts of dividing up, or portions divided and distributed. The division of portions is an act that calls for moral reflection. How you divide and apportion resources is question of justice, and fen marks out a place where appropriate apportionment might be pursued.

This statement about bao also mentions zhi 直, which is an important term. Zhi means straight and vertical, and it is closely related to zheng 正. The Shuowen jiezi defines zhi as 正见也, proper vision. We just saw that it is what Confucius counsels as the appropriate response when one has been injured or harmed. That is, one should stand up erect and proud and straight. James Legge translates it directly as “recompense injury with justice.”

Along with the idea of straightness, there is balance and steadiness as expressed by zhong 中. To be zhong is to hit the mark and maintain the center rather than go to extremes. While the early translation of the Zhongyong 中庸 as the “Doctrine of the Mean,” overwrites the Zhongyong’s unique contribution, there is a sense in which maintaining zhong is similar to Aristotle’s equation of justice with avoiding the extremes. Zhong keeps order and stability and maintains personal, social, and cosmic balance.

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[^259]: Ames, Confucian Role Ethics, 195.
[^260]: Because it is framed as a negative injunction, it has been called the reverse golden rule or the silver rule to distinguish it from the more positive and proactive formulation.
[^261]: Analects 15.24. 其恕乎！己所不欲，勿施於人.
[^262]: Analects 14.34. 以直報怨，以德報德.
Finally, *fa*, the laws and institutions, fulfill some functions associated with justice, and we will revisit this concept in more detail in the following chapter.

**Practices of Justice**

This brief survey of some of ancient China’s moral vocabulary does not show that they had a single concept of justice equivalent to that developed in the traditional western narrative, nor that all the connotations of justice were acknowledged in China. I leave it as an open question (until the next section) whether or not the above terms truly accord with the traditional meanings of justice. What I believe these terms do show is that Chinese moral concepts address some of the ethical and social concerns on which western conceptions of justice bear. But we can still go further than conceptual analysis in investigating a Chinese notion of justice by looking at various practices and concerns.

Because “justice” is a polysemous term, if we are to look for the Chinese practices dealing with familiar questions of justice we must investigate in several dimensions. Below I consider several of the most prominent aspects of justice – social or distributive justice, retributive justice, procedural justice, and restorative justice – to see how the Chinese have thought about and handled these issues. These categories are meant to reflect some broad concerns that fall under the heading of “justice,” but not to imply that the Chinese make such distinctions (at least not until they were translated from western languages) or confine their thought to the parameters of western categories. I shall wait until the next section to consider whether it is appropriate to use the word “justice” in these areas.

**Social Justice**

Several fruitful attempts have been made to consider a Confucian notion of social and distributive justice. Three of the most instructive are Huaiyu Wang’s reformulation of justice in terms of Mencian sentiments, Erin Cline’s elaboration of a Chinese “sense” of justice, Joseph Chan’s formulation of Confucian principles of justice. As well, Roger Ames has reflected on Confucian justice through the lens of a Deweyan pragmatic philosophy.
Hauiyu Wang formulates a conception of justice rooted in the Mencian understanding of yi, which he sees as springing from the human heart rather than reason. He writes, “This emotional understanding of the fundamental human condition on the basis of the heart, which is pivotal to the unique character of ancient Chinese culture and moral practice, has also produced a different path of justice (yi) in early Chinese thinking.” Wang sees justice as rooted in friendship, affection, and care for the dignity of others. It is because we care about others that we hope to treat people with respect and bring them joy. Because our hearts are warmed by positive relationships and the happiness of our friends and family, we take action to eliminate the suffering that characterizes injustice. Social and distributive justice is rooted in the desire to see others doing well. The heartfelt emotions of care and compassion lead people to pursue social justice.

Erin Cline, in exploring Chinese notions of justice, discovers a “sense of justice” rather than “principles of justice.” It was Rawls who first distinguished and described a sense of justice, and Cline works from his definition. For Rawls, a sense of justice is a primal endowment of moral psychology, an untutored impulse connected with the emotions. He writes that this sense “may be aroused or assuaged, and it is connected not only with such moral feelings as resentment and indignation but also, as I shall argue, with natural attitudes such as mutual trust and affection.” A sense of justice is the basic capacity to recognize rightness and wrongness, to feel badly when someone is treated unfairly, and to want to treat others well. It is rooted in the sentiments and our basic sociability, whereas the mature principles of justice that will develop in light of this sense are based on reasonability and rationality.

Cline writes that in the Confucian tradition we can find a capacity similar to Rawls’s sense of justice: “The Analects, too, maintains that the capacity to feel or perceive what is fair is a basic capacity that humans can and should cultivate.” She writes that there is not one concept that matches up with the sense of justice, but that it is expressed in the Confucian virtues, xiao, ren.

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264 Rawls, Collected Papers, 97.
265 Rawls says that a sense of justice is a nearly universal feature of humanity, and is inclined to accept that all people by nature have such a sense. If this is right, then Cline’s discover of such a sense in Confucianism is not surprising: “It seems almost certain that at least the vast majority of mankind has a capacity for a sense of justice and that, for all practical purposes, one may safely assume that all men originally possess it. It is plausible to suppose that any being capable of language is capable of the intellectual performances required to have a sense of justice; and, given these intellectual powers, the capacity for the natural attitudes of love and affection, faith and mutual trust, appears to be universal.” Rawls, “The Sense of Justice.”
266 Cline, “Two Senses of Justice,” 367.
仁，yi 義，and shu 恕. In behaving according to each of these virtues, a person honors the value of fairness. A respect for justice is built into the Confucian virtues, and Cline concludes that,

This concern is seen in a wide range of discussions, including the fair distribution of wealth, the need to address the problem of poverty and provide assistance to those in need, the importance of doing what is right instead of what will result in profit or material gain, the problems of partiality and corruption, the capacity to take a wider view and judge situations in a fair and balanced way, and one’s appreciation for the institutions that help to preserve a stable society, such as the administration of punishments for criminals.*

These issues are generally ones that can fall under the broad concerns of justice in the west, but Cline still worries that “One might still doubt though that these different discussions are all an expression of the capacity for a sense of justice,”* Cline’s response echoes Rawls, in saying that a concern for fairness is the main characteristic of a sense of justice:

these different discussions are unified (in) that they all concern the source of our attitudes and responsibilities toward other members of society, specifically respect to questions of fairness. In all of these discussions, the capacity to feel or perceive what is fair and respond accordingly is considered part of what it means to possess certain Confucian virtues.*

Cline thinks of fairness as not allowing arbitrary inequalities. The word “arbitrary” does a lot of work here, because there are clearly many inequalities in Confucian social organization. While there are some egalitarian sounding statement in the Analects and even more in the Xunzi (see below), persistent distinctions between officials and peasants, fathers and sons, elder and younger brothers, and husbands and wives, challenge the idea that unequal distributions are arbitrary. Nonetheless, Cline admirably highlights a constellation of moral feelings and impulses that we might see as constituting a Confucian sense of justice in Rawlsian terms.

Joseph Chan has argued for a conception of justice based on classical Confucianism that intentionally departs from a Rawlsian conception of fairness. He asks, “Does Confucianism contain the concepts of distributive justice and social justice? Are there ethical principles governing the distribution of resources in Confucianism? Are they principles of justice, and, if so, are they still relevant and viable today?” In answering these questions, he relies on a broad definition of justice inherited from the Greeks: “render to each his due.”

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267 Ibid., 370.
268 Ibid.
269 Ibid.
270 Chan, “Is There a Confucian Perspective on Social Justice?,” 261.
In arguing that the Confucians do have this conception of justice, he first points to Xunzi’s emphasis on the distribution of punishments and political offices. Regarding political office, Xunzi writes, “As a general principle, every rank and official responsibility, and each reward or punishment, was given as a recompense that accorded with the nature of the conduct involved.”

He takes a similar position when it comes to punishments: “In antiquity, penal sanctions did not exceed what was fitting to the crime.” Here and elsewhere Chan finds statements that accord well with the ancient Greek idea of rendering what is due, writing, “If my analysis is correct, then Confucianism does have the concept of (distributive) justice, and it is the same as the Greek one: to render to each person his due. Like the Greek concept, Confucian justice is distributive, individual-oriented, and moral.”

In addition to proportionally just distribution of offices and punishments, Chan finds connected principles of economic or social justice in answering the question of what each person is due and on what criteria. Through his reading he distills three principled criteria for assessing social justice: 1) the principle of sufficiency; 2) priority for the badly off; and 3) rewards for merit and contribution.

The principle of sufficiency says that everyone is due a basic minimum standard of material comfort. If there is starvation, homelessness, and no such thing as retirement age, people do not have sufficient resources. Besides health and comfort, people need a basic level of material wealth to be moral. Desperate people cannot be expected to cultivate strong moral character; they are too busy trying to survive. A principle of sufficiency should eliminate this immorality born of desperation. Confucianism affirms that people are due the opportunity to be moral human beings with a basic standard of living. Chan argues on Mencian grounds that providing a functioning system of distribution which meets the minimums of sufficiency is the government and ruler’s responsibility, and is a matter of social justice. The following provides a basis for the argument:

Hence when determining what means of support the people should have, a clear-sighted ruler ensures that these are sufficient, on the one hand, for the care of parents, and, on the other, for the support of wife and children, so that people always have sufficient food in good years and escape starvation in bad; only then does he drive them towards goodness.

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271 Xunzi 18.3. Translated by Chan, 263.
272 Xunzi 24.3. Translated by Chan, 264.
273 Chan, “Is There a Confucian Perspective on Social Justice?,” 265.
274 Mencius 1A.7, Translated by Chan, 267.
Elaborating on what is sufficient to care for oneself and one’s family, Mencius refers to the well-field system, in which equal plots of land were distributed to families around a communal well. The plots were big enough to feed a typical family, affirming a sense of equality in distribution as well as a concern for sufficiency. Xunzi too endorses the idea that people are due a basic level of resources: “Employ the people so that they are certain to succeed in their assigned tasks; make certain that the profits from their assigned tasks are sufficient to provide a means of living for them.” In answering what people are due, that is, what is just in social and economic matters, Chan finds the Confucians advocating a principle of sufficiency.

Priority of the worst off is a familiar element of justice thanks to Rawls’s advocacy of the maximin and the difference principle. Confucianism reflects a sense that people who are already suffering shouldn’t be made to suffer more when other people are doing fine. Along with the principle of sufficiency goes the principle that those who struggle to reach sufficiency on their own are due some assistance by those who have a surplus. Mencius is clear that good a government must take care of those who need special help.

Old men without wives, old women without husbands, old people without children, young children without fathers—these four types of people are the most destitute and have no one to turn to for help. Whenever King Wen put benevolent measures into effect, he always gave them first consideration.

Xunzi, too, is explicit in advocating that government and rulers must give priority to the disadvantaged.

Those who have one of the Five Defects [deaf, dumb, crippled, armless, dwarf] should be raised up and gathered in so that they can be cared for. They should be given official duties commensurate with their abilities and employment adequate to feed and clothe themselves so that all are included and not even one of them is overlooked.

Select good and worthy men for office, promote those who are honest and reverent, reward filial piety and brotherly affection, gather under your protection orphans and widows, and offer assistance to those in poverty and need.

Some people, through no fault of their own, have more burdens that most others. It hardly seems fair that some people are born crippled, or that some people’s spouses or parents die early, or that they are born into impoverished families. Recognizing the arbitrary and unfair misfortune they face, there is a sense of justice which inspires people to want to help them, to make them, if not

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275 Xunzi 10.3a, Translated by Chan, italics his, 270.
276 Mencius 18.5, Translated by Chan, 273.
277 Xunzi 9.1, Translated by Chan, 273.
278 Xunzi 9.4, Translated by Chan, 273.
whole, a little bit closer to normal, a bit closer to having an equal shot even if they can’t obtain it themselves.

The idea that material rewards should go towards those who have the most merit and contribute the most to an endeavor is a familiar common sense notion of just desserts. People who are morally superior deserve superior rewards, and those who work hardest to achieve some goal deserve the largest share of the fruits of their labor. Xunzi advocates that official positions and the benefits that go with them should be allocated on the basis of merit and competency, rather than on heredity.

Although they be the descendants of kings and dukes or knights and grand officers, if they are incapable of devotedly observing the requirements of ritual and moral principles, they should be relegated to the position of commoners.

Although they be the descendants of commoners, if they accumulate culture and study, rectify their character and conduct, and are capable of devotedly observing the requirements of ritual principles and justice, they should be brought to the ranks of a prime minister, knights, or grand officers.  

People should obtain official positions because they merit such positions. They should receive large emoluments because they are competent to use those emoluments for the good of the society. Mencius declares that contribution must be counted when distributing resources. He writes, “it is not that you feed him for his intentions, you feed him for his work.” Chan points out that the Confucians are not for strictly equal shares beyond a level of sufficiency. Once everyone has enough, then greater benefits go to those who earn them through virtue and hard work.

While this principle of merit and contribution does not agree with Rawls’s denial of the relevance of desserts in a theory of justice as fairness, Chan demonstrates for us that broadening our concept of justice makes it more likely that we will recognize what the Chinese tradition understands as just. Instead of seeing if the Chinese conception matches the modern conception, he goes looking for the Chinese ideas on their own terms.

In all, Chan’s arguments and examples reveal some primary concerns of ancient Confucian social thinking. He demonstrates the idea that government owes something to the people, and that what they owe touches on the same issues that people in the west sometimes classify as matters of justice. What he does not demonstrate, and perhaps doesn’t intend to, is that Confucians held

279 Xunzi 9.1, Translated by Chan, italics his, 274.
280 Mencius 3B4. 子非食志也，食功也.
these ideas as principles of justice, where principles are understood as inviolable, foundational, and absolute. If one’s moral beliefs are rather firmly held convictions developed by experience and induction, open to refutation but having survived rigorous investigation, then we might call these “principles” though I think it is better to call them considered convictions or sage wisdom. Better to say Confucians didn’t expound principles; they gave sage advice for managing a harmonious society. As Cline argues, it is not Rawlsian “principles” of justice but only a “sense” of justice that we find in the Analects. The difference between a sense and a principle of justice is also reflected in the difference between the Confucian practical orientation and the western focus on theory. Confucius wants people to live well, and a sense of justice informs what is meant by “well.” Chan and Rawls aim to provide a theoretical framework of inviolable foundational imperatives that justify justice as a first principle of political society.

Ames describes a Confucian perspective on justice as “derived from acting justly within our family and community relations.” He argues that justice does not refer to some independent and pre-existing principle, but is rather a generalization from the quality of relationships in which a person deliberately and circumspectly attends to the needs of another. Justice is “a quality of efficacious and productive behavior attained when human transactions are informed by our best efforts at cultivation and personal growth.” This is a conception of justice that can accord with the virtue of ren, consummate conduct, especially in relation to particular people. Confucian justice is not a matter of strict equality or distributive principles, but rather, “built into the Confucian position here is the imperative of making the situation right for all members of the community who are affected.” Justice as “relational virtuosity” requires a careful attention to particular relationships. Only by such particular attention can one address another with a ren manner and get the most out of the relationship. Ames’s conception of Confucian justice echoes the idea of giving each person what he or she due, where what is due to a person can only be determined by genuinely considering them and caring about their needs.

I would mention several other points that reflect upon a Confucian notion of social and distributive justice. Some of these were addressed by the other scholars previously mentioned, but they deserve explicit attention for their striking relevance to western questions about justice. Some statements by Confucius, Mencius, and Xunzi reflect an obvious concern with distribution, fairness, and social equality.

282 Ibid.
283 Ibid.
First, Confucius suggests that material equality is a key consideration:

A) Myself, I have heard that one who has a state or a household does not worry about lack, but worries about inequality, and does not worry about poverty, but worries about disturbance. When equality pervades there is no poverty, and when harmony pervades there is no lack, and when peace pervades there is no instability.\(^{284}\)

The key term here is *jun* 均 which we noted above, meaning even, flat, or equal. Confucius seems to be saying that everyone, or at least every peasant, should have a roughly equal share of wealth so that nobody will be poor relative to his neighbors. This is a point about distributive justice, such that common people should have roughly equal measures of material wealth. Confucius does not elaborate on this, but it seems clear that great inequality is a recipe for disharmony and instability. However, there does not seem to be any requirement that rulers and the nobility should be on equal or flat footing with the people.

Confucius suggests that efforts should be made on behalf of the poor, rather than the rich:

B) A *junzi* helps the distressed, he does not advance the wealthy.\(^{285}\)

Confucius here claims a kind of priority for the worst off. People who are already rich don’t need more, and so policies that enrich them further come at the expense of others who really need the help. The opportunity costs of increasing a rich person’s fortune immorally deprives poor people the help they need to relieve their suffering.

Mencius decries the uneven allocation of resources:

C) In terrible years and times of famine, as for your old and feeble people who end up in ditches and drains, and your strong ones who scatter and go in four directions, there have been many thousands of them; but your storehouses, granaries have been full, and your government offices well stocked.\(^{286}\)

Mencius here refers to the inequality of wealth between the common people and the rulers. He is clearly dismayed at the terrible disparity and the effects it has on the poor. In the case he is discussing, impoverished peasants had let public officials be killed, but instead of condemning them, Mencius implies that their actions are justified because they are rightfully resentful of the

\(^{284}\) Analects 16.1. 丘也聞有國有家者，不患寡而患不均，不患貧而患不安。蓋均無貧，和無寡，安無傾。
\(^{285}\) Analects 6.4. 君子周急不繼富。
\(^{286}\) Mencius 1B19. 凶年穀歲，君之民老弱轉乎溝壑，壯者散而之四方者，幾千人矣；而君之倉廩實，府庫充。
inequality that leaves them suffering. Mencius is suggesting that some measure of distributive justice is sorely needed.

Xunzi suggests a basic minimum of care for the disabled and distributing jobs proportionate to people’s abilities:

D) Those with the five ailments, raise them up and organize them, then nurture them; teach them skills, then give them activities; give them official tasks then feed and clothe them. Address them all together without any left out.287

Xunzi here advocates for the protection of the disadvantaged and giving them an opportunity to contribute. This establishes a minimum level of equality in meeting basic needs. He makes a universal appeal in insisting that not one person be overlooked. Giving people work commensurate with their abilities is a strategy based on a sense of proportionality.

As well, Xunzi insists that offices be open to all based on ability and not on heredity:

E) Select the worthy and respectable, raise up the sincere and respectful, make prosperous those with family reverence and brotherly affection.288

This is fairness of opportunity, another important element within western discussions of justice. Xunzi especially is adamant that hereditary offices are a problem and that only open access to powerful positions can promote effective governance.

I think it is indisputable that Confucians were concerned about many issues that westerners consider matters of distributive and social justice. Though they did not develop a comprehensive theory of justice or describe absolute principles of justice, in a wide variety of contexts they express deep concerns that the poor and the disadvantaged receive enough resources to live decently, that the wealthy and powerful are obliged to share their advantages, and that everyone be given an opportunity to work and to be successful without being disadvantaged by the accidental circumstances of their birth. This is the heart of social justice, a heart clearly on display in the Chinese tradition.

287 Xunzi 9.1. 五疾，上收而養之，材而事之，官施而衣食之，兼覆無遺.
288 Xunzi 9.5. 選賢良，舉篤敬，興孝弟.
Retributive justice in the sense of punishing wrong doing is not hard to find in ancient China. Crime was dealt with severely. Confucius in the Xiaojing remarks on the breadth of the penal code in his time: “The five punishments are applied to three thousand (crimes).”\(^{289}\) Not only were punishable crimes extensive, but the punishments were often terrible: “The five punishments current at the beginning of the Han dynasty were branding, amputation of the nose, amputation of the leg, castration for men and sterilization for women, and decapitation.”\(^{290}\) Clearly, punishment of wrong doing was a basic and pervasive element of governance in ancient China.

Besides inflicting pain as retribution, punishment serves several other purposes: “In this tradition, amputory punishments and facial branding were commonly used on criminals, not only to alert the community of a ne’er-do-well in their midst, but also to shame such miscreants before their ancestors in the invisible world.”\(^{291}\) Xunzi clearly acknowledges the role of punishments in preventing crime: “In general, the basis for punishing people is to prohibit violence and make them hate deviant behavior, and further to restrain what they have not yet done.”\(^{292}\) Retributive justice is not merely for retribution, but serves a social purpose in bringing about order through fear of punishment.

Legalist philosophers most clearly embraced the power of retributive justice. Han Feizi advocated merciless punishment of any infraction. He said of the effective ruler, “His inflicting punishment is terrifying like overpowering thunder, so that even divinities and sages cannot rescue you.”\(^{293}\) Embracing a view of humans as self-interested and calculating, Han Feizi thought that rewarding good behavior and punishing bad behavior, carrots and sticks, are the most effective tools of social control. People must be afraid of breaking laws, and fearful of the power of the state. Strong laws and harsh punishments are hallmarks of Legalist philosophy.

Similar to American criminal law, in Legalist theory criminals should be persecuted on behalf of the state (or the Emperor directly) because of the harm done to the state’s authority and to the society at large by lawlessness. The victims’ interests were not the chief concern, but rather the maintenance of order:

\(^{289}\) Xiaojing 11. 五刑之屬三千.
\(^{291}\) Ibid., 12.
\(^{292}\) Xunzi 18.9. 凡刑人之本，禁暴惡惡，且懲其未也.
\(^{293}\) Han Feizi 5. 其行罰也，畏乎如雷霆，神聖不能解也.
For this reason, a bright ruler’s way of maintaining his ministers is to fully exploit them using laws, and target them using precautionary measures. Therefore, there is no amnesty for the death penalty and no leniency in punishments. Amnesty for the death penalty and leniency in punishment is called an imperiling excess. The altars to the spirits of land and grain will be endangered, and the state and its families will be face trouble.\textsuperscript{294}

A ruler without the ability or willingness to punish people threatens the social order (good order represented by the altars to the spirits) and will not be a ruler for long. If officials do not respect the authority of the Emperor and his laws, they will usurp authority and undermine the state. Fear of harm and hope of reward were instruments of governance and maintaining order. Punishment without leniency, harsh retributive justice, was a main tool of governance according to Legalist philosophies.

The interests of the victims of crimes were more straightforwardly represented at certain times in history by the youxia, the so-called knight-errants of China. The youxia were not professional warriors, but men who would fight for noble causes and sought to punish anyone who caused harm to those in distress. James Liu, who wrote an authoritative study of the youxia throughout Chinese history and literature, introduces them by writing, “the knights-errant simply took justice into their own hands and did what they thought was necessary to redress wrongs and help the poor and the distressed. They did not hesitate to use force, nor did they have much regard for the law.”\textsuperscript{295} He later cites a description of them as people who, “seeing an injustice on the road, pulls out a sword to help.”\textsuperscript{296} Redressing wrongs with a sword is retributive justice in the sense of direct vengeance, which Liu acknowledges: “the knights-errant made revengefulness a virtue.”\textsuperscript{297}

The youxia’s sense of justice was most closely aligned with the Mohists, though the direct connections between the two are tenuous. In accordance with Mohist ideals, the youxia sought justice, or vengeance, not only for their families, friends, and neighbors, but for anyone who was wronged or unjustly treated. That is, they showed impartiality in their concern for justice, rather than a graded concern which was strongest for those closest to them. This is in pointed contrast to the Confucian teaching of graded affection. The youxia held to a more universalistic and absolute insistence on equal treatment for all, exhibiting a more egalitarian or Mohist view. They would fight for basic fairness and decent treatment for all, and where harm was done they would seek

\textsuperscript{294} Han Feizi 4. 是故明君之蓄其臣也，盡之以法，質之以備。故不赦死，不宥刑。赦死宥刑，是謂威淫。社稷將危，國家偏威.
\textsuperscript{295} Liu, The Chinese Knight-Errant, 1.
\textsuperscript{296} Ibid., 5.
\textsuperscript{297} Ibid., 8.
retribution on behalf of the victims. This kind of retributive justice stood outside the law and flowed from the compassion and conscience of individuals.

The youxia saw themselves as defenders of yi 義. Their sense of yi was not the Confucian yi, but closer to the Mohist yi with its universal and absolutist ambition. Liu says a youxia sense of yi is “closer to ‘altruism’ and ‘justice’ than ‘righteousness.’”298 In this context yi might be appropriately read as concept of justice, if we understand justice to include retribution and vengeance.

The incorporation of legalist governing ideas into the state practice across the history of Chinese dynasties, along with the Confucian awareness that punishment was a useful secondary measure for controlling people, ensured that exacting retributive justice was among the state’s explicit roles. The desire to punish rule-breakers seems to be a universal human trait, so it is not surprising to find the highly organized Chinese governments codifying the practices of retribution. We can find some parallels here with the idea that Dike’s punishments can both maintain and restore order, but we will hold off until the next section considering whether that restored order constitutes justice.

Procedural Justice

In dealing with criminal law and legal disputes, China has historically had a set of procedures to handle such matters. Whether this means China had procedural justice is slightly more complicated, but as a starting point, Peerenboom explains that:

China has had a well-developed legal system for over two thousand years replete with detailed legal codes, procedures for law-making, rules that specified the hierarchy of the different types of legislation, a multilevel court system, and procedural rules covering all aspects of litigation from the filing of a complaint to pretrial investigation, the trial itself, the issuance of the judgment, and appeal.299

China’s detailed codes and legal procedures certainly demonstrate an aspect of procedural justice. These procedures were meant to ensure a standardized legal system which could be relied upon to settle disputes. The laws were meant to replace individual discretion as the basis of judgment, and could be applied without regard to personal quirks or demographic differences.

298 Ibid., 11, n.3.
299 Peerenboom, China’s Long March toward Rule of Law, 36.
In general the legal system was a system of built out of two main guiding philosophies, Confucianism and Legalism. Let’s look at how these two philosophies affected the practices of procedural justice.

Confucius himself said, “Hearing legal cases, I am no better than other people.” Later Confucians who mediated from official positions typically sought to determine the li 礼 of the situation and determine who had acted inappropriately, and what punishment or restitution was proper.

Traditionally, Confucians were members of the shi (literati) class, charged with the responsibility of interpreting the li and making the li applicable to the times. When called on to resolve conflicts, they attempted to interpret and apply the li in such a way as to give effect to a particularized justice that was amenable to all parties and thus restored harmony.

The Confucian way was in fact hostile to the usual understanding of procedural justice. Confucians preferred informal mediation and particular solutions worked out according to the situation. Confucius repeatedly stated that promulgating rules and recourse to litigation were inferior to education and cultivation of particular relationships. Flexibility and the capacity for insight into the particularity of circumstances were higher Confucian values than consistency of procedures. “The Confucian sage determined what was best in a given situation based on his own judgment and interpretation of the li rather than by appeal to fixed standards or laws of general applicability.” Peerenboom explains why Confucius preferred moral cultivation to laws in ordering society:

Confucius rejects law as a means for attaining social order because law focuses on external compliance. Since one is merely expected to conform one’s behavior to the given legal norm, one is denied the opportunity to fully participate in the creation of a social order more reflective of one’s individual character. Laws, as standards of general applicability, do not allow for sufficient individual expression or particularity.

The formal character of a legal proceeding further diminishes the opportunity for a more contextualized justice able to account for the particular circumstances of the individuals involved. By its very nature, a formal legal system elevates procedural justice relative to, if not at the expense of, substantive justice. In fact, one of the motivations for the development of a formal legal system is to provide a procedural means of resolving interpersonal conflicts that cannot be resolved on a more informal, personal level. While substantive justice has always remained the primary goal of the legal system in China, the formal character of the process and the emphasis on predetermined procedures for

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300 Analects 12.13. 聽訟，吾猶人也，必也使無訟乎.
301 Peerenboom, China’s Long March toward Rule of Law, 31.
302 Ibid., 33.
resolving conflict have often been seen as obstacles to a more personalized and creative approach to interpersonal conflict.\(^{303}\)

Confucianism in its consistent contextualism and particularity is opposed to pure procedural justice which treats everyone as equal, a fact bemoaned by the late Qing Dynasty reformers who denounced the long Confucian tradition for holding back progress. Confucian thought in general is not interested in appealing to universal rights or inviolable rules. The criticism that arose in the late 19th and 20th centuries shared some affinities with the ancient critique of the Legalists.\(^{304}\) Peerenboom notes that, “Not surprisingly, there were those who objected to the power granted the literati (and the ruler) in a Confucian li-based order. To the Legalists, the Confucian system of li zhi was nothing more than “rule of man” (ren zhi 人治).”\(^{305}\) Relying on enlightened gentry to make correct legal determinations seemed like a recipe for failure to the Legalists. The Legalist way of dealing with crime and legal matters was to make many clear rules and harshly punish anyone who violated them. The existence of clear rules and procedures was meant to remove discretionary power from people in authority since, as Han Fei saw it, most rulers weren’t good enough to be trusted with great power. Whereas Confucians relied upon the moral goodness of sagely rulers, Legalists had no faith in such benevolent rulership, and so invested authority in the laws which couldn’t be swayed by feelings of affection, loyalty, or selfish interest. The impartial law was meant to ensure fairness by removing the ability of magistrates to decide cases from their own partial viewpoints.

Despite the Legalists’ influential insistence on detailed laws and procedures, some of the hallmarks of western procedural justice are missing from the Chinese judicial system. First, the procedures do not apply to everyone, especially not the rulers. Peerenboom refers to this a “rule by law” rather than “rule of law” because the law is a tool of governance in the hands of the ruler, rather than a truly independent standard that applies even to those in the highest leadership positions. Second, the basis of law is not arrived at by pure procedural processes, but by appeal to the authority of the ruler. The ability of the sovereign to promulgate and enforce the laws was the only force justifying the laws.\(^{306}\) They were not based on rational necessity or divine revelation, but only on the contingent demands for social order and the sovereign’s actual capacity for enforcement. An important part of Rawlsian procedural justice is that the principles of justice are derived from fundamental procedures, not other principles or ideas about the good life. This is a

\(^{303}\) Ibid., 30.
\(^{304}\) Ibid., 43.
\(^{305}\) Ibid., 33.
\(^{306}\) “In the final analysis, law was what pleased the ruler.” Ibid., 34.
requirement that locates procedural considerations much deeper than having procedural guidelines for administering laws. Third, consequentialist considerations were a large part of the judicial deliberation, despite the Legalists’ attempts to create clear and mandatory sentences. The ideal of social order or social harmony was a recurring concern. Fourth, the heavy Confucian influence ensured that the laws were not blind to the distinguishing features of people appearing in the courts. Being elderly, or female, or low-born made a great difference in how one was treated by the law.\textsuperscript{307} Rather than a purely impartial consideration, the Chinese legal system for much of its history was a set of procedures applied discriminately to certain segments of the population, often with a keen concern to bring about certain social outcomes, and often times displaying what westerners would call rampant and even sanctioned corruption. Basic ideas at the root of procedural justice, such as equality before the law and the recourse to set procedures rather than personal creativity, were raised by the early Legalists and the late Qing reformers. However, much of the actual practice of criminal law and nearly all aspects of civil law\textsuperscript{308} were handled in ways that violated many of the key concerns of procedural justice as developed in the west.

**Restorative Justice**

Restorative justice (RJ) as a movement in modern western criminal law began in the 1990s, but basic restorative ideas can be found in many Chinese sources, both ancient and modern. John Braithwaite, a leading voice in the RJ movement, has pointed out that Chinese history contains many important lessons for contemporary practice. He wrote, “China is also the home of Confucius, arguably the most influential thinker about restorative justice the world has ever known,”\textsuperscript{309} and he laments that the Chinese experience has been mostly overlooked: “What a pity that so few Western intellectuals are engaged with the possibilities for recovering, understanding, and preserving the virtues of Chinese restorative justice while studying how to check its abuses with a liberalizing rule of law.”\textsuperscript{310}

Here we will look at Chinese practices as compared with key values in restorative justice. We start with the history and effects of imperial pardons of criminals, then look at more recent trends

\textsuperscript{307} Ibid., 38.
\textsuperscript{308} “As noted, the system was primarily designed to handle criminal cases, with most commercial and civil cases being relegated to the informal resolution sphere.” Ibid., 41.
\textsuperscript{309} Braithwaite, *Restorative Justice & Responsive Regulation*, 20.
\textsuperscript{310} Ibid., 22.
through Braithwaite’s model of reintegrative shaming within Chinese societies, and the modern
practices of bangjiao 帮教, literally, “help education.”

Brian McKnight, in *The Quality of Mercy*, documents and analyzes the traditional practice of
giving amnesty (she 赦) to prisoners. He tells us that, “For two thousand years, Chinese rulers
issued a bewildering host of amnesties and acts of grace. In frequency, scope, and elaborateness
this Chinese practice has no parallel.” In certain eras amnesties were granted by the emperor
every year; in others eras the practice was more infrequent. While details of the actual procedures
and provisions of a pardon are difficult to come by, it is clear that innumerable prisoners were
freed by the authorities and allowed to return to their families. Amnesty served many purposes,
including demonstrating the emperor’s virtue and benevolence and ability to purify the wicked,
inspiring the ministers, generating loyalty and goodwill among the commoners, celebrating major
events, influencing the weather, giving prisoners hope to discourage them from escaping,
saving state resources on prosecutions and imprisonments, and restoring people to their families
and communities. It is this last aspect that relates to restorative justice, since amnesty allowed
people who had been isolated and imprisoned to return home where they could be reintegrated
into the community and resume the rhythms of their previous lives. McKnight writes:

All people occasionally break the rules. Without some mechanism for reintegrating
deviant individuals into the group society would collapse….If we can just get back to the
way things were before, then we can begin again and hopefully avoid a repetition of the
violation….Ritualized devices for the forgiveness of sins are as necessary to a society as
the punishments which precede or accompany them. It is in this light that we
must view
the system of amnesties which was so prominent a feature of Chinese justice. 313

While some acts of amnesty may have been initiated for political purposes such as glorifying the
ruler or inspiring loyalty, the restorative purpose was central to the public justification of amnesty
and would have been key for genuinely benevolent rulers. McKnight quotes from an edict of
Emperor Ping, which reads, “Verily an ordinance of amnesty is [an instrument] for the purpose of
giving the empire a new beginning. It is sincerely hoped that it may cause the people to correct
their conduct, purify themselves, and preserve their lives.”314 A new beginning as a productive

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311 McKnight, *The Quality of Mercy*, 2.
312 Ibid., 22. There are interesting connections here between justice and the harmony of the cosmos, such
that justice as punishment or mercy must be carried out at the right time to maintain the harmonic order
of the world. See also, McKnight, 113: “Miscarriages of justice, and justice too long delayed, were often
said to be responsible for disturbances in the harmonious blending of natural forces.”
313 Ibid., 2.
314 Ibid., 26.
member of society, ready to act with good conduct – this is a strong example of the value of reintegration as an aspect of restorative justice.

Xinzhou Zhang analyzed the modern Chinese criminal system in terms of restorative justice, focusing on the criteria of personalism, participation, reparation, and reintegration, elements which were identified by Roche as central values of restorative justice.\footnote{Roche, \textit{Accountability in Restorative Justice}, 25.} Personalism expresses the idea that crime violates and harms the victim directly rather than the state at large. Participation means that offenders, victims, and others affected by a crime all participate in finding a just resolution. Reparation means that in some way the damage inflicted on victims is repaired. Reintegration means that the offender’s relationship with the community is reestablished and repaired. Both the offender and the community have to work to make this possible.

Zhang’s assessment of the value of personalism in modern Chinese criminal justice is quite bleak. Chinese law is heavily punitive, and is meant to discourage crime for the sake of social order. Victims are not integral parts of the process as punishment is meted out on behalf of the state. Zhang writes, “According to the Criminal Law, the task of the Chinese criminal justice system is first to protect the socialist order, then the people’s personal rights. Therefore, crime is considered to be defiance against the ruling order of the state rather than harm to the individual.”\footnote{Zhang, “A Restorative Justice Audit of the Chinese Criminal Justice System,” 15.} This stance is more Legalist than Confucian, and probably more rooted in a modern understanding of a state than in any traditional ideas. Traditional Confucianism is resolutely personal, making constant reference to the particular people involved and to the \textit{li} in play given the circumstances. Rather than pursuing abstract universal laws, Confucius and his followers insisted on dealing sensitively with the particularity of unique people in unique situations. While this history is downplayed in modern law, it remains as a unique resource for future thinking about restorative justice.

Participation also plays only a small role in the formal mechanisms of Chinese justice. Since crime is primarily conceived of as a violation of the law and not of persons, victims and communities have a limited role to play in court proceedings. Zhang tells us that, “The criminal procedure code does recognize the rights of victims to participation in a public prosecution. However, this participation serves to strengthen retributive purposes rather than encouraging reconciliation between the victims and offenders.”\footnote{Ibid., 32.} Rather than participating for the sake of reconciliation, the victim is called upon to give evidence or elicit sympathy to justify and increase

\footnotetext[315]{Roche, \textit{Accountability in Restorative Justice}, 25.}
\footnotetext[316]{Zhang, “A Restorative Justice Audit of the Chinese Criminal Justice System,” 15.}
\footnotetext[317]{Ibid., 32.}
the severity of the offender’s punishment. This is participation, but it is not restorative participation, and indeed is detrimental to the eventual reintegration of the offender into the community.

Participation is greater in the vast realm of informal dispute mediation. Because of the cost and cultural distaste for formal legal cases, much of Chinese conflict management is done in informal settings. Here participation by affected parties is key (and the value of personalism is likewise much stronger), since the mediation requires the parties to come to some kind of agreement with each other. In fact, much of what might be considered restorative justice often takes place outside of the realm of official jurisdictions. These kinds of processes are much more likely to draw on cultural values, such as those offered by the family-centered, harmony-oriented traditional Confucianism.

Reparation for victims is often lacking in Chinese criminal prosecutions. Zhang comments, “It is astonishing that there is no provision in sentencing legislation for reparation for losses and injuries sustained by the victim.” Victims are entitled to bring a supplementary civil claim against an offender, but only to recover material losses with no consideration for any psychological suffering. Still, compensation for physical suffering was established in 2003, indicating that financial reparation is increasingly seen as an aspect of justice.

Finally, reintegration is perhaps the place where Chinese criminal justice demonstrates the most comprehensive and useful engagement with restorative justice. One way is through using shame (xiuchi羞恥) to keep people behaving morally, which has been associated with Brathwaite’s theory of reintegrative shaming, and the other is through the bangjiao groups which assist criminals with their transition back into the community following their punishments.

When dealing with crime and morality, shame has had a special place in Chinese culture ever since Confucius said, “Lead them using political means and keep them in line with punishments, and the people will evade and be without shame. Lead them with admirable character and keep them in line with reverent propriety, and they will have shame and also manage themselves.”

This quotation is at the heart of the dispute between Confucians and Legalists, as it enumerates the contrasting approaches of moral education as opposed to external authority, inspiration as opposed to obedience, and li禮 as opposed to fa法. In valuing li over fa, Confucius points to the development of shame (chi耻) as a key consideration in the evaluation of li and de as the right.

318 Ibid., 11.
319 Analects 2.3. 道之以政，齊之以刑，民免而無恥；道之以德，齊之以禮，有恥且格.
way. China has been called a “shame culture” because of the tremendous influence shame and the associated notion of “face” (mianzi 面子) have had in shaping the way people relate to each other. Because people understand that the community will judge them for inappropriate behavior, and the judgment may extend to their families as well, there is tremendous pressure not to lose face. People’s fear of social disapprobation inclines them to follow customarily acceptable norms and to feel shame when they transgress these norms. Inducing or educating people to internalize those norms, or li, is the Confucian prescription for maintaining a moral society through the influence of shame.

Braithwaite has put forward an influential theory of reintegrative shaming, which suggests that there is great value in rituals and processes which induce shame in a person for their bad behavior, allow that shame to be expressed and acknowledged in front of the community, and encourage the community to welcome a genuinely remorseful person back into the fold. Early studies show these kinds of procedures, including “expressions of community disapproval, which may range from mild rebuke to degradation ceremonies, followed by gestures of reacceptance into the community of law abiding citizens,” lead to reduced rates of recidivism and repeat offences, better overall community relations, and victims who are more satisfied with the final outcome of the judicial process. Though shame is often seen as a negative emotion, Braithwaite identifies it as a key to communal solidarity and an ingredient in the healing process when a community’s standards have been violated. He argues that “the fundamental societal conditions conducive to cultural processes of reintegrative shaming are communitarianism and interdependency,” features which are frequently used to characterize Chinese society. Zhang notes all of this and concludes, “Both the Confucian culture and Braithwaite’s ‘reintegrative shaming’ emphasize the importance of awakening the offenders’ conscience through the use of shame in the process of reintegration.”

Others have also looked at the Chinese criminal justice for restorative practices and identified certain practices with Braithwaite’s ideas. Dutton and Xu look at prison rehabilitation programs and suggest that gan hua 感化, moral conversion through touching the emotions, as practiced with prisoners exhibits deep affinities to Braithwaite’s reintegrative shaming. As well, Hong

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320 Braithwaite, Crime, Shame and Reintegration, 55.
321 Ibid., 84.
323 Dutton and Xu.
Lu\textsuperscript{324} has examined \textit{bangjiao} groups explicitly in terms of reintegrative shaming. \textit{Bangjiao} groups consist of community members, often off-duty police or other civil servants, who give assistance to both criminals who have served their sentences and are reentering society and non-criminal at-risk youth. These groups assist in many ways, such as helping find jobs, mediating between family members, making small loans, and generally checking in to make sure things are going well. “\textit{Bang jiao} teams not only help delinquents and released offenders develop good conduct and a moral conscience, but they are also ready to intervene and provide support when those individuals face difficulties, such as financial problems, lack of housing, family conflicts and other personal problems.”\textsuperscript{325} These groups represent grassroots efforts at reintegration, trying to ensure that crime does not lead to an irresolvable disharmony. Their aim is to prevent recidivism by encouraging personal growth and growth in relationships. Zhang explains the workings of shame in the \textit{bangjiao} process: “It is the moral persuasion and care for released offenders and minor delinquents that provoke their consciences. The provoked conscience in turn induces remorse, which results in shame, which facilitates reintegration into the community.”\textsuperscript{326} Compassion and care remind the offender of the values that are violated by crime, and shame becomes a motivating sentiment urging them to repair their relationships with the community. The work of \textit{bangjiao} groups facilitates and heals relationships for the sake of social harmony. Reviewing Lu’s work, Braithwaite comments that \textit{bangjiao} practices “tend to start as rather stigmatizing encounters but to end as reintegrative ones.”\textsuperscript{327} Lu, Braithwaite, and Zhang agree that, as Zhang puts it, “\textit{Bang jiao} practice is in fact a process of positively shaming the delinquents’ misbehaviors while supporting their reintegration into the community.”\textsuperscript{328} Braithwaite reads the history of Chinese criminal justice as a dialectic between the retributive emphasis of Legalism and the restorative emphasis of Confucianism. He suggests that the excessive use of punishment in the Qin dynasty discredited the Legalists’ retributive justice, and made way for the dominance of Confucian philosophy. The modern era has seen a return to punitive policies, but Braithwaite suggest that the Confucian heritage gives us reason to think that China is fertile ground for advancing restorative justice practices. This contention finds additional support in the traditional Chinese saying, “A delinquent’s reintegration is worth more than

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\textsuperscript{324} Lu, “Bang Jiao and Reintegrative Shaming in China’s Urban Neighborhoods.”
\textsuperscript{326} Ibid.
\textsuperscript{327} Braithwaite, \textit{Restorative Justice & Responsive Regulation}, 20.
\end{flushright}
While the modern system of formal Chinese justice is more often punitive than restorative, informal mediation, community bangjiao, the historical enactment of general amnesty, and the ideals of benevolence and harmony in the Confucian tradition offer rich grounds for arguing that restorative justice is an important concept and fruitful practice in China.

**Conclusion**

Examining the classical moral vocabulary and using some familiar categories of justice, we can see that the Chinese share many of the concerns that drive considerations of justice in the west. These are broadly human concerns about social organization, material resources, care for others, vengeance, bureaucratic structures, and healing personal injuries and ruptures in the social fabric. Whereas “justice” is a single polysemous notion that unites these issues in the west, they do not all come under the same heading in Chinese, but they seem to be present in some form. Whether or not this adds up to a Chinese conception of justice or justifies the use of the word “justice” in translating ancient Chinese philosophy is another question, which we turn to in the next section.

**IS JUSTICE 正義？**

In modern times, zhengyi 正義 has served as a fairly convenient translation of “justice” into Chinese. But before we simply accept the equivalence of “zhengyi” and “justice” and render these philosophically loaded terms into another language, it would be wise to pause and consider whether the two terms have subtle differences which facile translation paves over.

Because justice has such a long history and such a wide variety of uses, I would like to acknowledge an important distinction in how people now speak of justice. Justice can be a general term for good, right, decent, moral conduct. In this colloquial sense it need not carry a technical definition or a lot of philosophical baggage. This loose notion of justice is flexible enough to cover almost any positive behavior. On the other hand, across the history of philosophy justice has often meant something more precise and rare than this. Justice has often been seen to have an absolute character and to serve as an indefeasible principle. It has been seen as divinely given, universal, and inflexible. While earlier in this chapter I acknowledged some alternatives to

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329 浪子回头金不换.
this notion of justice as absolute and universal, influential conceptions of the Form of Justice, Divine Justice, Natural Justice, and Principles of Justice have dominated the philosophical narrative surrounding justice. It is these stricter, philosophical meanings of justice which I hope to compare with Chinese zhengyi.

Before we consider whether zhengyi is justice, it will help to first ask if yi 點 itself is justice, a question that was raised but not concluded in the previous section. Following that, we will ask what happens when we add zheng to yi. The two characters zheng and yi have been linked since ancient times, with Xunzi being the most widely cited source, and have always been associated with good behavior. Whether or not that behavior accords with the standards of justice is the question at hand.

### Yi 點

Yang Xiao has argued that there are some instances where yi 點 means justice, especially in terms of fair economic exchange, and that this shows the Chinese had a concept of justice. However, as we saw in the last section and Xiao acknowledges, both yi 點 and justice have wide semantic ranges. Thought they both function in cases of material gain and loss, both go far beyond this limited context. When discussing them as broad moral ideas, the parallel is not as clear.

I contend that where justice is understood as The Form of Justice, or Divine Justice, or as absolute principles of moral reason, the highly contextual considerations of yi 點 make this a bad candidate to represent this meaning. Yi 點 does not signify a universal rule which can be applied; it is rather the result of sensitive attention to the particulars of the situation. Absent the metaphysical background that establishes these universal standards, it is hard to see the contextual and situational determination of yi 點 as working in the same way.

Nonetheless many have understood yi 點 in terms of justice. For example, Heiner Roetz, in his *Confucian Ethics of the Axial Age*, consistently translates yi 點 as justice.\(^{330}\) John Knoblock, in his translation of *Xunzi*,\(^{331}\) also frequently renders yi 點 as justice. My sense is that to equate these two terms requires either importing a foreign metaphysics into Chinese philosophy, or changing the typical meaning of justice.

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\(^{330}\) Roetz, *Confucian Ethics of the Axial Age*.
\(^{331}\) Knoblock, *Xunzi: A Translation and Study of the Complete Works*. 

Xunwu Chen displays the first technique, importing foreign ideas into Chinese philosophy. He starts with a Platonic understanding of justice and reason, writing, “Plato brilliantly associated the idea of justice as setting things right with the concepts of rationalization and the rule of reason. In his view, justice is the rational order.” With this Greek definition in mind, he asks, “Has justice its own formal essence and substance?” and, “Is the rule of reason part of the essence and substance of formal justice?” In the end he answers both questions affirmatively:

the human problems pertaining to justice that we face today call for essentially the same justice that those human problems of centuries and centuries of human history have been calling: justice as the rule of human reason. Once we take as the starting point the idea that the essence of justice is setting things right and setting righteousness to stand straight in human affairs, we recognize that only the rule of reason can bring about true justice to us and to the world.

Chen starts with the idea that there is a formal essence of justice and declares that the essence is based in reason, and only this can bring about “true justice.” His ambition is to find a rational form as the essences behind appearances, reminiscent of Platonic metaphysics.

Chen finds a confirmation of this Platonic world view in the Chinese classics by translating yi as “justice,” li 理 as “reason,” and rianli 天理 as “universal reason.” Ames and his collaborators have argued that using philosophically loaded words such as “reason” to translate the important Chinese concepts is likely to import a western worldview into our readings of the Chinese thought, so that instead of taking li on its own terms, we end up finding that it just means the familiar idea of reason. This is precisely what happens in Chen’s argument, and using these loaded translations allows Chen to conclude that the ancient Chinese and ancient Greeks are saying the exact same thing:

Indeed, from [the book] Mencius and [the book] Xunzi, through the Confucian classic The Great Learning, the works of neo-Confucian masters Zhou Dunyi, Zhang Zai and the Cheng brothers, to the works of Zhu Xi and Wang Yangming, one conspicuous feature of the development of the Confucian concept of justice (righteousness) is that the evolution of the concept of justice is a consistent story of defining justice as the rule of an objective, impartial and moral reason.

333 Ibid.
334 Ibid., 197.
335 Chen also refers to yi as “righteousness,” but immediately slides between the terms righteousness and justice as if they were equivalent (191).
Translating *li* as “reason” and *yi* as “justice,” he points to phrases in both the *Mencius* and the *Xunzi* to show that they equate “justice” with “reason.” In fact, what they do is to pair *yi* 義 with *li* 理. To assume that these mean “justice” and “reason,” and to argue that therefore the Chinese agree with the Greeks that the essence of justice is reason is to overwrite the meaning of the Chinese philosophical terms in a way guaranteed to prove that there is a universal essence of justice, rather than exploring the Chinese meaning in its own context.

The second way to identify *yi* with justice is to have an atypical definition of justice. Huaiyu Wang takes this path in comparing Greek justice with “Mencian” justice. He says, “Through a comparative study of the meanings and origins of justice symbolized by the Greek word *dike* and the Chinese word *yi* 義, I intend to illuminate a vital dimension of social and political justice that originates in the human heart instead of reason.” Wang contrasts *dike* with *yi* in that the former is rationally determined while *yi* is founded in the emotionally charged heart-mind (心). Despite this fundamental difference he refers to both as justice. He says that in the Confucian tradition, “The judgment of justice originates in the human heart.” On this account justice is rooted in affection and communal feelings of friendship. This is an atypical account of justice, which Wang recognizes in asking, “But how can this interpretation, which may not meet the immediate approval of the philosophical community, be justified?” While this interpretation may be unusual, it does bear some resemblance to Robert Solomon’s notion of a passion for justice. Both Solomon’s and Wang’s approaches oppose the mainstream thinking about justice by reconceiving the basis and application of the concept of justice.

I think this tactic of transforming justice is much more fruitful than Chen’s importation of metaphysical vocabulary for finding common ground between *yi* and justice, but it does make the use of justice as a translation a case of shoehorning the term into where it might not have previously fit. This shoehorning is clear in Wang’s citation of classic texts. While he generally uses James Legge’s translations he intentionally changes Legge’s translation from “righteousness” to “justice” in key passages. He writes:

For Mencius, justice is one of the most important virtues, the consummation of one’s moral character. Humaneness and justice name the beginning and the end of moral self-

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337 At 6A7.
338 At “Dalue” 21.
340 Ibid., 321.
341 Ibid., 323.
cultivation. It is only when we ‘settle ourselves in humaneness and follow the path of justice’ (居仁由義 – 7A.33) that we can discover the way of the human being.\footnote{Ibid., 322.}

In this example, he substitutes James Legge’s translation, “path of righteousness,” for his own, “path of justice,” and is then able to attribute the admiration of justice to Mencius, who actually admired yi. He does this to many places in the Mencius and he even modifies a translation of the Yijing, for which the idea of justice might be even more foreign than for Mencius.\footnote{Ibid., 350, n.26.} Wang makes it clear that when he speaks of yi as justice he is not ascribing to it the characteristics we assume when we translate “dike” as “justice,” but since most of his paper is an argument about how yi’s justice is different from dike’s justice and from the main tradition of justice in the west, we might wonder whether justice is the right word to be using for yi at all.

Perhaps a more natural fit with lofty notions of justice might be found in the Mohist conception of yi. In the Warring States period, Mozi came closest to suggesting a universal standard for yi. He wrote that in the past different people and tribes each had their own idea of what was yi, or what was appropriate behavior.

In ancient times, nature had begun to generate people, but there was not yet a proper leader, and the families each acted for themselves. If the families acted for themselves, then one person had one notion of yi, ten people had ten notions of yi, one hundred people had one hundred notions of yi, and a thousand people had a thousand notions of yi. To grasp the extent of people’s multitudes was impossible to successfully account, and so what they called yi was also impossible to successfully account. They all approved of their own notion of yi, and disapproved other people’s notion of yi. Thus, the powerful would have conflict, and the meek would have disputes.\footnote{Mozi, “Shangtongxia.” 古者,天之始生民,未有正長也,百姓為人。若苟百姓為人,是一人一義,十人十義,百人百義,千人千義,逮至人之眾不可勝計也,則其所謂義者,亦不可勝計。此皆是其義,而非人之義,是以厚者有鬥,而薄者有爭.}

To eliminate this strife, Mozi encouraged leaders to look to tian to give them a model of yi. He hoped this could unify people’s understanding of yi and give an impartial standard of behavior. He wrote: “The emperor will further gather together all the world’s yi by identifying with tian.”\footnote{Mozi, “Shangtongxia.” 天子又總天下之義,以尚同於天.}

Mozi said the wise emperor should unify the meaning of yi by having the commoners follow the example of their lords, the lords follow the example of their ministers, the ministers follow the example of the emperor, and the emperor follow the example of tian. The emperor took the way of tian as his own guideline in fixing the standards of yi behavior.
In identifying tian as the source of authority for yi, we might be tempted to see this as a transcendent standard against which behaviors could be measured. However, we must ask, what and where is the way of tian? In some early Shang and Zhou Dynasty thought, tian was an anthropomorphized power revered like a divinized ancestor. However, as an ancestor from this world raised up to a greater power, tian does not exist in an external realm or in a transcendent space: “Tian can thus be understood as the “skies” under which culture accumulates rather than as some more disjunctive, atemporal, and aspatial ‘Other,’ some ontologically different order of being.”346 In the Mohists’ context in the Warring States period and in the early Han Dynasty tian is more often the way of describing the natural processes of the world: “there is also a strong association between tian and the natural, physical environment…. tian is both what our world is and how it is.”347 The way of tian appears in the regular transformation of day into night, of spring into summer, the past into the future, and the regular cycles that appear in the world. To say that the wise emperors model themselves on the way of tian is not to say that there is a transcendent form of yi that they intuit, but that they observe the processes of the world and try to accord themselves with what they discover there. In Mohist thought, what they discovered was the impartiality with which nature treated human beings. While Mohists did look for impartial standards, they were standards one could measure with one’s hands: the carpenter’s square and plumb line, the draftsman’s compass. These were empirical methods, the best possible models to follow. They were not perfect ideals or absolutely rational forms. Thus in emulating the emperor’s yi, people are adopting the best practices and models available in the world, not aspiring to a timeless ideal. Mozi saw tian as a model of impartial love for all people, and made this his standard for yi. There is a sense of universality that Mozi’s invokes when he calls for all the world to unify their yi according to the ways of tian. However, there we need not see universality as implying fixity, absolutism, principles, or transcendent origination. The Mohists do move yi in some directions towards a meaning of justice, even more so if we think of the youxia’s vigilante acts as Mohist inspired, but the impartiality and universality of modeling yi on tian does not mean we have found a notion of justice as an eidos or as absolute principles.

Though some have seen yi as meaning justice, other scholars have thought about justice in the Chinese tradition in ways that do not center on yi. Both Erin Cline and Joseph Chan have gone searching for Confucian justice, and both were able to make strong cases that something like justice can be found without locating it directly in the idea of yi. While they both take yi to be an

347 Ibid.
important part of the moral vision of Confucianism, it is a component in a broad set of concerns that lead to a promotion of social justice. Cline makes this clear:

A sense of justice is not exclusively subsumed under or tied to one single concept in the Analects, because as I have shown, it is at work in a number of different discussions, including those concerning the acquisition and distribution of wealth, the need to help the poor, the importance of doing what is right (yi) instead of what is profitable, the ability to take a wider view and consider the needs of those outside of one’s family and community, and one’s appreciation for the importance of legal justice.348

The search for Chinese justice need not begin an end with one term, and to force yi into the shape of justice is likely to do injustice to both. Justice and yi are both ancient polysemous terms. Understanding them involves complicated issues of hermeneutic recovery and interpretation, and so the broad context Cline invokes here is instructive. Instead of looking for yi to play the role of justice, perhaps it is preferable to let yi be yi, and to try to understand it within its own context rather than ascribing an imported meaning to it.

Zhengyi 正義

If yi cannot serve as a direct parallel to justice because of its contextual and particularistic connotations, can we bring it more in line with the more strict meaning of justice by combining it with the idea of zheng 正? Since zheng means to straighten, correct, or make proper, does its addition give yi the fixed standard that yi lacked when compared to justice? The answer will depend on the subtleties of what we take zheng to mean, and how these two characters interact and take on meaning when combined.

Zhengyi is not quite zheng and not quite yi. As a single binomial word it takes on its own meaning, yet that meaning is inextricably tied to the sense imparted by its components. Because of the looseness of classical Chinese grammar, the early appearances of the characters zheng and yi in succession can be read in several different ways. In some circumstances, both characters could be nouns, as in “uprightness and righteousness.” They might also be two adjectives, as in “straight and right.” In other cases we could read them as verb and object, as in “to adjust the appropriate behavior.” In still other cases we could read them as adjective and noun, as in “straightened morality.” Sometimes the grammar of the sentences surrounding these two characters makes clear how they should be read, but all too often it remains ambiguous.

348 Cline, “Two Senses of Justice,” 372.
The first instance I can find of the two characters in succession is in a passage from Shen Buhai, one of the great influences on Legalist thought. He writes that “the ruler must have clear laws and正義.”^349 This statement makes a remarkable connection between zhengyi and the law as necessary conditions for good leadership. But this connection between law and zhengyi was largely overlooked by the Confucians, who associate ren 仁 and li 禮 rather than fa 法 with yi, and it seems to drop out of the discourse.

Xunzi was the first Confucian to put zheng and yi together and it is probably his influence that shines through in later uses of the phrase. The combination appears in four places, but the grammar is ambiguous as to how we should read the characters. The four instances are:

1) 正義直指，舉人之過，非毀疵也^350
2) 不學問，無正義，以富利為隆，是俗人者也^351
3) 故正義之臣設，則朝廷不頗^352
4) 正義而為謂之行^353

In 1), I read the phrase 正義 as verb-object suggesting that we “straighten appropriate behavior” because it is parallel to 直指, “extend the finger.” In 2) it looks like two nouns in successions, “uprightness and propriety,” because a verb could be negated with a parallel bu 不 instead of the wu 無. Knoblock translates this as “rectitude and moral principles,” which I like grammatically but not philosophically. In 3), zheng and yi modify chen 臣, minister. This could be rendered as a single concept, but I feel best reading the sentence as, “if upright and proper ministers are given prominent position, then the court will not be biased,” which leaves zheng and yi as two different but complimentary concepts. In 4) standard grammar suggests we need a verb in front of er 而, so I’m inclined to read it as “correcting appropriate behavior, then, is what we call noble conduct.” Knoblock says that here zheng modifies yi,^354 marking it out as the proper yi which should be chosen.

In a slightly later work, the Lu Shi Chun Qiu, we find zheng and yi together again. Duke Miao 繆公 is described as able to cause his ministers to establish their正義.^355 It is entirely ambiguous

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^349 Shenbuhai, “Yiwen” 6. 君必有明法正義.
^350 Xunzi 3.5.
^351 Xunzi 8.21
^352 Xunzi 13.2
^353 Xunzi 22.2
^355 Lushichunqiu, “Buguolun” 3. 繆公能令人臣時立其正義.
whether zheng and yi represent two nouns or a single noun phrase. Later still in the Han Dynasty, the *Han Shi Wai Zhuan* describes vulgar people pursuing profits as unlearned and behaving without 正義. Again, there is no indication that these are two concepts or one. When the Han Dynasty *Xin Shu* or the *Qian Fu Lun* refers to the ancients’ or the scholars’ 正義, they start to feel like a set phrase that belong together, but in these and other Han documents where the we see these two characters together, the same problem remains.

If we want to use the word “justice” to translate zhengyi, there are many instances where it can plausibly fit into a sentence without sounding terribly out of place. But we could equally plausibly translate zheng and yi in succession as two concepts, as in “rectitude and morality” or “correct and appropriate.” Both terms continue to be important concepts on their own across history. My own estimation is that, especially in early texts like the *Xunzi*, zheng and yi may stand next to each other, but they carry different semantic content, associated but not united. It is only later that they become familiar enough together to constitute a single idea. When that happens, I contend that the single concept combining these two characters is best understood as a special kind of yi – a yi that has been straightened or adjusted. Some support for this reading comes from reflection on a more widely studied concept, zhengming 正名.

*Zhengming* has typically been translated as “rectification of names,” but Sarah Mattice has given reasons to reject the term “rectification” and has provided an alternate understanding of zhengming that avoids the foreign metaphysics invoke by this translation. I believe we can draw a linguistic parallel between zhengming and zhengyi. If we construe zhengming as a verb-object expression, then it is to make a name appropriate; if we construe it as a modified noun, then it is a name that is proper. Likewise zhengyi might either be to make the yi proper or yi that is proper. If we look at zheng in zhengming, we can draw a helpful parallel with the function of zheng of zhengyi.

Mattice argues against what she calls the conservative reading of zhengming in which names are corrected according to the meanings established in the previous dynasties. On this understanding, the older meanings provide the fixed standard against which contemporary use is measured.

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356 *Hanshiwaizhuan*, 5.5. 耳不聞學，行無正義，迷迷然以富利為隆，是俗人也.

357 *Xinshu* 3.1 古之正義．

358 *Qianfulun*, “Qiantan” 2. 故正義之士與邪枉之人不兩立之．

The conservative view takes zhengming to be a kind of linguistic archaeology, a wholesale retrieval of past meanings for their use in the present…. On this conservative view, a name, which includes the responsibilities and expectations of the role in question, is to be altered to coincide with how that particular office was understood to function during the Zhou dynasty.360

She makes an argument that the conservative reading mistakenly supposes that meanings from centuries ago are easily available, that change of historical context does not affect meaning, and that Confucianism is only concerned to return to practices of the past. Using the term “rectification” to translate zhengming subtly propels us to adopt the conservative reading. “Rectification” asks us to look backwards for a standard that is pre-defined:

To rectify is to make right, to correct using an external standard. Geometrical rectification, for example, means to match a curved line to a straight line in order to measure the curved line….Additionally, if we go back to the Latin, right (rectus) means to be righteous, to be straight, to be in accordance with what is just or good, to conform to facts or truth, or to be genuine or real. When we think about making something right, about rectifying it, we are then invoking certain elements of the Greek metaphysical picture such as the appearance/reality distinction and the reified ideas of Justice and Goodness.361

Because of these connotations, “rectification” subtly but persistently pushes us to look away from the situation, to look to the disappearing past or to a geometric ideal or to a transcendent realm. While to “rectify” is to bring something into accord with a pre-established standard – a traditional definition, a straight line, a form of Goodness – Mattice argues that zhengming is a creative act362 which takes account of the unique context in which the name is in question. “Because we can never recreate the same context, any retrieval we do attempt is always into different circumstances. What does this mean for zhengming? It means that any event of zhengming is creative.”363 This insight brings about new understanding of zhengming, one which will bear on how we should read zhengyi. It starts with Mattice’s suggestion that “zhengming be understood as

360 Ibid., 249.
361 Ibid., 251.
362 There are several points where Kurtis Hagan, in his reading of Xunzi’s zhengming, offers support for Mattice’s interpretation. He affirms that the process does not refer to antecedently existing meanings, but requires creativity: “It is not a process of explain (sic) what is already there in language, nor of what exists independent of our mental activities. It is a creative and evolving process, yet we will see that it is one which operates within boundaries and answers to standards.” (Hagen, “Xunzi’s Use of Zhengming,” 36.)
a hermeneutic process of attuning names, of proper naming, intersecting past meanings, present circumstances and future possibilities.\textsuperscript{364}

While \textit{zhengming} is not just about the past meaning, this does not mean that we ignore the past. History and tradition are full of extraordinary people and moral exemplars of the highest rank. When we \textit{zhengming} we seriously consider their contributions and the lessons they hold for us. However, we are not the sage kings or the heroes of the past, and when we \textit{zhengming} we are doing so in novel circumstances. Rather than simply conforming to the practices of the past, we draw upon them to inspire our behavior in the present. Careful attention to the immediate context is equally important. Our understanding of the present includes an awareness of both the actual circumstances and how those circumstances could be improved. The purpose of \textit{zhengming} is to make things better, to do what is necessary to realize greater social benefits.\textsuperscript{365} Confucius first invokes \textit{zhengming} when asked about governing, where governing is the job of making society better. This instrumental use of \textit{zhengming} also pushes us to think about how we affect the future. Confucius stresses consequential considerations in saying:

\begin{quote}
If names are not appropriate, then language will not be in order; if language is not in order, then affairs will not be complete; if affairs are not complete, then reverent proprieties and music will not flourish; if reverent proprieties and music do not flourish, then punishments and penalties won’t hit their marks; if punishments and penalties do hit their marks, then people will not know what to do with themselves. Therefore, the \textit{junzi} must apply names that can be spoken, and must speak in ways that can be acted upon. The \textit{junzi}’s approach to his speech is without carelessness, and that is all.\textsuperscript{366}
\end{quote}

So that people will know how to employ themselves and how to behave, now and in the future, \textit{zhengming} is of the highest importance. In this reading of \textit{zhengming}, it requires the constant negotiation of past meanings, current circumstances, and future consequences. Rather than claiming that there is one correct essential name for anything truly real, \textit{Zhengming} demands a contextual and empirical understanding of the world as it was, is, and may be.

To engage in \textit{zhengming} requires a broad range of thought, critical reflection, and imagination. Mattice speaks of Deweyan intelligent deliberation.\textsuperscript{367} Hagen pushes for a critical assessment of

\textsuperscript{364} Ibid., 254.
\textsuperscript{365} Hagen writes: “The sagely mind constructs distinctions that when adhered to forward the project of achieving a stable harmonious society” (42).
\textsuperscript{366} \textit{Analects} 13.3. 名不正，則言不順；言不順，則事不成；事不成，則禮樂不興；禮樂不興，則刑罰不中；刑罰不中，則民無所措手足。故君子名之必可言也，言之必可行也。君子於其言，無所苟而已矣.
\textsuperscript{367} Mattice, “On ‘Rectifying’ Rectification,” 255.
ossified categories, suggesting reconstruction where they are counterproductive. Both imply that Zhengming is a process of reflection on and critical assessment of names and language. Rather than formulaic thinking or reliance on outside authority, it demands creative engagement and personal judgment.

The way of the world past, present, and future is dao 道. Ultimately to Zheng is to adjust according to dao, but dao must be recognized as the ever-changing way rather than as a transcendent and permanent ideal. To attune oneself to the ever-dynamic dao is to adjust what one considers to be appropriate behavior, straightening oneself in accord with the changing circumstances.

If we construe Zhengyi as parallel to Zhengming and maintain the understanding of Zheng along these same lines, we don’t have the rectification of yi according to a retrospective understanding of past norms and behavior. Nor do we have the absolute standard of the Form of Justice or a model of Divine Justice. Rather, we Zheng the yi by carefully and critically considering past models, assessing the present, and envisioning the future. Zhengyi is yi critically and rigorously considered, and then adjusted according to insights into the immediate context and the possible consequences. Alternately, we can say it is the reflective attunement of yi between the actor and the situation.

Of course, Ming is not yi, and I have never seen a translation of Zhengyi as rectification of yi. Nonetheless, there are parallels in how we determine names and how we determine proper behavior which I think make the analogy appropriate.

Hagan claims that in the Xunzi, and Confucianism more generally, Ming are (1) constructed, (2) instrumental to social goals, and (3) constructed through negotiation among different classes of people. I will argue that yi shares these characteristics.

(1) Mozi describes how in the early days the different tribes and kingdoms each had their own idea of yi. As we saw above, he wrote that ten people would have ten notions of yi, and a hundred people would have a hundred notions. This suggests that the parameters of yi are constructed by people according to their own purposes. The scope of yi is something that different people of different times and places can see differently. If people have the same idea of yi, it is only because they have similar aims and values, and not because yi is something that inherently

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368 Hagen, “Xunzi’s Use of Zhengming,” 37.  
369 Mozi, “Shangtongxia.”
must be agreed upon. While Mozi’s ultimate point is that the sage kings were able to unify yi by taking nature (tian 天) as their model and bringing order to the world for all to follow, this further reveals the potential for disagreements about yi since the model of tian seemed to reveal different ways to different sages. Disagreements among wise people suggest that yi is largely constructed pragmatically to achieve particular values.

(2) Acting according to yi is not only for the inherent satisfaction of being yi, but also to achieve harmony among people. Yi thus has an instrumental purpose, in that it should lead to broader harmony. Hall and Ames write, “The objective in either case is the harmonious order occasioned by appropriate action and its attendant enjoyment.”

Yi acts, because they are attuned to the situation and the people affected, realize the potential for growth and integration in any situation. Whereas proper names are useful in bringing clarity and defining relations, proper behavior is useful in creating personal and social harmony. Yi is not solely valuable as a tool, but it is important to see that its value is largely determined by what goods it leads to. To be an effective instrument, it must be judged according to its effectiveness in bringing about harmony, and where it does not it must be rethought and modified.

(3) As well, yi has a public meaning. Zhengming is negotiated among various classes of people and so the meaning of terms is a public matter affair. Zhengyi is likewise a public matter. While yi behavior is a matter of personal expression and self-realization, one cannot simply declare oneself yi and it is so. Yi is meaningful behavior recognized and understood by the community.

Hall and Ames write, “From this beginning, and in the process of socialization, these individual expressions of meaningful action were knit into a somewhat constant, somewhat changing fabric of social, political, and cultural institutions called ritual action (li),” Whether li is performed in a yi way or not is a question that the community experiences, not just the single performer. Li is social behavior, and even those rituals performed by a single person are performed in the presence of the ancestors.

Because of these characteristics, I think we can comfortably claim that to zheng the yi has parallels with the way we zheng a ming. The way to zheng the yi is not to find external standard to measure the yi against. Rather it is a process of reflecting on past models, critically assessing the needs of the present, and envisioning the consequences for the future. We zheng something by

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370 Hall and Ames, Thinking Through Confucius, 105.
371 We might recall Wittgenstein’s argument against a private language. Meanings must be public to be useful.
372 Hall and Ames, Thinking Through Confucius, 98.
making a beneficial adjustment\footnote{Mattice, citing Cikoski, lists the additional meanings of zheng that reinforce this idea of beneficial adjustment: to straighten, to adjust, to order, or to regulate.} as a result of thorough reflection and critical assessment. Importantly, in the Chinese understanding of reality we must use the tools of assessment available to us in this world. Just as the carpenter uses the square and the plumb line, tools of empirical measurement rather than the Form of The Straight or the Divine Law, so we use empirical methods to determine if a behavior or action is the best possible option for the particular circumstances in question. We look to the models of those great people who have gone before, we take stock of the current context and surroundings, we consider the future impact of the action. When we need it we ask for help, we make sincere and honest and unstinting efforts, and hopefully by such careful reflection we act as properly as is humanly possible.

In light of all this, I suggest that justice can be a misleading translation of zhengyi. Loosely speaking, if by justice we simply mean the right thing to do, what is good behavior, or what is approved of by decent people, then zhengyi certainly carries these connotations too. But if by justice we mean the Form of Justice, or Divine Justice, or the Universal Principles of Justice, then zhengyi doesn’t fit into those paradigms. When we zheng the yi, we do not make it equal to Justice, but rather we have behavior that has been reflected upon, scrutinized, critically evaluated and considered, and has emerged as behavior that stands up to critique, that has been straightened, and which has undergone any necessary adjustments appropriate to the situation.

Modern Discourse

Despite my misgivings, zhengyi has been the standard translation for justice for a long time. This has given rise to a Chinese discourse on zhengyi, shehui zhengyi (social justice), fanzui zhengyi (criminal justice) and chengxu zhengyi (procedural justice) that leans heavily on the imported connotation of justice as a rational and universal moral principle. Sun Yat-sen helped import a western-influenced notion of justice when he brought democratic principles to China through his Three Principles of the People. In a speech on pan-Asian culture\footnote{Sun, “大亚洲主義.”} he speaks of a culture that is in accord with zhengyi and humanitarianism.\footnote{是合乎正義人道的文化 A culture in accord with zhengyi and humanitarianism} He also associates zhengyi with gong li, whose modern meaning is about universal principles and logical axioms, showing that while he is associating Asian cultures with moral rulership, this conception of morality is now tied up with
the values of public reason and logical thinking. Following on this, the May Fourth movement was conceived as a drive to modernization and a rejection of tradition, where modernity was associated with the west and the Enlightenment values of liberty, autonomy, science, and democracy. In the demand for individual rights, zhengyi was part of the rallying cry, an ancient term which could be called upon to introduce a new way of thinking. Because the May Fourth and broader New Culture movement saw themselves as champions of rational science, zhengyi became a translation for the Enlightenment value of justice associated with science and rationality and freedom, rather than an ancient Chinese concept.

This trend is still present in academics. Above we saw Xunwu Chen describe justice as the rule of reason. Shunfu Shen, in a paper called “Justice as Rationality” is explicit in formulating a concept of justice as a rational principle of rights, and then connecting this with Xunzi’s use of yi. Given the lack of a strong legal system of protections in China, it is reasonable for many disadvantaged people to want the protections and rights that have developed in association with a western notion of justice. Seeing rational universal justice as the foundation of rights, concerned academics hope to bring this concept to bear to improve social justice in China. However, the insistence that zhengyi be the rule of universal reason overlooks the history and meaning of zheng and yi, and overlooks the potential benefits of employing zhengyi in its own Chinese context as another avenue to achieve social good.

Given the resurgence of traditional culture scholarship and national studies (guoxue 国学), there are some scholars who would like to see zhengyi understood without an over-reliance on western concepts. Tian Chenshan maintains the more traditional connection of zhengyi to a sensitive awareness of the dao and decries the uncritical adoption of western terms to naively translate Chinese philosophy. “A Chinese theory of zhengyi follows the Dao of nature and heaven, and anyone who mistakes zhengyi for justice in the west must have ignored the fact that China and the West each have their own specific traditions of thought, their own cosmological views, thinking modes and values.” He argues that absent a transcendent creator God or a Platonic formal realm, the connotations of zhengyi cannot neatly match up to the historical understanding of western justice. To be zheng is not to measure up to an eternal and unchanging standard of straightness (like the abstract geometric shortest distance between two points), but to stick to the

376 讲仁義道德，是由正義公理来感化人 In following virtues and morality, these coming from zhengyi and evident reasons brings persuasive transformation to people.
377 Shen, “Justice as Rationality.”
path of the *dao* wherever it may meander. *Dao* is the standard, but the *dao* is not comprehended rationally (per Laozi it can’t even be put into words), nor is it an unchanging Archimedean point from which objectivity can be achieved. Within a cosmology that does not presuppose a transcendent perfection of absolute straightness or preformed moral order, a *zhengyi* that is in accord with the *dao* is a matter of making constant adjustments to stay in line with the *dao*’s constant progression. Likewise, Tian stresses the contextual determination of *yi* and its cognate *yi 宜*, endorsing the idea of “fittingness” to the situation instead of an unchanging rule.

A Chinese theory of *zhengyi* differs from western Justice in its implication of appropriateness. *Yi* means *li*, or propriety, which changes accordingly as all the conditions such as time, location, and situation vary and alternate, remaining in accordance with *li*, specific patterns of continuity and correlativity as well as with the conduct as required in particular circumstances; it is not an absolute principle.”

It follows that it is not reason but an aesthetic sensitivity to the appropriate balance and tone of the situation that traces the line of the *dao*. Thus *shehui zhengyi* 社会正义, or social *zhengyi* is not the approximation of perfect equality or the institution of absolute principles, but is rather the sensitive adjustment of institutions to the changing needs of the moment. “*Shehui zhengyi* means the righteous, humane activities and organizational measures used to realize and safeguard interpersonal and natural-anthropic relations that feature interconnection and inseparability.”

This meaning of *zhengyi* rooted in traditional Chinese thinking is obscured if we simply equate it with the western concept of justice.

If *yi* or *zhengyi* don’t have all the same connotations and background as justice, then were the ancient Chinese concerned with issues of justice at all? Whether or not *yi* or *zhengyi* are equivalent to the term “justice,” we can inquire further and ask whether the ancient Chinese had a concept of justice that is not captured by reference to these terms alone.

In asking a similar question, Yang Xiao makes use of a distinction between a concept and a conception, a distinction which Rawls also used to great effect. A concept can be broad and vague – a general notion into which various formulations and concrete examples can fit. A conception is a particular vision of how that concept is fleshed out and how it works. Yang illustrates by explaining that deontologists and utilitarians have different ideas about what makes something just, that is they have different conceptions of justice, but they agree that there is such thing as justice and what basic issues belong to it. He quotes Rawls, who wrote, “it seems natural to think

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379 Ibid.
380 Ibid.
of the concept of justice as distinct from the various conceptions of justice as being specified by
the role which… [its] different conceptions have in common.”

Using this distinction, Yang says “if we want to see whether Confucians have a concept of justice, the concept of justice we
define has to be sufficiently empty, broad and abstract.” This accommodating notion of a
concept then allows for a diversity of specific conceptions to be counted as having a kind of
family resemblance under the umbrella of the broad concept, while not requiring that they be
identical or share essential features. What is typically meant by justice in contemporary academic
and political discourse is a particular liberal conception of justice having to do with systems of
cooperation and distribution and with rights and laws. This modern conception is so familiar that
it is often taken as the only possible understanding of justice. It becomes a default mode, invisible
due to its nearness. Yang says that when people go looking for a concept of justice in ancient
China, they are usually mistakenly looking for a modern liberal conception of justice, and
unsurprisingly fail to find one. Yang reminds us that we must look to the Chinese ideas
themselves and give those ideas room to speak their own language, rather than trying to shoehorn
them into our own familiar principles and conceptions.

My own conclusion is that zhengyi has meanings that do not accord with the idea of justice as an
eternal principle of rational morality, but because justice is a polysemous concept in the west
there are clearly ways in which the Chinese have long been concerned with issues addressed by
western notions of justice. For instance, the Confucian understanding of yi has little value
according to Kantian justice, but we can see some important parallels between Xunzi’s concern
for orphans, widows, and cripples, and Rawl’s concept of the maxi-min. We can find other
affinities with Sophoclean retributive justice, or Aristotelian proportional justice, or Solomon’s
sentiments of justice, or restorative justice as enumerated by John Braithwaite. But of course,
there are important dissimilarities with these thinkers and their own subtle understandings of
justice.

Perhaps the best course is to understand zhengyi and the ancient zheng and yi within the contexts
of their use, and then to try to employ them in thinking through the problems that typically call
upon the resources of western theories of justice. Zhengyi is not exactly “justice,” but the two
ideas can certainly both be held in mind when we are faced with disorder, imbalance, undeserved
suffering, or unequal distributions.

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381 Rawls, A Theory of Justice, 5.
382 Xiao, “Trying to Do Justice to the Concept of Justice in Confucian Ethics,” 528.
INTRODUCTION

Having looked carefully at ways of conceiving both harmony and justice across broad traditions, we have seen some major conflicts arising between the dominant western conceptions and traditional Chinese conceptions of both justice and harmony. As we saw in sections 2.3 and 3.3, I traced some of these differences, especially the differences between transcendent standards and dynamic standards, to underlying metaphysical assumptions. Fortunately, we also saw some conceptions that could help us translate between different traditions. Moving on from conceptual analysis and metaphysics to ethics and politics, I want to focus on another hurdle to understanding justice and harmony in relation to each other: the division of the right from the good. To build a reconciled theory of harmonic justice and just harmony in chapters 5 and 6, we must first recognize the factors that have driven them apart.

In contemporary ethical theories, there is a split in the distinction between the theories of the right and theories of the good. Deontological and contractual theories typically claim that the right has priority over the good, while consequentialist and virtue theories generally focus on a pursuit of the good. This split manifests again in political philosophy and in the aims of governance. Political philosophy typically reflects this division through the opposing camps of liberalism and communitarianism. Liberalism tends to emphasize freedom, inherent rights, universal respect, and basic equality. Communitarians are inclined to emphasize responsibility, communal values, local interests, and intimate relationships. In drawing up actual policies of governance, the opposition is between policies that are either neutral with respect to particular conceptions of the good life, or perfectionist in promoting certain values. Neutral policies aim to set background conditions for people to choose their own values, typically in a kind of marketplace of ideas. Perfectionist policies encourage people to make choices that promote certain values, such as certain family structures, or education, or employment paths.

A similar division shows up in traditional Chinese philosophy in the debate over the most effective means of keeping society in order: *li* 禮 or *fa* 法, reverent propriety or law. While never denying a place for *fa*, Confucians overwhelmingly advocated *li* as the best means to ensure
flourishing human relationships. Legalists emphasized a foundation of *fa* to regulate everyone’s obedience to the state, while relegating *li* to a subsidiary role. Let’s look closer at the divisions on these four levels. With an explicit understanding of where conflicts occur, we will be better equipped to find ways around them.

**Justice and Harmony: USA and PRC**

Especially since John Rawls’s *A Theory of Justice* appeared, the dominant conception of justice has been associated with the priority of the right over the good, with liberalism in politics, and with state neutrality. These are all connected in Rawls’s theory and he argues for them explicitly. Even those who argue against Rawls typically use his basic framing in putting forth their counter-arguments. Frequently the way to oppose Rawls was to flip the order of the dichotomies he endorsed, leaving justice on the side of the right but giving priority to the good. In the mainstream discourse, justice has found its place on the right-liberal-neutral side of the debate.

On the other side of the divide we can see harmony as a value that can be maximized or as a beneficial condition to achieve. A vision of people in harmony is a vision of the good life, more

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383 Will Kymlica (see: Kymlicka, “Rawls on Teleology and Deontology.”) denies that there is a legitimate controversy in political theory over the priority of the good and the right. First, where Rawls describes utilitarianism as a teleology that prioritizes the good, Kymlica says that Rawls mischaracterizes utilitarianism. He argues that the most persuasive forms of utilitarianism affirm the right of each person to be equally considered and to be counted as one and no more than one. He sees utilitarianism as an insistence that each person’s good be taken into account, before considering what that good may be. This insistence on equality is the priority of right. In demanding equal consideration for all, utilitarianism puts forward a deontological demand. Thus there is no conflict between deontology and utilitarianism over the priority of the right, because both prioritize the right: “It is not an issue of ‘deontology versus teleology,’ since neither side believes that the good is prior to the right in Rawls’s sense” (178). What Kymlica seems to be glossing over here is that equality of consideration is itself a conception of the good (see Walzer below, and Ricoeur in Chapter 5).

Second, Rawls opposes deontology to perfectionism by saying they have different priorities regarding the right and the good. Kymlica says that Rawls’s disagreement with perfectionism is not in this priority, but that Rawls and perfectionists have a different idea of what the good for humans is. “Rawls and a perfectionist do not disagree over the priority of the right and the good. They simply disagree over the nature of the good” (187). Rawls believes that people’s good is in an essential freedom to choose their ways of life, while a perfectionist theory says that people’s good is in achieving the view of perfection they subscribe to. This is the key difference separating Rawls’s anti-perfectionist deontology from typical perfectionisms. Therefore, “it is misleading of Rawls to express the debate over perfectionism as a debate over the priority of the right and the good” (187). Contrary to the first point above, this suggests that the Rawlsian goods of freedom and equality ground the right to enjoy them.
in line with teleological and consequentialist ideals. Harmony is an achievement, and thus a sort of consequential consideration. Harmony is a matter for families and communities to pursue, and can take different forms in different times and places, and thus fits more comfortably with communitarian thinking. Harmony is a value that some people hold, but that not everyone has to hold. Martha Nussbaum has argued against harmony as a moral and political ideal,\textsuperscript{385} as have Critical Buddhists.\textsuperscript{386} Harmony is perhaps a defeasible value. It is one vision of the good and of success in life which could compete with other life plans in the marketplace of value systems. Crafting policies in pursuit of harmony is perfectionist governance. Harmony, then, can be seen on the side of the good, communitarianism, and perfectionism.

The United States of America has promoted the notion of justice alongside its calls for human rights, enforceable contracts, and equality before the law. As enshrined in the Preamble to the Constitution and recognized by Superman,\textsuperscript{387} there is an affinity between “Truth, Justice, and the American Way.” Justice is a major component of US foreign policy and its promotion of the rule of law. By aligning justice with the freedom and rule of law, the US has helped define justice as a pillar of liberalism.

In recent years the Chinese Communist Party has pursued a policy of “harmonious society and harmonious world,” where that vision of harmony is rooted in Chinese traditional ideas about the good life, invokes community over individualism, and involves paternalistic social planning. The discourse invoking harmony is ubiquitous in China – even the newest high speed trains are named “Harmony.”\textsuperscript{388} By extending the aim from domestic to global politics, from harmonious society to harmonious world, China has signaled that it regards harmony as value worth promoting broadly.

If the right and the good as ideals are in conflict, and if justice and harmony embody those distinct notions, and if America and China are promoting justice and harmony respectively, does this mean there is necessarily conflict between American and Chinese ideals?

\textsuperscript{384} An emphasis that we saw in Greek notions of harmony is ratio—a rational, logical application to a situation. Harmony is achieved when a situation accords with the abstract form. Chung-ying Cheng points out that Chinese harmony is an achievement but also a process and a principle as well.\textsuperscript{385} Nussbaum, \textit{Love’s Knowledge}.

\textsuperscript{386} Hubbard and Swanson, \textit{Pruning the Bodhi Tree}.

\textsuperscript{387} Recently Superman has changed his tune. In response to the shameful elements in America’s War on Terror (torture of prisoners being chief among them), Superman has dropped the bit about the American Way.

\textsuperscript{388} Perhaps because of their role in making connections and facilitating productive relationships between diverse locations. Or maybe just to get the word out there.
This chapter explores the conceptual differences that create this divide between the just and the harmonious, and explains why each side seems incompatible with the other. To clarify the problem, we turn first to the level of moral philosophy and the arguments over the right and the good.

MORAL THEORY: THE RIGHT AND THE GOOD

Most generally, an emphasis on the right can mean adhering to principles, duties, and laws at the expense of obviously positive outcomes – doing what is right no matter the cost. An emphasis on the good means bringing about beneficial consequences, maximizing certain values, enacting important virtues, or bringing about the best results whatever it takes. Thoughtful philosophers recognize that most humans consider both the right and the good within their ethical decisions. Instead of one or the other existing alone, the argument often comes down to a matter of priority and which one will have the final determination in an ethically difficult situation.

Kant has been an influential voice in establishing most of the modern understandings of the right as a domain of discourse, and Rawls made sure that the priority of the right over the good is a prominent argument in contemporary ethical theory. Rawls’s use of justice as synonymous with a philosophy of the right has formed the dominant academic understanding of justice. On the other side, Bentham and Mill, as champions of utilitarian consequentialism, gave us an ethics that emphasized the good. They claimed that measuring people’s achieved happiness gives us a criterion for morality. More recently philosophers have seen Aristotelian teleology as an ethics of the good, and a rival to both deontology and utilitarianism. Teleology suggests that there is a good life proper to human beings, and that virtue and deep fulfillment (eudemonia) are signs of ethical achievement.

We will first look at the conflicts of good and right as they appear in Kant, Mill, and Aristotle. In the next section we will see how more recent philosophers arguing from within these traditions have advanced these classic arguments into a debate between liberal and communitarian politics, and from there into a clash between neutral and perfectionist policies.

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389 When a critic like Sandel puts out a book called, “Liberalism and the Limits of Justice,” he is giving the meaning of justice to Rawls and arguing for its limits rather than arguing for a more capacious meaning of justice. Others, like Sen and Solomon and Ames, seek to reclaim the meaning of justice from the Rawlsian framework.
Deontology

Kantian deontological morality emphasizes one’s duty is to do what is right and lawful, no matter who is involved or what the consequences. Any consideration of benefits for oneself or loved ones or any pursuit of favorable outcomes actually takes away from the morality of an action. Kant writes, “Now this principle of self-love or personal advantage is perhaps quite consistent with my whole future welfare, but the question now is whether it is right… I then see at once that it could never hold as a universal law of nature and be consistent with itself, but must necessarily contradict itself.” Personal welfare is not an ultimate justification because we can further inquire if it is “right.” They question of rightness is the key moral question and Kant answers that acting for the sake of one’s welfare is not necessarily right.

Moral actions are those which are performed out of respect for the moral law. The moral law is discovered by reasoning, and allegiance to this law is universally binding on all rational creatures. The will to do one’s duty as commanded by the moral law, to do the right thing, is the object of moral judgment because people have control over what actions they choose, but they cannot always control the effects of their actions. Judging them for the results of their actions is uncalled for. We can only judge a person for what they can control, and so the will to do one’s duty is the focus of moral judgment. Weakness of will and irrationality are the principle moral failures.

Kantian moral theory says that the universal law is discovered by the use of reason. Reason can determine if our own actions are universalizable, that is, if they accord with what we would have every other person do in the same situation. Because all people share the same faculty of rationality, all rational people should come to the same conclusion when faced with an ethical dilemma. The answer that any rational person would give is the universal law. The universal law admits of no exceptions, and any exception taken in favor of personal interests or personal pursuit of good outcomes is immoral. While Kant understands that real human beings rarely live up to the high standards of his moral theory, he maintains the clear line which separates respect for the moral law from submission to inclinations. Kant establishes a clear and strict dichotomy. On one side we have such notions as: law, reason, autonomy, categorical imperatives, duty, principles, universal, freedom, respect, dignity, etc. On the other are: sentiment, heteronomy, hypothetical imperatives, desires, inclination, self-love, submission, consequences, etc. The first set is properly moral and associated with a duty of the right. The second are impediments to morality and are associated with pursuit of the good.

For Kant, the judgment of good or evil must make reference to the universal law, which stands independent and prior to those judgments. “The concept of good and evil is not defined prior to the moral law, to which, it would seem, the former would have to serve as foundation; rather the concept of good and evil must be defined after and by means of the law.” The law as an expression of the right precedes the good. We take as good only that which is in line with the boundaries set by the right. We can see that Kant sets up most of the important features of a morality of the right. The right is prior to the good and trumps the pursuit of welfare and benefits, the right is rational, and the right is about freedom.

**Utilitarianism**

J.S. Mill offers a utilitarian consequentialist ethical theory that is opposed to Kant on many points. For Mill, the chief aim of moral life is to bring about the greatest good and the most happiness. It is not the will that matters morally, it is the results. The utilitarian formula of maximizing happiness or utility for the most people has a totally different standard of judgment from the Kantian. It looks to the actual results and the empirical evidence and then tries to take measure of the satisfaction achieved. Mill writes,

> According to the Greatest Happiness Principle, as above explained, the ultimate end, with reference to and for the sake of which all other things are desirable (whether we are considering our own good or that of other people), is an existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality.

The ultimate aim is enjoyment and freedom from pain. These are conditions to be realized, goods to be achieved. Consequentialism asks, “Were those things that people value accomplished?” A positive answer is a judgment of moral worth. A negative answer is blameworthy. The standard of an autonomous will to universal law that Kant puts forward is not operative. Because we never have access to the agent’s motivations, the good will is not directly available to be judged. Instead, utilitarians say that what we can roughly measure and judge is people’s happiness. We have both a scale of happiness an ultimate standard of success – the maximum of happiness. And yet pursuit of this success is precisely what Kant said diminished one’s moral worth. Mill’s standard gives priority to the good that people achieve. Happiness is that good, and so whatever promotes

391 Kant, *Critique of Practical Reason*, 65.
happiness is right. Rightness is determined secondarily, on the basis on whether something good is achieved.

**Teleology**

Teleology is based on the idea that there an aim or a goal in life shared by all humans. Ethical behavior is then understood as that which advances one towards the ultimate goal. Aristotelian teleological ethics has been revived following Alasdair MacIntyre’s invoking it to describe the importance of a *telos* for making sense of disputes in modern moral philosophy. Understood through the key concepts of virtue and the *telos* proper to human being, Aristotle presents another way of understanding an ethics of the good. The strong sense in which the good structures Aristotelian teleology is highlighted in the very first sentence of the Nicomachean Ethics: “Every craft and every line of inquiry, and likewise every action and decision, seems to seek some good; that is why some people were right to describe the good as what everything seeks.”

The good life is the point of all action and striving. Because humans are a certain kind of creature, it is good for them to live with virtue and to realize the perfection proper to them (namely, philosophic contemplation). Achieving this is living the good life and is the focus of Aristotelian ethics.

However, if a person has a heteronymously determined *telos* to fulfill, such as a *telos* implanted by God or given by biology, then he can’t be truly autonomous in a Kantian sense, and so cannot be moral. Such a teleology sets a destination to arrive at, which would eliminate the freedom at the heart of Kant’s moral theory. Kant explicitly says happiness cannot be the motivation of moral behavior, while Aristotle think happiness (*eudaimonia*) is the final answer to every question about moral motivation. The standards that define moral behavior in teleology and deontology are different, even contradictory in some ways. The moral choice in a *telos*-driven theory is the choice that fulfills one’s given purposes; the moral choice in a duty-driven theory is the choice that accords with autonomy and universal reason. These philosophies of the right and the good may be at odds. The pursuit of one can require the neglect of the other. Because conforming to the right and pursuing the good can come apart there is philosophical divide about which to prioritize or take as the ultimate criterion of moral judgment.

Although they share a focus on good outcomes, utilitarianism and Aristotelian teleology have enough differences that they too are in competition to prove which approach provides the best

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description of ethical experience and which grounds a more satisfying life. Utilitarianism and
other consequentialist theories typically focus on the aggregate of happiness or utility, while
teleology typically focuses on the individual’s character or achievement. Also, while some
sophisticated consequentialists factor in how the consequences were attained, this need not be the
case. In contrast, virtue-based theories typically maintain that the way one pursues one’s telos is
fundamental to achieving that telos. Further, the values to be maximized by a consequentialist
theory can be open to debate, but most teleological theories posit a fixed end. Such differences
can drive apart utilitarian and teleological theories.

Despite seemingly endless volleys and arguments meant to invalidate one side or the other, no
knock-down arguments have succeeded in disqualifying any of these approaches from serious
philosophical consideration. Instead, well-reasoned attacks produce side-steps, qualified retreats,
and counter attacks. Very rarely do people give up their primary intuitions in response to good
arguments, and so deontology, utilitarianism, and teleological virtue ethics remain rivals in
modern academics, with passionate defenders who have not been swayed away from their favored
stances despite powerful critiques. While cogent critiques strike at the ultimate satisfactoriness of
any of the three main approaches to ethics, there are also many good reasons to establish duties
and laws, and to pursue good outcomes, and to try to live virtuously. Few would deny this, but
there is still an unsettled question about which to prioritize.

The distinctness and co-existence of different concerns is well described by John Dewey, who
identifies “Three Independent Factors in Morals,” corresponding to the good, the right, and virtue
theory. Dewey emphasizes the different origins and the incompatibilities of these three ways of
measuring moral worth: “the virtuous differs radically from the good and the right. Goods, I
repeat, have to do with deliberation upon desires and purposes; the right and obligatory with
demands that are socially authorized and backed; virtues with widespread approbation.”

Though he claims that they spring from different sources and have different criteria, Dewey does
not give pride of place to one above the others. He sees the competing claims of these three
important considerations as a source of conflict, a conflict that makes morality a genuinely
difficult issue because all three are worthwhile considerations. While Dewey says that they must
all be considered in making moral choices and evaluations, he argues that they are independent
factors because he is arguing against flattening them in the pursuit of a single principle of

394 The book, Three Methods of Ethics: A Debate, by Baron, Petit, and Slote demonstrates this kind of tap-
dancing. The ever-growing legion of sub-species of consequentialism, each meant to avoid specific
criticisms, is another shining example.
morality. This approach does not remove the conflicts between the three factors, but lets them co-exist as worthwhile and important considerations which must always be considered in any morally fraught situation.

POLITICAL THEORY: LIBERALS AND COMMUNITARIANS

The split between the right and the good appears in political theory in the rivalry of liberalism and communitarianism. Liberalism in the Lockean and Kantian traditions, especially as carried forward by Rawls, sees itself as based in a morality of the right, whereas communitarian responses to Rawls have emphasized the values and virtues of the good life as understood in particular communities. Philosophies of the right and the good lend themselves to different views of what politics should be trying to accomplish. Liberalism attempts to set up conditions that will allow all people the freedom to pursue their own projects, while communitarianism attempts to realize some particular values as they arise in actual communities. In the following section, we will see some of the effects on political philosophy that arise out of separating the concepts of right and good.

Liberalism

Liberalism is based in the fundamental ideal of liberty. It insists that people be free to choose their values, their practices, their way of life, and their moral and religious beliefs. A person is free in that they are not tied to one conception of the good life, but is an autonomous and dignified self capable of rational choice. Rawls describes this capacity to be free from the external influences of culture and particular values:

As free persons, citizens recognize one another as having the moral power to have a conception of the good. This means that they do not view themselves as inevitably tied to the pursuit of the particular conception of the good and its final ends which they espouse at any given time. Instead, as citizens, they are regarded as, in general, capable of revising and changing this conception on reasonable and rational grounds. Thus it is held to be permissible for citizens to stand apart from conceptions of the good and to survey and assess their various final ends. 396

As described by Rawls, liberalism is a response to pluralism, to the co-existence of different comprehensive doctrines, different moral and religious beliefs, and different ideas of the good life. This plurality ensures that there are alternatives to choose among, and so the essence of human freedom is being not stuck with any one alternative. Liberty to choose one’s values – the freedom of conscience and belief – is a fundamental assumption of liberalism.

Given these pluralistic conditions, government must ensure that people have the liberty to pursue the lives and values they choose, even if those values are not shared by the majority of people. Because there is no single vision of the good, liberalism holds that an ideal of freedom can accommodate people’s ability to choose a vision of the good for themselves. Thus liberalism conceives the role of government as establishing the background conditions which uphold basic freedoms and ensure that no one belief system dominates others. Government exists to ensure everyone a fair chance to achieve whatever they choose as a good way of life.

Liberalism employs a constellation of ideas which are defined in terms of each other and support the overall political vision. These include liberty and freedom, autonomy, rights, equality, property, reason, choice, and justice. In any liberal political theory, these will be among the chief values. Rawls describes the features of liberal conceptions of politics, writing:

> The content of such a conception is given by three main features: first, a specification of certain basic rights, liberties and opportunities (of a kind familiar from constitutional democratic regimes); second, an assignment of special priority to those rights, liberties, and opportunities, especially with respect to claims of the general good and of perfectionist values; and third, measures assuring to all citizens adequate all-purpose means to make effective use of their liberties and opportunities. 397

The first condition highlights the basic sense of freedom in liberal politics. People have rights to freedom of conscience, association, movement, etc. The second condition claims that these freedoms take precedence over realizing other sorts of values, values that might be particular to specific belief systems or doctrines. The third condition aims to ensure an equality of basic resources and goods so that people are effectively free to pursue their choices.

Rawls’s political conception of liberalism aims to establish the background conditions of social cooperation. He insists that his political theory of justice is about the institutional structures that maintain a just society, not about a particular value or individual character traits. He wants to build the political framework which best supports and sustains good lives, but the shape those lives take depends on people’s comprehensive doctrines.

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397 Rawls, Political Liberalism, 6.
The combination of the first two conditions listed above by Rawls becomes the priority of rights and liberties, a priority explicitly claimed by Rawls: “The idea of the priority of right is an essential element in what I have called political liberalism, and it has a central role in justice as fairness as a form of that view.”398 Priority of the right means that right principles are determined independently from any particular conception of the good or any local values. Considerations of the right establish the framework of freedoms which allows particular moral visions to flourish, and so has precedence as the enabling ground of the good. The right, as independently determined by reason, exists prior to and takes precedence over anyone’s desire to realize of their own good. Priority of the right means that the demand to maintain institutional structures can put limits on the good, but local ideas of the good cannot change the structure.399

The priority of the right has become one of the defining ideas of liberalism as a political philosophy. It is meant to establish basic principles which no individual’s or group’s pursuit of their own good can violate. This priority ensures that everyone has an equal playing field, and an equal opportunity to enact their own values, provided those values don’t prevent others from freely realizing their own values. The priority of the right sets restrictions on what comprehensive visions of the good are acceptable, because it rules out any that impinge on others’ ability to choose their own good lives. Thus, for example, authoritarian comprehensive doctrines are ruled out because they violate the right of others to their own liberties. The principles of justice are meant to secure liberty and equality as rights for everyone so that each person can chose a life plan for him or herself.

The principles of justice as fairness are meant to apply to everyone, and to be able to cover everyone in a pluralistic society they must have a kind of generality and an abstract character so as to encompass diverse individuals. Rawls is adamant that the principles of justice do not presuppose any particular comprehensive doctrine, and that they rely only on a “thin” concept of the good which all people of any belief system would agree to. This thin concept of the good allows that people will need some basic provisions to allow them to pursue their own “thick” concept of happiness, whatever that may be. Rawls further ensures this generality by using the device of the original position. The personal details of the representatives behind the veil of ignorance are wiped away so they can have an impartial perspective. They represent practical reason itself, rather than personal interests. They are abstracted from any contexts which would give them an identity, precisely so they can chose without the undue influence of living at a

399 One directional relationship.
particular time or place or role. This is to ensure equality of consideration for all people, which is the condition of fairness. The decisions stemming from this procedure are fair to everybody because there are no determinate interests which could bias the outcome. In this way the original position approximates a standpoint for universal judgment.

**Communitarianism**

Communitarianism has opposed liberalism on several points. One point is on the theory of self and choice that underlies the freedoms of liberalism. Another is the question of whether justice is a universal or particular virtue. A third, which will be addressed in the next section, is whether government can or should be neutral or whether it should favor certain values in crafting its policies.

**Self and Choice**

The liberal conception of selfhood emerging from Kantian philosophy is that of an autonomous agent, able to reflect and choose according to rational preferences. The self’s essential feature is its autonomy, which ensures that no contingent features of personality or upbringing have any necessarily heteronymous influence over it. Sandel describes this as a subject of that stands prior to its objects of choice. The liberal position is that the essence of a person is not what he or she chooses, but the capacity to choose. We are not defined by any contingent or accidental features of our personalities or cultures, but by our free will and ability to choose among alternatives. Every self has certain attributes of course, but these are accidental. The self exists prior to those attributes and can maintain some reflective distance from them.

Whereas Kant appeals to transcendental metaphysics of self to posit this essential freedom from contingent circumstances, Rawls uses the device of the original position to imagine how people would choose if they were completely free from the accidents of personality, culture, and social role. “By assuming certain general desires, such as the desire for primary social goods, and by taking as a basis the agreements that would be made in a suitably defined situation, we can achieve the requisite independence from existing circumstances.”  

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representatives shed the details of their lives so they can make a completely fair and impartial
decision, unencumbered and uninfluenced by and particular self-interests.

It is this picture of the self as prior to and independent of its values that the communitarians reject.
Communitarians argue that the self is constituted by the community and surroundings, and cannot
simply dispense with these ingrained values in making its choices. They claim that human beings
are resolutely embodied in a particular milieu, and there is no view from nowhere that can wipe
away the deep roots of self-identity. Instead of the self as an independent agent free to choose
one’s fundamental values, Sandel argues that people’s identities are constitutively determined by
the circumstances of their lives. To imagine we can shed our identities and make decisions based
on purely rational deliberation alone is a mistake. Real human beings cannot be abstracted from
their interests, their values, their histories, or their identities. Some interests are not secondary
objects of choice that can be attached to an independent subject, but are the very constituents of
the subject and one’s self-understanding. The community in which a person is raised is central to
identity, and the values imparted by family and friends cannot be so easily set aside. One’s
personal perspective has sedimented over years of experience. Some measure of reflective
distance is possible, but never to the extent that all of our identity can be put aside for the sake of
rational deliberation. Joel Feinberg, in his estimably balanced consideration of autonomy and
community, identifies important communitarian insights while resisting the most radical of their
critiques. He writes, “there are selves and selves, and some are detachable from certain roles that
others are not detachable from…. there is no gainsaying MacIntyre’s point that by the time one
has an adult awareness of a world, it is for all practical purposes too late to cease being, in certain
fundamental respects, an American, Englishman, or German, as the case may be.”401 While it may
be logically possible to renounce one’s deep-seated identities, “such radical ‘disownings’… must
be rare and exceedingly difficult.”402 While critical reflection and thoughtful rejection of some of
one’s inherited identities and practices is possible, the communitarian insists that this deep layer
of identity is far too fundamental to be treated like other objects of choice in a marketplace of
ideas.

A central claim that unites the diverse theories under the umbrella of communitarianism is that
values are not independently and rationally chosen by pre-existing subject, but that a person
grows up inextricably constituted by the environment and the social situation he or she is born
into. Likewise, communities don’t choose their values out of thin air, but even in the

402 Ibid.
establishment of a constitution they rely on traditions and languages that have been accumulating for millennia. Identity is not something chosen, but something that develops out of local circumstance. Sandel writes:

But we cannot regard ourselves as independent in this way without great cost to those loyalties and convictions whose moral force consists partly in the fact that living by them is inseparable from understanding ourselves as the particular persons we are— as members of this family or community or nation or people, as bearers of this history, as sons and daughters of that revolution, as citizens of this republic. Allegiances such as these are more than values I happen to have or aims I 'espouse at any given time'. They go beyond the obligations I voluntarily incur and the 'natural duties' I owe to human beings as such. They allow that to some I owe more than justice requires or even permits, not by reason of agreements I have made but instead in virtue of those more or less enduring attachments and commitments which taken together partly define the person I am.  

Loyalties, allegiances, attachments, commitments, convictions – these are not just objects of choice which can be attached to a pre-existing subject. Rather they are what define a person, and no subject stripped of them can participate in making moral choices. Sandel says the abstraction provided by the veil of ignorance is not liberating, but rather disempowering. It strips the agent of the key components of human life that motivate any choice at all and make morality worth pursuing.

According to early communitarian replies to Rawls, liberal justice, when taken as a matter of rights which ensure the freedom to choose one’s own comprehensive doctrine, rests on the fiction of antecedently rational self that freely chooses it values. Instead, communitarians insist that the self and its values are already given by the time mature deliberation is possible, and that self-identity runs too deep to be a matter of autonomous choice.

**Universality and Context**

Daniel Bell claims that, “Communitarians have sought to deflate the universal pretensions of liberal theory.” Kant certainly intends for his moral philosophy to apply universally. Rawls seems to be suggesting something similar, but in his later works he acknowledges that justice as fairness is primarily appropriate for pluralistic nations with some liberal leanings. Despite this

404 Rawls has replied that the original position is merely a tool of representation, and that he does not envision a self independent of its encumbrances. Recognizing this, most communitarians have moved on to other area of contention.
405 Bell, “Communitarianism.”
retreat, Rawls still seems to think that liberalism would be the right choice for any peoples, with nonliberal but decent societies a passable second choice. These societies that are decent but do not commit themselves to pluralism and justice as fairness are subject to the “fact of oppression,” such that a single comprehensive doctrine, even a reasonable liberal one, can be maintained only by state coercion. The fact of oppression is another reason to see justice as fairness as having an advantage when compared to other doctrines in any time or place. Other liberals have been more explicit in insisting that justice as principle of the right is the highest goal universally. Communitarians have been quick to attack the project of establishing universal principles justice, arguing that the meaning of justice is shaped in particular circumstances and must be determined according to the empirical conditions.

Michael Walzer focuses on social structures rather than the underlying philosophy of selfhood, but he still insists on the historical character of particular communities in determining what justice is. He says, contra Rawls, justice cannot be determined by reference to universal principles. Instead, different “spheres of justice” each have their own criteria for measuring justice. Walzer’s spheres and their specific criteria are summarized in a review by Dworkin and include the following:

- medicine and other necessities of a decent life should be distributed according to need,
- punishment and honors according to what people deserve,
- higher education according to talent,
- jobs according to the needs of the employer,
- wealth according to skill and luck in the market,
- citizenship according to the needs and traditions of the community,

In each of these spheres, Walzer says the meaning of the criteria is determined by the community, and different spheres and the goods proper to them have different meaning in different times and places. We cannot look to transcendent or universal standards to determine just distribution; we must look at the community and its needs and values before we identify what would be just. He writes, “My own claim is that we cannot distribute goods to men and women until we understand what the goods mean, what parts they play, how they are created, and how they are valued, among those same men and women. Distributions flow out of and are relative to social meanings.”

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406 Law of Peoples.
407 Rawls, Political Liberalism, 37.
408 Dworkin, “To Each His Own.”
409 Walzer and Dworkin, “Spheres of Justice': An Exchange.”
In opposition to the liberal claim that justice is prior to community or local values or comprehensive doctrines, Walzer maintains that just distribution is relative to the meanings societies place on various goods. Priorities among different goods, even primary goods, are determined by local practices, and only on the basis of these can we measure justice. A principle of justice that covers every sphere of distributable goods and accounted for the different valuations and priorities among those spheres cannot be found. Instead, particular communities must appeal to their own understanding of the good life when deciding whether to prioritize health or wealth, education or leisure, and so on. Human beings are much too bound up in their circumstances and circumstances are much too dynamic for one principle (or two) to account for justice in all places and at all times.

Reflecting on the debate between liberalism and communitarianism later in his career, Walzer concludes that he and most people he knows are convinced by the values espoused by liberalism, and that the debate over liberal values is basically settled. Still, he claims that there are certain reminders and correctives that the communitarian perspective will always be there to interject. Because societies that do subscribe to liberalism have people living more separate lives with looser bonds, as shown in what Walzer calls the “Four Mobilities” (geographic mobility; social mobility; marital mobility; and political mobility), communitarian values offer a corrective when mobility threatens social integration. Because shallow cultural identities, loneliness, and alienation are prevalent in liberal societies, the communitarian emphasis on the bonds of community is a good reminder of those things that unite people.

A further function of the communitarian critique is to remind us that liberalism only exists in a community that values liberal ideals. Left unchecked, liberalism would liberate people from liberal values, which are the product of a particular culture and history. “Liberalism is a self subverting doctrine; for that reason it really does need periodic communitarian correction….It would be a good thing, though, if we could teach those (liberal) selves to know themselves as social beings, the historical products of, and in part the embodiment of, liberal values.”  

The communitarian position is still distinct from the dominant liberal culture, and this difference is an important bulwark against the more skeptical and alienating aspects of pure liberal ideals. Later I will emphasize, with Walzer, that the liberal position is culturally conditioned and does not escape historicity. Equality and liberty are well-tested values within the vision of the good that shapes liberalism, not universal demands of rationality. Some liberal values may be worthy of our convictions, but this does not put them above question or make them eternally indefeasible values.

The debate between liberals and communitarians has gone many rounds. Daniel Bell suggests that arguments over the nature of the self have largely faded away with both sides giving some ground towards the idea that we grow up shaped by community but we can gain some measure of reflective distance from our inherited values. Instead of the philosophical debates over universalism and particularism, Bell says the debates have become political and now revolve around questions of policy and the ambitions that should drive lawmakers.\(^{411}\)

**GOVERNANCE: NEUTRALITY AND PERFECTIONISM**

The political philosophies of liberalism and communitarianism lend themselves to two different stances regarding the purpose of laws and legislation. Liberal governors, because they do not favor any one comprehensive doctrine and must leave open the opportunity for any value system to flourish, and aim to craft policies that do not promote any particular way of life. These policies are neutral toward the different values that groups of people hold. An example is the policy of exempting religious institutions from paying taxes, regardless of the denomination or beliefs espoused in the religion. Communitarian governors, because they recognize certain values as having worth and meaning in society, aim to craft policies that lead people to realize those worthwhile values. An example would be giving tax breaks to married people and homeowners, because this promotes the vision of life that includes marriage and home ownership and denigrates the lifestyle of shacked up gypsies. More weighty issues might include the establishment of a state religion, or the criminalization of various types of heresy. This directedness of policy is called perfectionism because it recognizes that some conditions are more perfect than others, or that there is a goal, a perfection, that people should reach. Perfectionism is closely related to paternalism, in which the government creates policies for the sake of the people’s good, even if that kind of good is not what the people would choose themselves.

Simon Clark gives us a clear description of the distinction between state neutrality and perfectionism:

> According to the ideal of state neutrality, government action should not be based on any conception of the good. This requirement is usually thought to preclude the state from, among other things, enforcing sexual morality and inculcating a particular religion but not from protecting and enforcing rights and ensuring a just distribution of resources. In the abstract, neutrality seems an appealing idea, embodying fairness and impartiality.

\(^{411}\) Bell, “Communitarianism.”
Perfectionism, by contrast, rejects the requirement of neutrality, holding that the state may, and perhaps has a duty to, take a stand on what is a worthwhile way of life in order to help people lead good lives.\textsuperscript{412}

The question at issue is whether government should actively promote certain ways of life and particular values, or leave such promotion to civil society. Promoting some values must come at the expense of other values. Whether the government legitimately has coercive power to encourage or discourage particular visions of the good life divides neutralists from perfectionists.

Liberals believe that state and society are separate institutions with different rules and aims. Likewise, public and private are separate domains. Liberals generally believe that the choice of values and promotion of certain goods is something that should take place at the level of civil society. This is the appropriate forum in which different civic groups should hash out their differences, compete for adherents, and fortify their beliefs. Likewise, the choice of a life plan is a private matter, an intensely private matter, and the capacity to develop a life plan of one’s own is among the fundamental moral powers which make a person worth of respect. The ideal government has only limited functions, leaving a lot of room for civil society and private personal decisions to determine how a person should live.

In contrast, communitarians see the state as an extension and expression of the society and not something that can be entirely separate. Gaining some reflective distance can provide new perspectives, but the absolute freedom to put away one’s history, one’s sedimented habits of thinking, and one’s basic world-view inculcated through a lifetime of experience in society is not possible. Stepping into a government job does not give you an off switch for your unique perspective on the world. The values of the society that produces government representatives will inevitably show up in the decisions made by those representatives. Thus there can be no absolute division between society and state. The state is ultimately a collection of individuals, and all those individuals are members of civic society too. The values those people want to promote, whether consciously or unconsciously, will always be a part of their deliberations. It may be better to acknowledge this and search for the best possible values to publicly endorse instead of imagining that our representatives can be neutral in crafting public policy.

One main reason why liberals prefer state neutrality is the fear that the massive resources and coercive power of the government can become oppressive to minority groups if the government pushes perfectionist polices that favor the values of the majority. History has proved that when

\textsuperscript{412} Clarke, “Debate,” 111.
one set of values is prized by the governing powers, people with other values are at a terrible disadvantage. The wars of religion and the history of colonialism are good examples. Beyond such dramatic examples, it seems oppression of minorities and their ways of life has been the historical global norm, even in states that promote liberal values. Regimes of racial, cultural, and religious intolerance have produced a healthy fear of the power of any government that believes it has all the right answers. This concern that the power of government not be used to suppress ways of life it doesn’t approve of is a key component in arguments that would limit the state’s power to pick winners and losers in the marketplace of value systems.

On the other hand, communitarians stress that when broad communities do identify important values, the power of the state is needed if they are going to achieve and maximize the realization of these values. Joseph Chan asks why we should separate the responsibilities of civil society and state so dramatically: “As far as the pursuit of perfectionist goals is concerned, are there any strong reasons for a sharp and fundamental distinction between the state and civil society in a political community?” If civil society exists to fulfill certain human needs and aims, why bar government from working to fulfill those same needs and aims? Chan argues that there are no clear reasons. In some matters government may be able to provide superior service than civil society. If, for example, the people recognize an educated life as better than an uneducated life, the people who take power of the government to compel primary education and the resources of the government to pay for schools may be the only way to ensure that quality education is widely available.

Perfectionists can also argue that biology and human nature provide a reason to promote certain ways of life that seem to align with natural human flourishing. Even if there are different values that arise in different cultures, if we can recognize common features of a natural direction to human life, a government should have the authority to help people move in that direction. For example, if health was recognized as an inescapable value for human beings, then a perfectionist government which promoted or legislated a particular diet, exercise, and or medical treatment over all other aims might be legitimate, even if some groups didn’t value their own health so highly. On the other hand, neutral policies on health might aim to provide equal access to health care, treating it as a good to be distributed according to fair principles, but which must not be imposed on those who don’t value it. Norman Daniels has described health care, broadly construed, as connected to the primary good of opportunity. In this case, recognizing that poor

414 Daniels, Just Health, 57.
health care can be a barrier to opportunity, it is only the thin primary good of opportunity that
government must endorse, and not any particular conception of healthy living. The state’s
responsibility is to give equal access to health care (or at least in line with the difference principle)
and so expand people’s opportunities to live as they wish, but not foist a healthful life plan upon
them.

Liberal neutrality puts a lot of faith in the people and their ability to work out major issues
through civil society. Because every person is equally autonomous and shares the capacity for
reason, everyone is qualified to decide on their own values. Rawls’s two moral powers express
this belief that all people can formulate their own conception of the good. Some communitarians,
especially those who lean towards paternalism, think many people are not clear about what it
takes to live well. Some people may need to be led towards goodness and virtue. Within any
government there are smart people and cultural elites who, through native intelligence or superior
cultivation, are in a better position to see what real success as a person looks like. The strategy
that follows from this is to give those elites the power to move the country in the ways that seem
best to them, rather than leave it to the uniformed choices of the laity who are busy, distracted,
and blinded by daily chores. Arguments such as those put forth in What’s the Matter with
Kansas415 suggest that people often don’t recognize where their own economic interests lay. It is
possible that the American public doesn’t know enough about governance and economics to make
decisions with subtle foresight; China certainly does not show much trust that its common people
will be well served by democratic rule.

Most defenders of liberalism come from highly educated populations. Giving people the reins and
taking moral leadership away from the government is possible when there are many qualified
leaders and everybody has been to high school or beyond. Perfectionism and paternalism make
more sense when the population is uneducated or laboring so hard that they don’t have the luxury
of exploring other cultures and values. This has been the historical global norm, as religious
leaders, charismatic leaders, warlords, and a small educated class have governed the working
masses. The viability of liberalism and the associated idea of state neutrality presupposes a
plurality of capable groups and people. Rawls has acknowledged that his theory of justice is
primarily applicable in the modern, well educated, pluralistic democracies of the West. In states
without such contingent social circumstances, the arguments for perfectionism can find additional
support.

415 Frank, What’s the Matter with Kansas?. 
State neutrality and perfectionism name two divergent views about the role of government. Neutrality limits the role of government to maintaining a basic structural stability and ensuring freedom in the marketplace of ideas. Neutrality assumes the liberal view that people are able to determine their own ideas of the good life, and so limits government to enforcing rights and freedoms through basic institutional structures. Perfectionism gives the government a role in promoting the values that are part of the good life, however the good life may be defined. Perfectionist governments take up some values from the communities they represent and try to realize the goods of those communities in practice. The division between a moral philosophy of the right and an ethics of the good comes into practical conflict when actual policies are crafted and the aims of those policies can be either neutral or perfectionist.

Summing Up

In the forgoing sections, what we have seen is a dramatic divide in modern western philosophy between philosophies that pursue the right and those that pursue the good. This split leads to a division between camps of liberals and communitarians, and neutrality and perfectionism. Of course, in the massive and messy world of modern ethical and political philosophy there are camps within camps, stray hands reaching across the divide, occasional voices claiming a third way around these two, and plenty of people who want a moderate position which balances out the twin concerns for the right and the good. Indeed, common sense suggests that most people are often weighing both the weight of rules and expected outcomes when they make their moral decisions. As strictly philosophical concepts though, there is a clear difference in the criteria of judgment between philosophies of the right and the good. At their most general, philosophies of the right will ask if an action violates some important standards, and philosophies of the good will ask if things turned out well. Though both seem like legitimate concerns, they do not always lead to the same answer and so the divide persists.

LI 禮 AND FA 法

Turning to the Chinese tradition, a similar division shows up in the debate over the most effective means of keeping society in order: li 禮 or fa 法. Confucians advocated li, reverent propriety, to make the best of human relationships. Legalists insisted on fa, law, to regulate everyone’s
obedience to the state regardless of rank and regardless of any person’s contingent circumstances. This debate is primarily about the best way to regulate a well-functioning society, and not about the criteria of evaluation as in the good versus the right, yet I think many of the intuitions that ground the division in western ethics are also at work here. On one side stand inviolable laws and the foundations of institutions, while on the other we find a concern with relationships and social behavior. Like conceptions of the right, fa define enforceable standards, whereas li can be associated with conceptions of the good since they are meant to promote valuable states of affairs among people. If we are to formulate a relationship between justice and harmony with reference to both western and Chinese ideals, we will have to understand the differences between governing by li, and governing by fa.

**Li 禮**

“Li” has been translated at rituals, rites, propriety, rules, customs, manners, etiquette, morals, norms, and more. Li directs one’s appropriate behavior in various relationships and circumstances. In Confucianism, the five basic relationships were Ruler/Minister, Father/Son, Husband/Wife, Elder Brothers/Younger Brother, and Friends. Qu Tongzhu writes of these, “The different human relationships can only achieve perfection through the operation of li.”416 In each of these relationships certain rules of behavior obtained. The li between an officer and his minister was different than the li between that officer and his mother. Li especially marked out the differences in rank within the government and seniority within the family. It proscribed the patterns of deference and respect between people in different social positions. When two people would meet, who would speak first, who would offer food or drink, who would sit where at the table – these types of questions of deference were settled by the li. Yet the translation of li as manners or etiquette seems inadequate because they minimize the deep significance, the religious tenor, of following li. The translation, “ritual,” maintains li’s connotation of religious ceremonies and sacrifices. The component parts of the character 禮 depict a sacrificial alter: “The compound character 禮 is an ideograph connoting the performance and presentation (shi 明) of sacrifices to the primary ancestral spirits at an altar dedicated to them (li 豐), suggesting the profound religious

significance this term entails.” \(^{417}\) While not precisely synonymous with the performance of rites, \(li\) is intimately connected with the aesthetic quality of a sacred ceremony.

The \(li\) are what enable a Confucian conception of social harmony. They establish the differences between particular roles and also proscribe practices for building relationships between those different roles. Because \(li\) distinguished among the various relationships, they supported the graded affection that afforded more consideration to close relatives than to strangers. \(Li\) proscribed that intimate relations should be treated with greater care than less intimate, and that family should take priority over others. Still, \(li\) extended to strangers and established the courtesies that paved the way for new relationships.

Qu emphasizes the differentiations of \(li\), saying “the function of \(li\) is to achieve differentiation,” \(^{418}\) and cites the \(Liji\) where \(li\) is contrasted with the unifying power of music:

Music aims at homogeneity; \(li\) aim at differentiation.
Music embraces what is equal; \(li\) distinguish between what is different.
Music unites the homogenous; \(li\) distinguish between differences
\(Li\) are different.\(^{419}\)

At the same time as they distinguish differences, the \(li\) describe the behaviors that should obtain between each differentiated role in the relationship. The people in the roles must maintain intimate connections to those around them. \(^{420}\) The smooth participation in relationships builds a harmony of connected parts.

Ames and Rosemont describe both structural and personal aspects of \(li\), writing,

On the formal side, \(li\) are those meaning invested roles, relationships, and institutions that facilitate communication and foster a sense of community…. On the informal and uniquely personal side, full participation in a ritually constituted community requires the personalization of prevailing customs, institutions, and values. What makes ritual profoundly different from law or rule is this process of making the tradition one’s own.\(^{421}\)

\(Li\) establish the social structures, but also guide the personal investment in particular relationships. Qu emphasizes \(li\)’s grounding in relationships and its relativity to the people involved: “\(Li\) is

\(^{419}\) Liji, “Yueji” 10. Qu’s Translation at 232. 樂者為同，禮者為異。同則相親，異則相敬，樂勝則流，禮勝則離。
\(^{420}\) Separation implies connection. Two become three because as soon as two things are distinguished then there is a relationship between them, and that relationship is three.
never an absolute standard, but is only relative to one’s status. “Governing by li’ is much more than the application of abstract ethical and moral principles.” Though in some sense formal rules of behavior, li were very much a matter of personal relations and particular circumstances. There is no single principle of li to apply, but every situation requires a personal appropriation of norms and a creative engagement to recognize what is appropriate for each person involved.

Li are introduced through moral education. “The Confucianist believed that no matter if human nature was good or evil, it was possible to bring about improvement by moral and educational influences. To improve the heart through education enabled a man to become good and to become conscious of shame.” Moral education inculcates a genuine concern for others to generate good behavior. A good person internalizes the moral ambition and acts to create good relationships. Education is the best way to bring about deep and lasting moral behavior in people.

The Confucians argued that li was the best means of ordering society. Confucius said “For bringing security to superiors and governing the people, nothing is better than ritual propriety.” Xunzi elaborated on this, writing “Li is the highest achievement of governing, the root of a strong state, the path to authority, and the sum of achievements and prestige; those who follow it acquire the world, and those who do not harm the state.” Qu summarizes the Confucian advocacy of li as a means of governing: “For these reasons the Confucian school has always considered the li as primary and fundamental in government.” From the most intimate relations of husband and wife to the emperor’s role in ritual sacrifice, li were the organizing patterns of deference and interaction that maintained order among social relations.

Fa

“Fa” has been quite consistently translated as law or laws. It refers to positive law and specific codes or rules promulgated by authorities. Chinese legal codes dating back to the Zhou Dynasty have described criminal offenses and announced punishments. The fa were set by the ruling

422 Qu, Law and Society in Traditional China, 1961, 235.
423 Ibid., 241.
424 Ibid., 247.
425 Liji, Jingjie. 安上治民，莫善於禮.
426 Xunzi 15.22 禮者，治辨之極也，彊固之本也，威行之道也，功名之總也，王公由之之所以得天下也，不由以故隕社稷也.
427 Qu, Law and Society in Traditional China, 1961, 240.
power and enforced throughout the kingdom or empire by the official bureaucracy. Typically fa set prohibitions on behaviors and established the punishments (xing 刑) that were imposed for violating the prohibitions. Likewise, fa could describe the rewards due to people for their meritorious acts, though the reward system was more often informal since good deeds are not as easily demarcated as crimes.

The twin motivators of punishments and rewards were key to the efficacy of fa in governing the people: “the governing of a state depended primarily upon the rewards which encouraged good behavior and the punishment which discouraged bad behavior.” Rewards for doing a good job motivated people not to make trouble, but more influential were the deterrent effects of painful and merciless punishments. Hanfeizi wrote that “Laws are what are used to restrain any deviance that ripples beyond oneself. Harsh punishments are what are used to enforce orders and warn the lower classes.” Believing that humans were naturally selfish, the advocates of fa thought appealing to that self-interest in avoiding pain and receiving rewards was the best way of controlling people’s behavior.

The Legalist school contains ardent defenders of fa as the most effective means of effectively governing society. “In the Legalist view, humans are self-interested. To avoid conflict and achieve order, they must be manipulated through a reliable and impartial system of rewards and punishments.” They insisted that clear laws and harsh punishments applied universally would keep the kingdom in order. They made no exceptions for social rank, closeness of kin, or extenuating circumstances. Everyone was covered by the law and the law had absolute authority.

Instead of trusting people’s ability to regulate themselves, the law took the power out of the hands of incompetent ministers and rulers. Rather than have officials make difficult judgments over moral issues, relying on them to be wise like legendary kings Yao or Shun if we want a healthy society, the law would be there to clearly guide the identification and prosecution of misconduct. With law properly in place, the sovereign could maintain control without effort, *weiwuwei* 為無為.

This absolute and impartial law was the primary means of social order advocated by the Legalists. “What actions were to be rewarded or punished were determined by objective, absolute standards

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428 Ibid., 241.
429 Hanfeizi, “Youdu.” 法所以凌過遊外私也，嚴刑所以遂令懲下也.
431 Excepting the sovereign. Because the sovereign uses the law for his own benefit, Peerenboom calls this “rule by law” rather than “rule of law.”
which permitted no differentiation on the basis of personal differences. Only when there was a uniform law, a uniform reward and punishment could everyone be made to obey."  

Social order was to the advantage of the sovereign and when people obeyed laws order was easy to maintain. Laws did not have any connection to a privileged realm of universal norms, rational essence, or natural law, but they were useful for maintaining a calm society: “Law was simply a pragmatic tool for obtaining and maintaining political control and social order.”  

To be as efficacious as possible, law should be absolute and brutal.

The Opposition of Li and Fa

Qu insists that the divides separating li and fa are stark: “The Legalists’ position, as noted before, was diametrically opposed to that of the Confucianists….direct political conflict was inevitable.”  

Peerenboom describes the main issues separating them:

The contrast between li, conventionally translated as rites or rituals, and fa, conventionally translated as law, marks a distinction in Chinese political theory as to the nature of political order and the preferred means of achieving such order. Li zhi, traditionally associated with Confucianism, refers to political order predicated on and achieved primarily by reference to the li or rites, that is, traditional customs, mores, and norms. In contrast, fa zhi, associated with Legalism, refers to political order attained primarily through reliance on fa or laws, that is, publicly promulgated, codified standards of general applicability backed up by the coercive power of the state.

The question of using li or using fa as the primary means of ordering society carried with it a host of other questions. Legalists viewed humans a basically selfish, whereas Confucians viewed human nature as basically good (except Xunzi, who was influential for the Legalists). Legalists believed people were only motivated by fear of punishment and hope for reward, whereas Confucians believed moral education could motivate people to be good for the sake of goodness. Legalists believed impersonal rule by law would create lasting order no matter who was in charge, whereas Confucians believed moral education could lead to effective rule by virtuous men. Legalists aimed at universal laws that applied to everyone exactly the same, whereas Confucians thought different people should be considered according to their role and status. Legalists tried to regulate people’s relationship to the state, whereas Confucians tried to influence people’s

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433 Peerenboom, China’s Long March toward Rule of Law, 33.
434 Qu, Law and Society in Traditional China, 1961, 257 and 263.
435 Peerenboom, China’s Long March toward Rule of Law, 28.
relationships with other people. Legalists aimed at a negative prohibition on wrong-doing, whereas Confucians aimed at a positive encouragement towards benevolence.

Some of these oppositions track the opposition of the right and the good, especially: universal laws vs. particular customs; uniform procedures vs. individual consideration; government’s negative prohibitions vs. civil society promoting the good; and abstraction from personal details in deciding cases vs. the insistence on the particularities of the people involved.

Nonetheless, there are major differences that make clear that the Chinese conception of fa does not track all the aspects of the western idea of law. Most importantly, the Legalists’ fa was a pragmatic tool for a powerful ruler, and not a transcendent principle that ensured equal rights for all. A sense of natural law or divine law was not part of fa, which was consistently used to describe man-made codes and regulations. Fa was not given by God, or by nature, or by pure reason. Fa often enabled authoritarian domination of the population, which is far removed from the liberal ideal of self-governance and respect for universal reason, though not so far removed from the practices of repressive western regimes. And li, while conforming to some features of the good, had contours not present in the west. The connection between manners and reverential ritual, the prevalence of shame as a social control mechanism, and the pursuit of aesthetic beauty instead of a maximization of valued consequences indicate some differences. The li/fa debate echoes elements the liberal/communitarian divide, but does not mirror it precisely. It is an argument fully formed in the Chinese context with issues and contours of its own, and it has been a basic distinction in political morality, social order, and criminal law for millennia.

**Conclusion**

Across the domains of normative ethics, political philosophy, and the methods and aims of governance, we have seen a persistent division into oppositional camps. Sometimes the opposition is seen as directly confrontational, and at other times as a matter of strict priority. This divide also stands between the most prominent conceptions of justice and harmony. The dominant conception of justice is associated with the right, liberalism, and neutrality, and would fit most easily in a society governed by fa-based laws and institutions. Harmony is associated with the good, communitarianism, perfectionism, and the practices of li. Having looked more closely at the differences and the areas of contention across these domains, we should have a better understanding of what must be overcome if we are to bridge the divide. If we are to reconcile
justice and harmony, then we must first find a way to understand the good and the right which does not put them in strict opposition. The next chapter explores several attempts to do just that, to situate the good and the right in a productive relationship, rather than in irreconcilable conflict. Finding a productive relationship between the right and the good, we can then attempt to model the relationship of justice and harmony upon this structure.
CHAPTER 5

RECONCILIATIONS

INTRODUCTION

Wrangling over the priority between the right and the good has been a prevalent feature of recent moral philosophy. However, I do not think that claiming one or the other as the primary concern serves anyone’s genuine interests when it comes to dealing with the different governing aims of China and America. Instead, understanding how the good and the right are complimentary and how China and the US can benefit from each other’s traditional focus is a much more productive approach. In this chapter, I will highlight three attempts to see the right and the good as cooperative rather than competitive, as complementary rather than conflicting. These three are Paul Ricoeur’s framework of deontology and teleology, Chung-ying Cheng’s comparison of Kant and Confucius on Peace and Justice, and Qu Tongzhu’s notion of the Confucianization of Law. With these ideas of reconciliation in hand, I will then in Chapter 6 describe the conceptions of justice and harmony that I think can be likewise reconciled.

RICOEUR’S LITTLE ETHICS

From Paul Ricoeur’s prolific writings and vast range of ideas, I wish to borrow one insight which I expect will help us to realize a productive relationship between harmony and justice. This insight is first put forward and explicated in Oneself as Another,436 in the three chapters that constitute what he calls, “my little ethics.” This little ethics in fact addresses very large problems, especially the conflict between the good and the right, and the move from ethical theory to ethical practice in fraught situations. Later in his career Ricoeur returned to his ideas on ethics, clarifying and using them as a lens through which to approach practical issues such as medical ethics and

436 Ricoeur, Oneself as Another.
judicial practices. This later work is collected in two volumes of essays, *The Just*\textsuperscript{437} and *Reflections on the Just*.\textsuperscript{438}

In this section I will lay out the Ricoeurian structure of ethics and some of his arguments for it. With this understanding in hand, we will see the conflicts enumerated above in a new light, and we will have a new resource for approaching actual social and political problems.

In each of the three chapters on ethics in *Oneself as Another*, Ricoeur describes one plane of a three-part structure. His first chapter explores the foundational human desire to live well. In the second chapter he turns to the development of obligations, norms, laws, and principles. Finally, he explains how these first two planes play out in practice as people try to make wise decisions in difficult situations. Thus we have the triadic structure: 1) a teleological vision of the good life, 2) a deontological duty to act according to right principles, 3) practical wisdom in action. It is in the complex interplay of these three planes – none of them sufficient by themselves, but all of them necessary – that we find the scope of the human ethical experience. Understanding the relationships among these planes, we can then exemplify them through the concepts of harmony and justice, and reveal a fruitful way of integrating our key concepts.

To begin, Ricoeur distinguishes between the terms “ethics” and “morality.” He writes, “It is, therefore, by convention that I reserve the term ‘ethics’ for the aim of an accomplished life and the term ‘morality’ for the articulation of this aim in norms characterized at once by the claim to universality and by an effect of constraint.”\textsuperscript{439} This distinction maps onto the now familiar antagonisms between the good and the right, teleology and deontology, Aristotelianism and Kantianism. While Ricoeur divides these two using this terminological distinction, he does not put them in opposition. He writes, “the two approaches, which for didactic reasons get encapsulated under the labels of teleology and deontology, (are) not rivals inasmuch as they belong to two distinct planes of practical philosophy.”\textsuperscript{440} These two planes, while distinct and performing different functions, are related: “There will thus be no attempt to substitute Kant for Aristotle, despite a respectable tradition to the contrary. Instead, between the two traditions, I shall establish a relation involving at once subordination and complementarity.”\textsuperscript{441} As complements, there is no need to choose between them as one does not invalidate the other but

\textsuperscript{437} *Ricoeur, The Just*.
\textsuperscript{438} *Ricoeur, Reflections on the Just*.
\textsuperscript{439} *Ricoeur, Oneself as Another*, 170.
\textsuperscript{440} *Ricoeur, Reflections on the Just*, 50.
\textsuperscript{441} *Ricoeur, Oneself as Another*, 170.
instead fulfills its missing dimensions.\textsuperscript{442} The primary ethical aim cannot be fulfilled without passing through the constraints of norms, but norms have no reason for existence without the impetus of our desire to live well. Thus they are complementary, each fulfilling an indispensable and unsubstitutable role in the overall process. Rather than one disproving or overthrowing the other, Ricoeur claims that teleology and deontology both contribute, in turn, to the full flowering of ethics broadly construed.

According to Ricoeur’s terminology, each of these three vertical levels is further subdivided into three horizontal spheres. The three spheres are meant to reflect “the dialogical constitution of the self,”\textsuperscript{443} and so there is an axis where the selfhood and the ethico-moral process intersect. On all three levels, these three spheres denote considerations of 1) oneself, 2) one’s relation to another person, and 3) one’s relation to any other person. Other ways of naming these three are self-solicitude-institution, or self-other-anonymous, or self-neighbor-stranger, etc. The handy chart below indicates how these three horizontal spheres show up on the three vertical levels of the broader ethical pursuit.

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<th></th>
<th>Self</th>
<th>Neighbors</th>
<th>Strangers</th>
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<tr>
<td>Ethics</td>
<td>Aim of the good life</td>
<td>With and for others</td>
<td>In just institutions</td>
</tr>
<tr>
<td>Morality</td>
<td>Obligation</td>
<td>Norms</td>
<td>Laws and Principles</td>
</tr>
<tr>
<td>Practical Wisdom</td>
<td>Autonomy and Conflict</td>
<td>Respect and Conflict</td>
<td>Institution and Conflict</td>
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I won’t pursue the details of these horizontal divisions here, though they will show up in the organization of the following discussion. What I am more concerned to capture is Ricoeur’s way of situating the vertical levels in relation to each other. For now it is enough to be aware that he organizes his discussion according to these three horizontal spheres of dialogical selfhood, as we

\textsuperscript{442} So much of ethical theory involves poking holes in one’s opponents’ theory rather than making a full and unassailable defense of one’s own theory. There are indeed insufficiencies in any teleological or deontological account, but neither can be ultimately argued away because they each contain partial but indispensable elements.

\textsuperscript{443} Ricoeur, \textit{The Just}, xiii.
can see in his primary formula for describing the level of ethics: “aiming at the ‘good life’ with and for others, in just institutions.”

Ricoeur describes the relationship between these three levels in slightly different ways in *Oneself as Another* and in *Reflections on the Just*, with different points of emphasis and new considerations introduced in the newer works. He tells us, “The reader who knows my ‘little ethics’ in *Oneself as Another* should see the present essay as something more than a clarification and something less that a *retractio*, as the writers of Latin antiquity would put it. Let us say it is a ‘rewriting.’” Whereas in the earlier formulation he was more interested in describing the limitations and narrow role of moral considerations, in the later works Ricoeur puts the morality of obligation in the central position and situates two portions of ethics in relation to it as anterior and posterior ethics. As well, he strengthens the connection between the first and third levels, by describing them as two aspects of the ethical drive. Thus he writes, “It is in relation to this new median (norms applying to the obligated self) that I see the realm of ethics split between a fundamental ethics that we can speak of as anterior and a cluster of regional ethics that we can speak of as posterior.” Despite this shift in emphasis, the basic three-part structure and the general functions of each level remain: a fundamental desire to live well, a constraining role for duties and norms, and practical wisdom as a way of acting which negotiates the conflicts that arise in difficult situations. We now turn to the relationships that exist among these three vertical levels in the overall ethico-moral process.

**The Relationships between Vertical Levels**

The relationships between the vertical levels involve myriad complexities, dialogical interactions, dialectic advances, hermeneutic circling, and unrelenting revisitation. To present them as above in a sectional chart may suggest that they are clear lines of division between them, but in life there is an unending interplay among all the human concerns that confounds any effort to reliably map them and their boundaries. Nonetheless, frameworks are helpful in finding clarity. To reveal the basic relational structures, I would distill the key interactions as follows: First, the ethical level founds and generates a need for the moral level. Second, the moral level reflects upon the ethical level, clarifying it, formalizing it, and protecting against the unintended infliction of

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444 Ricoeur, *Oneself as Another*, 172.
446 Ibid., 2.
suffering. Third, the need to act in concrete situations reveals the conflicts that arise on the level of formal morality. Fourth, practical wisdom in actions recalls the ethical intention, which has been refined by the attempt at moral universalization.

Ethics as Foundation and Motivation

In relation to morality and practical wisdom, Ricoeur describes ethics as fundamental, anterior, presupposed, upstream, and primary. In *Oneself as Another* he lays out his basic scheme, writing, “I propose to establish… (1) the primacy of ethics over morality, (2) the necessity for the ethical aim to pass through the sieve of the norm, (3) the legitimacy of recourse by the norm to the aim whenever the norm leads to impasses in practice.”

Below we will return to points (2) and (3), but first we will focus on his claim that ethics has primacy over morality. Ethics has primacy because it is rooted in a basic desire to live well which is shaped by the social environs we grow up in long before we are able to rationally reflect on universal principles.

Ethics begins in natural desire. Referring to the just as it appears on the ethical level, Ricoeur writes, “The just is first an object of desire, of a lack, of a wish. It begins with a wish before it is an imperative.” Without any prompting or moralizing or insistence of duty, people want to live well. This is not an irrational desire, but a reasonable preference for happiness over misery, health over sickness, success over failure, friendship over loneliness, pride over shame, and so forth. The object of this reasonable desire is, “magnificently designated by the expression of a ‘good life’ or, better, ‘living well.’ This open horizon is inhabited by our life projects, our anticipations of happiness, our utopias, in short by all the changing figures of what we take as signs of a fulfilled life.” At root, people all wish to live well, be fulfilled, and feel good about their lives and who they are. How to accomplish this is a subsequent question. “The first question in the moral order is not ‘What must I do?’ but rather ‘How would I like to lead my life?’” What we would like, what we desire, what we wish for – this is the first level that that sets off the whole pursuit of ethics and morality. In this sense a good and fulfilled life, however that is conceived, is the human telos to which every human being aspires. This inner drive is what initiates the search

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447 Ricoeur, *Oneself as Another*, 170.
448 Ricoeur, *The Just*, xv.
450 Ricoeur, *The Just*, xv.
for the kind of actions that lead to teleological fulfillment, a search that only subsequently delivers us to the reflective practices of deontological thinking.

The pre-reflective desire to live well is also attested to by the moral sentiments, which provide us with motivations. Whereas Kant appealed to a rationally generated respect for the law to motivate people, Ricoeur claims that respect is but one piece of the complex set of emotional responses that influence our behavior: “Respect, in my opinion, constitutes only one of the motives capable of inclining a moral subject to ‘doing his duty.’ It would be necessary to lay out the whole gamut, were this possible, of moral sentiments...for example: shame, modesty, admiration, courage, devotion, enthusiasm, and veneration. I would give place of honor to one strong sentiment, something like indignation.” Indignation and the other sentiments need not be schooled by reflective rationality or any law-like considerations. They surge forth in those particular circumstances when we think that the good life is being achieved or violated. They indicate that we have an underlying and fundamental ethical stratum that prompts us to respond to circumstances emotionally even prior to considering whether the circumstances conform to universal rules. We can look to Humean arguments about the division between sentiment and rationality (though I think too much is usually made of this split), as well as developmental psychology, and even experimental evidence in primate studies to show that emotional responses to ethically charged situations exist prior to rational consideration of what is required by universal morality.

In discussing the aim of a good life Ricoeur refers to the notions of practices and life plans as put forth by Alasdair MacIntyre. Practices and life plans are rooted in the particular traditions of a place and time and have meaning within specific communities. Before any critical examination of maxims is possible, we grow up surrounded by certain patterns of behavior and beliefs, patterns which we unconsciously adopt in childhood. We absorb the ideals of our culture and our parents and even if we begin to rebel, our primary visions of the good life are absorbed before we reach the age of reflection and thus necessarily influence the forms of our rebellion. No one can escape the influence of his or her upbringing. What a person absorbs by growing up surrounded by a particular community forever informs the vocabulary they have available to describe or imagine a good life. While further expansions of one’s cultural horizons and critical reflection on one’s own native culture are later possible, the foundational imprint of one’s upbringing is impossible to erase. The variety of life plans that might fill our imaginations and the practices we might imagine to be the sources of our personal success and pride are developed in us without necessary

451 Ricoeur, Reflections on the Just, 48.
reference to universal considerations, and are instilled by the culture and family in which we are raised.

In a fundamental desire to live well, shaped by our social environs, we have the primary foundation or the upstream source of morality. This first level supplies the basic motivations that make humans care about themselves and others. Without these desires, grand visions, and pre-reflective motivations, we would have no reason to begin thinking about how to act rightly according to an objective standard. To show that ethics is fundamental and necessary, Ricoeur argues that the attempts to ground morality without appeal to these ethical roots either come up empty, or blindly presuppose the content generated at the ethical level. Considering deontological theories across all three of the horizontal spheres, he either finds teleological content smuggled in or a critical gap where such content should have a role to play. In arguing that the teleological intention grounds the deontological commitment in all three of the horizontal spheres, Ricoeur points to three key points in deontological thinking where ethical considerations lurk: Kant’s initial appeal to the good will, the categorical imperative to treat people as ends and not as means, and reflective equilibrium as a justification for Rawls’s hypothetical contract.

Kant’s notion of a good will is the first place Ricoeur looks to demonstrate the necessary connection between ethics and morality. He writes, “moral obligation is itself not without some connection to the aim of the ‘good life.’ The anchoring of the deontological moment in the teleological aim is made evident by the place occupied in Kant by the good will at the threshold of the *Groundwork of the Metaphysics of Morals*.” The good will thus occupies a pivot point. Both the concept of “goodness” and the concept of “will” have roles in teleological thinking prior to any formal deontology, and are available for Kant’s efforts to recast them. The will, before it has been stripped of all its irrational inclinations in the Kantian formulation, is an estimable capacity for initiative exercised in the service of our desire to live well. The untutored will is initially the will to happiness (Nietzsche trades happiness for power, but the function is similar). As well, Ricoeur writes that “the predicate ‘good’ conserves its teleological imprint.” The “good” inevitably recalls the “good life” or the directedness of something’s being “good for some purpose.” Kant has tried to strip the good will of this teleological imprint by calling it “good without qualification,” but this effort reinforces the need to recast the basic meaning. “This reduction presupposes in a problematic way the preconception of something that would be the

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452 Ricoeur, *Oneself as Another*, 205.
453 Ibid.
This presupposed goodness is the teleological good that is our primary ethical aim, and cannot be completely whitewashed in the attempt to purify the will of personal inclinations.

Likewise, in the *summun bonum*, the supreme good, envisioned in the *Critique of Practical Reason*, we again find a lingering teleological conception of what the best kind of life must achieve. While it cannot serve to motivate the Kantian rational person, the supreme good nonetheless serves as a notion of what the ultimately fulfilled person would be: one who has lived according to right principles and ends up happily rewarded with eternal bliss for his selfless efforts. The ultimate fulfillment of blessedness in the afterlife is a vision of the good, and the life of duty seems incomplete or unsatisfying without it. Kant has been much criticized for his notion of the supreme good rewarded to the moral person in the afterlife. Rather than criticize Kant (at least on this point) I would, in light of Ricoeur’s insight, praise him for finally situating deontological morality in the broader context of an understanding of a supremely good (eternal) life.

Moving horizontally from the sphere of the individual to the sphere of oneself and one’s neighbors, Ricoeur writes, “Just as the appraisal of good will as unconditionally good seemed to us to assure the transition between the aim of the good life and its moral transposition in the principle of obligation, it is the *Golden Rule* that seems to us to constitute the appropriate transitional formula between solicitude and the second Kantian imperative.” Solicitude recalls the basic ethical concern humans have to engage with others. The Golden Rule, in its various formulations, represents solicitude through the notion of reciprocity. At the level of ethics, the basis of reciprocity is the desire to live with others as friends and neighbors, and to live together it is necessary to recognize that one’s friends and neighbors have their own projects and desires. People have a basic and underlying sense that the good life involves relating to others, and that in order to maintain decent relations, one must become adept at recognizing that other people have wants and needs and they will want those needs to be taken into consideration. The Golden Rule begins to give this insight a law-like formulation. People have taken the basic insight that we must engage in reciprocal relationships if we want to live with and for others and raised it up to the status of an overarching Golden Rule. However, the Golden Rule occupies a transition zone because it is not entirely free from personal inclinations in that it makes reference to “how one

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455 Ricoeur, *Oneself as Another*, 219.
would like to be treated.” This taint of personal desire prevents the Golden Rule from being a truly universal dictate of reason, at least in Kantian terms.

At the deontological level, reciprocity is captured in the Kantian categorical demands to respect the humanity in every person, and to treat each person as an end in themselves and not as a means to the achievement of our own ends. Solicitude is stripped of its roots in desire and its connotation of special interest in the welfare of particular friends, and given a strictly rational basis. Because we value humanity in ourselves, it would be irrational not to value humanity in others. Because we recognize our own ends, we must recognize that other people have ends, and we should not treat them as mere means. While Kant sees this conclusion as based purely in reason, Ricoeur speaks of a “practical preunderstanding,” which the Kantian formula formalizes and makes absolute. He writes, “We have always known that we cannot make use of a person in the same way as a thing, that things have a price and persons, worth.”

The idea of respect between people, as enumerated in the Golden Rule, is part of our basic understanding of good living, and turning that basic understanding into a law or formal principle is a subsequent endeavor. Thus the initial impulse and desire to be with other people in reciprocal relations is raised up to a higher realm of obligations in the deontological pursuit, but this attempt to undergird the relations by establishing them upon a rational argument is dependent upon there being basic relationships in the first place.

Moving on to the third horizontal sphere we find John Rawls with his procedure for forming a social contract from within the original position and his attempt to generate a political theory which is independent of any prior conception of the good. Ricoeur argues that this cannot be done. He writes, “the sense of justice, raised to the level of formalism required by the contractual version of the deontological point of view, cannot be made entirely independent of any reference to the good.” Ricoeur points to several elements of Rawls’s theory that reveal the necessity of an ethical aim to ground deontology, including considered convictions, reflective equilibrium, overlapping consensus, and the fact that the original position is a fiction. These all show the ways that in which Rawls’s theory cannot escape presuppositions about good living.

In justifying the conclusions that arise out of his purely procedural theory of justice, Rawls says we should weigh the theory’s conclusions against our considered convictions. Our convictions spring from our ideas of the good life, often supplied by the comprehensive religious and

\[456\] Ibid., 239.
\[457\] Ricoeur, The Just, xix.
philosophical doctrines we grow up with. These convictions can be described as considered once we have deeply reflected on them and submitted them to scrutiny. It is not that they are derived by reason, but that they are given by experience and then reflected upon. It is those considered convictions about the good that are weighed against the promises of different theoretical positions in settling on a reflective equilibrium, and it is reflective equilibrium that justifies Rawls’s use of the two principles of justice. This prompts Ricoeur to ask: “Can we preserve both the relation of fitness between theory and conviction and the complete autonomy of the argument in favor of the two principles of justice? Such is the ambivalence that seems to me to prevail in Rawls’s theory of justice.” This ambivalence is caught between two levels, straining to justify the moral requirement without having to acknowledge the ethical aim. Ricoeur’s suggestion is that instead of denying its rootedness in our ethical aims, Rawlsian and other deontological theories should recognize and embrace the full picture of ethics in which they play a part. In his later work, Rawls does seem to go some way towards recognizing the underlying and indispensable ethical level. Since “A Theory of Justice does not say what considered convictions satisfied the conditions for reflective equilibrium,” Rawls returns to this question in his essay, “The Domain of the Political and Overlapping Consensus.” In seeking to explain the ideas of considered convictions, reflective equilibrium, and overlapping consensus, Rawls must make reference to actual historical comprehensive doctrines to illustrate his ideas. He points to the doctrines of tolerance in Christianity, Kantianism, and Utilitarianism as demonstrating a typical case of overlapping consensus. In calling for a society built upon an overlapping consensus, he recalls the fundamental visions of the good life at the heart of these religious and political traditions. This only serves to indicate that a political vision cannot be described in the abstract, but can only be imagined along the lines already provided by historical communities.

Ricoeur’s assessment of the purely procedural approach is clearly stated: “Does a purely procedural conception of justice succeed in breaking all ties to the sense of justice (on the ethical level) that precedes it and accompanies it all along? My thesis is that this conception provides at best the formalization of a sense of justice that it never ceases to presuppose.” Deontology is not grounded in reason alone or upon purely formal procedures, but contributes a refinement and formalization of our primary desire to live good lives as good people. Given our basic pre-reflective impulse to live well, any theory that ignores this level is left with an empty space to fill.

458 Ibid., 55.
459 Ibid., 72.
460 Rawls, “The Domain of the Political and Overlapping Consensus.”
461 Ricoeur, Oneself as Another, 236.
Rawls relies on the fiction of the original position to fill this space. “The social contact appears to be capable only of drawing its legitimacy from a fiction – a founding fiction to be sure, but a fiction nonetheless… (political community is founded) not by reason of an imaginary contract, but by virtue of the will to live together.”\textsuperscript{462} Having discounted the basic sociability of human kind,\textsuperscript{463} Rawls and other contractarians must posit some binding force like a contract, where in fact no contract is needed in the first place. This reliance on a fiction at the heart of the enterprise and the ultimate recourse to considered convictions and overlapping consensus suggests that it would be easier to acknowledge the ethical foundation of morality than to construct a purely procedural theory that must make such gyrations to avoid teleological thinking. Ricoeur writes, “for me, the circularity of Rawls’s argument constitutes an indirect plea in favor of the search for an ethical foundation for the concept of justice.”\textsuperscript{464}

Throughout these arguments, Ricoeur is trying to show that the deontological ideas of autonomy, obligations, and law-like formal principles are not the foundation of morality, but arise because the teleological foundation needs to be supplemented. The pursuit of the good life is primary, and the recognition of obligation that characterizes the moral level depends on this primary drive. Whereas Kant and certain of his followers want to claim that rationality and autonomy are the starting point of all morality, Ricoeur maintains that we must “question… the independence of the principle of autonomy…in relation to the teleological perspective, in other words, to doubt the autonomy of autonomy.”\textsuperscript{465} If autonomy is not independent, then it is in some kind of relationship. Ricoeur first describes this relationship as one of “subordination and complementarity,”\textsuperscript{466} and in his later work as a downstream expression and its upstream source.\textsuperscript{467} I have described it by calling ethics the foundation and motivation for morality.

**Morality as Reflection, Purification, and Formalization**

Ricoeur’s claim is that while the ethical aim is foundational, it is not sufficient. Further advancements are necessary. “The transition from the wish to the imperative, from desire to

\textsuperscript{462} Ibid., 239.
\textsuperscript{463} Rawls argues that he does not ignore human sociability, but I think Sandel argues convincingly that the individual must be primary for Rawls’s theory to be cogent, and so I say that sociability is “discounted.”
\textsuperscript{464} Ricoeur, *The Just*, 38.
\textsuperscript{465} Ricoeur, *Oneself as Another*, 215.
\textsuperscript{466} Ibid., 170.
\textsuperscript{467} Ricoeur, *Reflections on the Just*, 3.
interdiction, appears to be inevitable.”\textsuperscript{468} Whereas the “good life” is characterized as the “nebulous of ideals and dreams of achievements with regard to which life is held to be more or less fulfilled or unfulfilled,”\textsuperscript{469} morality cuts through the haze to deliver clear boundaries and prohibitions encapsulated in definitive laws. “The style of a morality of obligation can then be characterized by the progressive strategy of placing at distance, of purifying, of excluding.”\textsuperscript{470} At the level of morality we scrutinize our initial ethical intentions, providing them with clarity and rigor. Whereas ethics is initiated by desires, morality is initiated by reflection upon those desires. By stepping back from our inclinations and creating the distance necessary to scrutinize them, we gain a second order of moral understanding. We emerge with a set of norms and rules that have been purified of inappropriate motivations and that constitute a formal system. The effort to formalize morality is meant to ensure moral treatment of as many people as possible, with an ideal of universal coverage. One reason to consider people in their more abstract and formal shared qualities instead of their particularity is to include all people in the circle of moral concern. If formal morality covers everyone, then one’s own inclinations and idiosyncrasies cease to be the determining factors in moral questions. At the moral level, the aim is to reflect upon our behaviors, to purify them of wrong-doing, and to create a formal system of law-like clarity and authority.

The human ability to reflect on one’s motivations and one’s behavior is what enables the movements of this second stage. Human self-awareness is a unique capacity, and since the time of Socrates it has been a cornerstone of philosophy. Ricoeur acknowledges this and claims that the ability to examine one’s life is what moves us from basic ethics to formal morality: “Certainly there is no human life that should not be ‘examined’ in the sense of the Socratic adage. And it is the necessity of this examination that… forces it to be raised from the teleological to the deontological point of view.”\textsuperscript{471} It is the reflexive ability to examine and question our own actions that initiates the movement from pursuing the good life in vague outline to considering what ought to be done. In Kantian terms, this is a matter of subjecting the maxims of one’s actions to the critical test of the categorical imperative. Rather than just acting immediately on inclination, one must examine one’s behavior to isolate the maxim inherent in the behavior and then, using the criteria of rationality and logical contradiction, one reflects upon whether this maxim can be universalized. “Moral reflection is a patient examination of the candidates for the title of good

\textsuperscript{468} Ricoeur, \textit{The Just}, xvi.
\textsuperscript{469} Ricoeur, \textit{Oneself as Another}, 179.
\textsuperscript{470} Ibid., 207.
\textsuperscript{471} Ricoeur, \textit{The Just}, xv.
Without qualification and... for the title of categorically imperative."\textsuperscript{472} Whereas desire and emotion are immediate, patient examination by reason is performed at a remove. It is this distancing that allows us to reflect, scrutinize, and submit action to examination. Such examination enables us to move beyond the immediacy of a wish for the good life, and enables us to look beyond our own desires to the possibility of universal principles.

As mentioned in the previous section, defenders of deontology have frequently claimed that their theories are self-sufficient, and that they need not consider desires, inclinations, or notions of the good in determining how to act in judging an action. In opposition to this position, Ricoeur delimits the role of deontological thinking and sees it as having an indispensable but narrow scope. He writes, “according to the working hypothesis I am proposing, morality is held to constitute only a limited, although legitimate and even indispensable, actualization of the ethical aim, and ethics in this sense would then encompass morality.”\textsuperscript{473} Rather than simply invalidating or replacing considerations of the good life, the demands of norms and principles are given their rightful place in delimiting the practices that can still be considered “living well.” Being neither the primary impetus nor the final goal, norms and laws fulfill a subordinate role, not as ends in themselves, but as means for testing our more basic intentions. Morality is not autonomous, but requires the grist of ethics for the maxim testing mill. In \textit{Oneself as Another} Ricoeur describes it as a “sieve,” a constraint on the types of actions that one can employ in pursuit of the good life. Whereas ethics offers a positive vision of what should be pursued, morality frequently provides a negative prohibition of actions which are out of bounds according to certain standards. Morality tests our initial drives, making sure they are acceptable; “it is necessary to subject the ethical aim to the test of the norm.”\textsuperscript{474} Thus the relationship between the primary and subsequent vertical levels is one of refinement rather than replacement, sifting rather than swapping.

In \textit{Reflections on the Just}, Ricoeur changes the emphasis of his formula a bit and claims that norms are the level at which we are typically engaged in our daily lives. As we work through our days we feel ourselves to be capable individuals faced with the challenge of conforming to rules and duties. Instead of our desire to live well being the primary experience, it is usually hidden in the unquestioned acceptance of norms which guide our choices in daily activities. As a result of a lifetime of social conditioning, we are already aware of the norms and obligations that attend social behavior. For the most part, the process of reflection, purification, and formalization have

\textsuperscript{472} Ricoeur, \textit{Oneself as Another}, 207.
\textsuperscript{473} Ibid., 170.
\textsuperscript{474} Ibid., 203.
already taken place and are part of our cultural heritage. We are born into a system of norms and laws, hopefully developed through rational and reasonable reflection through the ages. To reach morality by Kantian standards, each person must make these three movements for one’s self rather than merely accepting the heteronomous standards of society, but whether the process is personal appropriation or communal training, these steps are what contribute to the creation of a moral level over and above the primary ethical level. In any event, we do not daily reflect on our primary idea of the good life; rather we make choices about our behavior in light of what we ourselves and others judge to be right. Only when we have conflicts or questions about our decisions do we look back to the upstream depths for the ethical foundation. Ricoeur’s later belief is that most of the time we are engaged with moral matters.

In arguing that the necessary function of morality is purifying and formalizing the ethical level, Ricoeur directs his comments to Kant’s efforts along the first two horizontal spheres. In the sphere of the individual, Kant has prominently rejected inclinations and desires as appropriate moral motivations. He insists that any motivation not coming from reason itself is considered heteronomous, and thus not worthy of human dignity. This puts the whole realm of actions springing from desire outside the bounds of morality. Kant encourages us to isolate the maxims inherent in the actions we pursue while aiming at our daily enjoyment and fulfillment of life plans. These maxims are then subjected to the criteria of the Categorical Imperative, and those that do not pass the test are rejected. Thus, only certain maxims remain permissible, and the field of moral action has been limited and purified. This prohibiting function of morality is emphasized by the frequent critique of Kant which claims he fails to tell us how to behave and only tells us what we are not to do, i.e., don’t lie, don’t waste your talents, don’t commit suicide. In the Metaphysics of Morals Kant does go a bit further in encouraging people to pursue self perfection and the happiness of others, but still the Hegelian charge that Kantian philosophy is “bloodless” has stuck because Kant emphasizes formal rules and prohibitions. Because of this, Ricoeur writes that we “add the predication of the obligatory to that of the good, usually under the negative figure of what is prohibited.”475 This whole realm of prohibited actions whose maxims fail to satisfy the categorical imperative are screened out as the sieve of morality does its work.

The process of reflection and purification in the sphere of neighbors aims at the creation of a set of universal laws or principles. In Kant’s theories, only those laws that are universal and apply to all other people can be truly moral. Kant’s categorical imperatives formulated in terms of universal laws and laws of nature indicate just how broadly the scope of morality is supposed to

475 Ricoeur, The Just, xvii.
reach. In order to cover all cases, the principles discovered by rational reflection must be formal principles. As Ricoeur puts it, “the universalist ambition of the rule has as its first corollary the formalism of the principle.”

Moral reflection aims to discover a formal system of rational laws that can stand for all time in all places. Only a formal system devoid of particular content would be broad enough to cover all potential cases that might arise. By rational discovery or construction it aims to replace the various particular and contingent desires that could guide people’s decisions with an overarching principle. Instead of consulting one’s inclinations before deciding to act, one can check one’s decision against the formal principles which rational reflection can discover.

Why must our initial drive towards good living be passed through the sieve of morality to be purified? “Because there is evil, the aim of the ‘good life’ has to be submitted to the test of moral obligation.” We are not alone in this world and our actions have consequences for others, sometimes bad consequences. If we simply pursue our own naive notion of a well lived life, we may unwittingly cause great suffering for other people. Thus in pursuit of one’s own happiness, some actions must be put out of bounds so as not to trespass against the legitimate interests of other people. “In short, it is owing to the wrong that one person inflicts on another that the moral judgment given an action has to add the predication of the obligatory to that of the good.”

Because we have a fundamental concern to live together, this potential for imposing violence upon others is always present and must be curbed. It becomes incumbent upon people to avoid the harms that befall others when our projects conflict in a crowded world. Likewise, we all want some tool of injunction against others who are causing suffering through injustice.

Because selfishness, violence, and injustice must be eliminated if people are to be free to live good lives, this screening, restricting, and purifying sieve of morality is characterized by prohibitions. Along the three horizontal spheres, Ricoeur identifies what is to be put out of bounds and prohibited: “Formalism therefore amounts to setting (something) aside, as this will be expressed in each of the three spheres of formalism: setting aside inclination in the sphere of rational will, excluding treatment of others simply as means in the dialogic sphere, and, finally, eliminating utilitarianism in the sphere of institutions.” Having set aside inappropriate motivations, behavior, and means, we are left with a set of duties and obligations which can be developed into a set of norms and then into a system of universal principles.

476 Ricoeur, Oneself as Another, 238.
477 Ibid., 218.
478 Ricoeur, The Just, xvii.
479 Ricoeur, Oneself as Another, 238.
Action Reveals Formal Morality’s Conflicts

The need to act in particular morally fraught situations reveals the conflicts engendered by a morality of universal principles. Principles have an abstract and universal form, but there are situations where the abstract and universal form of the rule conflicts with the demands of particular circumstances and people involved. Living morally is not as easy as following a rule or formula, and a dedication to doing right by everybody and every rule can even bring about tragic conflicts.

Ricoeur writes of two different paths relating to universal maxims. The first is to take an example of a behavior, find the maxim that characterizes that behavior, and ask whether that maxim can survive the test of the categorical imperative. Along this path maxims are derived from the “propositions of meaning in everyday life.” This is the first path from action to maxim. Once we find a maxim that survives the test of universalization, the second path must be taken, in which the abstracted maxim is put back into action by a real person in a particular circumstance. In this second movement, when principles are given concrete expression, the potential for conflict concealed in the formulation of absolute duties is realized. Kant does not stress this second movement when he emphasizes the rationality of the abstracted maxims, and so we must go further than Kant because the recognition of abstract moral principles is not the end point of the ethico-moral process. Recognizing and formulating duties is not the same as fulfilling duties. Creating moral laws is not the final goal; engaging in moral actions within the context of good living is the final goal. Kant’s later description of virtue as the determination to act morally recognizes this, but he still does not recognize the conflicts that acting on categorical imperatives can create. Since all actions are singularly situated, putting one’s principles into practice involves a transition from pure and abstract rules to concrete actions, and it is on this second path that problems can arise.

Ricoeur takes pains to stress that the process of universalization and building a system of imperative duties is not the problem. This can be done with rational clarity and is an important project. The problems show up on the second path, after the system has been constructed and the formal laws have been enumerated. Real world actions open a possible space for conflicts in all three horizontal spheres. In the sphere of the individual there is conflict between the universal scope of the law and the historical circumstances of application. In the sphere of interpersonal

480 Ibid., 263.
481 Kant, Metaphysics of Morals, 6:405.
relationships, there is conflict between respect for the law and respect for persons, that is, between treating all people equally and treating people as ends-in-themselves. In the sphere of institutions, there is conflict between principles of distribution and the diversity of goods to be distributed.

In the third sphere (Ricoeur deals with the spheres in reverse order in this part of the discussion), Rawls’s deontological exercise in designing a just political system of distribution creates conflicts when it comes to considering the real diversity of goods to be distributed. This is an issue first raised by Michael Walzer, which Ricoeur expands upon. While Rawls employs the notion of “primary social goods,” historically actual societies have ranked and prioritized the possible distributable goods differently. Ricoeur writes,

> What qualifies these social goods as ‘good,’ if not the estimations, the evaluations, which, compared among themselves, reveal themselves to be heterogeneous? It is from this real difference among goods invested in things to be distributed (exchangeable and nonexchangeable goods, positions of authority and responsibility) that Michael Walzer concludes the necessity to refer to definitions (which are different in each case) to multiple and competing spheres, each governed by ‘shared understandings’ of concrete communities.482

When it come to distributing such things as titles, decision-making power, money, and so forth, it will take actual negotiation among interested parties to reach what they consider a just distribution. While it is possible to imagine principles of justice that govern the distribution of social goods, every historical community, because of differences in their circumstances, desires, and needs will have a different way of saying just which goods should be considered and in what order. Any claim to have solved the problem of a just distribution is subject to conflicting claims from other times and places: “every distribution… appears problematic: in fact there is no system of distribution that is universally valid; all known systems express revocable, chance choices, bound up with the struggles that mark the violent histories of societies.”483 The idea that we could discover a formula or universal blueprint for determining or distributing primary social goods is rendered untenable by the conflicting values of historical societies.

In the second sphere, subtle conflicts within the Kantian formulations of the categorical imperative come to light. In demanding that we respect the humanity of people as ends-in-themselves, Kant sets up a notion of universal humanity, but also suggests that every particular person deserves consideration. On the one hand we are to have respect for the shared humanity in

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483 Ricoeur, *Oneself as Another*, 284.
people, and on the other we are to respect the individuality of their ends. This is the conflict “stemming principally from the split between respect for the law and respect for persons. In this new framework, it was the real plurality of persons rather than of goods that posed a problem, the otherness of persons opposing the unitary aspect of the concept of humanity.”

Along the second path of putting ideals into practice, we cannot treat the humanity of a person as an end without considering the actuality and irreplaceable unsubstitutability of that particular person. Respecting a person in his or her singularity may, in some circumstances, mean making an exception to the supposedly universal rule so that the person in question doesn’t suffer unreasonably. Kant is tremendously concerned that people not violate the dictates of universal reason or make an exception to satisfy their own personal interests, but Ricoeur suggests that making an exception on behalf of someone else’s interests raises another issue: “Another sort of exception is beginning to take shape, one differing from the exception in my favor, namely the exception on behalf of others.”

If it is categorically imperative that we treat people as ends, what if respecting their ends means breaking the universal law? As Ricoeur writes, “it is because the categorical imperative generates a multiplicity of rules that the presumed universalism of these rules can collide with the demands of otherness, inherent in solicitude.”

Taking action in real situations brings this collision into the open, revealing the conflicts that deontological morality engenders.

In the first sphere (which Ricoeur deals with last because it leads to his ultimate position) Ricoeur considers the communicative ethics expounded by Habermas and Apel to be the highest expression of a deontologically based ethical theory aimed at universal principles. Their requirement of public rationality improves the Kantian theory by submitting principles to the test of collective scrutiny, rather than leaving them in the hands of one autonomous individual: “whereas (Kant’s) analysis was conducted without any concern for the dialogic dimension of the principle of morality, in Apel and in Habermas the theory of argumentation unfolds entirely within the framework of communicative action.”

In communicative dialogue the possibility of one idiosyncratic agent being left to determine the bounds of morality is eliminated and diverse opinions can be given expression and consideration. While communicative ethics can “carry the requirement of universality to its highest level of credibility,” Ricoeur nonetheless finds an ineliminable conflict that remains possible when debaters with fundamentally different life plans

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484 Ibid., 285.
485 Ibid., 268.
486 Ibid., 262.
487 Ibid., 281.
488 Ibid., 283.
meet to argue their positions. This is because there are some local values which, though they may be the contingent result of historical and cultural factors, are still not disposable conventions of ideology, as Habermas the critical theorist would have them, but are firmly and reasonably held convictions which are neither logically inconsistent nor indefensible in public. Ricoeur argues that, “What has to be questioned is the antagonism between argumentation and convention, substituting it for a subtle dialectic between argumentation and conviction.” Here the critical function of public argumentation cannot be supposed to entirely overcome the historicity and particularity of personal convictions. All the requirements of argumentative ethics can do is to ensure that convictions are well and truly considered. We can ask that a person submit his or her convictions to the rigorous tests of argumentative ethics, but we cannot suppose that convictions can be discarded so that pure practical reason can reign unencumbered. Those convictions which can withstand critical scrutiny are many, and since there is not just one reasonable way to live but a multitude of reasonable life plans, conflicts of convictions will still have to be worked out through the actual practice of argumentation on the return path from universal and formal rules of argumentation.

While the deontological pursuit of universal principles can set up norms, rules, laws, and principles along the first path of formalization, along the return path of application when we must act in particular situations, the diversity of situations and concerns introduces messy complications: “On this second path, the rule is submitted to another sort of test, that of circumstances and consequences.” Because norms must be put into practice, practical concerns intrude on the formal system of morality. This is the reason that Ricoeur says morality constitutes an essential but limited function in the broader scope of ethics. In his later terminology, we can say that morality sits on a foundation of primordial ethics and gives way to regional ethics. In trying to make deontology the be all and end all of ethics we end up with conflicts because every life is unique. A theory of stand-alone morality ignores the existence of a relationship between the second and third level of the ethico-moral process: “applied ethics… exceeds the resources of the norm.”

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489 Ibid., 287.
490 Ibid., 265.
491 Ricœur, Reflections on the Just, 56.
Wisdom in Action Expresses our Ethical Aim, Filtered through Moral Requirements

How, then, are the conflicts generated by attempts to apply universal moral rules to be settled? Ricoeur clearly spells this out in summarizing the over-arching process:

> a morality of obligation, we stated, produces conflictual situations where practical wisdom has no recourse, in our opinion, other than to return to the initial intuition of ethics, in the framework of moral judgment in situation; that is, to the aim of the ‘good life’ with and for others in just institutions⁴⁹²…. It is morality itself which, through the conflicts it generates on the basis of its own presuppositions, refers back to the most original ethical affirmation.⁴⁹³

Situational wisdom helps us recall the aim of the good life as a way of navigating the conflicts engendered by moral obligation. Only by digging into our core convictions about what constitutes a well-lived life can we adjudicate the deepest of moral dilemmas that life presents us with.

If A is an inviolable duty, and B is an inviolable duty and they are mutually exclusive options, what will help us choose which duty to violate and which to follow? There is no more work for formal morality or universal principles to do here, since the duties have already been established. Instead we must recall our own intuitions and visions of the good life. Once our duties are determined, if they conflict then there is no more work for universal morality to do. One’s final decision will spring from the desires and life plans and visions one has about the good life (or about the converse: the bad life to be avoided). Similarly, when there is a clash between the imperative to respect the universally valid law and the imperative to respect the person suffering before us, we can only rely on our understanding of what it is to live “a good life with and for others in just institutions.”

To further illustrate, let us return to the conflicts in the three spheres mentioned in the previous section. In the first sphere where we encountered the communicative ethics of argumentation, we must enter the argument from somewhere. Our starting point is in conviction. Through the process of public reason and argumentation these convictions can be raised to a level of scrutiny that qualifies them as considered convictions, but there can still be situations in which different people’s considered convictions conflict. In these cases the formalism of the argumentative process cannot decide the outcome of the argument. The argument itself must take place, and everyone must make their case drawing upon all the resources of their beliefs and traditions. If we can accept the idea of value pluralism then there may be multiple acceptable answers to moral

⁴⁹² Ricoeur, *Oneself as Another*, 240.
⁴⁹³ Ibid., 273.
questions, and the deciding factor among acceptable options can turn out to be one’s contingent, but real, personal history and vision of the good life.

In the second sphere, when the needs of one respect-worthy person conflict with respect for the law, Ricoeur speaks of the need to craft exceptions for the good of real people. After discussing the way legal codes inscribe certain exceptions, like the self-defense exception by which some killings are not murder, Ricoeur claims that the singularity and irreplaceability of individual humans means that respecting them as ends sometimes mean making an exception for them. As we saw above, Kant is adamant that people cannot make exceptions for themselves – that is the main point of universalizing maxims – but the question of making exceptions for others is less clear. It just may be that in order to care for someone as an end-in-himself, to really consider that person’s singular needs, we may need to focus on that person’s unique circumstances rather than their more abstract humanity. Yet that person’s humanity, which is common to all, is what ensures that everybody is covered by the same rules. So in the conflict between persons and humanity at large, practical wisdom must not forget the rule, but must also weigh the needs of the unique individual. As Ricoeur puts it: “Practical wisdom consists in inventing conduct which will satisfy the exception required by solicitude, by betraying the rule to the smallest extent possible.” The rule cannot be disregarded, but it may be, with regret, violated in service of our considered conviction that the welfare of our associates is terribly important.

In the third sphere of institutions where it comes to managing the distribution of resources, the diversity of real goods makes practical distribution a matter of priorities and relative evaluations. The pursuit of pure procedural justice inevitably runs up against the concrete and unique diversity of goods to be distributed, and the evaluation of those goods in particular historical circumstances. Only by reference to the actual priorities and evaluations of a given community can actual distributions be judged for fairness. Ricoeur writes:

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The historical and communitarian character can now be brought to the forefront. This concerns not only the meaning that each of these needs, taken separately, may possess in a given culture but also the order of priority established in each case among the spheres of justice and the diverse and potentially rival goods that correspond to them. In this sense every distribution, in the broad sense that we have attributed to this word, appears problematic: in fact, there is no system of distribution that is universally valid; all known systems express revocable, chance choices, bound up with the struggles that mark the violent history of societies.495
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494 Ibid., 269.
495 Ibid., 284.
To determine what a given society will consider a just distribution, we must look to the values of that society, and not simply to an abstract procedure. As in the other spheres, the conflicts discovered in pursuing universal formulas can only be adjudicated by looking to primary values that shape our understanding of well-lived lives. In different times and places, local conceptions of well-lived lives might require “primary goods” according to different priorities. The ordering of the goods to be distributed, no matter what principles guide the distribution, is a matter of historical and local circumstances, and can only be decided by the people in those circumstances according to their practical wisdom.

One danger in grounding our actions in the convictions that stem from cultural practices and personal life-plans is that it seems to sanction a wide-open relativism. To forestall a thoroughly permissive relativism in which any action can be justified by appeal to culture, Ricoeur is adamant that while the appeal to universal morality is not ultimate, neither is it dispensable.

This manner of referring morality back to ethics is not to be taken to mean that the morality of obligation has been disavowed. In addition to the fact that this morality continues to appear to us to be the means of testing our illusions about ourselves and about the meaning of our inclinations that hide the aim of the good life, the very conflicts that are produced by the rigorosity of formalism give moral judgment in situation its true seriousness.496

The search for universal morality is the process through which infliction of suffering is refused, domination is denounced, and evil is expurgated. Moral reflection and the search for universal principles reflect our highest aspirations (witness Kant’s admiration for the starry heavens and the moral law). The purifying practice of pursuing universally applicable laws ensures that the vision of the good life that we turn to in conflictual situations has been stripped of any obviously offensive content. For this reason, the aim for universal principles must not be abandoned, and any violation of well-founded rules is cause for deep regret.

With the practical wisdom that traverses the second return path from maxim to action, people must be sensitive to their circumstances and the consequences of their actions. Human beings, real living flesh-and-blood people, do not live universal lives. We are historically situated, culturally grounded, and physically limited. It is this existential limitation and the inescapable concreteness of action that leaves the aspiration to universal principles just that – an aspiration to be aimed at but never to be achieved. The unachievability of the goal of universal morality in practice is attested to by the conflicts enumerated in the previous section. This

496 Ibid., 240.
incommensurability between the historical place of action and the universal aim of moral principle is where Ricoeur finds a tragedy that cannot be dismissed if we are to take full account of the human experience of ethics: "the two studies in Oneself as Another devoted to the two levels of moral judgment governed by the predicates of the good and the obligatory are merely preparatory exercises for the confrontation that gives me the most difficulty… the tragic dimension of action."\textsuperscript{497}

In the midst of life’s vicissitudes, the ethical drive and moral reflection can leave us in difficult circumstances facing hard choices. It is in such circumstances that applied ethics must exceed the resources of the norm, because the level of formal and universal moral systems sets aside the messiness of history, contingency, and plurality.

It is this tragic dimension of action that is left out in a wholly formal conception of moral obligation, reduced to the test of universalization of a maxim. It is largely overlooked too in the Rawlsian conception of justice, where the confrontation between substantial goods is set aside to the benefit of a wholly formal procedural rule. It is no less overlooked in an ethics of discussion where convictions are reduced to conventions.\textsuperscript{498}

Thus, to correct and supplement the level of morality, Ricoeur restores the historical and cultural dimensions of action to the pursuit of formal morality, even though this also restores tremendous complications and uncertainty.

Both the universalist aspiration and the historical-communal content must be maintained, but there are times when is not possible to hold them both to their fullest degree. In those cases, practical wisdom is the capacity to mediate between the demands of universal aspiration and actual circumstances. As mentioned before: “Practical wisdom consists in inventing conduct which will satisfy the exception required by solicitude, by betraying the rule to the smallest extent possible.”\textsuperscript{499}

We should pursue as far as possible the universalist ambition of creating fair rules that cover everyone, but we must also recognize that the insistent particularity of people’s circumstances will create situations that demand we honor people’s lived experiences over our abstract rules. The ability to recognize those singular situations and honor their uniqueness while still striving to respect the law where possible and regretting when it is not possible is wisdom in action. Though Ricoeur maintains that our final recourse in moments of crisis is to our understanding of a

\textsuperscript{497} Ricoeur, The Just, xxi.
\textsuperscript{498} Ibid., 154.
\textsuperscript{499} Ricoeur, Oneself as Another, 269.
desirable form of life, the value of universal aims cannot be forgotten, and must remain part of our considerations about how to navigate the situation. He writes that there is,

a confrontation between the universalist claim attached to the rules claiming to belong to the principle of morality and the recognition of positive values belonging to the historical and communitarian context of the realization of these same rules. My thesis is here that there would be no room for a tragedy of action unless the universalist claim and the contextualist claim had to be maintained each in a place yet to be determined, and unless the practical mediation capable of surmounting the antinomy were entrusted to the practical wisdom of moral judgment in situation.  

This notion of wise living is not the naïve drive of the original ethical aim, but one that has been passed through the fire of morality and has emerged strengthened, clarified, and purified. The aspiration to find universal principles is part of good living, whether or not we can actually ever find them. Though we may ultimately turn to our convictions to settle hard cases, it is the earnest search for the broadest possible agreements through the process of public argumentation – that is, in the highest achievements of communicative ethics – that warrants our calling our convictions “considered” convictions. The fundamental beliefs and desires we have about a good life, at least the ones able to withstand the scrutiny of public reason and argumentation, provide a basis for decision as solid as any we might find within our historically limited horizons. Casting the whole ethico-moral pursuit in terms of justice, Ricoeur summarizes it in writing, “The search for justice ends with a heartfelt conviction, set in motion by the wish to live in just institutions, and ratified by the rule of justice for which procedural formalism serves to guarantee impartiality.”

In his later work Ricoeur turns to the places where ethical decisions actually take place, pointing to the singular ethically freighted situations that frequently occur in what he calls regional ethics. The diffuse notion of practical wisdom is concentrated into the specific wisdom of doctors in medical ethics, of judges in judicial ethics, of politicians in political ethics, of conservationists in ecological ethics, and so on. In this way, the primal desire to live well, whether consciously acknowledged or not, is captured in the various moral codes and guidelines that regulate doctors, judges, politicians, etc. Yet even with these rules and formal procedures, every doctor must act when faced with a particular patient, every judge must act when presented a particular case, and every politician must vote on the particular legislation before her. Thus Ricoeur’s later formulation retains the basic structure of his little ethics:

500 Ibid., 274.
501 Ricoeur, The Just, xxi.
Everything suggests that the basis of rational desire, which makes us aspire to happiness and seek to stabilize ourselves in terms of a project of a good life, can only reveal, expose, and unfold itself by passing successfully through the filter of moral judgment and the test of practical application in determinate fields of action. From a basic ethics to ethics passing through moral obligation—this seems to me to be the formula for what I called my ‘little ethics.’"\textsuperscript{502}

This formula incorporates teleology, deontology, and practical decision-making. Each is necessary yet none alone sufficient. To truly live ethically/morally/wisely, one must navigate the relations that exist among them.

**Filling-in the Framework**

Ricoeur himself pursues his ideas through a method he describes as “detours of reflection by way of analysis,” which makes a reduction of his work to a formula or framework potentially crippling to its effectiveness. As well, Ricoeur’s own theory of justice is rich and nuanced and crosses the boundaries of ethics and morality and practical wisdom: “the meaning of justice, which conserves its rootedness in the wish for a good life and finds its most ascetic rational formulation in procedural formalism, does not attain concrete plenitude except at the state of the application of the norm in the exercise of judgment in some situation.”\textsuperscript{503} This understanding of justice in multiple dimensions far outstrips the most popular conception in philosophy today, which is limited to the second stage of morality.

Despite the danger of simplification, to deal with the narrower and more widely prevalent conception of justice and its relation to harmony, I follow Ricoeur himself when he expresses the “formula” of the “little ethics.” To reiterate, that formula expresses the following structure:

1) Fundamental Ethics: A vision of the good life as the foundation and initial motivation of our behavior, drawn from our historical, cultural, and familial background.
2) Normative Morality: A reflective process of eliminating those self-interested practices which may do violence to others, so that we can formulate obligatory norms and universal principles.
3) Applied Practical Wisdom: Putting ideals into action in particular circumstances, taking account of general rules as well as the situational demands.

Each of the first two levels is often seen by competing moral theorists as sufficient by itself. Thus theories of teleology and the good in moral theory, communitarianism in political theory, and perfectionism in policies are often justified by appeal to the first level alone; theories of

\textsuperscript{502} Ricœur, *Reflections on the Just*, 3.
\textsuperscript{503} Ricœur, *The Just*, xxii.
deontology and the right in moral theory, liberalism in political theory, and neutrality in policies are typically justified by appeal to the second level alone. Applied ethics across many fields is often pursued along the lines of the third step, without sufficient attention to the first two steps. In most cases the other steps, if they are acknowledged, are used as foils, or treated as secondary and of lesser importance. Ricoeur claims that all levels are necessary and none is sufficient by itself.

Our sense of social harmony is first cultivated in the family, among our neighbors, within a certain culture. It is first understood as a pre-reflective feeling of peace and satisfaction, a lived experience of smooth and positive relations. On the other hand, justice is generally understood as a universal principle, a way of treating everyone fairly, even strangers, so that no violence is done to anyone. Under the tremendous influence of John Rawls, justice is associated with deontology and the rule of law and standardized procedures.

We can use harmony and justice to embody and represent the first two steps of Ricoeur’s formula. Accordingly, as above we reflected on the relationships between the steps, we can describe the relationships between harmony and justice. Using our key terms, those relationships were:

- Harmony as Foundation and Motivation
- Justice as Reflection, Purification, and Formalization
- Action Reveals Formal Justice’s Conflicts
- Wisdom in Action Expresses our Harmonious Aim, Filtered through Requirements of Justice

CHENG’S REN AND YI

Coming from a specifically East-West comparative perspective, Chung-ying Cheng has outlined a structure of ethical and moral concerns that has suggestive parallels with Ricoeur’s framework. Using the representative figures of Confucius and Kant and the Chinese terms ren 仁 and yi 義, he has described a broad framework that incorporates both harmony as a conception of the good and justice as a conception of the right. Much as Ricoeur insists that teleology and deontology are complementary rather than contradictory, Cheng writes, “In light of our two models for justice and peace as we have seen in Kant and Confucius, I wish to once more stress their complementation and their mutual enrichment.” This complementation and mutual enrichment is made possible by a structure in which a fundamental stratum of communal bonds is supplemented by reflection on the diverse needs of others, with an ultimate aim at an advanced

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state in which those first two levels are incorporated. As he puts it, “it is an approach which will argue for a basic starting point and position in benevolence and then moving to a level where righteousness or justice will rule as a means to achieving the supreme good willed by the benevolence or ren.”\(^{505}\) This three-part formulation echoes the Ricoeurian relationships between teleology, deontology, and practical wisdom. Let’s now look more carefully at Cheng’s formulation of the content and structure of these levels, and the relationships between them.

Cheng describes two main levels on which we engage broadly ethico-moral issues: “a human person must operate on two levels: ren and yi.”\(^{506}\) These he explicitly associates with harmony and justice, writing, “We may also call the first Confucian principle of ren the Principle of Harmonization and the second Confucian principle of yi the Principle of Justice or Righteousness.”\(^{507}\) Given this, I will use each of the terms in the concept clusters of “good-ren-harmony” and “right-yi-justice” as basically interchangeable with the other two terms in the cluster.

Ren and harmony form the first stratum in Cheng’s structure. In addition to naming them the “first” Confucian principle, Cheng describes this as a “basic and deep level,”\(^{508}\) “a basic starting point,”\(^{509}\) and a “common foundation.”\(^{510}\) The foundational level of ren and harmony is based in emotion and ties of community, factors which are common to all humans. Ren has commonly been translated as “benevolence,” or “human heartedness,” terms which reinforce its affective sense. At one point, Confucius defines ren as “loving others.”\(^{511}\) This understanding of ren as the first level grounds ethics in human emotional connections. In light of this, Cheng writes, “the Confucian approach is one which not only considers the importance of reason but also considers

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\(^{505}\) Ibid., 350.

\(^{506}\) Ibid., 354.

\(^{507}\) Ibid., 352. While I earlier argued against the idea of “principles” of justice in a Rawlsian sense, in discussions Cheng has described principles as a posteriori values which have been strengthened by long practice and testing, and which would require overwhelming evidence to discount them. Principles in this sense are not necessary or eternal, but contingent yet reliable. Further, translating yi as “justice” or “righteousness” is not my preferred vocabulary, but these terms can signal the general range of issues at hand, keeping in mind the caveats I raised in Chapter 3. As well, Cheng emphasizes that though he speaks of yi as a “principle of justice,” yi has meanings that outstrip “justice”: “In either case for Confucius and for Confucianism, the yi either in the private sense or in the public sense always has more the following determining factors than justice as intended by Kant, namely situational considerations, context of relations and feeling content, consistency and variance of application.” (Ibid., 353.)


\(^{509}\) Ibid., 350.

\(^{510}\) Ibid., 351.

\(^{511}\) Analects 12.22. 爱人.
the importance of relevant feelings and aspirations of humanity behind reason.”

Our first emotional connections begin with our immediate families. Confucius says the roots of ren are in xiao, family reverence. Training and conditioning within the family are inextricably involved with emotional relationships and are the source of social practices, such as the norms of xiao. It is on this basis that a person’s understanding of how to behave in ren ways develops and matures. The extended bonds of society are built upon such intimate family feelings and practices: “It is on the basis of family harmony that a society of trust and care could be developed.” The society of trust and care also relies upon the social grammar of li, which help define who can be counted upon for what, and how to treat people in a ren manner. The li are defined by local communities, but nonetheless have powerful normative force. Growing to understand and appropriate the li is an important factor in coming to embody ren.

Thus at the first level we find emotional connections among families and communities which are united by local practices. The ethics of ren is about relationships and community, and involves care, love, trust, and so forth. It recognizes our unavoidably social upbringing and the emotions that unavoidably attend human relations. From this basis, ren urges us to expand our care and to see harmony and peace realized in others and in the community at large. In sum, the principle of ren is central to a “harmonious society with comprehensive good as an end.” The foundational concerns that shape a conception of ren are central to a vision of the good life. It is this first level which sets the stage for the second level of yi.

Cheng makes it very clear that the second level of yi is grounded on a prior conception of the good life encapsulated by the term “ren,” stating: “it is ren which ontocosmologically or ontoethically gives rise to yi.” Support for this contention can be found in the classics when Mencius, in advocating for the value of ren, says, “Without ren and without wisdom, there is no

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513 Analects 1.2.
515 Ibid., 351.
516 Additionally, Confucians associate ren with shu, identifying oneself with others, sometimes translated as “reciprocity.” The Confucian formulation of the Golden Rule (some call it the Silver Rule since it is framed in negative terms – do not do to others) is given as a gloss on shu. Recall that Ricoeur identifies the Golden Rule as a transition zone between the first and second levels, since it still makes reference to one’s personal inclinations, yet begins to give a law-like formula. Such a “rule” moves us towards reflection on our behavior and extension of moral consideration to others, but has not yet asked us to move beyond our own local conception of goods and interests.
reverent propriety and there is no yi.” This makes yi causally dependent on ren. In a later chapter, Mencius says, “Ren is a person’s heart; yi is a person’s path,” which gives an image of ren as a deep core and yi as instrumental. Mencius thus suggests that yi is dependent upon ren, as does Cheng in saying, “It is clear that the first principle of identity as ren is the foundation for the second principle of difference as yi.” Without the first level understanding of ren as generating a vision of the good life, there would be no need for the secondary processes associated with yi.

Cheng describes the principle of yi as a matter of differentiation: “The difference principle of yi...requires individual rights and justice to be determined in a system of positions befitting the merits and demerits of each and every person in the system.” Considerations of yi must take into account the particularities of the people involved and the context, and so require a sensitivity to the subtle differences between people and what is due to them. At 2A4, Mencius indicates that yi is what must obtain between a ruler and his minister, which suggests that yi acknowledges differences, in this case differences of social rank. Instead of identifying with the common interests in a family or community, working on the level of yi allows us to gain distance and recognize differences. Cheng describes this aspect of the second level, writing, “the principle of yi gives rise to needed gradation... yi regulates distribution and employment in recognition of significant differences and difference-making.” It is yi for a minister to stand in a certain way towards his ruler, and it is yi for a senior minister to stand closer to the ruler than a junior minister. Such differences must be recognized if positions are to be properly distributed. Identifying differences makes it possible to determine who deserves what in a proportional distribution or a distribution that considers desserts. While Rawlsian principles of distribution refuse to acknowledge desserts as a factor, distributions associated with yi would consider just desserts according to specific differences.

Considerations of yi are reflective and judgmental. In an earlier meditation on yi, Cheng wrote, “A man of yi, therefore, must be a man of creative insights who is able to make appropriate moral...
judgments in particular situations,” highlighting the connection between yi and judgment. Thinking in terms of yi allows us to recognize improprieties, criticize them, and then correct them. As Cheng puts it, (yi) allows creativity and critical reexamination at the same time. But most importantly…

Thinking in terms of yi allows us to recognize improprieties, criticize them, and then correct them. As Cheng puts it,

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the principle… requires that each person should maintain a degree of self-consciousness on virtuous improvement of understanding and valuation for the improvement of standards and correction of wrongs and errors.\[525\]

Critically reexamining, maintaining self-consciousness on improvement, improving standards, and fixing errors are all part of the processes of reflecting and judging which characterize the second level of moral concern. This critique can pertain to the local practices of a particular community whose ways are challenged by the encounter with foreign practices. Cheng writes, “A community may have a form of morality which is limited to that community, and hence needs to be constantly renovated in the interest of expanding community.”\[526\] These renovations are undertaken where established practices are judged to be lacking. The idea of ming 明, clarity or brightness and by extension wise vision, makes an important contribution here as clear awareness is needed to make worthwhile evaluations. Having ming helps us to see and judge what is or is not yi about a person, a behavior, or a practice.

At this second level, yi restrains behavior by determining what behaviors should be continued or eliminated. Confucius is adamant that the presence or absence of yi is the determining factor in choice-worthiness: “If it is not yi but it earns wealth and honor, to me it is like passing clouds.”\[527\] Mencius highlights this role for yi as a criterion for inclusion or exclusion in saying to a ruler unwilling to lift onerous taxes, “You know it is against yi, therefore immediately end the practice. Why wait until next year?”\[528\] Considerations at the level of yi introduce standards by which certain actions or practices can be judged and put out of bounds. Whatever does not reach the standards of yi should be eliminated. Yi judgments are what we use to refine and restrict the domain of moral behavior. As Cheng says, “yi… restrains the inclinations toward material goods and desires of pleasure and comfort.”\[529\] Mencius’ description of the foundations of yi also suggests yi’s role in eliminating bad behavior. He writes, “A heart with feelings of shame and

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526 Ibid., 356 n.9.
527 Analects 7.16. 不義而富且貴, 於我如浮雲.
528 Mencius 3B12. 知其非義, 斯速已矣, 何待來年.
ugliness is the sprout of yi.” Mencius 2A6. 羞 惡 之 心，義 之 端 也.

Those actions which we recognize as wrong cause the feelings of shame and ugliness, and so yi involves the drive to eliminate any improprieties that wound our conscience.

Much of the grounding for evaluations of yi comes from the social li 禮 that one has absorbed and appropriated. The li provide stable guidance for expected behavior. They have a long and reliable pedigree as worthwhile ways of behaving, though not an absolute or a priori status. Deviations from li are immediately suspect as possible violations of yi, yet Mencius makes clear that doing the right thing can sometimes mean disregarding the li. He affirms that touching one’s sister-in-law is against li, but that if she is drowning this customary injunction can be disregarded in favor of the obviously right action, which is saving her life. What we see is that the li give us a general grounding for our yi judgments, an enduring and reliable foundation, but without the universal and absolute quality that firmly deontological obligations have.

Concern for yi moves us to expand the scope of the moral community, not as a Kantian dictate of universal reason, but as a concern for proper relations among neighbors:

A community may have a form of morality which is limited to that community, and hence needs to be constantly renovated in the interest of expanding community. No community can be isolated from other communities and hence interactions and relationships among communal moralities will have to lead to a larger and more general form of morality.

This is not a matter of universally respecting human rational dignity, but of having concrete encounters with others, encounters which lead to broader consideration and more general rules that can encompass as many people as possible. Encountering others is a trigger for reflection and renovation of ossified practices. Though not as rigorous as the universal duty to treat every person with equal respect, yi is meant to ensure that every person receives consideration. Unlike procedural justice, yi demands that every person be considered in their particularity, accounting for their unique needs. For this reason Cheng has called yi a “universal principle of specific application of virtues.” It pushes towards universality because ideally it governs all relationships, but it remains particular by considering the unique dynamics of every relationship.

The level of yi is where Kantian terms fit most naturally with Chinese notions, yet with certain qualifications. There is a role here for reasoning, for rights, and for universal aims, but these are

530 Mencius 2A6. 羞 惡 之 心，義 之 端 也.
531 Mencius 4A17.
more limited than Kant conceived. Working towards a comparative reconciliation, Cheng incorporates these ideas, but sees them as having an instrumental purpose, whereas Kant saw them as ends. Cheng explains this limited role on the second level, writing:

Kantian reason is merely a rational aspect of human nature or human nature as reflected in its rational aspect. To obey reason as a law...does not reveal the true nature of the humanity, for reason itself must serve a higher purpose or value: the fulfillment of humanity in harmony and mutual care-love. 533

Reasoning cannot drive the whole of the ethico-moral process, but it can play an important role at this second level. Rights can be claimed, not as an indefeasible birthright, but in recognition that everyone holds some position in the society and their needs must be fulfilled if society is to remain whole and harmonious. The role of reason can be related to ming 明, clarity or intelligence. Cheng connects these two, writing, “Rational justification could be accorded the status of clarity.” 534 Clear thinking reveals and brightens any subject under consideration, in this case questions of morality. Rights and duties take shape not as necessary dictates of universal reason, but as clarifications of what certain relationships need if they are to be sustained. That is, “yi gives rise to needed gradation and fair distribution which would cater to rights and duties arising from systems of employment and distinction of abilities and talents, which are to be justified as a contribution to the total good of the whole society that is shared and affirmed by the principle of ren.” 535 As Cheng describes them, rights and duties flowing from yi are only justified by their contribution to society, not by their inherent rationality: “such rights need to be harmonized with each other and with the all or the total in the interest of all, they must be based on mutuality of care and love.” 536 Thus we can see that while Cheng’s reconciliation of Kantianism and Confucianism employs such terms as “reason,” “duty,” and “rights,” these reflect conceptions that do not strictly follow the Kantian definitions.

Further, Cheng recognizes certain problems that forestall Kant’s ambition to create a thorough account of human ethics and morality. The first problem is that all of our actions are concretely embedded in particular circumstances, while Kantian laws are universal and abstract. Cheng writes, “we must point out that an imperative as such could be also impaired by our subjectivity and the abstraction because of its universality.” 537 Abstract laws must be applied, and there are ambiguities in application that frustrate our ability to turn general laws into practical guidance.

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533 Ibid., 354.
534 Ibid., 356 n.8.
535 Ibid., 351.
536 Ibid.
537 Ibid., 345.
“The problem is that as any moral action must be a concrete event situated in a given situation, (and) it is challenging to our reason to make our action right in precisely the required moral sense.”

Besides this, Cheng highlights the difficulties of finding synthetic a priori moral laws that can guide action:

In short, the Kantian paradox of moral imperative is that if this imperative is truly a priori, it cannot be applicative and truly synthetic for real situations are complicated, and often requires mediation; and if it is applicative and truly synthetic, it cannot be truly a priori for it must presuppose relevant information from experience.

Given this paradox, Cheng’s solution is to recognize that Kantian morality is instrumental, a necessary but limited part of the process, and that a broader understanding of human purpose is called for. He writes:

In this sense, yi, like any other virtue, is an instrument and a way for fulfilling the ren under differentiating and particularizing circumstances… Kantian reason is merely a rational aspect of human nature or human nature as reflected in its rational aspect. To obey reason as a law leads to individual autonomy and social democracy or civil liberty, it does not reveal the true nature of the humanity, for reason itself must serve a higher purpose or value: the fulfillment of humanity in harmony and mutual care-love.

A morality of rational laws or formal procedures runs into conflicts when it claims the entire ethical domain for itself. This forces us to look elsewhere for our motivating goals and purposes. This does not eliminate the need for reason and clarity in morality, but instead reminds us that it serves a limited and instrumental role in the ultimate search for human fulfillment.

We could apply a similar critique to the notion of yi and say that there is no substance for the judgment of yi or not yi without a foundational set of values and a particular moment of evaluation. However, this critique is less urgent because Chinese thinkers have not advocated the use of reason alone or an absolutely objective moral standpoint divorced from culture or traditional values. Ren and yi have been closely linked throughout the Confucian tradition, and so the task at hand becomes less about reconciling their divisions, as with the right and the good, than about enunciating their relationships and the ways they complement each other.

As we have seen above, the foundational aspects of social life embodied in the conception of ren form the basic substance on which questions of yi can then reflect. In this way, “it is yi which

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538 Ibid., 346.
539 Ibid.
540 Ibid., 354.
enriches ren,” because “yi gives rise to needed gradation and fair distribution which would cater to rights and duties.” However, this is not simply a one way relationship, and ren also contributes to yi beyond giving rise to it. Cheng writes that, “ren complements liberties and rights with mutual care so that conflicts could be resolved in the interests of harmony,” and “ren as applied to yi gives rise to the total good and ideal goal of a community.” That is, we cannot rest with the pronouncements of yi; we must recall the context in which those pronouncements are made and the reasons motivating them. This is the “ideal goal” which is invoked when there are conflicts surrounding questions of yi. What moves us to ask whether something is yi is the drive for fulfillment of our ren concerns. Recalling these ren concerns adds another level again to the primary level of ren and the secondary level of yi, a third level where we aim at a higher quality fulfillment of both our basic desires and our sense of propriety.

One conception of this fulfillment is given by Kant’s promotion of international peace. The goal of perpetual peace is a teleological aim, one which Kant says is to be achieved by rational debate and negotiation. However, without understanding the limited role of reason and its basis in the first level, the deeper understanding of peace and harmony as a final aim will remain hollow. Cheng points out how Kantian rational principles were unable to influence peace in the world: “The history of wars and expansion in the nineteenth century and even in the twentieth century spoke loudly in testimony against the sham and futility of rational negotiations.” Assuming that appeals to rationality can constrain people and nations because rationality is privileged in theory misses the depths of human behavior. Such practical limitation created by reduction to the single level of rational morality “points to the need for a deeper understanding of human nature and its desires in relation to reason.” The basic level on which ren is operative is also the domain of less benevolent drives for power, wealth, and the satisfaction of parochial interests. Understanding that this level cannot be ignored in favor of purely rational motivations suggests the need to develop ren attitudes at the basic level rather than disregard this level altogether.

A condition of universal peace and harmony is the ultimate aim, and moral imperatives are instrumental to approaching this ideal. This aim recalls our initial uncritical desire for harmony and love within the family. However, incorporating the second level of reflection and criticism, there is now a refined and broadened conception of this goal. It is a “vision of human harmony

541 Ibid., 352.
542 Ibid., 351.
543 Ibid.
544 Ibid., 353.
545 Ibid.
and world peace, not just harmony and peace without justice and righteousness, but harmony and peace in which justice and righteousness are incorporated.” 546 Whereas the first level of ren envisioned the good life and harmony, this harmony among intimates did not have to consider the standards of yi. With the additional consideration of yi, we do not eliminate that primary level, but refine it. We never lose the drive to achieve peace and harmony, but we do come to understand that peace and harmony without yi has no great worth. Mencius, in discussing why a life without yi is worse than death, says that a starving beggar will not accept a gift of food if it is offered in an insulting manner, 547 which is to say some deep personal interests are not worth satisfying if they violate our sense of yi. Likewise, if we can attain peace and harmony within our small social circle, but the means of attaining this violates yi, it is not worth having. It is only when harmony is achieved by means that conform to yi, only when ren and yi complement each other, that the highest goals of extensive peace and harmony are even possibly attainable. As Cheng puts it, “The highest stage is a stage of fusion of naturalism and rationalism rather than rationalism over naturalism,” 548 where naturalism is our initial social drives and rationalism is the working of intellectual reflection and judgment. This highest stage – achieved social peace and harmony – requires the complementary interactions of our basic ren-associated practices and our secondary yi-associated judgments. This is a structural framework which demonstrates that, “for the sustainable development of justice and peace in the world we need a multilevel and multidimensional approach.” 549

In this section I have described the structural features of the ethico-moral life as described by Cheng as he tries to relate the prima facie divergent philosophies of Kant and Confucius. While Cheng does not use these terms in this context, Kant and Confucius could stand in metonymically for the broader ideas of deontology and teleology, which were the terms Ricoeur used in his “little ethics” examined in the previous section. I see parallels in the structure and concerns laid out by Cheng’s two levels and their fusion, and Ricoeur’s framework of teleology, deontology, and practical wisdom.

Cheng concludes by outlining a five-step prescription that follows his multilevel analysis and aims at perpetual peace and ultimate harmony:

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546 Ibid.
547 Mencius 6A10.
549 Ibid. As mentioned in the precious section, while in analysis we distinguish “stages” or “levels,” in actual experience we simply have related but distinct concerns to deal with in our choices and behaviors. Rarely do we make such clear distinctions between “levels,” but as we aim for philosophical clarity it is a helpful practice.
1. Action of care and benevolence with the vision of great harmony toward an ideal humanitarian society which is to be induced by morality and moral education and a concern for humanity as evinced in world religions and artistic activities;

2. Action of trust and respect based on good will and good feelings which leads to sharing a basic form of freedom and happy life;

3. Action of laws and justice which provides a social framework of procedures for distribution, substitution, and retribution with the common good of a society in view;

4. Action of constant dialogue and negotiation for refinement and extension of recognized principles or laws and innovation of new rules and new laws of rights and duties;

5. Action of contributions to be made toward maintaining and supporting world organizations of governance comparable to the United Nations.550

I see the ren concerns at 1 and 2 as subdivisions of what Ricoeur understands as an underlying vision of the good life. The yi concerns at steps 3 and 4 are related to Ricoeur’s conception of morality. Step 5 recognizes the need for practical governance to achieve unified goals, akin to Ricoeur’s call for practical wisdom in specific situations. Cheng here makes additional subdivisions in the three part structure, but he also lays out the structure of the reconciliation in these three parts when he writes, “it is an approach which will argue for a basic starting point and position in benevolence and then moving to a level where righteousness or justice will rule as a means to achieving the supreme good willed by the benevolence or ren.”551 A basic starting point in social impulses, another level involving justice, and a final goal of supreme good which recalls the first level aided by the second: this is neatly parallel with the three-part Ricoeurian understanding of teleology, deontology, and practical wisdom.

What we have, then, are two ways of conceiving the broad sweep of ethical processes that employ different vocabularies but rely on a very similar structure. Both suggest an initial ethics based on the emotions of familial and social bonds and shaped by local practices. Both suggest a secondary process through which we reflect upon behaviors and practices, criticize them, and create more formal standards. Both suggest that the second level has a limited but necessary role, and that the reification of this level’s concerns causes contradictions when it comes to actual practice. Both suggest that pursuing the best possible course involves negotiating between the concerns of the first two levels, and involves recalling the initial thrust which has been refined by the secondary processes. As Ricoeur puts it, “From a basic ethics to ethics passing through moral obligation –

\[550\] Ibid.
[551] Ibid., 350.
this seems to me to be the formula for what I called my ‘little ethics.’” As Cheng puts it, we have “our vision of human harmony and world peace, not just harmony and peace without justice and righteousness, but harmony and peace in which justice and righteousness are incorporated.” As I will put it in Chapter 6, we begin with a sense of fundamental harmony, refine that with harmonic justice, and aim at a just harmony.

But before we get to that, we will look at one more example that identifies two distinct levels of concern in the ethico-moral process and describes the manner of their reconciliation for the sake of practical benefits. Having examined Ricoeur’s attempt from a western philosophical perspective and Cheng’s attempt from a comparative perspective, we will next turn to Qu Tongzu’s attempt from the perspective of *Law and Society in Traditional China*.

**QU’S CONFUCIANIZATION OF LAW**

While not precisely parallel to the issues that divide the right from the good, Chinese moral, political, and legal philosophy has its own major split that defines two separate camps. Going back to the Warring States philosophers, the split is manifest on several levels, including some that align with the divisions in western moral philosophy. The split is encapsulated in the opposition of *li* 礼 and *fa* 法, reverent propriety and law. Traditionally, Confucians have been the advocates of *li*-governed society while Legalists have championed *fa*-governed society. Also encapsulated in this division are different views of the role of government, different justifications for laws, different bases for judging criminal cases, and different views of human nature.

Qu Tongzhu emphasizes that the Confucian *li*-governed society and the Legalist *fa*-governed society are fundamentally different goals:

> ...no compromise was possible at this point. If the Confucianists had abolished their *li*, they would have been compelled to abandon their ideal social order. Similarly, if the Legalists had abolished their law, they would have been compelled to abandon their social order. Under these circumstances, the serious arguments put forth by both schools are quite understandable.  

Despite their differences, Confucians and Legalists have both been tremendously influential in organizing the government and the legal system throughout Chinese history. Together they have

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molded Chinese institutions and history. In fact, Confucian and Legalist practices were inseparable through most dynasties. Peerenboom writes, “The Imperial system showed clear signs of both Legalist and Confucian influence.” Qu coined the phrase, “Confucianization of Law” to describe the complex interactions and accommodations by which a broad legal framework and the specific values of Confucianism came to coexist.

When the first emperor of China, Qin Shi Huang, unified the warring states to begin the Qin Dynasty, the Legalist program of clear and extensive laws with harsh punishments was put into action. With prominent Legalists in influential positions, the Qin Dynasty was notoriously strict and brutal. It lasted only fourteen years, unable to survive much beyond Qin Shi Huang himself. The Han Dynasty which followed it made many changes to back off of the uncompromising brutality of Qin law. Confucians came back to court and held high offices, and were able to influence the direction and implementation of government. “Confucianization was a gradual process, one which began in Han times and continued through the Southern and Northern Dynasties. The Sui and T’ang law represented the fullest development of this process.” In this way, officials with Confucian values took control of a government that had built a state on a Legalist framework of laws and administrative institutions.

While Confucians preferred moral education and Legalists preferred punishment as the primary methods for bringing about ideal behavior, these two need not be seen as mutually exclusive. People can be made to follow li by the threat of legal punishment, and people can be educated to respect and not just fear the fa. Qu distinguishes between the goals espoused by Confucianism and Legalism and the methods they recommend. He shows that Legalist methods can be applied to Confucian goals. Though the differences between these li and fa are sharp, there is a further question of how to attain these ideals, and this is where Confucian and Legalists methods can overlap.

In both theory and practice, the Confucians were not opposed to laws and punishment. Confucius himself said, “if punishments and penalties do hit their marks, then people will be not know what to do with themselves.” Punishment is listed here as an important factor in keeping the people in order. However, it is not the first factor on the list. In this same passage, Confucius mentions appropriate use of names and language, managing affairs, music, and li before he gets to punishments. Confucius is not against punishments; he just thinks they are not the first step.

555 Peerenboom, China’s Long March toward Rule of Law, 38.
556 Qu, Law and Society in Traditional China, 1961, 280.
557 Analects 13.3.刑罰不中, 則民無所措手足.
Mencius, too, clearly states that the imposition of law is appropriate but incomplete, citing the saying: “Goodness alone is not enough to make good government; laws alone are not able to propel themselves.”\(^{558}\) Among the classical Confucians, Xunzi was the strongest advocate of the efficacy of punishment for managing the people. This is not surprising, as Xunzi has not always been included in the Confucian tradition, and his student Han Feizi became the chief proponent of Legalism. Still, Xunzi held onto the Confucian li and a role for moral education right alongside his endorsement of punishments: “If people are punished without education, penalties will be enormous and evil cannot be overcome; if they are educated without punishment, evil people will not be punished.”\(^{559}\) Xunzi says that both education and punishment are needed to overcome evil people and deeds. Some people will respond to education, but for those who don’t, punishment is necessary. Xunzi is Confucian in wanting to see a society which embodies the li, but believes it will take both moral education and legal punishment to achieve this. What is quickly apparent is that Confucians were not so far away from the Legalists in recognizing that punishments and rewards were important factors in maintaining social order. Confucius make this clear, saying, “Hearing cases, I am no better than other people.”\(^{560}\)

Still, the second part of Confucius’ saying is, “Hearing cases, I am no better than other people; what must be done is to make it so there are no cases.”\(^{561}\) Recognizing punishment as a necessary evil, it still comes a distant second to the cultivation of morality through education into li. The most famous Confucian statement about li and punishment is when Confucius says, “Lead them using political means and keep them in line with punishments, and the people will evade and be without shame. Lead them with admirable character and keep them in line with reverent propriety, and they will have shame and also manage themselves.”\(^{562}\) Confucius recognizes that punishments and injunctions can enforce order, but these do not cultivate good qualities in people, and so are inferior to the use of de and li, which not only bring order but also create a self-governing population of virtuous people. The goal is to have people learn self-governance and to have the people have taken ownership of the culture so that they do not require external coercion to achieve social harmony.

Confucianism puts forth a positive doctrine that urges people to be good. Cultivation of ren 仁 and yi 義 is a constructive project that enters deeply into a person’s character. Such cultivation

\(^{558}\) Mencius 4A1. 徒善不足以為政，徒法不能以自行.

\(^{559}\) Translated by Qu, Law and Society in Traditional China, 1961, 269.

\(^{560}\) Analects 12.13. 聽訟，吾猶人也.

\(^{561}\) Analects 12.13. 聽訟，吾猶人也，必也使無訟乎.

\(^{562}\) Analects 2.3. 道之以政，齊之以刑，民免而無恥；道之以德，齊之以禮，有恥且格.
helps people internalize patterns of behavior and make those values their own. It is a hopeful
doctrine encouraging people to successfully achieve a positive vision of good living, happiness,
and harmony. Legalism, though it holds out rewards for good behavior, is much more heavily
weighted towards eliminating bad behavior: “The function of the law, according to them, was to
prevent evil, not to encourage good behavior.” The content of people’s character was not seen
as a concern of the government, and issues of personal morality were not questions of state law.
The law’s function was to ensure orderly behavior, and fear of punishment was enough to
accomplish this. Laws did not have to lead people to a good life, but only had to restrain them
from harming each other and causing disturbances to society.

According to Qu, the Confucianization of law is the gradual appropriation of the legal
mechanisms of punitive sanctions to bring about the Confucian goal of a li-driven society. It is
likewise the incorporation of morality into the administration of the state. The Confucians of the
Han Dynasty and afterwards “tried to introduce into the code the principle and spirit of the li
together with its concrete rules of behavior and to enforce them by legal sanction.” Qu describe
three main ways in which Confucian values were written into the law. First, people of different
ranks and social positions were treated differently under the law. Second, the family relationships,
including distinctions of junior and senior and near or distant relations, were taken into
consideration when judging cases and handing out punishments. Third, violations of filial piety
became a major legal issue. Peerenboom also cites these three developments:

On the other hand, the amoral positivism of Legalism was tempered by the infusion of
Confucian mores and values into the codes and the entire legal process. For instance, the
legal system paid particular attention to familial relations and filial piety. One of the
unpardonable “ten offenses” was unfilial behavior…. The influence of Confucianism and
the li is also reflected in the hierarchical nature of the legal system. Punishments were
meted out in accordance with one’s status and the status of the victim. Officials were
treated more favorably than commoners.

Taking advantage of their positions as governing officials, Confucians helped write their own
moral sensibilities into the laws of the land. They institutionalized the li, giving them not just the
authority of social expectations, but also the authority of law. By legislating the responsibilities
between, for example, fathers and sons, governing official ensured that everyone had to follow
Confucian xiao 孝, family reverence. Because a Confucian moral ideal was for sons to mourn the
father’s death for three years, they made a law mandating that sons mourn for three years, backed

564 Ibid., 274.
565 Peerenboom, China’s Long March toward Rule of Law, 38.
by penalties for violating that mourning period. The law was still universally applicable, but it institutionalized role-specific behavior. This law made a universal duty out of what was clearly not a universally held moral position: Daoists certainly didn’t want to follow proscribed mourning rituals (as we see in Zhuangzi’s wildly banging pots and singing at the death of his wife), and Mozi argued directly against elaborate funerals and long mourning periods. What we have in the Confucianization of law is the appropriation of legal mechanisms for the promotion of a particular vision of the good life.

Paul Goldin has tried to take the focus away from li and the opposition of Legalists and Confucians in his own discussion of the Confucianization of that law. He claims that Qu’s focus on li and fa does not capture “the essence of Confucianization either in theory or in practice,” and that the real philosophical shift was from laws regulating the people in their relationship with the state, to laws regulating people’s relationship with other people. He spells it out like this: “What I mean, then, by ‘the Confucianization of the law’ is a process by which the legal system, comprising not only statutes and ordinances, but also principles of legal interpretation and legal theorizing, came to reflect the view that the law must uphold proper interactions among people, in accordance with their respective relationships, in order to bring about an orderly society.” Goldin says pre-Han governments viewed crime as an offense against the state. Law was a practical tool for keeping the state in order, so violations of law harmed the state. Further, since the king or emperor made the law, and the law was meant to keep the emperor in power by keeping the people in order, any violation of order was a threat and an offense to the ruler. In contrast, Confucians viewed crimes as offenses against people and relationships. Because every action should be taken with consideration for the role and status of the people affected, violations of appropriate behavior are a personal matter. In the Han Dynasty, Confucians came to regard the regulation of interpersonal relations as a matter of law.

Like Qu, Goldin sees the Confucians using law as a way of enforcing an ethical vision. The big shift away from pre-Han legal thinking was to make law a matter of regulating personal morality in interpersonal relationships, rather than describing the people’s obligations to the state. Though Goldin hesitates to frame this as a matter of li, the changes he describes as legislating

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566 Goldin doesn’t use Legalist as the contrast with Confucian, saying it is simplistic. Nonetheless, this distinction is part of the historical self-understanding of Chinese thought about rujia 儒家 and fajia 法家, which is a conceptual framing that has historically-effected Chinese political philosophy.


568 Ibid., 6.
interpersonal relationships institutionalize the Confucian ideas of *xiao* and differentiated roles, which are what the *li* deal with. The shift in the legal philosophy over the purpose of law, from enforcing state regulation to promoting social morality, was largely accomplished by making the forms of *li* the official state laws. The process of Confucianizing the law was a broad social movement with various dimensions, and while Goldin’s claims about a new legal theory have some helpful explanatory value, they do not give us any reason to discard Qu’s framework describing the interaction of Confucian and Legalist ideals.

One further way in which Confucianism came to undergird the law was the use of the Confucian classics as support and justification for deciding particular cases. Zhang Weiren 張偉仁 made an extensive study of Qing court cases, and he suggests that reference to the canonical texts, rather than arguments about jurisprudence, served to justify rulings. Of officials serving as magistrates and settling disputes could appeal to passages in the classics, such as the *Zhouli* 周禮, the *Liji* 礼記, the *Chun Qiu* 春秋, the *Lunyu* 论语 and the *Mengzi* 孟子. A definitive word from one of these authoritative sources was often enough to justify a particular ruling. The Confucianization of law was a process that established the authority of Confucian justifications for various laws and rulings. Peerenboom also points to three studies that come to different conclusions about what justifications were cited in Qing court cases – codes, local customs, broad moral consensus, or past cases – and what weight each type of appeal was given. Peerenboom’s own conclusion seems to be in line with Allee’s, such that the magistrates used their broad discretion and the vagueness of the laws to bring about the best possible results, relying on whichever justifications seemed pertinent to the case at hand. This does not privilege jurisprudence in the sense of theorizing about the role and power of *fa*, but continues to undergird *fa* with cultural and social concerns.

The Confucianization of law seems to involve what we would now call perfectionist governance and even paternalism. Believing that the good life was most fully realized through moral education and the committed adherence to *li*, Confucians used the power of the government and legal sanctions to push people into accepting the norms and values that the Confucian elites favored. By uniting their moral vision with the mechanisms of law, they were very successful at bringing about a social and political structure that for two millennia instantiated Confucian norms across China. While this rings of paternalism to many, recognizing the distinctive structures of

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569 Zhang, Weiren, *Qingdaifazhiyanjiu* 清代法制研究.
Confucian families should give us pause. Whereas Christian families modeled on God the father/creator would represent uni-directional imposition of law in a classically paternalistic fashion, the Confucian insistence that *li* be the primary force of social stability encourages us to see the children/masses as part of a dynamic and holistic family built on complementary roles, and not as passive receivers of dictatorial rules. The proper roles are not instantiated by fiat, but by the long cultural practices of negotiating a productive order. The Confucian governance that inculcates the *li* might be seen as a kind of “familialism” rather than “paternalism.”

Of course the combination of Confucian values with Legalist enforcement never resulted in the *datong* 大同, the great social unity, coming into existence. Peerenboom points to some fundamental tensions left unresolved by the traditional Chinese legal system: “As a synthesis of the Confucian *lizhi* and Legalist *fazhi* theories of law, the Imperial legal system reflected their inherent limitations. First, the Imperial system failed to provide effective restraints, particularly institutionalized legal restraints, on the power of the ruler. Second, it failed to adequately address the need to protect individuals against the state.”

Because China had what Peerenboom calls rule-by-law rather than rule-of-law, all too often powerful officials and certainly the emperor were above the law, using it as a tool to enrich or empower themselves. And because of the familialistic bent of Confucian governance, individuals hoping to pursue their own life plans and unconventional visions were corralled back into the community not just by the weight of social expectations, but also by force of law. Peerenboom traces these issues to three key assumptions that both Confucianism and Legalism share, and which their union cannot therefore address:

This failure, like the failure to adequately restrain the power of the ruler, can be traced back to certain underlying philosophical assumptions common to both the *li zhi* and *fa zhi* traditions. These assumptions include the rejection of three key tenets of the Western liberal tradition: First, that to treat one with respect and as one’s equal requires that one refrain from imposing one’s view on that person (the toleration or normative equality premise). Second, that each person usually knows what is best for him or herself, and/or people reasonably disagree about what constitutes the good (the epistemic equality premise). And third, that the interests of the individual and state are not always reconcilable.

Peerenboom here uses several ideals of liberalism to point out problems with the Confucian/Legalist hybrid. The imposition of social values by the governing elites clearly

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572 Akin to “paternalistic,” but with the reservations expressed above
violates the liberty to follow one’s own life plan, as well as the belief that everyone is capable of developing their own reasonable idea of the good life (one of Rawls’s two moral powers). As well, the Chinese often did not see an opposition between the individual and the state, assuming that the moral development of the person was always for the good of the state, and that any profit made by the state was for the good of individuals. Peerenboom’s claim that these assumptions are shared by Confucians and Legalists reminds us that the split between li and fa is not neatly parallel to the split between the good and the right. A move towards fazhi does not mean a move towards tolerance, or equality, or independence. Indeed, there are many assumptions in the shared background of Chinese thought, especially assumptions about the relational basis of personal identity and the basis of moral obligation, that should warn us against simply using the familiar liberal constructs to criticize the Chinese attempts at governance. There are more subtle trade-offs in comparing liberal ideals with the governing ideals of li and fa.

What we can do, I would suggest, is to see the incorporation of li into fa evidenced in the Confucianization of law as demonstrating ways of overcoming divisions among moral and political concepts by incorporation rather than opposition. One lesson is that when they co-opted the force of law, Confucians gave up the idea that the law is blind to circumstances. Instead of letting the same punishment fall for every similar infraction, Confucian law paid close attention to who was involved, what the offender’s motivation was, and how punishment would affect the surrounding community. In other words, “Another product of the Confucian tradition was the tendency to pursue a particularized substantive justice at the cost of procedural justice and formal equality.”574 Taking the law not as a set of procedures but as a source of authority, Confucians were able to push ahead with their positive vision of the good life.

Second, where crimes and violations occurred, Confucians often used the law to seek restoration in addition to retribution. They viewed the law as a tool for moral instruction, and not just as a brute force to ensure fearful compliance. A common assumption among scholars has been that, “magistrates decided nonpenal cases based on general Confucian moral values and in so doing tended to split the loaf between the plaintiff and defendant.”575 Trying to satisfy all parties, restore harmony, and maintain social order is consistent with Confucian ideals of fostering relationships. A focus on the particular people and circumstances involved also reflects Confucian concerns: “the prevailing view was that magistrates tended to decide cases based on general moral principles rather than strictly in accordance with legal provisions, and in the process used their

574 Ibid., 39.
575 Ibid., 40.
discretion to mold a judgment that reflected the particular circumstances.” Peerenboom notes that this view has been challenged by Phillip Huang’s study of Qing cases, but Huang’s interpretation has also been challenged in turn. It seems to me that Confucian morality played a large part in deciding criminal cases, whether in interpreting vague statutes, justifying decisions to litigants, or in assessing the outcomes of ruling one way or the other. In these matters, punishment certainly served as a deterrent, but more important was the chance to make things better, either through judgments that restored harmony to the community or through moral education which improved people’s character. Punishment through the institutions of government, adhering to *fa*, was a means to restoring social order, that is, a means to Confucian social harmony.

Over the course of Chinese history, the social and political philosophies of Confucianism and Legalism, *lizhi* and *fazhi* respectively, have together structured Chinese government and communities. Though there are deep differences at the heart of these two governing philosophies, Confucian morality and Legalist methodology have gone hand in hand to shape the actual practices of law and politics in China. Like the structure picked out by Ricoeur and Cheng, I think Qu has given us a three part process that shows the full sweep of ethics and morality: The Confucians’ (1) ethical form of life is (2) codified and pushed towards universal application by the Legalists’ instruments, so that (3) in practice particular magistrates can weigh the directives of law, the litigants’ desire to live well, and society’s interest in harmony.

**CONCLUSION**

In addressing the division of right/good, liberal/communitarian, neutral/perfectionist, and *li/fa*, these theories from Ricoeur, Cheng, and Qu do not conflate the two sides nor eliminate one of them, but put them in a relationship and give them complementary roles. They remain distinct and equally necessary in the ethico-moral pursuit, inspiring, giving shape to, and fulfilling each other.

Given that they remain distinct and address different concerns, there is always the possibility of conflict between the right and the good and their further manifestations in different arenas. This conflict is part of their inescapable relationship. This is a tension that cannot be eliminated, which is why in the end we only have recourse to practical wisdom, doing our best so far as we can.

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576 Ibid., 39.
know. Even in acting with wisdom, given the imperfections of this world there will be necessary sacrifices and neither the ideals of the good nor the right can be ultimately and eternally fulfilled. Recognizing this, many have sought for a way to determine what we should sacrifice when there is conflict. People want an ultimate principle, or a foolproof decision procedure, or a supreme value that trumps all others. Locating this decisive factor on the level of either the good or the right gives that level a special status, and this is the point that splits people into one camp or the other.

My argument is that neither position holds a trump. Sometimes we will sacrifice our obedience to law and sometimes we will sacrifice our concern for people’s suffering. We may lose a high level of harmony to ensure that an individual is not unfairly burdened, or we may put extra burdens on someone to bring about a greater harmony. These types of decisions are not easy, do not leave us feeling pleased, and cannot be ultimately justified. And yet life is like that. It is a matter of wisdom and insight to get the best out of a tragic situation. We move back and forth in a dialectic that weighs our responsibility to the law and our responsibility to individuals. As Dewey puts it:

there is no uniform, previous moral presumption either in one direction or in the other, no constant principle making the balance turn on the side of good or of law; but… morality consists rather in the capacity to judge the respective claims of desire and of duty from the moment they affirm themselves in concrete experience, with an eye to discovering a practical middle footing between one and the other - a middle footing which leans as much to one side as to the other without following any rule which may be posed in advance.

There is no final resting point, no end to the weighing. Instead there is a constant striving to do better, to use our understanding of the good to improve our pursuit of the right and to use right actions to further the good life. We hope to constantly increase the good and the right in tandem if possible and to the greatest extent for each when we are in difficult circumstances. This tension in balancing the two concerns is the heaviness that sits upon our moral choices, a heaviness we cannot eliminate. Again Dewey sees this and affirms that “desire and duty have equally legitimate bases and the force they exercise in different directions is what makes moral decision a real problem, what gives ethical judgment and moral tact their vitality.” We can never disregard the good, so when we choose in favor of the right we have regret. We can never disregard the right, so when we choose in favor of the good we have regret. This is why ethics is an eternal struggle.

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577 This conflict ensures an ongoing role for shame and forgiveness.
579 Ibid.
In fortunate circumstances the good and the right align, but when they conflict there is no substitute for the sincere and rigorous consideration of both of these indispensable concerns.

The relationships between the right and the good, liberalism and communitarianism, neutrality and perfectionism, and *fa* and *li*, are encapsulated in our notions of justice and harmony. Because there is a necessary relationship between these two ideals, I suggest that we need a conception of ethics, politics, and governance that recognizes and honors both. In the following section, I will describe the conceptions of harmony and justice that can work together most productively without the conceptual conflicts we found in the earlier chapters. I believe a reconsideration of justice and harmony, in light of what we have discussed so far, will lead to productive insights about how to address the one-sidedness behind the festering problems of injustice in America and disharmony in China.
CHAPTER 6

HARMONIC JUSTICE FOR JUST HARMONY

REFORMULATING OUR IDEALS

In the previous chapter, I described attempts at overcoming the split between the right and the good. We saw ways of reconciling deontology and teleology, Kant and Confucius, and 非 and 礼. Taking some clues from these efforts, I wish to demonstrate a reconciliation in terms of justice and harmony. I believe that a reformulation and integration of Chinese and western notions can navigate the conceptual incompatibilities that have driven them apart. In my reconciliation I emphasize a conception of harmony that is empirical, dynamic, organic, and interpenetrating. I emphasize a conception of justice that is emotionally responsive, critically reflective, particular to specific cases, and that expands the circle of moral concern. Combining these two revised concepts of harmony and justice into a framework that honors both of them and their relationships, I will describe:

1) Fundamental Harmony
2) Harmonic Justice
3) Just Harmony

On the first level, my notion of harmony acknowledges that one’s vision of the good life is unavoidably shaped by the concrete circumstances of one’s family and culture. I maintain the communitarian insight that a person’s deepest identity is socially constituted. Fundamental harmony is the ideal that best expresses one’s interpenetrating embeddedness in tradition and community. The ethical wish begins with the emotions and with the feelings of harmony and discord within one’s local environment. On the second level, my notion of harmonic justice begins with sentimental awareness of injustice. Critical reflection then creates some of the distance from tradition emphasized by liberal critiques of ideology, but never fully escapes historicity and never abandons the emotions. Finally, on the third level of wisdom in action I urge a refined perfectionism qualified by relentless concern for undue suffering. This is an aim at higher-quality harmony, at just harmony, which honors both the needs of diverse individuals and the over-arching quality of social relations.
Fundamental Harmony

Ethics begins in the family. For most human beings, one’s first experiences of love, care, interdependence, reciprocity, responsibility, rules, conflicts, etc., occur in the home with one’s parents and siblings. Confucius identifies the family as the entry point for developing moral competence, claiming that the roots of the ethical ideal, ren 仁, are established by family reverence, xiao 孝. ⁵⁸⁰ At first with one’s parents and siblings, and then later with teachers and local leaders, young people follow the examples around them into a way of life, a culture, a range of norms. These local norms in the extended family establish the models of success in life and inform one’s conception of the good life.

The Book of Songs describes an ideal of family life as a harmony. ⁵⁸¹ The Zhongyong approvingly quotes this passage, suggesting that Confucians see the family as where one encounters harmony and forms a sense what causes it. I suggest that the feeling of harmony in the family first gives meaning to a notion of living well with and for others.

The Confucian emphasis on family as the basis of morality calls up comparisons with Alasdair MacIntyre’s idea of local practices in which virtues are learned and exhibited. MacIntyre gives the example of a parent teaching the rules of chess to a son or daughter. In learning the game and playing it virtuously the youth enters into a tradition, absorbs its standards, and accords with its ways. Individuals coming into accordance with practices that both transcend and include them can be described as harmonization. Paul Ricoeur cites this idea of practice as he explores the initial formation of an ethical vision of the good life: “Practices, we observe following MacIntyre, are cooperative activities whose constitutive rules are established socially; the standards of excellence that correspond to them on the level of this or that practice originate much further back than the solitary practitioner.” ⁵⁸² Though the solitary practitioner is the focus of this particular practice, he or she is embedded in a socially established context. The broader field and the focal point are mutually interdependent. Social practices need individuals to carry them out, and individuals need social conditions to make their practices meaningful. The individual’s exercise

⁵⁸⁰ Ricoeur identifies the encounter with others as the spark of ethical feelings. It seem natural that the first others one meets would be one’s parents and siblings.
⁵⁸¹ Shijing, “Changdi.” 妻子好合、如鼓瑟琴。兄弟既翕、和樂且湛, 宜爾室家、樂爾妻帑. Wife and children in loving union is like the music of lutes and harps. With brothers in agreement, harmony and joy are lasting and deep. This brings comfort to your home and family and brings joy to your wife and children.
⁵⁸² Ricoeur, Oneself as Another, 176.
of socially meaningful practices demonstrates virtue in creating the good life, the exemplary life in harmony with society’s best practices.

Ricoeur further connects MacIntyre’s virtues with the ethical level: “In what way do these standards of excellence relate to the ethical aim of living well? In two ways." The two ways he highlights are developing an understanding of the goods internal to practices, and shaping one’s vision of a successful life plan. Local norms shape one’s sense of what is valuable about particular practices and both constrain and enable what one thinks a worthwhile telos might be. I am calling the process of enculturation and education that takes place in one’s family and neighborhood a kind of harmonization. The communitarian insight that people’s values are always shaped by their native culture, even when they reject those local values, is honored in this way of describing a person’s enculturation as harmonizing with local practices.

Chinese li is a broad philosophical term in Confucian philosophy that is both descriptive and prescriptive, covering everything from propriety achieved in roles and relations to the ritualized events that punctuate the human experience. It is closely related to these ideas of social practices and virtues. While li can refer to elaborate ceremonies, it also means simple social graces and expectations of how to treat various relations. These more basic proprieties are likely learned as a small child through emulation and informal instruction. Despite the Daoist criticism that they are artificial and oppressive, they can be absorbed and appropriated at a young age, and need not feel oppressive. No child can survive without relying upon its relatives, and when those relations are structured by the local practices of li, then “of li’s functions, harmonizing is the most valuable.”

As we find in a family and also in the basic experiences of harmony in cooking, my concept of harmony involves mutually interpenetrating parts that affect each other through internal relations along the lines A.N. Whitehead’s occasions or Peter Hershock’s diversity. This harmony is not just a collection of externally related parts. Family members are not substitutable units that can be traded out like the wooden planks of a ship. Because they are unique, they create unique harmonic configurations and affect other parts of the harmony in unique ways. Adding a new member to the family changes both the harmony and the characters of the other family members. Likewise, adding ingredients to a stew changes the harmonious balance of flavors, and also

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Ibid.

Abusive hierarchies are a possible corruption of the li, but should not be the basis of judgment for all li practices.

Analects 1.12.
changes the characters of the flavors already in the stew. Li Chenyang emphasizes the importance of mutually beneficial and internally constitutive relationships that are part of Chinese harmony:

This is to say that different elements need to form a relationship in which they mutually complete and mutually compensate one another and in which “one element smoothens another” (yi ta ping ta 以他平他). 18 The Zhou Yu B chapter of the Guo Yu 国語/周語 下 explicitly states this point: “when sounds correspond and mutually promote (bao 保) one another it is called he” (shen ying xiang bao yue he 聲應相保曰和) (Lai 2000: 166). Thus, we can say that he is not just that sounds mutually respond to one another; it is that various sounds respond to one another in a mutually complementing, mutually reinforcing, and mutually advancing way. 586

Through internal relations, the presence of harmony contributes to the character of the constituents, such that they are smoothed, or promoted, or reinforced by their participation in harmony. Participating in harmony at this level is a transformative experience. Though they retain a distinguishable and distinct identity as individuals, those individuals are not identical to what they were before the harmony. In Ricoeur’s terms they have ipse identity of continuity over time, rather than idem identity of sameness. They change character due to the influence of others but do not lose their ipse identity through this. In harmonizing, the individuals do not stay the same when they achieve a harmonious configuration. Rather, their incorporation into a harmony affects them, achieving qualities that they would not have on their own.

In laying the experience of fundamental harmony and the desire for more harmony at the base of ethics and morality, I am at the same time deflating some of the metaphysical pretensions of a Greek-influenced concept of harmony. My notion of harmony does not conform to neatly arranged Pythagorean whole number fractions; it is not originally, eternally, and divinely built into the world soul as Plato described; it doesn’t antecedently structure the cosmos as Kepler claimed about the motions of the planets; and it does not have the rational ordering of Leibniz’s pre-determined precision. In each of these examples, harmony is an a priori order or standard that must be measured up to. Instead, the harmony I locate at the base of ethics is an organically accreted order that develops out of the sensitive mutual adjustment of diverse parts as they find an optimal arrangement according to their actual shapes and contours. This kind order accords with the understanding of Chinese cosmology expressed by Joseph Needham when he writes,

Chinese ideals involved neither God nor Law. The uncreated universal organism, whose every part, by a compulsion internal to itself and arising out of its own nature, willingly performed it functions in the cyclical recurrences of the whole…could never be based on unconditional ordinances, in other words, on laws….Thus the mechanical and the

586 Li, “The Ideal of Harmony in Ancient Chinese and Greek Philosophy,” 86.
quantitative, the forced an the externally imposed, were all absent. The notion of Order
excluded the notion of Law.\textsuperscript{587}

The kind of law excluded here rules out numerical, formal, antecedent, and rationally created
conceptions of harmony. Instead, parts generate their own order by mutual accommodation
according to their concrete characteristics.

Li also describes this emergent kind of order: “The Chinese ‘deep harmony’ is not without order.
However its order is of a different kind.”\textsuperscript{588} In contrast to Plato and Leibnitz, the Chinese
harmony I wish to rely on is an emergent order organized from the bottom up. It is not an
antecedently imposed order. Li highlights this type of \textit{a posteriori} order in harmony, writing,
“This notion of harmony does not presuppose a given, fixed underlying structure in the world; if
the world is to have a structure, it is a result of the harmonizing process rather than a precondition
for harmony.”\textsuperscript{589} Instead of looking for an essential harmony and trying to copy it, the ethical
drive is to create novel harmonies out of the unique elements in any particular situation. We can
and should seek out orderliness, but this is not the search to discover a necessary and eternal order.
Rather, it is a contingent and provisional arrangement of historical entities. Harmony of this kind
comes about as a novel revelation. Highlighting the generative and creative thrust of harmony, Li
writes, “As the function of the Dao, harmonization generates order.”\textsuperscript{590}

This conception of harmony is presupposed in John Dewey’s work. He endorses a harmony
characterized by internal relations and formed organically rather than by an outside force: “Order
is not imposed from without but is made out of the relations of harmonious interactions that
energies bear to one another.”\textsuperscript{591} Deweyan harmony is not pre-given or necessary, but is a
fortunate experience of order and peace in the midst of ever-changing dynamics. He further
associates it with feelings and aesthetic beauty rather than with reason, which lends further
support for us to identify harmony with the first level of ethics.

Whitehead, too, gives us a conception of harmony as an aesthetic ordering of internally related
parts that impresses upon our senses and sentiments. He writes, “in so far as the qualitative
characteristics of the whole and the parts pass into the subjective forms of their prehensions, the
whole heightens the feeling of the parts, and the parts heighten the feeling for the whole, and for

\textsuperscript{588} Li, ”The Ideal of Harmony in Ancient Chinese and Greek Philosophy,” 96.
\textsuperscript{589} Ibid., 91.
\textsuperscript{590} Ibid., 96.
\textsuperscript{591} Dewey, \textit{Art as Experience}, 14.
each other. This is harmony of feeling; and with harmony of feeling its objective content is beautiful.” Whitehead describes aesthetic harmony in terms of qualities rather than quantities, associates it with beauty, and speaks of the heightened feelings harmony generates. This harmony is not a rational order or a logical arrangement, but instead something that we experience, that we feel with the depths of our senses. As we find in harmonious families, good music, and in delicious meals, “Undoubtedly, the Harmony is finally a Harmony of qualitative feelings.” Referencing qualitative feelings, Whitehead’s characterization of aesthetic harmony is appropriate to the ethical level where we first get a sense of the good life.

In the Zhongyong, harmony is similarly associated with the emotions. Whereas equanimity or centrality (zhong 中) is the ideal state before emotions are aroused, harmony is the goal after the emotions are stirred. Harmony here means having the appropriate emotions in the appropriate situations, letting the emotions transform with the circumstances. Feelings of peace and contentment are appropriate to a family picnic, and feelings of righteous indignation are the natural and appropriate response to undue suffering. When emotions are attuned and immediately appropriate with the surrounding environment, a person is in harmony.

Ricoeur associates the emotions with the first level of ethics because people are goaded into action by feelings of anger, resentment, joy, and excitement. Emotions are often most affective when there are ethical stakes involved. Emotions can be pre-reflective reactions to the world around us, yet there may be reasons why the emotions arise. Emotions can be reasonable, even without explicit reasoning. The sentiments have an important role in indicating when harmony is happily present and when is it sadly absent. At the foundation of ethics, living in harmony with others is a joy and the wish to live with and for others results from the experience of satisfying emotions during harmonious situations.

Chung-ying Cheng locates the practice and pursuit of ren 仁, as consideration and care and compassion, on this first level. It is ren that promotes a “harmonious society with comprehensive good as an end.” Ren is not a matter of law and formal rules, but rather is a matter of relationships and living together. To be ren is to care about others and to increase the harmony in all one’s relationships. There is no single guide or decision procedure that will answer how to be ren in any situation; instead, it is something learned, a sensitivity to context and relationships that

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592 Whitehead, Adventures of Ideas, 268.
593 Ibid., 281.
594 Zhongyong 1.
enables one to get the most out of any situation. This is acquired not by rational reflection on deontological principles, but by caring, by extending the heart and mind to others and considering how they must feel. At the first level, the pursuit of ren begins with caring for others and the community and finding harmony with them. Cheng writes, “We may also call the first Confucian principle of ren the Principle of Harmonization.”\textsuperscript{596} The identification of ren with harmonization reinforces the basic feelings of family, friends, and community on the first level of fundamental harmony. But rather than understanding it as a principle, which may conjure up ideas of an eternal or fixed basis, the conception of fundamental harmony I am drawing up takes this idea of ren as the empirically demonstrated practice of successful families and societies. Because ren has proven efficacious at promoting harmony – the “deep harmony” in which the constituents have internal relations of mutual benefit – it comes to represent a foundation for shaping society.

The foundational role of harmony in the ethico-moral process is the positive feeling of social integration that generates a primary vision of the good life. Successful social integration here means strong bonds forming constitutive and mutually enhancing relationships within the family and throughout the community, according to local practices. A positive feeling here means an aesthetic sense and a sentimental response to beauty and health that is felt and appreciated. Harmony as a fundamental ideal is a metaphor to help us describe an emotional and aesthetic feeling that the way people are living and working together is beneficial all around and is indeed beautiful.

**Harmonic Justice 和義**

This initial feeling of harmony is a basic experience, but the capacity to sense and promote harmony can be educated and increased. Part of this education occurs through simply having more experiences of harmony and disharmony and gaining sensitivity to what these feel like and what factors contribute to their presence. But it can also be improved through critical reflection. This practice of reflection is where I think the concept of justice intersects with harmony. This is the movement from Ricoeur’s first level of ethics to the second level of morality. It is through this movement that fundamental harmony can reach a higher quality harmony, a just harmony.

The concept of harmonic justice I am endorsing on the second level of morality must be distinguished from several familiar characteristics of justice. First, a modern conception of justice

\textsuperscript{596} Ibid., 352.
must deal with the various ways in which justice has been metaphysically diminished from its status as a divine principle or an absolute and eternal order. We do not seek a Form of Justice, or Divine Justice, or even Natural Justice. Instead, we are looking for an achieved justice among people and human communities.

Most social contract theorists also deny a metaphysical or divine basis to justice, conceding that justice is a human convention. Yet even as a human construction, many contract theories make justice a remote, abstract, and higher order concept because they claim justice is the necessary product of universal rationality. I deny that justice is based on any necessary, universal, or objective rationality. Rawls in his early work argues that all rational and reasonable people should be convinced by his arguments for the two principles of justice. But his later work seems chastened on this count, as he allows that many reasonable people do not leap to embrace the liberal democracy structured by his two principles. While I find his principles of justice admirable, I do not think they command assent by virtue of their irrefutable rationality, nor must reflective equilibrium come to rest secure on these points. Walzer and others have argued that no conception of justice commands the assent of all rational and reasonable creatures. Pursuing harmonic justice is not a matter of instantiating eternal rational principles. From the so-called communitarians, MacIntyre, Michael Sandel, and Michael Walzer, I take the idea that there is no universal principle of justice and that all conceptions of justice are culture bound. The harmonic justice we pursue is justice for us, here and now, and not some final word on the subject. We need not craft the single principle or decision procedure that will lead us to realize the putatively eternal and true concept of Justice. We can recognize that our conceptions of justice, of fair exchange, of who is due what, and of what goods are valuable are inextricably wrapped up with our cultural and historical embeddedness.

This communitarian critique echoes David Hume, who described justice as an “artificial virtue” which developed in human society for the sake of keeping the peace. He argues that justice is not metaphysically or rationally necessary; it is just convenient for creatures like us in circumstances like we find on earth. Were circumstances different, were resources either terribly scarce or wonderfully abundant, we wouldn’t have use for the concept of justice, and so wouldn’t have the concept at all. Freidrich Nietzsche goes even further than Hume in criticizing the conception of justice as a metaphysical principle or necessary law. To him, justice is another false idol, an invention meant to reassure us that there is inherent fairness in the world when there is not.597

597 While Nietzsche criticizes justice as a tool wielded by the weak to demand redress for their suffering, he also has a place for a different conception of justice born from strength.
However, I think we can be misled by Hume’s term “artificial” and by the Nietzschean suggestion that we can abandon the slave morality which clings to absolute Justice. Harmonic justice is a deep and natural human pattern. The naturalist world-view that has advanced alongside scientific progress deflates the speculative metaphysics and religion that inflated the cosmic importance of justice, yet still shows that there is a steady confluence of evolution, genetic inheritance, and cultural tradition that grounds our sense of justice. Studies in biology and psychology suggest that the origins of our interest in justice are in our natural human sociability as family and tribe dwelling animals, in the reproductive success of our more cooperative ancestors, and our desire to discourage cheaters and dirty players. Human babies and some primates show signs that we might call an untutored impulse towards approving of fair rewards and helpful behavior, suggesting that our sense of justice is part of our natural constitution, and neither artificial nor disposable.

John Stewart Mill, too, suggests that our natural desire for safety gives our sense of justice a feel of absoluteness. But a feel of absoluteness is not an ultimate criterion. Grounded in our fundamental desire to live safely, justice is defeasible in those situations where “some other social duty is so important, as to overrule any one of the general maxims of justice.” For Mill, justice is hugely important, but based in our desire to live well rather than in a necessary law. My sense of harmonic justice likewise assumes that it is a powerful drive, but not always the last word.

The idea that principles of justice are comprehended rationally by an unbiased intellect ignores the unavoidable roles of embodiment, sentimentality, and constant affectivity that attend every thought and judgment we make about justice. From Robert Solomon I take the idea that sentiment and our social nature and sympathies are the ultimate foundation and motivation for justice. He writes, “Justice, I will argue, consists first of all of a constellation of feelings, which alone can provide the psychological soil in which our grand theories can take root,” and from there he carries out the argument in convincing fashion. The first step towards justice is feeling indignant, angry, or resentful over someone’s undue suffering. This might be a reaction to our own suffering, but we are also emotionally stirred by seeing other people suffer. Justice is rooted in the emotional experience of sympathetic beings. These “negative” emotions spur us to envision something better, wrongs righted, evil punished, higher harmony realized. Imagining something

598 See for example, Bloom, Just Babies; Horner et al., “Spontaneous Prosocial Choice by Chimpanzees.”
599 Mill, Utilitarianism, 55.
600 Solomon, A Passion for Justice, 30.
better or acting to relieve someone’s suffering brings up positive emotions. These emotional judgments against suffering and for restitution are passions for justice.

The feelings of justice are an emotional recognition that someone is being unduly harmed and a burning desire to rectify that. It is not a cold and detached intellectual assent, but rather a feeling that surges through us in the presence of injustice and in the presence of justice restored. These feelings express a judgment of the situation at hand; indignation shows that we have judged the situation as unjust while gratification shows that we judge it as just again. Just because a judgment is based in emotion does not mean it is unreasonable. Solomon argues that emotional judgments are reasonable, insightful, and even cognitive.

Henry Rosemont, Jr reinforces the compatibility between Confucian ideas and Solomon’s conception of justice. He writes,

To appreciate fully the Confucian orientation, however, it is necessary to note that the concept of justice with which it is most compatible is not the legal one civil or criminal, nor the more socially-oriented but almost purely rational one made famous by John Rawls in his *A Theory of Justice*; rather is the Confucian orientation closest to the more experientially grounded view of the late Robert Solomon in his *A Passion for Justice*, the title of which makes clear that a true sense of justice involves the heart no less than the head.  

In siding with Solomon’s conception of justice and moving away from the Rawlsian conception, I believe we are more able to incorporate the insights and moral sensibilities of the Chinese tradition.

Huaiyu Wang reinforces this point about the sentimental basis of justice in his discussion of Mencius’ *yi*. He writes, “I intend to illuminate a vital dimension of social and political justice that originates in the human heart instead of reason.” The close connection between *ren* and *yi* suggests that the thrust of justice does not first arise out of our rational understanding of law and duty, but because we are affective creatures in a close society:

The origin of justice, which involves primarily the dignity of the self, lies in the human heart, which decides what is appropriate in every concrete human situation. It summons up care and reverence for one’s passing life upon the earth as well as love and

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compassion for other human beings… The ground of justice, as the Book of Decorum says, is “humaneness” — the humane love of others.\textsuperscript{603}

In some contexts yi also bears a sense of dividing things up, giving what is owed to everyone according to their station. However, this portioning out is not driven by rational calculation, but by sentimental consideration, by the humane love of others. Wang freely translates “yi” as “justice,” developing an account of justice as flowing from the \textit{xin}, the heart-mind, rather than from the pure intellect of the Greek tradition. I, too, take the affective as the starting point of harmonic justice, but would emphasize the complementary role of cognitive reason as in critical reflection. Wang is well aware that his notion of Mencian justice does not entirely square with the justice descended from Dike. Nonetheless, when we are looking for a meaning of justice to bridge the philosophical divide, this justice that springs from compassion, sympathy, and our emotional connection to others is an intriguing possibility.

Though bound up with our emotions, I do not want to suggest justice only requires benevolence and love. The pursuit of justice requires a highly critical approach. As Solomon describes, it is born of indignation, anger, and vengeance. These are emotions of critique and displeasure with existing conditions. A theory of harmonic justice does not dispense with or ignore this critical function.

The pursuit of justice requires processes of negation. In the ancient Greek myths, the normal state is cosmic order. Dike, the Greek goddess, is happily sitting at Zeus’ knee until order is defiled on earth and undue suffering must be repaid. Then justice is a killer. Here we see Dike beating Adikia, Injustice, with a hammer.

\textsuperscript{603} Ibid., 327.
Dike destroys those who upset the balance, those who introduce injustice where it doesn’t belong. Justice removes the unwelcome and eliminates the causes of undue suffering.

Ricoeur frames this critical function in terms of putting some behaviors and practices out of bounds and formalizing morality. Morality is the “sieve” that filters our behavior, eliminating anything that cannot withstand moral scrutiny. Moral rules attempt to purify our ethical vision by eliminating the practices that cause unnecessary suffering. Thus, through the second stage of moral purification, traditional practices are critiqued and refined and the behavior of individuals is sanitized.

I see parallels to this reflective and critical function of justice in the Chinese tradition as well. Master Zeng, one of Confucius great disciples, demonstrates his persistent critical reflection when he says, “Daily I examine myself for three things: In making plans for others, have I not been dedicated? Interacting with friends and companions, have I not spoken truly? In the traditions passed down to me, have I not practiced them?”

This is his moral attempt to continually improve, to rigorously refine his behavior, to be critical of any actions that cause suffering or fail to promote high achievement. Through this examination, Master Zeng hopes to eliminate the

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604 “N20.1Adikia.jpg.”
605 *Analects* 1.4. 吾日三省吾身：為人謀而不忠乎？與朋友交而不信乎？傳不習乎？
behavior that does not conform to his values. He admirably demonstrates the self-criticism that is required if we wish to pursue justice.

While Confucius does say laws are not as good as *li* for regulating society, he and other Confucians generally recognize a need for law when people are not restrained by *li*. When people transgress and go outside the bounds of propriety, laws exist to prevent bad behavior. This is a secondary measure, appropriate to the second level of our ethico-moral process, which corrects any excesses that cannot be shaped by the first level of social propriety.

I also see *zheng* 正 of *zhengyi* 正義 expressing this critical function. From Sarah Mattice I understand the process of *zheng* to be looking at the past, investigating the immediate situation, wondering how it will affect the future, and adjusting our behavior to keep straight with the ever-progressing path of *dao*. The practice of constant adjustment, getting back to the path, is in contrast with the idea of fixed or immovable principles. It requires sensitive awareness of the past and of tradition. It demands careful attention to the contours of the present circumstances, especially attention to the suffering of others and ways in which practices disadvantage some people. It calls for creative and insightful imagination about how certain actions will affect the future. The past, present, and future are all due sincere and consistent consideration. Just as “*zhengming* (is) understood as a hermeneutic process of attuning names, of proper naming, intersecting past meanings, present circumstances and future possibilities,”606 so *zhengyi* is a hermeneutic process of attuning proper behavior and adjusting moral judgment in light of past meanings, present circumstances, and future possibilities. It is justice in the sense of making adjustments to trace the movements of *dao*. With this notion of *zheng*, it is critical reflection on the past and understanding of the present that frees us to make different choices to shape the future. To *zheng* our behavior and practices requires a critical eye and reflection on the proper path, the path that avoids undue strife.

Recalling that Cheng says *ren* is the first layer of morality and *yi* is the second, we find this critical function of justice addressed by reflection on *yi*. Every morally weighty action can be further questioned as to whether or not it is *yi*. Even the basic virtues, like those we find on the first ethical level, are judged according to the standards of *yi*. Cheng writes, “basic virtues such as *ren*, knowledge, honesty, straightforwardness, courage, and sternness must be qualified by the principle of *yi* as well as justified as virtues within the restraints of *yi*.“607 The *yi*-ness of an action

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is a secondary question for reflection, and generates restraints on behavior. Though we many act with virtue in our hearts, only if actions are further qualified as yi are they truly worthwhile. Yi is a restraint and is the criterion for critical judgment of the morality of any action. In this sense it tracks the notion of justice I am advocating. Further, Cheng associates yi with ming 明, clarifying and making bright. This highlights the reflective aspect of justice, in which we critically perceive the undue suffering caused by particular actions: “yi is not simply a matter of a natural expression of a certain type feeling but a perception of what is right action under some given circumstances.” Cheng’s conception of yi relates to perception, clarity, judgment, and restraint. These are the characteristics that I would stress in my formulation of harmonic justice on the second level of morality.

I would also stress that these characteristics remain firmly embedded in a context of particular interpersonal relationships that constitute the characters of the people involved. Rather than the familiar philosophical pursuit of absolute and unconditionally valid moral judgments made from the perspective of universal rationality, judgments of yi are always made within a set of circumstances by a person who’s own character is bound up with those circumstances. They are not timeless judgments made by a neutral observer, but context-bound evaluations by participants in the unfolding action. In appropriating the concept of yi for harmonic justice, I wish to maintain yi’s close connection with the particularity of concrete relations and guard against any formulation that suggests judgments of yi follow the pattern of applying an antecedent universal law to a particular situation. Instead, repeated perceptions and judgments of yi in particular cases may form a set of general guidelines, but this bottom up accretion leaves room for tremendous moral creativity and novelty.

Another function of harmonic justice is expansion of moral concern. Whereas fundamental ethical concern can remain focused on the good life for a local community or narrow interests, the morality of justice pushes for greater and greater inclusion of broad interests. Harmonic justice is held up as a heuristic ideal of universal inclusion, but we recognize this as an imagined ideal rather than a real entity or practical possibility. Though we may purify and formalize our ethical desires in laws and codes, we never reach purity, formality, or universality. Though we may zheng, or straighten, our behavior, we never reach a final resting place where the dao comes to a standstill and we remain eternally in perfect alignment. Nonetheless, we can imagine the vague

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608 Ibid., 276.
outlines of what a fully formalized moral system that covered every possible person would be like, and this imagined ideal gives us our heading.

The drive to formalization and universalization that Ricoeur locates on the moral level, I take as the insistence that we not stop pushing our critical reflection and our moral concern as far as they will go. We should not rest secure knowing that our behavior does not cause our friends and family to suffer, but must look further for possibly unjust effects of our practices. These heuristic ideals drive us onwards even though universal justice is actually unachievable. Peter Singer popularized the image of the expanding circle of moral concern, and I see the idea of universal justice working in a similar fashion. The idea of universal and impartial justice is meant to carry us beyond our local interests, to generate obligations to those we have not even met, and to protect others who cannot speak up for themselves. Justice is a rallying cry for these broader interests.

Chinese philosophy also has this notion of extended inclusion. Like justice, the insistence on thinking of yi 義 rather than li 利, personal profits, also takes us away from selfish interests. The Daxue 大学 pushes the idea of extension to the vague and abstract borders of the political world. It increases the focus of concern from caring about self to family to government to kingdom, and I would add from there on to all humans, animals, the planet earth, and the wider cosmos. Caring about all these things, wishing them well, brings them into the jurisdiction of justice. We can ask of any action, “considering the well-being of the environment and my relation to it, was my action yi?” Broadened moral concern stands as an ideal pushing us to pursue ren as far as possible, to bring as many as possible within the circle of just consideration. While Confucian morality begins with the family, Mencius in 1A7 is explicit that we learn to see others as morally valuable in an analogous way. He tells the King, “I treat my elderly as elderly, then take this and extend it to other people’s elderly. I treat my young children as young children, then take this and extend it to other people’s young children. … What the ancient people used to greatly surpass others was nothing but this: they were effective at extending what they did and that is all.”

Extending the feelings and moral concern developed in the family is a way of aiming at more universal morality. This is the secondary pursuit of justice that follows the primary experience of local ethical relations.

609 Mencius 1A7. 老吾老，以及人之老；幼吾幼，以及人之幼.... 古之人所以大過人者無他焉，善推其所為而已矣.
Another way of extending morality is through fa 法, the use of promulgated codes and laws. The Legalist ideal is that the fa should obtain to everybody (some thinkers included the emperor, but others allowed the emperor to be above the law) and have universal application. Enforcement of fa promises to extend moral concern and judgment to everyone in the country. While fa was used to impose both moral and non-moral rules, the Confucianization of law made it an important tool for regarding every member of society as subject to moral consideration.

From Amartya Sen, Robert Solomon, and Roger Ames I also take the idea that practices of justice are more relevant than principles of justice. Alleviating obvious injustices is more pressing than crafting an unassailable theory of justice or fully spelling out a utopian government. Sen writes,

First, a theory of justice that can serve as the basis of practical reasoning must include ways of judging how to reduce injustice and advance justice, rather than aiming only at the characterization of perfectly just societies – an exercise that is such a dominant feature of many theories of justice in political philosophy today.\[610\]

The justice I am advocating follows this distinction and aims at making concrete improvements in people’s lives through applied ethics. Sen contrasts “arrangement-focused transcendental institutionalism” with “realization-focused comparison.” The first aims to create a perfectly just social arrangement or to organize the principles of justice. The second makes a relative evaluation of better or worse concerning the actual circumstances of individual’s lives. The injustices visited upon particular people in our world today are a horror show. A theory of justice must give us a way to address them and evaluate better and worse practices. To reduce actual injustice requires concern for people and their realization of capabilities rather than ideal institutional frameworks and proper rule-following, nyaya rather than nitti in Sen’s use of the terms.

Like Sen, Solomon wants to move away from an approach to justice that focuses solely on institutions and organizational setups. He insists on the particular and draws our attention to justice in our everyday lives. Rather than seeing justice as a quality of fair institutions or as some grand vision that is always a venir, still to come, justice is a part of our common experience. He says “I want to shift the focus from impersonal institutions and government policies to individual people and their personal passions.”\[611\] Justice is an everyday concern for everyone, not just for political philosophers trying to envision the organization of social structure. Justice is cultivated at the personal level and is engaged by particular people and situations.

\[610\] Sen, The Idea of Justice, ix.
\[611\] Solomon, A Passion for Justice, 3.
Ames’s understanding of justice is resolutely concrete, focused on “doing justice” to particular people and situations. This focus is shaped by his account of relational selfhood. He ties the dominant notion of procedural justice to the fiction of individual autonomy and the unquestioned support for freedom as an indefeasible value. This fiction suggests that if people are all essentially free, then the just form of society is one that does not constrain anyone’s choices by forcing them to help others. To be free means to be free from responsibility for society and for others. The perpetuation of this libertarian myth redounds to the benefit of moneyed interests at the expense of social justice. If what makes people equal is their shared freedom, then procedural justice that honors the essential equality rather than people’s accidental differences seems to be truly fair. However, because people with financial and social resources are able to influence the form that codified procedures take, and able to afford lawyers to help them navigate the procedures, and are able to exploit loopholes and legal subtleties, having procedural justice in the sense of need-blind processes actually works against social justice. Even though the same procedures apply to everyone, some people are positioned to navigate the procedures more easily. These consequences, Ames says, follow from viewing people as essentially free and autonomous.

Understanding people as fundamentally relational and only subsequently individually realized, Ames calls for a different understanding of justice.

There is a second understanding of justice that we might invoke as an alternative to this notion of upholding a principle of righteousness and rectitude. “To do justice” to something means to appreciate it fully and to respond to it in a way that respects its full worth. Indeed, this second, more holistic notion of justice references the complex, creative process of attempting to achieve what is optimally appropriate in the specific, usually inequitable relations and situations that locate us as always unique individuals within family and community.\(^\text{612}\)

A pursuit of this type of justice recognizes the immediate context and the presence of actual inequality and tries to do justice to the situation at hand and the people involved by pursuing equality as parity in difference. Instead of looking at an abstract or metaphysical self as the site of equality, such justice is achieved in honoring every circumstance in its particularity.

Ames builds relationships into the fabric of moral concern, since relationships are at the heart of human experience. A “radical empiricism” acknowledges relationships as constituents of the world. Ames refers to justice as a kind of “relational virtuosity,” such that justice is a matter of excellent conduct in concrete relationships. Being excellent in relationships requires careful attention to the particular needs of everyone in a certain situation.

\(^{612}\) Ames, “Confucian Role Ethics and the Ideology of Individualism: Doing Justice to Justice.”
It also follows that equality is not based on an essential similarity in humans as dignified, rights bearing agents. Instead, equality recognizes actual differences and accounts for them in coordinating relationships:

equality, rather than being a quantitative, reductive, and essentialistic sameness, is parity in the sense of an achieved functional equivalence that puts everyone on a par in having a claim to a fair share of the available resources according to need, and on a par in being obliged to give back proportionately to the social nexuses to which they belong. Equality is not something that we possess, but something that we are able to achieve together in a flourishing community through the coordination of our differences.613

Equality is not a quality possessed in virtue of a transcendent soul or rational capacity, but is a way of adjusting appropriately for different people in community. Ames call calls this equality “parity in difference.” Ensuring the parity in relationships between people with obvious empirical differences is the task of justice. An Amesian conception of justice abjures the pursuit of transcendent principles or rights based on an abstract idea of rational selfhood; instead it honors parity in the particular relationships that shape people and their communities.

The practices that refine and integrate our joint interests in the good life enact harmonic justice, 礼義.614 Justice rooted in harmony cannot simply focus on autonomous individuals, but must look to the relationships between distinctive parts. This conception of justice accounts for relationships and the emotional depths of interpersonal interaction. It sets its critical glare on undue suffering rather than on an abstract fairness. This is a conception of justice that never abandons our basic embodiment, affectivity, and acculturation. Allowing this understanding of justice with our fundamental sense of harmony brings us a practical goal of social harmony which both respects people in their particularity and progresses towards a harmonious life with and for any others.

Pursuing harmonic justice requires that we investigate the values and traditions that inform our actions. An expanding perspective or horizon can make the reflection on one’s assumptions and values more liberating. Community is a flexible boundary and no culture need be stagnant, and so the introduction of new ideas and values makes it possible for new conceptions of justice to arise. Justice is defined by historical persons within particular traditions, but this does not mean that any definition is above scrutiny or beyond criticism from a broader perspective. We come to the problems of justice bound by the limits of our community and horizon, but these limits are highly

613 Ibid.
614 My own term
elastic. Justice demands that we give maximum effort to ensuring the broadest possible care, even when it tests our fundamental assumptions.

Harmonic justice is the practice of identifying undue suffering and working to remedy it. Undue suffering is often identified by our emotional outrage at seeing it. Such emotions can promote critical reflection on our actions and the assumptions inculcated in our upbringing. These practices can be subject to scrutiny, though not with a view from nowhere and not without some grounding in a familiar culture. Harmonic justice involves excising and putting certain actions and practices out of the bounds of acceptability, specifically those practices that cause undue and unnecessary suffering. It further involves extending our care beyond our local interests and showing concern for suffering wherever we may find it. This is a conception of justice that acknowledges the impossibility of “absolute,” “certain,” “universal” and other such transcendent qualifications, and yet pushes us to ceaselessly advance towards these worthwhile heuristic ideals born of human imagination. Harmonic justice, then, is embodied, passionate, critical, expansive, practical, particular, and hopeful.

### Unavoidable Tragedy

The combination of fundamental harmony and harmonic justice cannot avoid tragedy. Instead, following Ricoeur, I hope these ideas help us recognize tragic wisdom for the sake of practical wisdom. Human life on earth engenders unavoidable conflicts. Rather than imagine that life could be perfectly blissful if only we had enough compassion or a fail-proof formula for morality, aiming at just harmony means acknowledging tragedy and nonetheless finding a way to make the best.

Where there are other definitions of the heart of tragedy, given the ideals of harmony and justice, the following strikes me as tragic: no matter our hopes and efforts, humans are unable to manage all relationships at once\(^\text{615}\) and are not able to addresses all suffering.

My contention that undue suffering is the key to injustice sets up another issue. Though born onto earth through no fault of their own, humans inevitably face pains. A doctrine of original sin may try to justify a life of toil and bleeding, but without such a doctrine then all existential anguish is, in a sense, undue. Further, human life on earth is both competitive and capricious. Everyone has

\(^{615}\) For instance, Creon can’t be both king and father-in-law to Antigone, and Antigone can’t be both sister to Polynices and citizen to the city. Oedipus can’t be both son and husband to Jacosta.
basic needs and though we may claim that each has a right to fulfill basic needs, life is such that
everyday some will die and others will live, some will suffer and others will thrive. Though we
sympathetic and justice-seeking people may hope to relieve all undue suffering, this is not
possible. Alleviating one person’s injustice often puts new burdens on others. Caring for one
relationship puts strains on another. It is tragic that that there is no end to undeserved suffering in
the world.

This tragic multiplicity of genuine moral demands is highlighted by Ron Bontekoe. He writes,
“(Kant) seems to have been incapable of recognizing the existence of those tragic situations in
which two claims, each of them fundamentally justified, cannot be mutually accommodated by
any effort of reason and one claim, for all of its legitimacy, must simply go down before the other.
Such situations are real; they do arise.”616 I would push further and say that not only do such
situations arise, but they are a constant presence for those who regard suffering in any corner as
implying a moral duty. In the face of these unending demands on our sympathy and the resulting
sense of obligation, the responsible person will “struggle to resolve conflicting values and
commitments – doing justice, insofar as it is possible, to all of them simultaneously. There is no
guarantee he will be successful in this. In fact, it is virtually certain that to some extent he must
fail, because the tension and conflicts existing among the various values that we can rationally
approve are enormously complex.”617

Extending our care and concern increases our vulnerability. The universalizing thrust of morality
expands our awareness of injustice. Though we wish it, justice cannot be absolute and harmony
cannot be pure and eternal. It is always polluted by suffering somewhere. The further we extend
our awareness and moral concerns, the more harmony is available but so is more injustice. The
moral hero who would extend his or her care to every human and animal on the planet must come
to realize the futility of such an ambition. The world is too much, suffering is too much, and in
putting one’s efforts into any one direction, more opportunity costs and negative externalities
mount. The tragic hero is like the Jain who, motivated by ahimsa, incredible compassion and
desire to do right for all living things, sweeps the ground in front of his foot fall so that he might
not step on a single creature and harm it. Sweeping may save some insects, but at the same time it
thrashes even smaller insects, tiny motes, and uproots living bacteria. The wise Jain knows this,
but can do no more than be extremely careful and recognize the tragic truth that there is no end to
suffering, no matter how compassionate or considerate we may be.

616 Bontekoe, The Nature of Dignity, 44.
617 Ibid., 78.
Ricoeur argues that the Kantian formulation of morality in terms of universal law can lead to conflicts when we have to act in morally fraught situations. The formalism of the law may strain on the return path to action in concrete situations. It may be impossible to both respect the universal law and at the same time honor the individuality and infinite worth of the actual other person in front of us. We may have to sacrifice either our principles or our friends. When there is conflict between rational duties and caring solicitude, for Ricoeur solicitude holds the trump card. In such cases, Ricoeur argues that we must look to our fundamental values for directions. Recourse to the ideas of better and worse and the good life will guide our choices rather than duty to a universal law because living well is the *raison d’être* for morality and the only ground for deciding between alternative worthy goals. The formal law cannot supply us with a final word to decide between competing obligations so we must turn to the models and standards that show better and worse options for life, the standards supplied by visions of the good life.

In the social arena, what drives us back to the ethical level is the diversity of real goods that are supposedly governed by justice in distribution. As Ricoeur points out, drawing on Walzer, the diversity of primary goods means that only a conception of the good life can direct actual distributions. Similarly, because of the diversity of real suffering in the world, only a conception of the good life can generate the relative evaluations needed to prioritize our efforts at relieving suffering. The moral demand of harmonic justice to alleviate undue suffering must refer to a set of local standards about what counts as suffering.

Our understanding of justice must be rooted in a conception of the good life. Because justice is connected with equality, and Sen’s question “equality of what?” is always in play, only an actual set of social practices can provide the terms to be equalized. Bontekoe writes, “The point is rather that, in order to determine what it is precisely that needs to be equalized if justice is to be achieved, we must appeal to some particular conception of the good life – a version of the good

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618 The libertarian conception of justice holds just the opposite. Those who follow Nozick’s reasoning equate justice with respecting the absolute rights of free individuals. One’s rights, moral and legal, trump any consideration of good or bad consequences. This justice has no obligation to others’ suffering, but only to respecting their freedom and self-determination. Having declared abstract rights to be indefeasible, if on the return path to action invoking these rights causes measurable damage to infinitely worthwhile individuals, those damages have no standing. Rights trump any claim of suffering. This extreme version of prioritizing the right and disregarding consequences has, predictably, led to some terrible consequences.
life that this form of equality (which defines justice) helps to promote.”

Again, we see the problem of resting at the moral level where an abstract ideal – i.e. equality, justice, fair distribution, alleviating suffering – does not give us concrete direction on what to do for whom. There is no universal form of justice or moral law that we can find outside of the various historical conceptions of social and personal ideals. We must rest our actual choices upon some ground, but the moral level cannot supply that ground. Instead we refer back to our ethical intuitions. In the terms of our present discussion, we look to the ideal of harmony when we are trying to decide what equality refers to, or how to prioritize primary goods, or what suffering to address.

However, this recall of harmony is not a simple return to our fundamental desires and socialization. Bontekoe writes, “It would be an even more serious mistake, however, to presume that, because reason cannot always provide unequivocal answers to the questions ‘How should one act in these circumstances?’ we might dispense with it, and rely instead entirely upon custom or feeling.”

Though the moral level does not supply an ultimate criterion, it has still played an indelible role. This recalled harmony has been passed through the sieve of morality, purified, and as far as possible stripped of injustices. Certain forms of harmony have been put out of bounds, e.g. those harmonies that ignore or inflict undue suffering. The conceptual substitution of what Habermas calls “conventions” for what Ricoeur calls “considered convictions” is important in grounding Ricoeur’s return to the ethical level for final judgment in moments of conflict. Harmony that has risen to the level of considered conviction by thorough scrutiny, filtering, and extension at the moral level is what I am calling just harmony.

Recalling the way Ricoeur’s later work divides ethics into upstream fundamental ethics and downstream applied ethics, we likewise have two levels of harmony. The first is the basic imprint of a good life during one’s acculturation and education. The second is the refined vision that has been reflected upon, clarified, and restrained. Having gone through the ordeal of justice, it is a more refined and pure harmony, while at the same time a more expansive and inclusive harmony. It is a harmony achieved by eliminating, as much as possible, the discordant obstacles of undue suffering.

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620 Ibid., 44.
In other words, it is harmony that has been zheng-ed. We can call it zhenghe 正和. This is harmony that has been “adjusted” “corrected” “trued” “squared” “plumbed” “straightened” and even “justified” as in making the margins straight. Following Mattice’s gloss on zhengming, this adjustment is undertaken with critical awareness of the past, comprehensive observation of the present, and concern for the future. To zheng harmony is to identify those places where previous pursuit of harmony has been blind to suffering, or has narrowly excluded others from joining the harmony. It is to identify the dynamics of the moment and to arrange them most productively. And it is to ensure that we are not creating an unstable moment of beauty at the cost of a chaotic future. This thorough examination and responsible deliberation gives us chance to create a higher quality harmony.

Once again recall that Master Zeng in Analects 1.4 is doing just this, criticizing his own behavior for the sake of better and more harmonious relations. The first thing he reflects on is extending his concern and giving his best efforts to other people, not only his friends. He first thinks of supporting others. His second concern is being trustworthy with his friends. Finally he’s is concerned about practicing what he has learned from his teachers and ancestors. He engages in rigorous, consistent, critical self-examination, especially to see if he has failed in his relationships with other people. Master Zeng is engaged in harmonic justice for the sake of just harmony. He is not asking if he has achieved an eternal standard or if he has complied with the universal law, but he’s asking himself if he honored people and strengthened actual relationships. He wonders if he did anything to cause suffering, or if he has enhanced the harmony in his community and beyond. Master Zeng demonstrates both the concern with others and the critical reflection that are constituent of harmonic justice and just harmony. This exemplifies the attitude and commitment needed to achieve just harmony, but can perhaps be improved by soliciting critique from others and relying on public scrutiny rather than reflecting only by himself.

A harmony that incorporates moral reflection should be extended to its furthest possible bounds. This is one lesson of the Daxue, which describes how one can affect the whole world (tianxia 天下). It prescribes that we start with investigating things, cultivating ourselves, and managing our family, but the benefits of this local focus extend to the whole world. The Daxue speaks of abiding in the utmost excellence. In my own terms this utmost excellence means just harmony. This is one of the Daxue’s, and subsequent Confucianism’s, important descriptions of the good life, referencing bright virtue, intimate relations, and the utmost excellence. This is described at

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621 My own term.
622 在止於至善.
the resting point, settlement, and peacefulness. And the way to achieve this echoes much of what we saw in harmonic justice. The first steps in the *Daxue*’s progression are to “investigate things” (*gewu* 格物) and “extend realization” (*zhizhi* 致知). Investigating and pushing further reflects our earlier insistence that justice involves critical reflection and scrutiny, and expanding the circle of concern. Later steps in the *Daxue* are to “make the heart proper” (*zhengxin* 正心) and to “regulate the family” (*qijia* 齐家). To *zhengxin* is to check and correct the impulses of our hearts and minds. We do not let our desires and thoughts stray out of bounds or out of line. To *qijia* is to ensure that the family is in order, that all are accounted for and none is left out. *Qi* 齐 is often translated as “regulate” which I understand as to make regular, to not leave uneven or jagged, and to not have unaddressed problems standing out. It means to be orderly and governed. Thus we can see in the *Daxue*’s pursuit of the highest good a process akin to the ideals of harmonic justice.

Another sense of the expansion at the third level of wisdom in action is found in the relation of *li* 禮 and *fa* 法. Recalling the statement that the highest function of *li* is harmonization, when the *li* are enforced by the nation-wide reach of *fa*, we push this harmonizing function to the furthest possible extent. The instrument of *fa* takes local norms and extends them to all. Because *li* demand an unstinting and unrelenting commitment to ensuring that every particular person has the right standing and resources to fulfill their role, universal enforcement of *li* ensures that everyone is afforded consideration. *Li* guide our actions to even the most distant relations. There is a *li* of treating parents, a *li* of treating neighbors, and a *li* of treating strangers. There are no relationships that escape the parameters of *li*. The idea was that by enforcing *li* through legal coercion, people would adopt the norms of their own accord for their inherent benefits. *Li* enforced by law formally proscribe behavior, but not for the mere purpose of following laws. Rather, the formal laws are in place to realize a greater harmony. The use of law was often justified by appeal to the popular morality articulated in the canonical texts, and not grounded by reflections on jurisprudence.

However, instituting *fa* cannot be simply setting *li* in stone, whatever the *li* may be. There are strict Legalist thinkers who claim that the content of laws are not as important as the fact that they are laws. Where *fa* can fail is by institutionalizing some suffering-inducing *li*. Uncritical reification of harmful norms into unyielding laws does not further the goal of harmonic justice. Instead, the process of establishing *fa* must carry out the filtering process, and must also allow reexamination of established *fa*. Because of this, the discretion of magistrates using their own
practical wisdom was an important point to reintroduce the value of harmony into the legal process and ensure that *fa* were not entirely blind to real consequences for social harmony.

People enjoying fundamental harmony need not demand that harmony be extended. Harmony can be sufficiently harmonious with just two or three parts in relationships. The drive to push for ever broader, more inclusive, and more diverse harmonies is based on the universalizing impulses of our sense of justice. Justice leads us to think of all suffering, and not just suffering near at hand. Thinking of others encourages us to stretch the parameters of harmony, even if a narrow harmony has already been achieved. In this way, a just harmony is an advance from fundamental harmony because it includes more in the harmonic field.

Harmonies can be better or worse. Rather than a binary “on or off” option, a harmony admits of degrees. Any suffering of injustice among the constituents brings harmony down in degree. Concern for justice as a concern to eliminate undue suffering contributes to harmony by removing the discord from the constituents of the whole. If a contributor is out of tune, radiating pain and suffering, then the harmony feels it. Imagine the symphony on stage that could keep playing while one flute player was choking to death in the middle of them. Restoring the flute player to health and relieving his suffering will allow a richer, deeper, and more extensive harmony to take shape.

Recall Cheng’s description of lower and higher grade harmonies, from mere co-existence to creative interpenetration. Then, recall Whitehead’s insistence that discord can lead to higher quality harmonies and is preferable to a limited and stale harmony. This can be seen in the process of expanding from fundamental harmony to just harmony. An experience of harmony within a small group may be limited and tame. If those group members expand their circle of concern and incorporate new people into the group, they may take on new suffering and encounter previously unnoticed injustice. But the process of incorporating them provides a chance to build a new harmony, to bring renewed focus to distinctive and novel parts and to use them to raise the quality of the harmony. Expanding the parameters of harmony might bring forth initial discord and discomfort, but it also creates a possibility of a higher grade of harmony. Because harmony is dynamic, the corrective acts of justice don’t destroy it but rather transform it into another kind of harmony. New configurations of harmony are always possible. This idea of new configurations of harmony motivates us to carry on in the face of insurmountable suffering. This is where the ideal of just harmony as a heuristic leads us higher and higher without an absolute goal in view.
Huaiyu Wang reinforces my contention that a higher quality harmony is the aim of justice. He invokes this through the image of the sage, the person who has mastered depths of care for others and the dignity that he equates with justice: “A Chinese sage is not a person who is perfect, who never makes mistakes, and who has a miraculous, ideal solution to all problems, but one who has the sincerity and courage to acknowledge human finitude and imperfections and who is able to explore and discover without ceasing new junctures of peace and harmony in human life.”623 It is the ability to realize novel harmonies – not perfect forms or absolute principles – through virtuous efforts that characterizes the sage. Having declared that Chinese justice is a matter of heart-felt care, Wang implies that when people realize this kind of justice, harmony and peace are the blessed result:

In the light of this thinking, the true dignity of the self is only realized with the peace and harmony of the historical community to which one belongs. And as a family, a community does not obtain its order and harmony through the enjoining power of certain social or divine authorities, but through love and care among different individuals, such as the benevolence of the father and the filial devotion of the son, and the kindness of the older brother and the respect of the younger brother…. The ultimate ground of a peaceful and harmonious community is not the sacred power of some divine or societal authority, but the genuine care and reverence among individual persons within the community. The root of justice lies in the sensus communis of the human heart.624

The root of justice is in the individual heart’s communal feeling and its fruit is a harmonious community. This is a concise reiteration of what I am describing as the three step ethico-moral process of harmonic justice for just harmony.

Stephen Angle also suggests that a higher harmony is built upon justice. He closely associates li 理 with harmony. He translates li as “coherence” and says it is, “the valuable and intelligible way that things fit together.” He relates it directly to harmony, writing, “Coherence does not point at individual things alone, but at their relations; the fundamental idea is of a harmonious organic unity. Each thing is different, as arms are different from legs, but each is part of the whole.”625 Here we have the Chinese harmony that focuses on the relationships between diverse constituents in an organic unity. What’s more, his description of harmony invokes the terms of justice when he writes, “Harmony involves seeing that each element receives its due weight at each point in time.”626 The question of what each is due is a classic formulation of justice, and here Angle affirms that this is a chief concern of harmony too. The high-quality harmony associated with li,

624 Ibid., 327.
625 Angle, Sagehood, 122.
626 Ibid.
which Angle advocates, relies upon every element receiving what is due to it. Practicing justice by giving each part its due enables the high quality harmony that fulfils the structure of *li* and its normative implications.\(^{627}\)

Just harmony is harmony that has been adjusted and straightened out, *zhenghe* 正和. We straighten out our fundamental sense of harmony by reforming our behavior and our practices in light of the suffering we perceive during critical reflection. To determine what suffering to address and how to correct it, one must ultimately rely upon an understanding of suffering and priorities developed by experience in a particular time and place, but this does not eliminate the moral requirement to push one’s concerns towards ever-greater inclusion. A harmonious configuration that has expanded to encompass more participants and has reduced suffering among the parts is more harmonious and has a higher quality harmony than one that has not been molded by a concern for justice.

**Conclusion**

In this section, drawing on a diverse group of philosophers and thinkers from across history and around the world, I have characterized fundamental harmony, harmonic justice, and just harmony. Fundamental harmony is that emotional and aesthetic sense that everything is working well together, which is inculcated in early family and community life. Harmonic justice is the alleviation of undue suffering, realized through emotional awareness, critical reflection, and expanded concern. Just harmony is harmony both expanded and refined by the insistence on harmonic justice in our dealings with others. I have described these as moments in a broad ethico-moral process that is unavoidably touched by tragedy but that also offers us the possibility of continuing improvement.

\(^{627}\) Angle identifies the ability to recognize and promote harmony as characteristic of a sage. He claims that the ability to recognize harmony does not need to be trained, but that our commitment to look for it does (Ibid., 143.). I agree that recognizing harmony is a primal ability, but that recognizing the quality of harmony and the differences between harmony that incorporates genuine diversity and eliminates suffering and harmony that simply settles into its comfort zone is something that needs training. This does not happen automatically but requires education, cultivation, and dedicated effort. Angle suggests that training strengthens people’s commitment to pursuing harmony, but I argue that it also enables them to see new qualities of harmony, such as the kind of mature harmony that has been refined by the pursuit of justice.
While I have continued to talk about three distinct levels, I see ethics, morality, and practical wisdom as thoroughly and inextricably intertwined. Only in analysis can we distinguish the moments of emphasis. In the end I cannot ascribe priority to either the good or the right, to harmony or to justice. They must both be given full weight and due consideration, and when there is conflict, only sincere reflection on the situation and the values that survive scrutiny can guide us in sacrificing one ideal to the other.

Though I hold on to the distinction between the two moments and recognize possible conflicts between them, in the grand scheme the question of the right is intimately bound up with the good life, so much so that to in principle pit the right against the good fails to recognize the full dimensions of either. Solomon writes:

> The whole philosophical division of “the right and the good” that goes with it has been a colossal mistake. Justice (“the right”) does indeed contain the essential prescription for the good life, that no matter what particular goals or interests we may each pursue, in is our doing so (and learning to do so) in the context and community of our peers that makes our pursuits and activities meaningful.  

Solomon, A Passion for Justice, 88.

The good and the right are united in the fullness of collective human endeavors and ultimately one cannot find fulfillment without the other. As Solomon puts it, “the joint pursuit of the good life is justice.” Justice is an indispensible consideration for living in harmony, and living in harmony with others is a motivation of justice. Rather than simple opposition, justice and harmony are ideals that must be jointly considered.

Our hope is that by doing justice for those who suffer, harmony will increase. Doing justice builds relationships, leaving the all the affected parties in a better state through their mutual influence. Doing justice makes deeper integration possible, eliminating the suffering that prevents people from contributing the best of themselves to relationships. Where people enjoy justice they are able to provide the boldest, deepest, most vibrant individuals possible to the overarching harmony. Justice that creates the conditions for beautiful integration is harmonic justice. The aim of such harmonic justice is a just harmony.

Given that harmonic justice and just harmony are heuristic ideals, in practice we might rather emphasize the processes of “harmoniously adjusting” and “justly harmonizing.” The active practice of doing justice doesn’t focus exclusively on some future realization, but brings attention back to the decisions and actions we make in the moment of moral weight. Instead of just creating

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628 Solomon, A Passion for Justice, 88.
629 Ibid., 94.
a static vision of idealized justice or harmony, in practice we must work at the activities of harmonically adjusting and justly harmonizing. Having sketched the theoretical considerations that characterize harmonic justice and just harmony, we now turn to the question of how to put these into practice in the real world.

RESTORATIVE JUSTICE AS A MODEL

Introduction

Above I have tried to lay out the concerns and concepts that inform the notions of harmonic justice and just harmony. This has been a theoretical exercise in which I challenged and reformed many ideas about harmony and justice, and also highlighted and developed the relationships between them. I hope to push this theoretical exercise further and suggest that these ideals can structure our practical pursuit of a better society and better world. I think that there are important affinities between my understanding of harmonic justice, just harmony, and the practices that fall under the heading of “Restorative Justice” (RJ). I hope to reveal those affinities and to suggest that incorporating these ideals can benefit existing RJ practices. As well, I believe that RJ practices give us a model of how to go about actually implementing our ideals where conflicts occur, that is, how to justly harmonize strife-ridden circumstances.

While scholars identify restorative justice practices going back thousands of years, restorative justice as a focused movement in modern criminal justice is a relatively new field. We can trace it to pioneering work done in the 1970s that arose from perspectives in Canadian Native American traditions, Mennonite religious communities in the US and Canada, and aboriginal peoples from New Zealand and Australia. Ideas of restorative justice have been put into practice in schools, prisons, and on large stages such as at the South African Truth and Reconciliation Commission.

Restorative justice is an umbrella term and different theorists and practitioners have different definitions and emphases. As generally understood, RJ involves at least three fundamental ideas: 1) crime or injustice is a primarily a harm to people and communities, not to the state; 2) all parties involved, including the offenders, the victims, and the affected community members, should be engaged in repairing the harms done; 3) repair and reconciliation should lead to growth for all individuals involved and the community at large.
We can see suggestions of these three fundamental ideas in the following definitions:

Viewed through a restorative justice lens, ‘crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance.’

Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future.

A definition of restorative justice includes the following fundamental elements: ‘first, crime is viewed primarily as a conflict between individuals that results in injuries to victims, communities, and the offenders themselves; second, the aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the dispute; third, the criminal justice process should facilitate active participation by the victims, offenders, and their communities in order to find solutions to the conflict.’

While there are many other definitions in the literature, the common ground seems to be a focus on direct personal harms, the importance of encounters and dialog among affected parties, and the aim at restoration and reconciliation.

There are strong connections between modern conceptions of RJ and the Confucian tradition. As we noted earlier, John Braithwaite hinted at the connections when he wrote, “China is also the home of Confucius, arguably the most influential thinker about restorative justice the world has ever known,” and “What a pity that so few Western intellectuals are engaged with the possibilities for recovering, understanding, and preserving the virtues of Chinese restorative justice while studying how to check its abuses with a liberalizing rule of law.” Xinzhou Zhang also highlights this in his study of RJ in modern China, writing, “Although China has gone through great changes, the ideology of Confucian culture continues to influence Chinese thinking and behavior. The key values of Confucianism resonate with the reintegrative value of restorative justice.”

Some of the important resonances between contemporary RJ and traditional Confucianism include:

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630 Zehr, Changing Lenses, 181.
632 Galaway and Hudson, Criminal Justice, Restitution, and Reconciliation, 2.
634 Ibid., 22.
• the focus on crime as a violation of other people rather than the law, as we saw in the above discussion about Confucianization of law
• the emphasis on social values and community standards over legal statutes
• the importance of recognizing the community’s interests when handing down judgments and punishments
• the appeal to emotions, particularly shame (chi 耻), to regulate society
• the role that family and community members play in redressing a person’s crimes
• the aims of the RJ mediator overlap with the traditional Chinese magistrate, the fumuguan, which Rosemont describes, writing, “While of course he had to uphold the law, and uphold the penal code, nevertheless in many of his functions he served much more as arbiter than as judge or adjudicator, his main task being to resolve a dispute between clans, families or other neighboring groups in conflict with each other.”

Zhang points to Confucianism as a basis for increasing RJ in China today, writing, “the emphasis on harmony in Confucian culture and informal social control practices at the grassroots level seem to have restorative values and possibilities.” Rosemont explicitly calls for attention to Confucian notions for those who would see a restorative function, rather than simply a retributive function, for Truth and Reconciliation Commissions. He writes:

I will focus on the classical Confucians, attempting to show that their views have a strong claim on our attention today, and perhaps allegiance as well. I will equally attempt to sharpen the contrast between the goals of a truth commission seeking retributive justice and a reconciliation commission devoted to restorative justice.

Rosemont argues that the Confucian conception of persons as fundamentally relational rather than autonomous can ground the highest restorative and reconciliatory ambitions of such proceedings. Given the relational character of restorative acts such as atonement and forgiveness, commissions which employ the Confucian focus on relationships rather than rights of autonomy would better promote reconciliation than would fact-finding and guilt-finding trials.

Since others have seen a strong basis for connecting Confucian ideas and RJ, I believe that the ideals of just harmony and harmonic justice, which incorporate much of the Confucian sensibility in explicit dialog with theories of justice, provide an updated and refined basis for understanding and improving the practices of RJ.

The RJ movement is as much practical as it is theoretical. While there is an extensive literature on RJ legal theory, social studies, and theory of justice, this work is often meant to support the

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implementation of RJ practices in schools, community centers, court rooms, and prisons. Practices vary, but the Center for Justice and Reconciliation provides a useful summary of the ways RJ promotes its ideals:

- **victim-offender reconciliation/mediation programs** use trained mediators to bring victims and their offenders together in order to discuss the crime, its aftermath, and the steps needed to make things right.

- **conferencing programmes** are similar to victim-offender reconciliation/mediation, but differ in that they involve not only the offender and victim, but also their family members and community representatives.

- **victim-offender panels** bring together groups of unrelated victims and offenders, linked by a common kind of crime but not by the particular crimes that have involved the others.

- **victim assistance programs** provide services to crime victims as they recover from the crime and proceed through the criminal justice process.

- **prisoner assistance programs** provide services to offenders while they are in prison and on their release.

- **community crime prevention programs** reduce crime by addressing its underlying causes.

While controversial, studies indicate that restorative justice is particularly effective at reducing recidivism and increasing satisfaction among victims, among other benefits. There are many contours and debates within the RJ movement, but to show the interplay of harmony and justice at work in RJ I will take just one influential version put forth by John Braithwaite.

**Fundamental Harmony in RJ**

In RJ, the conception of justice is rooted in the ethical. Most importantly, it treats injustice as a violation of people rather than a violation of laws or of the state. Braithwaite says, “Restorative justice means restoring victims, a more victim-centered criminal justice system, as well as restoring offenders and restoring community.” RJ practices address problems and injuries suffered by people and communities. This is in contrast to the modern criminal justice system in which crime is understood as a violation of laws and codes that damages the state, which are concerns of the second moral level. In RJ, suffering and disruptions of the good life motivate the

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641 Braithwaite, “Restorative Justice and a Better Future.”
pursuit of justice. By recognizing that crimes inhibit and damage victims’ ability to live the lives they want and diminish the enjoyments of community, RJ locates crime as a problem of on the level of living well with and for others, that is, the level of our fundamental ethical drives.

Restorative justice is not operative in so-called victimless crimes. RJ comes into play when there is suffering, suffering that disturbs social harmony. A robbery does not just violate the law; it injures the victim materially and makes them feel unsafe in the community. This loss of security and this fear of one’s neighbors directly inhibit social harmony. RJ comes into play when there is a problem with our ability to live with and for each other.

Understanding RJ as addressing damaged relationships instead of broken laws puts it in the arena of ren 存, which is about the way one behaves in relation to others. RJ is the community’s response to someone’s failure to be ren, a failure to treat people appropriately, and the painful consequences of that failure. RJ aims to restore relationships and to reestablish what counts as consummate conduct among neighbors and family of various levels of intimacy.

In mediation and intervention processes the presence the offender’s family members or close friends is an important feature. The family is there to provide emotional support during the difficult process of facing up shame and guilt to but also to remind the offender of the values he or she was raised with. The family is there to show that the ideal harmony envisioned by the family has been disrupted by behavior that is out of tune with everyone else’s desires. Not only does a robber harm his victim, but a thieving son is out of harmony with his mother’s wishes and is causing her to suffer too. RJ draws upon the resources of family bonds and the emotional ties of one’s upbringing. On the victim’s side, the presence of family and friends shows that the victim is not alone, that the bonds of community strengthen us in times of suffering. As Braithwaite says, “restorative justice alms to restore social support. Victims of crime need support from their loved ones during the process of requesting restoration.”642 Offenders, too, need restored social support.

According to Braithwaite’s version of RJ, the sentiment of shame plays a major role in the reintegration of the offender into the community. Shame is operable when there are strong bonds and social integration. As opposed to feelings of guilt in which a person judges themselves harshly, people feel shame in response to the judgment of others. Shame is a social sentiment which takes into account the approbation and disapproval of the community. One of Braithwaite’s

642 Ibid.
main contributions to RJ theory is his advocacy of using shame to reduce crime and reintegrate offenders back into the community they have violated. He writes, “Crime is best controlled when members of the community are the primary controllers through active participation in shaming offenders, and, having shamed them, through concerted participation in ways of re integrating the offender back into the community of law abiding citizens.”

Bringing offenders to recognize the hurt they have caused to victims, to their own loved ones, and to the community typically induces feelings of shame. RJ proceedings remind offenders of the communal values they have violated, of the disapproval they have provoked, and of the hurt they have caused. Facing up to these harms provokes a shame response. In the use of social disapproval, the invocation of communal values, and the appeal to emotions, the RJ practices of re integrative shaming appeals to the first level of ethics.

Braithwaite is keen to distinguish re integrative shaming from stigmatizing shaming. “Shaming can be counterproductive if it is disintegrative rather than re integrative. Shaming is counterproductive when it pushes offenders into the clutches of criminal subcultures; shaming controls crime when it is at the same time powerful and bounded by ceremonies to reintegration the offender back into the community of responsible citizens.”

Reintegrative shaming calls out the wrongness of the criminal act, not the evil of the offender. This makes it possible for the offender to rejoin the community if the criminal acts are renounced without the lingering stain of personal evil. Ensuring that people are not permanently stained makes it possible for them to rejoin society and contribute to harmony.

This recalls deep role that shame plays in Chinese and Confucian culture. As Confucius emphasized in Analects 2.3, the use of li 禮 to educate and shape people’s behavior leads them to develop a sense of shame, which proves an internal behavior control. Taking the role of legal sanctions as secondary, the communal and relational basis in li provides a first level of social control that is directly connected with an emotional response. Regarding RJ, Confucians recognized that invoking this emotional response is a way to motivate people to maintain connection with or rejoin the community and receive social approval by conforming to virtuous practices. The anticipation of feeling shame suppresses disapproved behavior and sustains fundamental harmony, and actual feelings of shame restore harmony by driving people back towards approved conventions.
Braithwaite’s version of RJ sees internal and constitutive relations between individuals and the society. He describes people as less autonomous than Kant would wish them to be, yet less than completely socially conditioned as strict communitarians would describe them. He aims for a moderate position which recognizes the strong points of each position: “Both sides of this debate can do a better job of learning from each other. We can aspire to a society that is strong on rights and strong on responsibilities, that nurtures strong communities and strong individuals. Indeed, in the good society strong communities constitute strong individuals and vice versa.”645 In this last sentence he the internal relations by which communities and individuals constitute each other. A restored community is not just a collection of independent parts, but is a unity of mutually affecting parts. This makes it an appropriate locus in which to seek harmony.

Harmonic Justice in RJ

RJ involves several elements that resonate with the second level of morality as I described in my own reformed conception of harmonic justice. First we should be clear that justice in restorative justice is not an absolute principle of reason or a divine standard. Braithwaite does claim that there are universal values underlying our desire for restoration – specifically property, security, dignity, empowerment, deliberative democracy, harmony based on a sense of justice and social support – but these are not divinely given or rationally discovered. Rather, “They are universals because they are all vital to our emotional survival as human beings and vital to the possibility of surviving without constant fear of violence.”646 The values which RJ is concerned with are founded on our sentimental nature and our biological inheritance.

Even if there are universal human values, local conventions and its contours determine the arrangements that constitute an instance of justice restored in every RJ case: “It is true that the virtues restorative justice restores are viewed differently in different cultures and that opinion about the culturally appropriate ways of realizing them differ greatly…. Scientific criminology will never discover any universally best way of doing restorative justice.”647 The shape justice takes is based on the local community’s values and aims, understanding that a pluralistic community will have a variety of aims to coordinate. Braithwaite’s “justice” in “restorative justice,” much like the “justice” in “harmonic justice,” is an attempt to identify and reduce

645 Braithwaite, “Restorative Justice and a Better Future.”
646 Ibid.
647 Ibid.
suffering according to local values and contingent circumstances. The justice of RJ is not a readymade set of rules, but is established by people coming together to find solutions to particular injustices. As Braithwaite describes it,

Restorative justice is deliberative justice; it is about people deliberating over the consequences of a crime, how to deal with them and prevent their recurrence. This contrasts with the professional justice of lawyers deciding which rules apply to a case and then constraining their deliberation within a technical discourse about that rule-application. So restorative justice restores the deliberative control of justice by citizens.648

Further, RJ is justice in practice rather than in principle. There is a vast literature focusing a sustained attention on implementation of RJ procedures and the experiences of restoration in various communities. As a movement in criminal justice there is a practical concern to change the way courts and prisons do business. From at-risk youth interdiction programs, to alternative sentencing programs, to prison rehabilitation initiatives, to truth and reconciliation commissions, the practices of restorative justice define the movement more than any unifying principle or theoretical scheme.

In the direction of universal morality, RJ proceedings aim to consider all the affected parties as widely as possible. While universal consideration is impractical, RJ ideals demand that we cast the net across the community to anyone impacted by the crimes under consideration. Many mediation programs include the victim, the victim’s family, the offender, the offender’s family and friends and neighbors, community law enforcement personnel, and other local people affected by crime. Often in such meetings everyone has the opportunity to speak. All perspectives are taken into account and the diversity of perspectives affords, if not objectivity, at least an approximation of comprehensiveness. This process aims at, but never fully achieves, a kind of equality of consideration such as Ames describes. Everybody is equal in the assurance that their claims are sincerely considered. Nobody is formally excluded from the process649 and because people and society are internally related, everybody has some interest (often slight, often ignored) in joining the attempt to ameliorate terrible suffering.

Another aspect of RJ on the level of morality is that the practices strive to correct and straighten imbalances and also affirm what behavior is unacceptable. A crime which causes suffering is out of line with the community’s values and ideas of the good life. The offender must be brought

648 Ibid.
649 There may be some situations in which a mediator excludes people from an RJ process because they would make it difficult for dialog to proceed. This situation is based on the wisdom and insight of the mediator, and not on any a priori principle limiting participation.
back into line and straightened out, not according to some universal blueprint, but according to the local values and circumstances. This is how I have understood zheng, as adjusting and straightening according the dao. The dao of the community is determined by the community, or as Confucius says, “People can expand the way; it is not that the way expands people.” The involvement of community members is meant to give the offender a reminder of the proper way in that place and time, and to give him or her a chance to recall that way and get back on it. This meeting of the community along with the offender and victim is meant to put the local values on the table, to explore what we think is the right way to act and what is hurtful, and to agree with each other about what is out of bounds. It is a time to reflect on the different ways of behaving and to have a serious discussion about what the community values and what it will not tolerate. Affirming that some behaviors are unacceptable to the community refines the social norms and purifies the community of deviant behavior.

Restorative justice practices force offenders to reflect. More than a punitive prison sentence, RJ practices open a space for people to think about how they act, who they affect, and what they really want. Victims, mediators, and affected family and neighbors all confront the offender and demand that they stop and think about what they’ve done and the consequences. This is a chance to, like Master Zeng, examine oneself critically (sheng 省). This is the time to, like Cheng says, illuminate and get clear on what has happened (ming 明) and what everyone wants to have happen in the future.

Restorative justice is a dialogical process. It involves discussion and conversation, and often argumentation. Victims speak and offenders listen. Neighbors speak and offenders listen. Offenders speak and police listen. Offenders speak and victims listen. And round and round they go, often with the help of a trained mediator, trying to progress towards mutual understanding through dialog. There is a great deal in Habermas’ communicative ethics that is operative here, especially if we accept Ricoeur’s substitution of “convictions” for “conventions.” The RJ process is about hashing out our convictions together according to the rules set by the mediator for this particular circumstance. However, while recognizing the facts of the case are important, establishing the facts is not the purpose of the RJ process. In a typical criminal trial, once the facts are established they simply await application of the relevant legal codes. In the RJ dialog the interlocutors’ personal and cultural backgrounds are in play, as are emotions and personal interests. Restorative justice is not just the employment of public reason according to fair

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650 Analects 15.28. 人能弘道，非道弘人.
procedures, but is the employment of all the human faculties according to the dynamics of the situation.

RJ practices, like my conception of harmonic justice, can recognize the relationships of the people involved and not simply the principles at stake. Rosemont highlights this contribution that Confucian philosophy can make to RJ proceedings, writing: “The survivors and families of the victims must come to see the offenders as other role-bearing human beings, not merely as individuals to be punished retributively. They must struggle to rid themselves of any desire for revenge; and they must be open to seeing themselves in the future as being possible benefactors and/or beneficiaries in relationship with the offenders.”651 This notion that relationships can be repaired or built anew by RJ processes especially makes sense in the context of a theory of personhood along the lines suggested by Chinese philosophy and incorporated into the ideals of harmonic justice.

Conflict in RJ

There is empirical data showing RJ is more satisfying than punitive justice to both victims and offenders, but it is not a fail-proof method.652 Some people will refuse to reflect. Some people will reflect and see something different than others see. Some people will reflect and not have enough connection to the other people to care about their suffering. Indeed some offenders may feel the compensation demanded of them is another injustice. There is no guarantee that RJ practices will eliminate conflict or avoid tragedy. Likewise, human immaturity and stupidity can derail any actual attempt at harmony or justice.

There will be times when restoration for the victim may not create a harmony in which the offender is included, and yet the restoration must proceed. Justice may trump harmony. Other times the reintegration of the offender into social harmony will outweigh the full restoration of the victim’s losses. Harmony may trump justice. It takes a well trained mediator, sincere and tireless effort, and cultivated judgment to decide where the sacrifice will fall in any particular circumstance where conflict cannot be avoided.

652 Sherman and Strang, Restorative Justice.
Because RJ creates a forum where values and beliefs are expressed and challenged, it can show how convictions become considered convictions. There is no attempt to find value-free neutral ground from which to judge, but the demands of dialog are such that public scrutiny and dialog is brought to bear on any differences in values. Because we can press no further than considered convictions, and because there are different values operative in a pluralistic society, there may be no way to bring about full agreement. There may be no way to end the process without anyone feeling unjustly done. There may be no way for all participants to join in the same harmony. Nothing about the ideals of harmonic justice and just harmony, nothing about restorative justice processes, and nothing about human beings provides any guarantees against failure. We can only hope to strengthen the prospects for success.

**Just Harmony in RJ**

Among the restorations addressed by RJ, Braithwaite lists restoring harmony. I would go further and say that the other issues that RJ tries to restore (property, security, dignity, etc.), while worthwhile in themselves, are also conducive to restoring harmony. My sense is that the processes of restorative justice ideally aim at an ultimate goal of harmony. We hope the victim, in being materially or emotionally restored, is able to participate in society without fear or resentment. We hope the offender, in accepting correction, will be able to re-enter lawful society without stigmatization. Fear, resentment, and stigmatization are barriers to social integration. Recalling that Cheng’s grades of harmony are divided according to the degree of integration, resentment and stigmatization are thus barriers to higher-quality harmony. Successful RJ processes remove these barriers and open the possibility of higher harmony.

The outcome a successful RJ dialog is a renewed harmony in which there is tighter and deeper integration than before the injustice occurred. As Braithwaite describes it,

> restorative justice should restore harmony with a remedy grounded in dialogue which takes account of underlying injustices. Restorative justice does not resolve the age-old questions of what should count as unjust outcomes. It is a more modest philosophy than that. It settles for the procedural requirement that the parties talk until they feel that harmony has been restored on the basis of a discussion of all the injustices they see as relevant to the case.\(^\text{653}\)

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\(^{653}\) Braithwaite, “Restorative Justice and a Better Future.”
This description shows a clear model of what I am calling harmonic justice and just harmony. It relies upon dialog among particular people who bring their own values and convictions to the discussion. It does not claim a final answer as to what justice is, but commits to a resolute investigation of injustice. And it goes through the formal process for the sake of an ultimate harmony. The dialog which constitutes much of a typical RJ process is the remedy, the means. Harmony filtered through the processes of justice is the final end. Braithwaite’s conception of RJ demonstrates the three part structure of the ethico-moral process by beginning with violations of our wish to live well, proceeding through critical reflection on the actions that cause undue suffering and the commitment to make adjustments to remedy the damage, and aiming at the production of a more deeply integrated harmony cleansed of injustice. Through such practices as dialog, mediation, apology, restitution, and forgiveness, the RJ process helps people actually realize more harmonious communities. Justice as retribution, distribution, and fair procedures can all be honored in a process that pursues harmony. Thus, while RJ is a diverse movement and there are many forms it can take, it gives us a model for how to pursue harmonic justice and just harmony regarding domestic problems and even the geo-political conflicts where Chinese and western interests are seemingly at odds.

I would like to note one more interesting connection between broken harmony, acts of justice, and restored harmony in Chinese history. As Brian McKnight notes,

> It is obvious that many members of the elite in Han times, and some in later times, sincerely believed the proposition that human misbehavior (of certain sorts, on the part of certain types of people) could produce ill omens and natural disasters. Miscarriages of justice, and justice too long delayed, were often said to be responsible for disturbances of the harmonious blending of natural forces.\(^{654}\)

There was a belief that where injustice persists, harmony is disturbed. Given the Chinese notion that humans are both constituted by and constitutive of the *dao*, human injustice could affect cosmic harmony, resulting in earthquakes, droughts, and floods. Only by bringing justice to wrong doers and repairing the harms suffered could harmony at large be restored. This is an ancient idea which, despite its dubious notions of causality, is still relevant in a social context: injustice disrupts harmony, and repairing broken relationships is the way to restore harmony. Restorative justice is the task of repairing broken relationships to create a just harmony.

I have tried to show that the practices encapsulated by the contemporary restorative justice movement are compatible with the conceptions of justice and harmony I have described as

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\(^{654}\) McKnight, *The Quality of Mercy*, 113.
harmonic justice and just harmony. Furthermore, I suggest that explicit attention to these reformulated ideals might enhance the coherence and efficacy of RJ practices. Finally, I expect that RJ practices incorporating the ideals of harmonic justice and just harmony can be expanded beyond the criminal justice system and applied to domestic social problems, and perhaps even to geopolitical conflicts.

CONCLUSION: APPROACHING OUR IDEALS IN THE REAL WORLD

In this concluding section, I will suggest that this dissertation has immediate relevance for contemporary American and Chinese attempts to pursue social justice and social harmony. By using the conceptions of harmonic justice and just harmony and recognizing a necessary relationship between ethical and moral concerns for dealing with practical problems, I believe progress can be made in correcting glaring injustices and disharmonies in contemporary society. In the American case, a one-sided focus on procedural justice comes at the expense of social harmony. In the Chinese case, a one-sided focus on harmony comes at the expense of justice. The reflections and conceptions contributed by this dissertation aim to correct these imbalances.

To review, in Chapters 2 and 3 we explored the concepts of justice and harmony individually in both Chinese and western philosophical traditions. We encountered some deep conceptual differences across the traditions stemming from the metaphysical assumptions underlying those ideals. But we also found some conceptions that seemed to avoid the most obvious incompatibilities between harmony and 正義, justice and 正義. In Chapter 4 we looked at a divide between the good and the right that runs through ethical theory, political philosophy, and governance, and recognized how justice and harmony have been seen as exemplifying those divides. In Chapter 5 we encountered some fruitful suggestions about how we could instead understand the divisions of Chapter 4 as revealing complimentary processes of layered and intermingled concerns, rather than a strict opposition or fixed priority. In Chapter 6 we saw how refined notions of justice and harmony could operate in concert to support our pursuit of well-considered ideals. I further suggested that the practices of restorative justice offer fertile grounds for implementing our pursuit of refined notions of harmonic justice and just harmony.

I am hopeful that the notions of harmonic justice and just harmony can contribute the following benefits:
• Help us attend to the conceptual and practical variety of ancient ethical notions
• Clarify the deeper connotations of terms in cross-cultural ethical and political discourse to prevent miscommunication
• Extend the broad scope of ethico-moral concerns
• Reinforce a conception of the self as concretely situated in ethical relationships
• Promote the idea that considerations of the good and the right, liberalism and communitarianism, neutrality and perfectionism, and \( li \) and \( fa \) must interact and need not contradict each other or even demand a strict axiological priority
• Clarify well-grounded ideals that should receive thorough consideration when proposing solutions to practical problems
• Remind those who overvalue justice of the importance of harmony, and remind those who overvalue harmony of the importance of justice
• Moderate the extremes of political ideologies in America and China
• Restore a positive connotation to harmony where it has been tarnished
• Slow the hegemonic spread of the simplest forms of procedural justice behind the language of justice and rights
• Smooth the seemingly inevitable incorporation of Chinese ideas into the global discussion
• Finally, I hope to forward a model of restorative justice where what is restored by pursuing justice are the conditions of higher-quality harmonies

This kind of restorative practice could be brought to bear on domestic problems. I believe many of the problems encountered in America, China, and beyond are exacerbated by ideologies that focus on a one-sided approach to the ideas explored here. A focus on harmonic justice and just harmony can bring balance and new approaches to festering issues.

For example, recent Supreme Court rulings regarding money spent on political campaigns have demonstrated a one-sided preference for procedural justice over harmony. By ruling that political contributions from corporations are protected by the right to free speech, they have upheld a firm principle arising deductively from the premises that speech is a right of all persons, giving money is speech, and corporations are persons. The majority rulings did not give substantial consideration to harmony. Inequality is causing obvious disharmony in America, and a ruling that
further exacerbates people’s inequality regarding money and political influence furthers disharmony. High-quality harmonies must have ingredients that are close enough to interact strongly. If distances are too great, connections are not clear, and then harmony is rather a chaotic and disjointed cacophony. By allowing some wealthy voices to sing very, very loudly while moving the microphone away from the mumbling grumbling masses, such a ruling removes the possibility of harmonious integration. The absolute priority of justice in the form of equal rights to abstract ideals has exacerbated problems of harmony in America.

In the US the over-emphasis on procedural justice has led to a system where sophisticated lawyers and lobbyists can navigate the increasingly complex regulatory and legal environment, claiming that the same procedures apply equally to everybody when in practice only the privileged few can take advantage and press their claims. The insistence on procedural justice allows lawmakers and judges to ignore the consequences of their rulings as they only need act on principle or according to the law as written. Another example of this is the enforcement of mandatory minimums in criminal sentencing. Judges must follow the set universal guidelines without reference to the damage a sentence might cause to personal, interpersonal, and social harmony in any particular case. The danger is that a regime of laws and procedures takes on a life of its own and persists for the sake of simply following the law, not for concretely improving people’s lives.

Ames ties this emphasis on procedural justice to the advantages of corporate capitalists:

> The industrial democracies and most of the rest of the world are dominated by a corporate capitalism, the interests of which are served by procedural justice. Hence, the more that academic and political forces are successful in championing and defending the morality that grounds procedural justice, the less will we able to achieve distributive justice.\(^{655}\)

Advocates of contract based moral systems that rely upon the rational decisions of free and autonomous contracting parties can give cover to those who inflict demonstrable harms to others. By claiming that a law or contract infers an indefeasible right, those who take advantage of those rights, especially property rights, can overcome the objections of those who suffer as a result of the rights-bearing party’s actions. Instead of recognizing suffering and disharmony among the community and then putting harmful practices out of bounds, contractual deontology points to the injured party’s agreements as binding and worthy of respect because they are freely and rationally

\(^{655}\) Ames, “Confucian Role Ethics and the Ideology of Individualism: Doing Justice to Justice.”
chosen. This ignores the actual distributions of goods and harms by looking primarily at the founding conditions to see if they were lawful.

While the ideology of capitalism insists on impartial fairness in competition, individual capitalists are most often more interested in competitive advantage than genuine fairness. Competitive advantages can be gained by manipulating laws to favor a small class, then justifying those laws by claiming that they are available to anyone with means to access them, or that “a rising tide lifts all boats” and inequalities actually trickle down to the poorest communities. These justifications are demonstrably false, yet they serve to put a seemingly fair or procedurally just face on policies that actively work against distributive, social, and harmonic justice. By focusing exclusively on the second level of morality and attending to and reifying the more procedural aspects of justice while neglecting the broader concerns of harmonic justice, the genuinely worthy pursuit of harmony is dismissed. By attending only to the second level without acknowledging the ethical foundations that guide us in our relations to others, we miss out on more just distributions of goods in actual practice. Further, in ignoring the third level by not considering actual consequences, acting on principles of justice risks standing firm on a promise of undue suffering. In these ways, the one-sided focus on justice at the expense of harmony sabotages the realization of actual justice in several dimensions.

The primacy of justice as the priority of rights and freedoms is based in a fiction that people are autonomous and rational selves independent of ethical level circumstantial relations. Ames grounds his arguments for the importance of doing justice in overcoming this mistaken conception of autonomous individuality:

The dark side of any ethical and political position that is grounded in the concept of the autonomous individual and its concomitant view of universal human rights is that when individual freedom is weighted more heavily than social justice, the political, legal and moral instruments employed in defending and enhancing that freedom virtually insure that social justice will not be achieved, and hence that poverty not be alleviated.656

The view of the autonomous self structures laws and institutions to protect that autonomy at all costs, even at the cost of harmony. This view of autonomous selfhood wrongly assumes that people begin with the reflective consciousness characteristic of the second moral level. It ignores the development of a self-conception that occurs at the first ethical level.657 and in doing so fails

656 Ibid.
657 Erin Cline points out that Rawls is actually quite thorough in grounding the principles of justice in a developmental process that begins with the family. (Cline, Confucius, Rawls, and the Sense of Justice.)
to do justice to people in their particularity and historicity. In these ways, it fails to honor the good of harmony as it over-emphasizes a narrow conception of justice. Further, even as it fails to honor harmony, it also fails to achieve justice. As Rosemont puts it in his attempt to impress a Confucian conception of relational persons into Truth and Reconciliation processes,

This, then, all too sketchily, is the dark side conceptually of viewing human beings most basically as individuals – especially in the moral arena, but also in the legal – and valuing individual freedom above all else: we too easily lose sight of our sociality, our obligations to others, our common humanity; liberty is purchased at the expense of social justice.\(^{658}\)

Starting at the second level with a conception of people as autonomously moral rather than rooted in ethical relations is a barrier to ultimate harmony, ironically, by preventing a more robust form of social justice from being realized.

As an example of the other extreme in over-valuing harmony at the expense of justice, in China there is a police and government network dedicated to blocking petitioners who come to air their grievances in front of the national government. The participants in this network are called “interceptors,” and the network of interceptors extends from Beijing to the country side. Interceptors maintain harmony by silencing the voices that would cry aloud about unacknowledged strife. While the practice of petitioning the government is written into law, the actual appearance of petitioners and their problems is embarrassing to the government. To maintain an image of harmony, the government has built a complex bureaucracy to hide the petitioners from the eyes of the nation. This chart show the extent of the organizational complexity of intercepting people:

The Interceptor.
Instead of an excessive concern to bring resolution and restitution to people suffering injustice, there is an excessive concern with managing the potential disruption caused by revealing strife. We can recall Whitehead’s insistence that a bit of strife is preferable to a stale stability because creative strife might bring about more vibrant harmony in the future. China is denying itself the chance to reach a more integrated and complex harmony by failing to address the injustices of undue suffering announced by petitioners. This privileges a notion of harmony as mere stability rather than an integration of genuinely diversity. A re-examination of low quality fundamental harmony in terms of justice could enable a more just harmony to be realized.

The Chinese over-emphasis on harmony causes cases of particular injustice to go unaddressed and uncorrected. This is the domination of a low quality harmony as sameness or tong 同. It privileges mere stability over the integration of diverse, interesting, and novel ingredients. The danger of this kind of harmony was highlighted by the Critical Buddhism movement in Japan. The Japanese, too, traditionally hold harmony (wa 和) in high regard. However, Critical Buddhist scholars, most notably Hakamaya Noriaki and Matsumoto Shirō, have attacked the idea of harmony as a tool of political repression not in line with true Buddhist thought. Tracing the culture of harmony back nearly 1,500 years to the influence of Prince Shōtoku, a legendary figure who promoted Buddhism and associated it with an ethos of harmony, they argue that harmony has become synonymous with the ideals of Japanese culture. However, they argue that this harmony is not actually a Buddhist value and its promotion has had disastrous consequences. Matsumoto especially points to the use of harmony to galvanize support for the government during WWII. Rallying the country to be united as one, calls for harmony were used to support the extension of nationalistic violence to a horrifying level. Beyond such instances of obvious abuse of the concept, they argue that the philosophy of harmony has been used to stifle individuality and to enforce political conformity. Matsumoto writes:

> Here we see the basic premise of the philosophy of harmony.... there is no other word that sums up the base ideology than ‘totalitarianism.’ No reason for the existence of the many elements that make up the whole is allowed other than that they consolidate the whole into a single unity. In effect, what is demanded of each element is simply that it ‘eliminate the self and return to the one’ or ‘extinguish the self to serve the public’. ⁶⁶⁰

In this case, harmony only refers to the quality of the whole, the totality, and the parts are merely instrumentally valuable in bringing about the unity of the whole. Their own interests disappear in service of the social harmony. Only the totality provides the parts with value, and so the parts can

⁶⁶⁰ Hubbard and Swanson, Pruning the Bodhi Tree, 362.
be sacrificed for the sake of the whole. This view suggests that for the whole to be harmonious
the parts must not stand out, so conformity is preferred to individuality. Harmony, as the
rhetorical and ideological tool used to enforce this conformity and make it seem like a positive
value, is one of Critical Buddhism’s main targets. Instead of a positive value, harmony is seen as
a repressive tool for enforced conformity which makes the population malleable in the hands of
the ruling powers.\footnote{As well, Critical Buddhism is especially concerned to discern truth from falsehood. They see harmony
as an umbrella under which all conflicting positions can be reconciled. Harmony uncritically incorporates
all diversities, whether or not they deserve to be preserved. This drive towards “syncretism” that values
everything without discrimination fails to separate the good from the bad, the true from the false. Paul
Swanson describes this use of harmony as,

an attitude of uncritical tolerance, which Hakamaya compares to mixing \textit{miso} and \textit{kuso}
(brown bean paste and dung – ‘curds and turds,’ if one is to preserve the play on words).
Both support a superficial syncretism that ignores the differences of right and wrong or
good and bad, and thus ironically works to maintain discrimination and injustice and the
whims of those in position of power and authority. (Ibid., 17.)}

China would be wise to recognize the dangers here identified with an uninspiring sort of harmony.
The harmony criticized by the Critical Buddhists is an oppressive unity that eliminates
differences. This kind of harmony is overcome by vagueness, since the individuals that comprise
it are not able to stand out as bold, strong, definite individuals who contribute a unique flavor and
distinct zest. When China seeks to “harmonize” the media and the internet through censorship;
when it “harmonizes” public opinion by making agitators and critics disappear; when it
“harmonizes” its minority races by portraying them as colorful caricatures in a tolerant society;
and when it “harmonizes” the ruling party by punishing those who publicly break ranks, China
pursues just that kind of weak harmony that has already come under withering critique in Japan.

The Critical Buddhist critique of harmony is sharp, but I do not believe it has to undermine the
ideal of \textit{just} harmony as a political goal. Their attack on political conformity hits the kind of
harmony that we earlier identified with \textit{tong} 同, sameness, rather than \textit{he} 和. Whitehead’s
recognition that vagueness is a major danger to harmony gives us not only a way to acknowledge
the damage that a misguided pursuit of harmony can do, but also an identifiable problem to be
solved. If the Chinese pursuit of harmony can recognize the value of bold individualities and
strong focal points as the constituent diversities that comprise rich harmonies, then harmony need
not be an oppressive totalitarian unity. The way to ensure the existence and survival of these bold individualities is to treat them with justice, to give them their due, to recognize their particular needs, and to remedy any unjust harms done to them. Justice is the remedy for totalitarian oppression, and justice is the means by which individuals are preserved and enabled to integrate in pursuit of genuine harmony. The embrace of just harmony is a defense against the oppressive imposition of a smothering totalitarian harmony. Only by eliminating injustices wherever we find them can we achieve the higher levels of harmony.

The analysis of domestic problems can continue in this manner. In many of the issues facing American and China we can identify one-sidedness in preferring justice or harmony as preventing innovative thinking and workable solutions. What we see is that an over-emphasis on either justice or harmony without the mitigating influence of the other can be damaging.

Borrowing from many traditions and thinkers, I have suggested new and composite conceptions of harmonic justice and just harmony as mediating the conflicts that appear in many popular accounts of justice and harmony. Practices of harmonic justice maintain communitarian foundations even as they aim to correct any deeply rooted habits that cause suffering. They push moral consideration towards continuous expansion, understanding that universal extension is a heuristic ideal to approach and not a pre-formed criterion. In critical reflection, pursuing harmonic justice creates some liberating distance from tradition, but makes judgments while still in contact with desire to live a good life. Just harmony is a kind of order, but an order that is generated creatively by trial and error rather than discovered as an antecedent principle. Just harmony is a perfectionist aim, yet one that envisions every person receiving due consideration. The perfectionist aim is a minimum of suffering and a maximum of mutual benefit. Precisely what this looks like in any situation must be determined by the sincere efforts of people affected. Within a perfectionist outline, a kind of neutrality as official openness to any productive suggestion and responsiveness to suffering no matter where it comes from is still available in the directed pursuit of just harmony. As elaborated in Chapter 6.1, harmonic justice and just harmony follow the reconciliation of the good and the right suggested by Ricoeur and reinforced by Cheng, and share some characteristics with Qu’s Confucianization of law. The practices of restorative justice in the field of criminal justice give us a model which I hope can be extended to other fields. I further suggest that these notions can also help reconcile the differing political ideals ascribed to China and America.
The simplistic opposition of China and America as communal vs. individualistic, communitarian vs. liberal, responsibilities vs. rights, etc. has obscured the subtle ways in which these ideas are mingled throughout any tradition, and has hidden the possibilities of mutually beneficial interaction. As Cheng says of the interdependence of deontology, consequentialism, and virtue theory, “good means good of right and good of the end and right means right of the good and right of the end, as well as the end of the good and the end of the right” (Correspondence 2/28/14).

All human beings wrestle with questions of the good and the right, and only when we articulate these struggles clearly and sincerely will we progress towards deeper integration.

China’s rise as an economic and geopolitical power will bring long-standing ideas and ideals into relief as they appear in new contexts. The entry of hegemonic rights talk into Asia has produced rich and varied reflections on the very idea of rights, and more attention is now being given to justice as a concept from an Asian perspective. This process must continue. At the same time, a corresponding effort to reflect on ideas like harmony, ren, yi, and zheng from the perspective of western philosophy must still grow and gain momentum. To understand what the Chinese mean when they call for justice, for zhengyi, we have to recognize the connotations and ancient resonances in the language of zhengyi.

Much as when Buddhism entered China and was translated using many native Daoist terms, leaving both Chan Buddhism and Neo-Daoism much transformed and enriched by the encounter, so I expect we will see the modern entry of first Marxism and then neo-liberalism into China spawning similar rebound movements in which old terms are revived, redefined, reappropriated, and put to creative new uses. The Chinese ambition to achieve a harmonious society is confronted with calls for justice. The American ambition to promote justice as a matter of indefeasible rights and laws is confronted with calls for social harmony. These encounters are some of the great ethical and political challenges of our times. They call for careful and sustained reflection on our ideals, and openness to transforming our ossified aims. Believing that justice and harmony are among the world’s great and worthy ideals, I am hopeful that that my reformulations in terms of harmonic justice (heyi 和義) and just harmony (zhenghe 正和) can not only enhance the theoretical discussion of philosophical ethics, but also give guidance to those working to solve practical problems and global predicaments.

662 As Cheng says of the interdependence of deontology, consequentialism, and virtue theory, “good means good of right and good of the end and right means right of the good and right of the end, as well as the end of the good and the end of the right” (Correspondence 2/28/14).

663 A hermeneutic shake-up.

664 See, for example, Bauer and Bell, The East Asian Challenge for Human Rights.


http://www.nybooks.com/articles/archives/1983/apr/14/to-each-his-own/.


Kan, Shirley, Richard Best, Christopher Bolkcom, Robert Chapman, Richard Cronin, Kerry Dumbaugh, Stuart Goldman, Mark Manyin, Wayne Morrison, and Ronald O’Rourke.


