Encountering China

MICHAEL SANDEL AND CHINESE PHILOSOPHY

EDITED BY MICHAEL J. SANDEL & PAUL J. D'AMBROSIO

WITH A FOREWORD BY EVAN OSNOS

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Michael Sandel and Chinese Philosophy

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Michael J. Sandel and Paul J. D'Ambrosio

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Foreword

China's Encounter with Michael Sandel

EVAN OSNOS

One night in December 2012, I was on the campus of Xiamen University, on China's southeastern coast, when students massed outside the auditorium—far more of them than the building could handle. I stood inside the doors and watched a growing throng of young, flushed faces on the other side of the glass. Security guards appealed to the crowd to keep calm. The president of the university had phoned the organizers of that evening's event and cautioned them not to lose control.

The object of such fervent anticipation—a figure who had acquired a level of popularity in China "usually reserved for Hollywood movie stars and NBA players," as the *China Daily* put it—was a soft-spoken Minnesota native named Michael J. Sandel. At Harvard, where Sandel is a professor of political philosophy, he taught a popular course called "Justice," which introduced students to the pillars of Western thought: Aristotle, Kant, Rawls, and others. He framed their theories of moral decisionmaking in real-world dilemmas. Is torture ever justified? Would you steal a drug that your child needs to survive? The classes had been filmed for an American public television series and put online. As they began to circulate in China, Chinese volunteers came forward to provide subtitles, and within two years Sandel had acquired an astonishing level of celebrity. *China Newsweek* magazine named him the "most influential foreign figure" of 2010.

Yingyi Qian, the dean of the School of Economics and Management at Tsinghua University, told me, "Sandel's approach to moral

issues is not only innovative to Chinese readers, but also relevant to daily discussions of some important social issues." By the time I visited the campus to gain a first-person sense of Sandel's encounter with China, his subtitled lectures on Western political philosophy had been watched at least twenty million times. The Chinese edition of *Esquire* put him on the cover, above the headline "Masters of Our Time."

To live in China in the early years of the twenty-first century, as I did from 2005 to 2013, was to witness a philosophical and spiritual revival that could be compared to America's Great Awakening in the nineteenth century. In the 1960s and 1970s, Chairman Mao's Cultural Revolution had largely dismantled China's traditional belief systems. In the 1980s and 1990s, Deng Xiaoping's economic revolution could not rebuild them. The pursuit of prosperity had relieved the deprivation of China's past, but it had failed to define the ultimate purpose of the nation and the individual. Chinese citizens often described a sensation that, in sprinting ahead, they had bounded past whatever barriers once held back the forces of corruption and moral disregard. There was a hole in Chinese life that people named the *jingshen kongxu*—"the spiritual void"—and something was going to fill it.

The more people satisfied their basic needs, the more they challenged the old dispensation. For new sources of meaning, they looked not only to religion but also to philosophy, psychology, and literature for new ways of orienting themselves in a world of ideological incoherence and unrelenting change. What obligation did an individual have to a stranger in a hypercompetitive, market-driven society? How much responsibility did a citizen have to speak the truth when speaking the truth was dangerous? How shall a society define fairness and opportunity? The search for answers awakened and galvanized people in a way that the pursuit of prosperity once had.

Sandel, who was accustomed to a relatively quiet life in Brookline, Massachusetts, with his wife and two sons, was learning to expect extraordinary reactions abroad, especially in East Asia. In Seoul he lectured to 14,000 people in an outdoor stadium; in Tokyo the scalpers' price for

tickets to his talks was $500. But in China, he had inspired near-religious devotion, and his visits plunged him into an alternative dimension of celebrity. Once, at the airport in Shanghai, the passport-control officer stopped him to gush that he was a fan.

Outside the auditorium in Xiamen, the crowd kept growing, until the organizers finally decided that they had a better chance of keeping the peace if they threw open the doors. So, fire codes notwithstanding, they let the crowd pour into the aisles, until young men and women covered every inch of floor space.

Sandel climbed the stage. Behind him, an enormous plastic banner carried the Chinese title of his latest book, *What Money Can't Buy*, in which he asked whether too many features of modern life were becoming what he called "instruments of profit." In China, the pendulum had swung fast and far from the heyday of socialism, and now everything in society seemed to have a price tag: a military commission, a seat in kindergarten, a judge's consideration. Sandel's message was urgently relevant, and his audience was rapt. "I am not arguing against markets as such," he told the crowd. "What I am suggesting is that in recent decades we have drifted, almost without realizing it, from having a market economy to becoming a market society."

Sandel mentioned a story from the headlines: Wang Shangkun was a seventeen-year-old high school student from a poor patch of Anhui Province who was illegally recruited in a chat room to sell his kidney for $3,500, a transaction his mother discovered when he returned home with an iPad and an iPhone and then went into renal failure. The surgeon and eight others—who had resold the kidney for ten times what they paid—were arrested. "There are 1.5 million people in China who need an organ transplant," Sandel told the crowd, "but there are only ten thousand available organs in any year." How many here, he asked, would support a legal free market in kidneys?

A young Chinese man named Peter, in a white sweatshirt and chunky glasses, raised his hand and made a libertarian argument that legalizing the kidney trade would squeeze out the black market. Others

disagreed, and Sandel upped the stakes. Say a Chinese father sold a kidney and then, "a few years later, he needs to send a second child to school, and a person comes and asks if he would sell his other kidney—or his heart, if he is willing to give up his life. Is there anything wrong with that?" Peter thought it over, and said, "As long as it's free and transparent and open, rich people can buy life, and it's not immoral." A ripple of agitation passed over the crowd; a middle-aged man behind me shouted, "No!"

Sandel settled the room. "The question of markets," he said, "is really a question about how we want to live together. Do we want a society where everything is up for sale?"

"Of the various countries I've visited," Sandel told me the next day, "China is the place where free-market assumptions and moral intuitions run deepest, with the possible exception of the United States." What interested him most, however, was the countervailing force—the ripple through the crowd at the idea of selling the second kidney. "But if you probe and test those intuitions through discussion, you can glimpse a moral hesitation about extending market logic to everything," he said. "For example, Chinese audiences are generally accepting of ticket-scalping—reselling tickets at high prices for concerts or even doctor appointments at public hospitals. But when I ask about the scalping of train tickets during the Chinese New Year, when everyone goes home to be with their family, most people are opposed."

In China, foreign ideas have a history of inspiring waves of public attention and scholarly debate. After World War I, China remained closed in many respects, but it attracted several influential visitors. Wang Hui, a professor of literature and history at Tsinghua University, told me, "In the 1920s, very few famous Western philosophers visited China, with the exception of John Dewey and Bertrand Russell—as well as Indian poet Rabindranath Tagore. They were introduced by famous Chinese intellectuals such as Liang Qichao and Hu Shi, who was Dewey's student." With those prominent introduc-

tions, Dewey and others attracted legions of followers. Later, that path was followed by Freud and Habermas.

When Sandel visited for the first time, in 2007, Chinese audiences were no longer charmed by the novelty of a visiting Western scholar; the engagement would need to run deeper than curiosity. Wang Hui said, "When Michael came to China, there were a lot of Western scholars who had visited China. Some philosophers, such as John Rawls, and his theory of justice, and Friedrich Hayek and his theory of 'spontaneous order,' were very influential among Chinese intellectuals. So, the acceptance of Michael's work among intellectuals has been a process of debate and negotiation, which, from my point of view, is very positive." The timing was ripe for a set of probing conversations. Introducing Sandel at Tsinghua University in Beijing, Professor Junren Wan said China had a "crying heart."

Sandel had spent much of his career considering what he called "the moral responsibility we have to one another as fellow citizens." After living for his first thirteen years in Hopkins, Minnesota, a suburb of Minneapolis, he moved with his family to Los Angeles, where classmates cut school to go surfing. It grated against his midwestern reserve. "The formative effect of Southern California," he told me, "was seeing the unencumbered self in practice." He took an early interest in liberal politics, went to Brandeis, then Oxford on a Rhodes Scholarship, and over a winter break he and a classmate planned to collaborate on an economics paper. "My friend had very strange sleeping habits," Sandel said. "I would go to bed, maybe around midnight, and he would stay up until all hours. That gave me the mornings to read philosophy books." By the time school resumed, he had read Kant, Rawls, Robert Nozick, and Hannah Arendt, and he set aside economics for philosophy.

In the years that followed, he argued for a more direct conversation about morality in public life. He said, "Martin Luther King drew explicitly on spiritual and religious sources. Robert Kennedy, when he ran for president in 1968, also articulated a liberalism with moral and spiritual resonance." But by 1980, American liberals had put aside the

language of morality and virtue because it came to be seen as "what the religious right does," he said. "I began to feel that something was missing in this kind of value-neutral politics. I worried that the moral emptiness of mainstream public discourse was creating a vacuum that religious fundamentalism and strident nationalism would fill. American liberalism became increasingly technocratic and lost its capacity to inspire."

In China, in 2010, a group of volunteers calling itself Everyone's Television had come together to subtitle foreign programs. When it ran out of sitcoms and police procedurals, it turned to American college courses, which were becoming available online. Sandel had visited China once before, to speak to small groups of philosophy students, but when he returned, after his course was online, he found that something had happened. "They told me that, for a seven P.M. lecture, kids were starting to stake out seats at one-thirty in the afternoon," he said. "They had overflow rooms, and I waded into this spirited mass of people." Sandel had seen his work ignite in other countries, but never as abruptly as it had in China. As we talked, we tried to make sense of this phenomenon. The Harvard brand didn't hurt, and the professional polish of the public television production made it more fun to watch than other courses. But for Chinese students, his style of teaching was also a revelation: he called upon students to make their own individual moral arguments, to engage in vigorous debate in which there was no single right answer, to think creatively and independently about complex, open-ended issues in a way that was largely unheard of in Chinese classrooms. Yingyi Qian observed that students were devouring the Chinese translation of Sandel's book *Justice*. "This is partly due to the fact that very little Western philosophy is taught in China," Yingyi Qian explained. "In addition, *Justice* is very accessible to Chinese college students, with interesting examples to illustrate alternative schools of thought."

Beyond style, Sandel sensed a deeper explanation for the intense Chinese interest in moral philosophy. "In the societies where it has

caught fire, there has not been the occasion—for whatever reason—for serious public discussion of big ethical questions," he said. Young people especially "sense a kind of emptiness in terms of public discourse, and they want something better." China, in a sense, was the land of the unencumbered self, a place where individuals could unfetter themselves from social bonds and history and make their decisions based on self-interest in a way that was previously impossible. It was ruled by technocrats who publicly espoused a socialist ideology while, in practice, they placed their faith in economics and engineering with pitiless efficiency. Deng Xiaoping, the leader who launched China on its economic transformation, had argued that prosperity was paramount. "Development is the only hard truth," he said in 1992, and China adopted a path toward abundance on a scale it had never known, but also at a heavy cost. In the decades that followed, China confronted the risks of a market society awash in counterfeit medicines, shoddy construction, and rampant corruption.

By the time Sandel arrived, the Communist Party was not allowing the growth of faith as much as it was trying to keep up with it. Sandel offered Chinese young people a vocabulary that they found useful and challenging but not subversive, a framework in which to talk about inequality, corruption, and fairness without sounding political. It was a way to talk about morality without posing direct questions about political legitimacy and authority. Sandel never explicitly challenged the taboos of Chinese politics: the separation of powers, the Party's superiority over law. But occasionally the Chinese authorities brushed him back. Once, a salon of Chinese scholars and writers in Shanghai arranged for him to give a public talk to a crowd of 800, but on the eve of the lecture the local government canceled it. Sandel asked the organizers, "Did they give a reason?" "No," they said. "They never give a reason."

At times Sandel encountered skepticism from Chinese critics. For some, his argument against markets was fine in theory, but gauzy notions of equity triggered Chinese flashbacks of ration coupons and

empty store shelves. Others argued that, in China, having money was the only way to defend oneself against abuses of power, so limiting markets would only fortify the hand of the state. "Some neoliberal intellectuals criticized his views angrily, but most of his audience likes his ideas," said Wang Hui of Tsinghua. "Michael's topics, such as justice, equality, the role of morality in human life, are all relevant to our society."

After the Xiamen lecture, I watched Sandel speak to several more college groups in Beijing, and it was clear that when Sandel described the "skyboxification" of life—the division of America into a world for the affluent and a world for everyone else—Chinese listeners heard much in common. After thirty years of marching toward a future in which everything was for sale, many people in China were reconsidering.

On his last night in Beijing, Sandel gave a lecture at the University of Business and Economics, and then met with a group of student volunteers who were working on perfecting the translations of his "Justice" lectures. One young woman gushed, "Your class saved my soul." Before Sandel could ask her what she meant, the crowd swept him away for photos and autographs. I hung back and introduced myself. Her name was Shi Ye and she was twenty-four years old. She was getting a master's degree in human resources, and when she came upon Sandel's work, it was "a key to open my mind and doubt everything," she told me. "After a month, I began to feel different. That was one year ago. And today, I often ask myself, what is the moral dilemma here?"

Her parents had been farmers, until her father went into the seafood trade. "I accompanied my mom to visit the Buddha to pray and to put some food on the table as an offering. In the past, I didn't think anything was wrong with that. But a year later, when I accompanied my mom, I asked her, 'Why do you do this?'" Her mother was not pleased by all the questions. "She thinks I am posing a very stupid

question. I began to question everything. I didn't say it's wrong or right; I'm just questioning."

Shi Ye had stopped buying train tickets from a scalper because, she said, "when he sells them at a price he chooses, it limits my choices. If he wasn't setting the price, I could decide to buy economy or first class, but now he is taking away my choice. It's unfair." She had begun lobbying her friends to do the same. "I'm still young and I don't have much power to change much, but I can influence their thinking," she said.

Shi Ye was getting ready to graduate, but her discovery of political philosophy had made things more complicated. "Before I encountered these lectures, I was sure I was going to be become an HR specialist and an HR manager and serve the employees in a big company. But now I'm confused; I doubt my original dreams. I hope to do something more meaningful." She didn't dare tell her parents, but secretly she was hoping she wouldn't get a job in human resources. "I might take a gap year and go abroad and travel and take a part-time job to see the world. I want to see what I can do to contribute to society."

For Shi Ye and others who came of age with growing control over their economic and personal lives, the limits on what they could ask seemed antique. Embracing a vast feast of new ideas, including those proposed by Michael Sandel, was about more than curiosity. It represented nothing less than the search for a new moral foundation, as men and women of China's middle class set out in search of what to believe.

Encountering China

I
Justice, Harmony, and Community

— 1 —

Community without Harmony?

A Confucian Critique of Michael Sandel

CHENYANG LI

Michael Sandel has been one of the most powerful critics of liberalism in the past decades. His work, especially in *Liberalism and the Limits of Justice*, exposes some of the fundamental flaws of Rawlsian liberalism and shows the need for a community-based framework in order for us to adequately understand and appreciate the concept of the individual and that of a just society. Confucians can endorse many of Sandel's critiques of liberalism. From a Confucian perspective, however, Sandel's version of communitarianism is too thin for a robust communitarian society. Confucians maintain a thick notion of community and take it to be vital to human flourishing. I will first discuss a key point where Confucians converge with Sandel as an example of the common ground between the two philosophies, and then I will turn to one important difference between them. The key point of convergence regards the circumstances of justice; the difference regards harmony. Harmony lies in the very center of the Confucian notion of community, but Sandel has given it no place in his conception of community.[1] This essay offers a Confucian critique as well as an endorsement of Sandel's communitarian philosophy.[2] It also extends a friendly invitation to Sandel to incorporate harmony into his conception of community.

Sandel's powerful argument on the circumstances of justice affects how we determine what value or values are primary for a good society.

John Rawls (1971) based his own theory of justice on his conviction in the primacy of justice in society: "Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust" (3). For Rawls, justice is not merely one virtue among many or merely one value among other values for a good society. It is the primary value against which all other values are to be gauged. As Sandel (1998) puts it, for Rawls, "justice is the standard by which conflicting values are reconciled and competing conceptions of the good accommodated if not always resolved" (16). On such a conception, the first question to ask when evaluating a society is whether the society is just, regardless of what type of society it is. This understanding of justice, Sandel points out, fails to adequately consider the importance of the circumstances of justice—that is, a society's background conditions that necessitate certain mechanisms in order for the society to function. Following Hume, Rawls divides these circumstances into two types: objective circumstances, such as the relative scarcity of resources, and subjective circumstances, such as the fact that individual persons have different interests and ends in their lives. Rawls holds, at least implicitly, these conditions are universal and thereby make justice the primary virtue of any society. Sandel argues, instead, that justice is a first virtue of social institutions only conditionally and not absolutely—analogous to physical courage in a war zone (Sandel 1998, 31). A decrease in the need for justice may indicate an improved society: "If the virtue of justice is measured by the morally diminished conditions that are its prerequisite, then the *absence* of these conditions—however this state of affairs might be described—must embody a rival virtue of at least commensurate priority, the one that is engaged in so far as justice is not engaged" (32).

Sandel's analysis reveals the remedial aspect of justice as a virtue. Justice is called on to "fix" things when they are broken, so to speak,

or at least to prevent social institutions from falling apart. However, Sandel maintains that the circumstances of justice do not obtain universally, at least not in certain spheres in society. For instance, in a more or less ideal family situation, in which relations are governed largely by spontaneous affection, the circumstances of justice obtain only minimally. Justice does not play a central role in the more or less ideal family, not because injustice prevails but because family members interact with sufficient mutual affection and care. In such a situation, it would not be appropriate to see justice as a primary virtue (33). We can just as easily imagine similar circumstances in a traditional tribal society when the situation is more or less ideal.

Sandel's argument in this regard is largely aligned with Confucian social and political philosophy. Classical Confucian thinkers made their case in terms somewhat similar to Sandel's. They saw two main apparatuses regulating and facilitating the operation of society. One is called "*fa* 法", literally meaning "law"; this word has been closely associated with *xing* 刑, "criminal laws." The other is "*li* 礼", usually translated as "ritual" or "ritual propriety." It encompasses a host of social norms, etiquettes, and ceremonies that aim to cultivate people's sense of appropriateness and affection toward one another. Cultivation though *li* leads people toward *ren* 仁, namely "human-heartedness" or benevolence—a characteristic disposition of kindness toward others.[3] To use a simple example, if you say "Good morning" and smile at someone you pass by every morning on your way to work, and that person does the same back, you two will gradually develop a positive attitude toward each other and will be more inclined to care about each other. Moreover, you will be more disposed to be kind toward people in similar circumstances and in general. The Confucian ideal is to practice *li* in order to cultivate people's sense of care and benevolence toward fellow human beings and to establish and maintain positive relationships in society. Though the Confucian notion of *fa* does not amount to justice in the Rawlsian sense, it is congruent with the general sensibilities of justice in that it sets rules against behaviors

that damage the social fabric. Classical Confucian thinkers did not regard *fa* as lacking value, but they held that a good society should not rely on *fa* (or *xing*) as the primary measure to govern its operation. Confucius maintained that if we rely on criminal laws to manage a society, people might stay out of trouble but they will not develop a moral sense of "shame" (*chi*), and only by way of practicing *li* can people not only stay out of trouble but also develop a moral sense of shame. A moral sense of shame will guide people to steer clear of bad behavior (*Analects* 2.3). For Confucians, a society's heavy reliance on *fa* or *xing* is an indication that the social fabric has deteriorated.[4] The Confucian classic *Kongzi Jiayu* (Confucius's Family Teachings) records that when Confucius served as the minister of justice in the state of Lu, he was able to help the king create a social order in which the penal code was never applied because there were no wicked people.[5] Regardless of the historical accuracy of this record, it makes the point abundantly clear: Confucians strive for a society where justice does not have to be the primary virtue. As important as justice is, it might not be the primary measure for a society when *li* and the virtue of *ren* prevail. Indeed, promoting *li* and *ren* has been the primary concern for Confucian thinkers. Their goal has been to create a social environment where the circumstances of justice are such that justice does not have to be the primary virtue.

In the Confucian view, practicing the virtues of *li* and *ren* establishes positive human relationships. These virtues enable people to develop a strong sense of community. In such communities, the highest virtue is harmonious relationship rather than justice. It is in this regard that Confucians see a major lack in Sandel's notions of self and community: Sandel's notion of community does not include harmony as a defining characteristic.

To be sure, Sandel's conception of community is profoundly different from that of Rawls. Rawls attaches a positive value to community, but it is subordinate to the value of right. To use Sandel's characterization, on Rawls's view, "community must find its virtue as one contender

among others within the framework defined by justice, not as a rival account of the framework itself" (Sandel 1998, 64). In other words, for Rawls, communitarian aims can be pursued after the establishment of the principles of justice and the concept of right, not prior to or in parallel with them. Coupled with the principle that the right is prior to the good is the view that self is prior to community. Sandel argues that Rawls's thin conception of the self falls far short in providing a foundation for a coherent account of justice in society. A well-founded conception of justice requires a conception of community that penetrates the self profoundly and defines the bounds of the self beyond what is drawn by Rawls. Sandel maintains that community is far more than an instrumental good that provides conditions for the self in pursuit of its own aims or an object of benevolent feelings that some members of society may develop and use as motivations for certain common pursuits. Rather, community is inescapably part of people's identity: "Community describes not just what they *have* as fellow citizens but also what they *are*, not a relationship they choose (as in a voluntary association) but an attachment they discover, not merely an attribute but a constituent of their identity" (150). In this sense, citizens of the same community not only share communitarian sentiments and pursue communitarian aims but also conceive their identity as constituted by the community of which they are a part. Without a strong notion of an identity-constituting community, Rawls cannot bridge the gap between his conception of the individual in the original position, on the one hand, and the principles of justice, on the other. To do this, a constitutive conception of community is needed. Therefore, Sandel argues, community cannot be understood as merely an attachment to be added to the self after the original-position stage when individuals begin to pursue their pluralist aims. A conception of the self as grounded in community must be antecedent to any reasonable conception of justice.[6]

Confucians would unhesitatingly endorse Sandel's conception of community as a primary value. In the Confucian view, personal identity

is partly constituted by social relationships and is integral to the very fabric of the community—and so the importance of community in Sandel's philosophy makes it not less, but even more, conspicuous that Sandel does not include harmony as a primary virtue. To illustrate this point, I will now turn to the Confucian conception of harmony and its close connection to community; and then I will look at Sandel's argument against Dworkin's justification of affirmative action. I aim to show that, without a concept of harmony, not only do Dworkin and Rawls fail, but even Sandel is unable to make a strong case in support of affirmative action.

There are widespread misconceptions of harmony. Classical Confucian thinkers refused to take harmony as merely the absence of strife or as indiscriminate conformity to social norms. They developed a conception of harmony on an analogy to soup-making and orchestral music. In harmony, each component (ingredient of a soup, or instrument in an ensemble) contributes to the overall condition in which each can realize its potential, and yet together with others they form a whole that brings out the best of each. Understood this way, harmony or harmonization ("*he*" 和) is best understood as a verb rather than a noun, indicating a productive ongoing process rather than a finished state of affairs (cf. Li 2014, 34). Instead of mere agreement or conformity, Confucian harmony is a dynamic, developmental, generative process, which seeks to balance and reconcile differences and conflicts through creativity and mutual transformation.[7] This Confucian philosophy of harmony was initially developed against a background of disharmony. Much of the pre-Qin Chinese philosophy during the "Spring–Autumn" and Warring States periods can be understood as various responses and proposed solutions to the problem of disharmony of those periods.

Disharmony is characterized by disorder and conflict. Seeking alternatives to disharmony, people found either domination or harmony. Domination exists when one party (or more) controls the other (or others) by direct force or explicit and implicit threat of undesirable consequences. The essence of domination is power. Domination may

coexist with peace and may thus present the appearance of harmony, but such peaceful states are not examples of harmony. Domination usually produces order, but it is a forced order based on the use or threat of violence, a kind of order with a high human cost. Ancient Confucian thinkers did not take domination as harmony because it does not involve a mutual engagement that is constructive to all parties, nor is there an adequate measure of equity in mutual recognition and compensation, which is crucial to harmony.

Harmony is the other alternative to disharmony. Ancient Confucians promoted a form of harmony that is characterized by constructive, active engagement of involved parties, with equity between them as a crucial condition. When Confucius famously claimed that the *junzi* (君子, morally cultivated persons) seek harmony without going along with the flow in an unprincipled way (*he er bu liu; Zhongyong*, chap. 10) and that the *junzi* harmonize without becoming the same with others (*he er bu tong; Analects* 13:23), he identified one of the most important characteristics of harmony. It is worth noting that the Confucian idea of harmony was initially developed as an alternative to domination that is disguised as harmony. In the classic text *Chunqiu Zuozhuan*, chapter Zhaogong Year 20, the philosopher Yanzi distinguishes harmony from conformity (*tong* 同). In a conversation with the duke of Qi, the duke bragged about his relationship with his minister Ju, who was always in agreement with the duke. Yanzi pointed out that the kind of relationship between the duke and Ju is mere "being the same" (conformity) rather than harmony. Yanzi used the examples of making a soup by mixing various ingredients and making music by orchestrating various instruments, in contrast to the duke's case. For Yanzi, the relationship between the duke and the minister should be a harmonious one, not one of conformity. Just like making a tasty soup calls for integrating various ingredients, some of which even carry opposite flavors, a harmonious relationship presupposes that people engage one another with different perspectives and different views on various issues. This is evidently not the case with the duke and his minister. The minister was without

his own independent voice and was merely in conformity with the duke. In light of the above discussion of domination, we can say that it is no coincidence that the minister always held the same opinions as the duke. The duke had power over the minister. Out of fear or a desire to please the duke or both, the minister always had to agree with the duke, creating the appearance of the two always seeing eye to eye on everything. This is a classic example of domination disguised as harmony. In history, this kind of misconception of harmony has given Confucian harmony a bad name. But that is not what classic Confucian thinkers have advocated when they explicated their philosophy of harmony.

While the difference between harmony and disharmony is usually obvious, the difference between harmony and domination is not always clear and sometimes can be blurred deliberately. Dominating forces tend to disguise domination as harmony. The confusion of domination with harmony is the greatest challenge to the ideal of harmony today as it was more than 2,000 years ago. In his influential book *The Open Society and Its Enemies*, Karl Popper targeted his main criticism at Plato's idea of justice as harmony. Popper held that Plato's idea of conflict-free harmony leads to totalitarianism and is contrary to freedom (Popper 1971). However, Plato's conception of the harmony of the three parts of the soul and of the three classes of people in society is characterized by one element dominating others. It is a model for domination, not for harmony in the sense explicated in the Confucian tradition. Largely because of this tendency to take harmony as conformity and domination, the pursuit of harmony in a diverse world is often regarded in contemporary West as naive at best and harmful at worst. The Confucian conception of harmony, however, should be distinguished not only from disharmony but also from domination. Confucian harmony is based on a strong conception of community and on constructing dynamic and equitable human relationships. In harmonious communities, each individual not only forms and discovers his or her identity, but also contributes to the identity and the good of other mem-

bers; in harmonizing with others, each person benefits from the contributions of fellow community members. In the Confucian conception, the community is not merely a collection of individuals with disparate aims of pursuit, as Rawls would have it. Nor is the community an identity-constituting social body without an overall defining character, as seems to be Sandel's view. Members of Sandel's community can be equipped with such personal characteristics of affection, benevolence, and responsibility, but these are not overall characteristics of the community as a whole. The Confucian conception of community is a social harmony that is to be realized by its members through mutual transformation for the common good.

Now we turn to the issue of affirmative action as a test case. Affirmative action has been a troubling issue for some liberals because it exposes a deep contradiction between their philosophy and their moral intuition. On the one hand, their liberal philosophy is based on the "trump card" of individual rights, which supposedly allow their holders to act in certain ways even if certain social aims would be served by doing otherwise (Dworkin 1984). On the other hand, an understandably strong moral intuition compels these people to think that certain social aims, including affirmative action, must be served, even if they result in restricting individual rights, which otherwise would have to be upheld. Accommodating such a moral intuition, some liberals have taken rather creative approaches to reconciling the contradiction. Ronald Dworkin tried to justify affirmative action on the basis of its social utility, presenting an awkward position that does not sit well with his rights-based anti-utilitarian philosophy. Rawls (1971) would justify affirmative action on the ground that people's natural talents do not belong to individuals but are a "common asset" (101). Rawls's approach may be defensible on the ground of certain metaphysics of personhood, but it is nevertheless not commonsensical to people on the street. Few people would accept that their natural talents are not really theirs but a common asset. Moreover, as Sandel (1998) has argued, "a wider subject of possession" is needed in order for Dworkin

and Rawls to make their case; without an adequate conception of community-based and community-constituted self, they cannot justify their support for affirmative action (Sandel 1998, 149): "Where this sense of participation in the achievements and endeavors of (certain) others engages the reflective self-understandings of the participants, we may come to regard ourselves, over the range of our various activities, less as individuated subjects with certain things in common, and more as members of a wider (but still determinate) subjectivity, less as "others" and more as participants in a common identity, be it a family or community or class or people or nation" (143).

Sandel's solution is subjective in that he relies on the individual's exercise of "reflection" to discover her community-based identity. In the case of admissions to law school or medical school, when a candidate of a racial majority with slightly higher academic score is passed over for a candidate of an underrepresented racial minority, the former's "sacrifice" is in the service of a common endeavor with the latter. Instead of feeling that one has been used for the benefit of others, proper reflection on one's identity will enable the rejected candidate to feel that he or she is making a contribution to the community of which he or she is part. That person's "sacrifice" is justified on the ground that it contributes to the realization of a way of life to which his or her identity is bound (143).

Confucians would support Sandel's point but nevertheless consider it inadequate. Confucians would agree that, in the above affirmative action case, the candidate of a racial majority should, upon proper reflection, realize that he or she is making a contribution to a common endeavor and that by making a contribution to strengthening the community, his or her own identity is also enriched. However, in Confucian philosophy this kind of community-minded understanding is not to be achieved merely through reflection, no matter how deep and thorough such reflection is. Instead it is to be achieved through a long-term project of self-cultivation, through which one develops a proper sense of self and sees one's own success and flourishing as

more aligned with those of the community, not opposed to it. But Confucians do not stop there. In the Confucian view, Sandel's solution is focused on the individual person and on reflection, which is more a theoretical than a practical virtue, to borrow a distinction from Aristotle, whereas Confucians would focus on social harmony, extending their solution beyond the individual and beyond theoretical and subjective reflection.

In the Confucian view, social harmony is essential to the good life; or, put more strongly, it *is* the good life. In harmonizing with fellow citizens of our community (or different levels and overlapping varieties of communities), we realize our own potentials and flourish. In harmonizing with others, we develop relationships with others, and become good persons, good family members, and good citizens in our community. If the candidate of a racial majority with slightly higher academic scores has actively engaged in community-building by constructing harmonious relationships with others, including members of underrepresented racial minorities, he or she will be more likely to feel the need for racial equality and to share a strong sense of common cause with the society—and will be more likely to see the admissions outcome as a worthy contribution to social harmony. This is not to deny that sometimes people may need to endure sacrifice in order to promote the common good in the community, which would in turn enrich the person's own life. A flourishing community is like a beautiful garden. One kind of plant, no matter how impressive it is individually, does not make a good garden. One kind of flower, no matter how beautiful each is separately, does not make an astonishing bouquet. In the Confucian view, a single type of thing, no matter how good it is, cannot make harmony. Yanzi emphasized that "mixing water with water" does not make a soup (not to mention a good soup).[8] Shi Bo, another ancient philosopher, made a similar point: "One note does not make music, one thing does not generate a colorful pattern, one fruit does not make much flavor, and one item presents no comparison."[9] Diversity is a necessary condition for

harmony. In the case of affirmative action, social harmony requires racial diversity and a balanced racial representation in stations that are highly prized in society. Persistently disadvantaging a racial minority in a society is contrary to achieving a harmonious society. Even though one person loses an opportunity to attend a particular medical school or law school, his community is strengthened; he and his children will be better off because the community is strengthened and more harmonized. A more harmonious society is beneficial not only to fellow citizens but also to oneself in the long term. From the Confucian perspective, social harmony provides a strong justification for affirmative action and similar social policies. The Confucian approach goes farther than Sandel's in that it not only connects personal identity to social relationships but also provides an account of what kind social relationships and what kind of community should be promoted.

A more recent example illustrating the Confucian understanding of harmony: Singapore has begun a serious national discussion about making the nation's presidency more racially representative and balanced. Singapore's multiracial population consists of approximately 74 percent ethnic Chinese, 13 percent Malays, and the rest being Indians, Eurasians, and others. Singapore has long made social harmony a central goal of its nation-building aspiration. It is no secret that such a theme has a historical and cultural connection to Confucian philosophy, as does much of its political vocabulary.[10] For the majority of Singaporeans, social harmony is of vital importance to their nation as well as to their individual lives. The nation has a parliamentary system, with the president primarily serving as the ceremonial head of state. Constituencies of its parliamentary election are classified as either single-member constituencies or group-representation constituencies. Group-representation constituencies are contested by teams of candidates from different political parties. In each group-representation constituency, at least one candidate of each team of a party must be from a minority (non-Chinese) race.[11]

This system guarantees that minorities are represented in the Parliament no matter which party's candidates are elected. It also encourages (or even compels) political parties to actively recruit and cultivate minority members. Thus, the system directs political parties to be racially diverse and inclusive.[12] Since 1993, Singapore has selected its presidents by popular vote through direct election. Since then, Singapore has elected three presidents, two of whom have been ethnic Chinese and one Indian. A recent survey shows that although Singaporeans generally believe their president can come from any race, the majority of every racial group prefers a president of their own race.[13] This has caused concerns that, as the nation-state becomes more democratic and relies increasingly on its citizenry to pick political leaders of their own preferences, with less and less paternalistic influence from political leaders, the chance of electing a minority president will diminish.

Recently a constitutional commission proposed a constitutional amendment that would guarantee the representation of all racial groups in the office of the president. One proposed solution is that when a member of any racial group has not occupied the president's office for five continuous terms, the next presidential election will be reserved for candidates from that particular racial group.[14] If such a plan materializes, proponents maintain, it will ensure that the office of president represents all three of the largest racial groups over a period of time and will promote social, religious, and cultural harmony in Singapore. Liberals may lament that such a move would violate individual citizens' political and civil rights. If the past five presidents have all been Chinese or Indian, the next president will be a Malay. A Chinese (or Indian) person would no longer be eligible to run for president until after there is a Malay president. Furthermore, by then that person might no longer meet other qualifications, such as experience of holding a major position not too long before the time of election, and would lose the opportunity to run for president for good. Ethnicity would make a huge difference.

So far, however, there has not been much concern about such a move.[15] From a Confucian perspective, a mechanism to ensure that all major racial groups are represented in the office of president can be justified on the ground of harmony. One of the main roles of the president is to represent the nation. When all racial groups are well represented in the nation's highest office and no racial group feels alienated, racial equality is enhanced; individuals are more likely to develop a strong sense of ownership of the country, a strong sense of citizenship, and a strong identity deeply rooted in the community of the nation-state. Hence, adopting the new mechanism of electing the president is conducive to social harmony and to building a strong national identity in Singapore. Such a move would be justified on the ground of the Confucian philosophy of harmony.

The Confucian philosophy of harmony not only provides an important vantage point for assessing such delicate social issues as affirmative action and racially inclusive presidency, but also gives us a vigorous account of the community and of community-rooted personal identity in general. In such a view, harmonizing with others in the community is to actively engage one another in building human relationships and to form and renew our identities as community members. The process of constructing personal identities and building communities are meant to achieve social harmony and the good life. Neither can be attained without the other. A communitarian philosophy without a concept of harmony leaves a big hole in its framework and is inadequate to produce a robust account of the individual and society. Sandel's communitarian philosophy will be greatly strengthened if he takes harmony seriously into account.

Notes

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1. The word "harmonious" occurs once in the book: "Now imagine that one day the harmonious family comes to be wrought with dissension" (Sandel 1998, 33). Here the word is used evidently in a positive sense but without conceptual significance. Sandel does not elaborate on how a family is harmonious or why harmony is an important characteristic of a family.
2. Sandel cautions that he is not communitarian in the majoritarian sense, whereby the majority is always right, or in the sense that "rights should rest on the values that predominate in any given community at any given time" (x).
3. *Ren* is a key concept of Confucian ethics. The term has been used by classical thinkers to describe the primary quality of a person of ideal virtuosity. Broadly speaking, it can be understood as a caring disposition toward fellow human beings and beyond. See Li (2007).
4. Confucius reportedly commented that in "ancient times," criminal laws were rarely used because people's behavior was mostly led by ritual propriety, but that in his times they had to use criminal laws abundantly because ritual propriety had deteriorated. See *Kong Cong Zi: On Xing*, section 1, at http://ctext.org/kongcongzi/xing-lun/zhs.
5. http://ctext.org/kongzi-jiayu/xiang-lu/zhs.
6. For a discussion of Sandel's notion of self, see Paul J. D'Ambrosio's discussion in this volume, Chapter 10.
7. See Li 2014, chap. 1.
8. "以水济水, 谁能食之." http://ctext.org/chun-qiu-zuo-zhuan/zhao-gong-er-shi-nian/zhs.
9. "声一无听, 物一无文, 味一无果, 物一不讲." http://ctext.org/guo-yu/zheng-yu/zhs. "味一无果" (*wei yi wu guo*) literally means "one flavor does not make a fruit." It may have been a typesetting error. I render it as "one fruit does not make much flavor."
10. In a 1987 interview with the *New York Times*, Lee Kuan Yew said, "Looking back over the last 30 years, one of the driving forces that made Singapore succeed was that the majority of the people placed the importance of the welfare of society above the individual, which is a basic Confucianist concept" (http://www.nytimes.com/1987/01/04/world/western-influence-worries-singapore-chief.html). To this day, Singapore's Ministry of Culture, Community and Youth still hosts a National Steering Committee on Racial and Religious Harmony, and periodically organizes a "Filial Piety Campaign," without associating it explicitly with Confucianism.
11. The opposition party (the Workers Party) won its first ever GRC in 2011. A recent study shows that an increase in group-representation constituencies also increases women's political participation (Tan 2014).
12. Singapore's system contrasts with that of its neighbor Malaysia, where some major political parties are exclusively race-based and explicitly exclude minorities from membership.
13. http://www.straitstimes.com/singapore/singaporeans-respect-people-from-all-races-but-quite-a-number-find-racism-still-an-issue.
14. http://www.straitstimes.com/singapore/constitutional-commission-report-released-key-changes-proposed-to-elected-presidency.

15. As this essay goes to print, the measure has been adopted by the Singapore Parliament and the 2017 Presidential Election is reserved for the Malay ethnicity.

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Individual, Family, Community, and Beyond

Some Confucian Reflections on Themes in Sandel's Justice

TONGDONG BAI

As a political philosopher, Michael Sandel is well known for his communitarian challenge to John Rawls's classic work *A Theory of Justice*. As a teacher and public intellectual, he has brought philosophy down to the "city," making apparently opaque and difficult philosophical texts and ideas intelligible to the college educated and even the general public, in China and around the world, by showing their relevance to everyday political and moral decisions. In this paper I introduce some Confucian ideas into the debates, both over some liberal and communitarian ideas and over some public issues, so as to enrich the projects Sandel started.

A central topic in chapter 9 of Sandel's *Justice: What's the Right Thing to Do?* (2009) is whether an individual is atomic and autonomous, or fundamentally social. This apparently abstract distinction has many practical implications, suggesting distinct answers to questions such as whether an individual is somewhat responsible for the wrongs his or her country or ancestors did to others—for instance, whether an American, an Australian, a German, or a Japanese who lives today has a duty to apologize, or encourage his or her present government to apologize, for slavery before its abolishment under President Lincoln, for the mistreatment of the Australian Aboriginal

people in the past, for the Holocaust, or for sex slavery in World War II, respectively. If we take an individualist understanding of a person, then the answer to the above questions seems to be that one should not be held responsible for an act someone else has chosen to do. But if an individual is profoundly associated with this "someone else," then it seems that the individual should take up the responsibility.

In arguing for the latter understanding of the individual, Sandel has drawn on Alasdair MacIntyre's narrative conception of the person: "We all approach our own circumstances as bearers of a particular social identity. I am someone's son or daughter, someone's cousin or uncle; I am a citizen of this or that city, a member of this or that guild or profession; I belong to this clan, that tribe, this nation. Hence what is good for me has to be the good for one who inhabits these roles. As such, I inherit from the past of my family, my city, my tribe, my nation, a variety of debts, inheritances, rightful expectations and obligations. These constitute the given of my life, my moral starting point. This is in part what gives my own life its moral particularity" (MacIntyre 1981).[1]

But a problem with this type of argument is that it only argues that we human beings *are* originally social, but doesn't say that we *ought to* be social. After all, it is in our human nature (or so many believe) that we can choose to deviate from our nature, if by "nature" we mean things human beings originally have, or have biological tendencies toward. Otherwise put, human beings are by nature not natural. Therefore, the question is really why human beings should follow their social nature, if we are indeed naturally social beings. One way to answer this is to argue that it is good, in the sense of being desirable, to stay social.

Now, let us take a look at how some early Confucian thinkers answered the above question. According to Mencius (372–289 BCE), what distinguishes humans from animals is that we humans have *proper* human relations with our family members, friends, and superiors / inferiors

in a political setting. Without these relations, we are not really different from beasts, and are human look-alikes at best.[2]

What Mencius offered is what many would consider a metaphysical account of human nature. A problem with such an account is that if I don't hold this metaphysical understanding of human beings, it will not have any force over me. One could also say that Mencius tried to shame people into believing his account by calling those who don't follow his proposed human norm "beasts," but shaming won't work for the "shameless," or for those who reject this shaming strategy.

Xun Zi (313–238 BCE), another early Confucian thinker, offered a different account. He, too, believed that proper social relations are what distinguish humans from animals. Xun Zi further argued that these relations are good for us and that therefore we should try to keep them the way they are.[3] For we human beings are not self-sufficient, and there has to be a division of labor among us, meaning that we need others to survive. In particular, we need to be united to defend ourselves against other animals. Apparently, in order to form a unit, proper relations need to be maintained. Moreover, we all desire certain goods. But their supply is limited, whereas our desires are not. If our desires are not ordered by proper social relations, we will end up killing one another and eventually killing off the human species.

Therefore, what Xun Zi offered is a more "naturalistic" account that appeals to human desire for a good life. This conception of good life (security and the satisfaction of basic desires) seems to be widespread. But it is by no means universal. For example, a Nietzschean might believe that a life of chaos with a possibility of domination is much more desirable than a life of security that is nonetheless dull. We shouldn't deny this possibility, but maybe it is a fool's errand to search for a philosophical answer to Nietzscheans and the like (because maybe there is none).

Putting aside the Nietzschean challenge, let us suppose not only that human beings are social but also that we should maintain proper

people of the host country are not severely harmed by the influx of refugees. Of course, an extremely difficult issue in practice is how to define "severely," but at least Confucians can offer a reasonable theoretical model in dealing with this kind of issue.

Another implication of the Confucian expanding network of care is that there shouldn't be a sheer divide between the private and the public. How we behave in the public has its root in the private. What we do in our bedrooms has a ripple effect on what we do in the public arena. If that is the case, then the typical liberal stance that the government should be value-neutral and should stay out of people's bedrooms begins to appear problematic. The government justifiably plays a role in promoting certain family values or morals in general. This issue is also discussed in chapter 9 of *Justice*. To be clear, this doesn't mean that the government should be involved in the promotion of all kinds of morals. What are considered morals by one group of people may not be so considered by another group. What the government should promote is what can become an overlapping consensus, to borrow John Rawls's terminology. Otherwise put, the governmental involvement in promoting morals should be "thin" and should, as liberals would argue, be limited to the political. The problem is that, according to the Confucian conception, the political is not sharply separated from the moral, and thus the thin morality the government can be allowed to promote is thicker than what liberal thinkers tend to allow. Moreover, this promotion doesn't have to be coercive. It could be tax policies, public reward, or denunciation of those who fail to perform family duties (such as an extremely irresponsible son or daughter). There should be mechanisms of checks and balances, accountability, and so forth. Nonetheless, for a Confucian, what is going on in one's bedroom is not categorically outside of the public concern.

So far, we have seen that many issues discussed by Sandel are also concerns for the Confucian. Although sometimes drawing on different resources and making different arguments, there are many overlapping ideas between Sandel and Confucians. To be clear, "Confucianism"

is a philosophical tradition that has lasted for more than 2,000 years, and different Confucian thinkers may have sharply different views. My discussion here follows mostly from the *Analects* and the *Mencius*. As I understand these texts, however, there is a crucial idea that may reveal a fundamental difference between Confucianism and Sandel's philosophy (or communitarianism, a label Sandel often rejects).

In *Beyond Liberal Democracy*, Daniel Bell (2006) puts this difference well: "The Western communitarians [writers like David Miller and Sandel] tend to be republicans, meaning that they favor active, public-spirited participation by the many. The [East] Asian communitarians tend to be more family oriented and more accepting of the idea that active political participation should be reserved for the educated few" (335). By Asian communitarians, Bell means the Confucians. Confucians such as Mencius believe, on the one hand, that all human beings have the same potential to become morally superior, a spirit of equality that is shared by the communitarians. But on the other hand, they believe that, in reality, only the few can make it. The latter point is where Confucians differ from communitarians, Sandel included.

Therefore, although Confucians and communitarians can agree on the idea that we start from the family and community, and develop our virtues outward, Confucians believe that only the few can go really far and thus can participate fully in politics. If this is the case, the average voter's lack of knowledge and relevant morals cannot be compensated by promoting politically relevant virtues through communal efforts, as communitarians would suggest, but can be rectified only by introducing meritocratic elements into politics. Otherwise put, Confucians would reject the strong republicanism in communitarianism. They would fully support the communitarian effort to promote communities, and would also consider the state responsible for providing basic goods, including education, as well as opportunities for political participation, to all. But Confucians would also insist that this effort has a limit, and that in a large society of strangers, which is the default

condition for most contemporary nations, the masses can never be lifted up to a level of competence that can make their political participation meaningful, even in terms of selecting their own representatives. This doesn't mean that Confucians would reject democratic procedure completely, and one person one vote can be considered an effective tool for people to express their satisfaction with governmental leaders and policies, which is what Confucians believe the people are competent to do. But they are not competent to make sound political decisions, either directly or through selecting their representatives. Regarding a bicameral legislature, a Confucian would support a structure in which members of the lower house are elected by the people to express their opinions of the government, whereas members of the upper house are selected based on their merits, especially their moral capacity to care for the people and their intellectual capacity to actualize this care.[7]

A hidden premise of this Confucian idea of a hybrid regime is that there is a fundamental gap between a small community of acquaintances and a large society of strangers. In fact, it was the so-called Legalist philosopher Han Fei Zi (280–233 BCE), an early critic of Confucianism, who made an explicit and powerful argument for this point.[8] According to him, moral values are doomed to be pluralistic in a large society of strangers, and thus what can be developed from one community may not be applicable to those from other geographical or intellectual communities. Thus, he rejected the Confucian idea of developing virtues from the family outward. In defense of Confucians, we can argue that although many, even most, values are doomed to be cherished only by people of a certain community, there may be certain values that are cross-communal. Then the issue is how to discover these cross-communal values. Following this idea, we can defend liberal thinkers such as John Rawls against Sandel's criticisms.

One target of Sandel's criticisms is the liberal understanding of the state of nature, in which we are all taken to be asocial individuals. But from Jean-Jacques Rousseau to Rawls, many thinkers take the state of

nature not as a description of reality, but as a hypothetical tool. That is, for example, the reason Rawls puts individuals behind the veil of ignorance and makes them asocial—it is not because of some individualist metaphysical standpoint, but because he wanted to use this mechanism to discover the cross-communal values. To find the cross-communal values he was looking for, he needed to take away the particularistic communal features of the individual. In Rawls's ideal state, the government is allowed to promote certain values, but this must be done under the premise of pluralism.

A Confucian can criticize Rawls for taking too much away in the veil of ignorance. For example, we can add some abstract social features to the individuals behind the veil of ignorance, such as the desire for social stability and the knowledge that a stable family is important to maintain such stability. Put in this way, the difference between liberal thinkers such as Rawls, on the one hand, and Confucians ("East Asian communitarians") and thinkers like Sandel ("Western communitarians"), on the other, is not really between an individualism-based, value-neutral philosophy and a community-based philosophy that recognizes the role of the government in promoting certain values. Instead, the difference lies in how many values a government should be allowed to promote. This is a difference in degree, not in kind.

Notes

1. Quoted in Sandel 2009 at 222.
2. Many passages in the *Mencius* imply this understanding of human beings. See 3A4 for an example. For all references to passages in the *Mencius*, see Lau 2003 for an English translation. See Bai 2012, 32–33, for a more detailed discussion.
3. For a more detailed account with references to the related passages in the *Xun Zi*, see Fung 1966, 145–147.
4. For a complete and superb English translation of the *Analects*, see Lau 1979.
5. See, for example, Bai 2008a.
6. He is not literally the police chief, as we understand that role today. But not to complicate the story with details, I will use this term to describe the office this person held. There are also some other simplifications in my recapitulation here.

7. For more detailed discussions, see Bai 2008b, 2012 (chap. 3), and 2013.
8. See Bai 2011 for a detailed discussion.

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addition to the honor, the medal entitles recipients to special privileges in veterans' hospitals . . . [T]he real issue is about the meaning of the medal and the virtues it honors. What, then, are the relevant virtues? Unlike other military medals, the Purple Heart honors sacrifice, not bravery" (2009, 10). As a negative example, Sandel uses the U.S. government bailout of certain failed companies in 2008–2009. There was public outrage over this bailout, particularly when some of the money was used to pay bonuses to the managers of the failed companies. As Sandel points out, "The public found this morally unpalatable. Not only the bonuses but the bailout as a whole seemed, perversely, to reward greedy behavior rather than punish it" (14).[3] In short, justice in this sense requires us to reward the virtuous and punish the vicious.

In the following, I shall briefly discuss Sandel's idea of justice as a virtue and then focus the rest of my discussion on his conception of justice according to virtues. In both cases I shall draw on Confucian resources. In discussing justice as a virtue, my main concern is the relationship between justice as a virtue of individual person and justice as a virtue of social institution and the Confucian contribution on this issue.

Justice as a Virtue

To say that justice is a virtue does not seem problematic, and I think Confucianism generally agrees on it. However, there is an issue that must be brought to light. When we say that justice is a virtue, we of course are saying that it is not a vice. However, whether it is a virtue or a vice, justice originally is a human character trait. Other senses of justice are derivative. For example, when we say an action is just, we mean that this is an action proceeding from a person with a character trait of justice; when we say that a state of affair is just, we mean that it is brought about by a person (or persons) with the character trait of justice.[4] This is similar to health, the original meaning of which is

related to a person's body. When we say, in a derivative sense, that one's food is healthy, the environment is healthy, or someone made a healthy decision, we mean that they are all related to one's being healthy.

In this sense, justice is a personal virtue. However, contemporary discussions of justice, which to a great extent are inspired by the work of John Rawls, are primarily, if not exclusively, concerned with social justice. The main question asked is not whether, in what sense, to what degree, and how a person can be just or act justly in his or her interactions with others or in his or her handling of interactions among others; instead those discussions focus on whether, in what sense, to what degree, and how a society is just in its regulating interactions among its members. It is in this sense that John Rawls (1999) famously said, "Justice is the first virtue of social institutions" (3). This is to see justice as a virtue, not of individuals, but of a social institution. The question thus arises: How these two notions of justice as a virtue—justice as a virtue of the individual and justice as a virtue of social institutions—be related, if at all?

Mark Lebar (2014) distinguishes two ways to connect the two: "The first way . . . takes the individual virtue as logically prior, and sees the justice of political institutions as composed of the just relations of individuals. On this conception we begin with the relations the virtuous person seeks to maintain with others . . . and we ask what kinds of institutions and public rules will allow for and maintain those relations"; in contrast, "the second way . . . gives logical priority to the justice of the structure of institutions, practices, and so forth that constitute the state (the political body that is the primary bearer of the attribute of social, institutional or political justice). The crucial idea here is that we have some idea of what a just society . . . should look like . . . The duties of the just individual then are derived from this structure, in virtue of the obligations and reasons they have as members of that society" (270–271). The representative of the first way is

Aristotle.[5] John Rawls represents the second. However, in my view, neither view is without problems.

The Aristotelian model, which derives the justice of social institutions from the justice of individuals, rightly emphasizes the important function of government to make people virtuous and, in this particular case, just. I shall return to this important point later. However, such a model assumes that social justice can be realized only if everyone in the society acts justly, and this further assumes that everything just, whether in terms of distribution or in terms of rectification, is done by individuals and not by the government. The first assumption is clearly unrealistic, and so as long as there is one unjust person, the society cannot be just. If the second assumption did have some plausibility in an ancient small city-state, it is certainly implausible in a contemporary large-scale nation-state. For example, a farmer in Maine cannot know whether and how much a homeless person in San Francisco deserves to have what he produces. In such a large-scale society, distribution of resources has to be done by the state. It is not enough that individual members are just; the distribution and rectification done by the state should also be just.

This seems precisely to be the strength of the second model, represented by Rawls, who emphasizes justice as a virtue of social institutions. The question is how it is related to justice as an individual character trait. Because Rawls's principles of justice are chosen by people in the original position, it might be said that they reflect or express their virtuous or just character, and in this sense it might be said that his justice of social institutions is also derived from the justice of individuals. Obviously, however, this is an implausible interpretation, because parties in Rawls's original position, as he describes them, are primarily self-interested, or indifferent to the interest of others, and thus cannot be claimed to be virtuous in general or just in particular.[6] The proper way to see it is that Rawls uses the original position as an independent procedure to determine principles of

justice for social institutions. In Rawls's view, although we know that *principles* of justice thus independently determined for social institutions must be principles of *justice*, if individuals in the society do not accept such principles, the society is not stable, and so it is important to cultivate a sense of justice among individuals starting in early childhood. Thus, Rawls (1999) argues that "when institutions are just . . . those taking part in these arrangements acquire the corresponding sense of justice and desire to do their part in maintaining them" (398). However, even if Rawls's *principles* of justice are indeed principles of *justice* for social institutions, it is inherently problematic to use such principles of justice, which are derived without any consideration of human nature (what makes humans human), to determine the virtue of justice as an individual character trait. Whatever virtues individual human beings ought to have are character traits that make them good human beings, but one cannot understand what makes human beings good unless one has a concept of human nature, any conception of which, however, is explicitly excluded from the parties in the original position in charge of choosing principles of justice. It is perhaps in this sense that Lebar (2014) complains that conceptions of political justice like Rawls's "may constrain the possibilities for individual justice in ways that have yet to be thought through" (274).

Given that neither of the two ways to connect justice as a virtue of individuals and justice as a virtue of social institutions is promising, Lebar laments, "We may yet not be in sight of a conception of justice as a virtue of individuals that can be congruent with institutional justice" (272). However, I think we have reason to be more optimistic on this issue. I have in mind here Michael Slote's approach. Slote is a virtue ethicist, but unlike most contemporary virtue ethicists who are Aristotelians, he is a sentimentalist, even though, it seems to me, one does not have to be a sentimentalist to agree with Slote on the issue we are concerned with here. In the most updated version of his virtue ethics, a virtuous person is an empathic person, where empathy is regarded as a virtue. To explain the connection, Slote (2009) states

that "the laws, institutions, and customs of a given society are like the actions of that society"; just as individual actions reflect or express an agent's character, they reflect or express the character of the social group who create them: "So a sentimentalist ethics of empathic caring can say that institutions and laws, as well as social customs and practices, are just if they reflect empathically caring motivation on the part of (enough of) those responsible for originating and maintaining them" (125). Slote's approach to the issue is similar to the Aristotelian one in the sense that in both approaches justice as a virtue of social institutions is derivative from justice as a virtue of individuals. But on the Aristotelian model, justice as a virtue of social institutions aims to cultivate just persons. On Slote's model, justice as a virtue of social institutions ensures just interactions or transactions among individuals.

Confucians will generally accept Slote's view that the justice of a social institution reflects the virtuous characters of its leaders. Their idea of inner sageliness and external kingliness expresses precisely the same idea: external kingliness, that is, political institution, is merely a manifestation of inner sageliness, moral virtues. Mencius, for example, claims that "the root of [governing] the world lies in [governing] the state, the root of [governing] the state lies in [governing] the family, and the root of [governing] the family lies in [governing] oneself" (*Mencius* 4a5). *The Great Learning*, one of Confucianism's Four Books, goes further: "To cultivate oneself, there is a need to rectify one's heart-mind; to rectify one's heart-mind, there is a need to make one's intention sincere; to make one's intention sincere, there is a need to extend one's knowledge; and to extend one's knowledge, there is a need to investigate things" (*Liji* 42.1). This makes it clear that a government is good in general and just in particular only because persons who govern it are good. Elsewhere, Mencius states, "Only because former kings have a heart that cannot bear to see people suffer can they have a government that cannot bear to see its people suffer. As they are running a government that cannot bear to see people suffer with a heart that cannot bear to see people suffer, it was as easy for them to

and expressing the virtue of justice of lawmakers—then if I am a person with exceptional talents, I understand that the intention of this principle is that I should make full use of my talents to benefit worse-off people in the most efficient way. Thus, even if I am not paid more, I will still make full use of my talents (although something parallel may not be easily said on behalf of worse-off people).[8]

Justice according to Virtues or Justice of Virtues?

We can now turn to the second feature of Sandel's neo-Aristotelian conception of justice, which I characterize as justice according to virtues: Things are distributed to people according to the relevant merits, excellences, or virtues these things are meant to recognize, honor, and reward. This conception of justice is most plausible in distributing offices, particularly political offices and honors, but not so plausible, if at all, in distributing economic benefits. For example, today economic benefits are distributed mostly in the form of money. Unlike flutes or other particular entities that may have a telos that can help us determine what relevant virtues we should consider when distributing them, it is at least odd to ask what the telos of money is (to buy things?) and what virtues (skills in investment or expertise at bargaining?) it is meant to recognize, honor, or reward. This is also true of many types of services provided by social institutions. For example, we may plausibly say that the telos of a hospital is to provide health care, and so those who can serve this purpose better than others should be offered positions as physicians. However, it is odd to ask how we should distribute the health care that a hospital provides and what virtues patients should have in order to merit such care. Even if we say that wealth and health (care) should be distributed to people according to their contributions to society, which seems to be Aristotle's view on such matters, this has been made very implausible by John Rawls's idea of the natural and social accidents that affect the amount of contributions people can make