



The Confucian Family as Dilemma for Justice

Suwanna Satha-Anand

*Philosophy Department, Faculty of Arts,
Chulalongkorn University
Suwanna.Sat@chula.ac.th*

Abstract

This paper offers a critical discussion of the dilemma between familial harmony and justice in the philosophy of Confucius as recorded in *The Analects* Book 13:18. This chapter is one of the most controversial chapters in *The Analects* as it seems to suggest that Confucius is protecting a thief from legal punishment. This paper would explore whether Confucius is justified in setting up the limits of justice once the harmony of the family is at stake.

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Introductory Note

There has been a general perception that the ethics of Confucius puts too much emphasis on the family, so much so that, it has overlooked the importance of the law in maintaining social order. In supporting that perception, *The Analects* 13:18 has been used a “textual evidence” indicating that Confucian ethics is detrimental to a solid cultivation of a law-abiding citizen. This chapter has been cited to support a cultural explanation of the Chinese or even the Asian vulnerability to corruption or crony capitalism.

This paper focuses on one of the most controversial chapters of *The Analects*, namely, Book 13, chapter 18. This chapter explicitly indicates that uprightness lies in the concealment of guilt of the father by the son and in the concealment of guilt of the son by the father. This indicates a principle of moral reciprocity within the family, while shielding it from the gaze of the state. This chapter seems to advocate harmony in the family by denying justice in the sense of legal punishment for wrong-doing. I would like to explain this dilemma, offer my interpretations, and hope to generate discussion on this important issue. In other words, I would like to explore whether Confucius is justified in setting up the limits of justice once the harmony of the family is at stake.



The Analects in Context

In the past decade, there has been an increasing number of academic translations of *The Analects*, whose translators make good use of new findings of ancient texts unearthed from the Mawangtui cave. There have also been numerous articles published on various themes related to Confucianism in respected journals. In this paper I will refer to some of these materials, many of which have been extensively referenced in my Thai translation of *The Analects*.¹

The historical context which saw the birth of *The Analects* was a time of inter-state wars in ancient China. Scholars name it the Spring and Autumn and the Warring States Periods. In the eyes of Confucius, it was a degenerate time of the once glorious Chou Dynasty (1111-249 B.C.) Confucius saw himself as a cultural if not a political heir to this dynasty which he comments as the “most beautiful.” Reading *The Analects* as a whole, one gets a sense that Confucius saw his mission (ming) as offering an alternative to two courses of events which were unfolding before his eyes. First, there was a sense of imminent collapse of the glorious culture of the Chou sage kings. Second, there was a sense of great concern over imperialist ambitions through wars. About 150 years after the death of Confucius in 479 BC., both fears developed into a historical reality in the “unification” of China under the First Emperor. If we wish to place the “Confucian movement” within the Thai historical framework, we probably would place him and his philosophy at around the time towards the end of the Ayudhaya kingdom. I would imagine that at that time, there must have been thinkers who would lament on the impending decline and imminent collapse of once a glorious political culture of the Ayudhaya kingdom.

In *The Analects* we can see that Confucius was basically arguing with two groups of people. The first group are the rulers who were busy manipulating the cultural symbols of power for their own political gains. The court officials, rulers of small states, many of whom usurpers, were using state rituals, royal dances, building styles, ritual vessels, court music, and social decorum reserved for the kings of the Chou Dynasty, all for their own symbolic hegemony. (*The Analects*, Book 3) The very group of people who were supposed to be the guardians of the state rituals and ceremonies were manipulating those rituals for the expansion and symbolic justification of their own power. The second group are the recluse whose despair drove them out of the socio-political sphere and settled down as farmers. Confucius saw both of these “choices” as detrimental to the cultural heritage of the Chou. The former is making it worse by being manipulative and unscrupulous, the latter by losing hope and giving up too easily. Confucius identifies himself as someone who transmits a culture, and someone who loves the past. His philosophy is proposed as a third alternative which avoids radical changes and





insists on hope for human co-existence. This hope can be made concrete through a long process of moral cultivation based on “loving humaneness (*ren*),” which requires a reconstruction of the Five Great Relationships. They are: father-son; husband-wife; brother-brother, friend-friend, and ruler-subject. These five sets of relationships are the Confucian vision of what constitutes the human world. We cannot go into details here of what kinds of conduct and which virtues are involved in each of these relationships. I would like only to address one particular aspect, namely, that of a conflict between the father-son and the ruler-subject.

I have argued elsewhere that Confucius’ philosophical project lies in his attempt to recreate a viable human community of “loving humaneness” (*ren*). (*The Analects* 4:1) This vision requires Confucius to spell out what are the basic networks of human connectedness which makes us all “human.” We could say that three out of the five great relationships arise within the family, one among friends, and one between the state and the people. We could say that Confucius was trying to form a congenial alignment between the familial, the civil and the political spheres into a harmonious whole. Only within this grand scheme of human relationships, peace is possible. However, as the human community of “loving humaneness” still needs to be cultivated, justice needs to be reckoned with.

Familial Harmony over Justice?

Although the focus of this paper will be on a situation of dilemma between the family and legal justice, there is no denying that Confucius actually sees the two spheres as working in support of each other. In *The Analects* 1:2, we have the following observation.

Master You said, “There are few who, being filial and fraternal, would offend against their superiors. There are none who, not offending against their superiors, would stir up confusion.” (*The Analects* 1:2)²

Although this saying does not belong to Confucius himself, we have good reason to accept this position as being in line with the overall philosophical project of Confucius. This chapter is arguing that in a society where its members have been well-cultivated in the virtues of filial piety and fraternity, chances are that there will be less confusion. It is interesting to note that the language used here is one of description of a state of affairs, it is not presented as an admonition or a prescription. It suggests that the validity of this observation has been tested and developed over long period of time. This chapter also implies that a society with less confusion and perhaps more harmony can be achieved by



cultivating virtues related to the family. It also seems to suggest that, in most cases, social harmony cannot be achieved in a short cut, perhaps by threats of punishment through penal laws. It argues that the family is ultimately the most basic unit of social peace, as it is the family which is producing members with a set of virtues which are not only appropriate for itself, but those same sets of virtues are also supportive of a viable social order. In this sense, filial sons and fraternal brothers are by extension “good citizens” in the sense of not stirring up confusion or rebellion.

I would like to pause here for a moment to offer some general remarks about *The Analects* as a text. What is so interesting about the sayings in *The Analects* is that they are very brief, and richly suggestive of many possible meanings. The task of weaving different sayings into a coherent position is therefore most challenging. The argumentations do not proceed through a set of rules or a neat process of logical explication. They are points of observations about human beings, moments of exchange of insights, moments of strong disagreement, moments of deep sorrow, moments of deep concern, moments of inspiration, moments of controversy and many more.

Although we are arguing that *The Analects* is suggesting an alignment of the familial with the socio-political spheres, we also find a controversial chapter which suggests that if and when the two spheres come into conflict, it is advisable to protect the harmony of the family as against “legal” justice from the state. We need to read this provocative chapter in light of the whole philosophical project of Confucius.

The Analects Book 13 Chapter 18 reads:

“She Kung asked Confucius, “In my village, there is an upright person. When his father stole a sheep, he acted as witness (in court).”

Confucius replied, “In my village, an upright man is different. The father covers for his son, the son covers for his father. Being upright lies in the middle of this.” (*The Analects* 13: 18)

First of all, one must not conclude here that Confucius is advocating theft for the sustenance of the family. In saying “covers for” he is recognizing the wrongness of the act of stealing. Second, one must not conclude here that Confucius is saying that the father needs not go through trial or receive punishment from the state. My reading is that he is saying that it is not the duty of the son to act as witness in court against his own father. I do not think that if the witness were not the son, Confucius would give the same response. Third, this response of Confucius is a response to the illustration of “uprightness” as posed





by She Kung. Confucius is arguing that “uprightness” lies in the middle of mutual concealment of guilt between father and son. We should be aware also that the posing of question by She Kung implies a sense of pride. In other words, he is boasting that he is a “good” ruler as this upright person in his jurisdiction is more loyal to the state than to his own father. If we read this conversation in connection with other similar conversations Confucius has with other rulers, it is reasonable to say that Confucius generally blames rulers for any theft conducted by the people. To another ruler who complained of thieves in the land, Confucius said, “If you were without greed, even if you reward them, they would not steal.” (*The Analects* 12:18) In this sense, Confucius sees the nature of the ruler-subject relationship as one of moral reciprocity. Wrong-doings committed by the people are basically viewed as reactions to a lack of virtue or evil deeds performed by the rulers themselves. The wrong-doings of the people is primarily a reflection of the lack of uprightness of the rulers. The injustice is not merely one of not-punishing the wrong-doer citizens, the injustice lies in the manipulative abuse of power of the rulers as well. In this sense, Confucius is arguing that the wrong-doing of the ruler is more basic than the wrong-doing of the people.

We have explored responses to many relevant questions in our analysis of this controversial chapter. There are many more possible and highly relevant questions which could be raised for further discussion. Here are a few examples.

One question is, what if the wrong-doing here was murder and not theft, would Confucius’ answer have been different? Should the son cover for the father if the father were a murderer, or even a serial killer? We also do not know the reason why the father stole the sheep. Was it because of hunger or starvation? Was the father stealing to feed this very son who was going to act as witness against his own father? Or was it a revenge on prior animosity between neighbors? We can also ask why the father and son did not cultivate uprightness in the family before this theft. Or we can ask whether the son would reprimand the father for his past deeds and help prevent him from any future misdeeds? Why was there no discussion of what possible compensation the son should offer to the neighbor whose sheep was stolen?

It seems that Confucius does not place highest values on justice, if and when justice is rather narrowly conceived in the institution of penal law. For him, peace or harmony is a result of an ethical-cultural process embedded in and expressed in *li* or ritual propriety, not the law. In order to more fully appreciate the implications of *The Analects* 13:18, we need to see another discussion of the role of law in keeping order vis-à-vis the relevance of ritual propriety or *li*.



The Analects Book 2 Chapter 3 reads:

“Lead the people with governance, keep order with penal law, they will follow, but will be without shame.

Lead the people with virtue, keep order with *li*, they will have a sense of shame and will keep order.” (*The Analects* 2: 3)³

The English translation of “*mien*” (translated here as “follow”) in Ames and Rosemont Jr. is to “avoid punishment.” (1998: 76) This term is highly suggestive as it points to the motivation of the people when abiding by the law. The reason why people abide by the law is that they want to protect themselves from possible punishment. It does not necessarily indicate that they really care for justice. Law as a mechanism for governance and keeping order would not cultivate a sense of shame. This sense of shame can be cultivated through ritual propriety (*li*) and virtue (of the ruler). Once ritual propriety is successful the people will keep order of their own accord.

It seems that Confucius sees the possibility of harmony or peace in a relationship of moral responsiveness between the ruler and the people. Justice as implemented in penal law would be inadequate as it would only generate order through desire for self-protection of the people, and not through shame. In this sense, law is a testimony of the failure of ethics and an indicator of a failed moral reciprocity within a human relationship. This ethical responsiveness between the persons in each pair of relationship and among the people is an indicator of a human community with loving humaneness. Confucius proposed that “What we must strive to do is to rid the courts of cases altogether.” (*The Analects* 12:13)

Justice in Harmonious Relationship

Once we read these three chapters together, namely Book 1:2, Book 13:18 and Book 2:3, we get a sense that for Confucius the best chance for creating a human community with loving humaneness is to create and cultivate a congenial alliance and alignment between the familial, the civil and the political. However, an explicit discussion of the conflicts between the familial and the political points to the direction of protecting the harmony of the family against the intervention of the state. A more desirable path to achieve social harmony is to lead the people through ritual propriety, not penal law.

However, we must not jump to the conclusion that Confucius is advocating sacrificing justice for familial harmony. We should see that for him, justice resides





in the relationship of moral reciprocity or moral responsiveness between the ruler and the people. Going back to our analysis of *The Analects* 13:18, we would have to say that a subtle sense of justice is also what Confucius is defending given his conceptual framework. In other words, if the theft of the father in the conversation was in some important sense a result of the moral failure of the ruler, She Kung himself, it would be extremely unjust of him to boast of his achievement as a ruler and as someone who claimed to know what “being upright” means. In arguing against She Kung’s definition and his illustration of someone being “upright” Confucius was refuting She Kung’s conception of an irresponsible ruler whose aim is to create a condition where the son would be without shame in acting as witness against his own father. In this kind of state it would not have been possible to have peace or harmony as penal law seems to be the supreme rule which reigns against a harmonious familial human relationship. From this analysis, we can see that Confucius was trying to maintain harmony or familial peace, while rejecting the sovereignty of penal law as justice. For Confucius, justice lies in the basic reciprocal relationship between the ruler and the subject, not in the penal law which indicates the failure of that relationship.

In conclusion, I would like to argue that Confucius is justified in setting up the limits of justice once the harmony of the family is at stake. We need to understand his position within the general framework of his philosophy which places the cultivation of a good citizen within the horizon of the virtues essentially related to being members of a family. We need also to make a distinction between justice as expressed in the penal law as institutionalized in an apparatus of the state on the one hand, and justice as moral reciprocity as embedded in human relationships, on the other. From our analysis, we can see that Confucius is much more concerned with justice as moral reciprocity, than with justice as institutionalized in penal law.



Notes

The first draft of this paper was presented at the 1st Conference of Humanities Scholars of Asia, titled “Knowledge and Values of Humanities in Asia” at Chung-Ang University, 6-9 October 2008, Seoul, Korea.

Please see the first philosophical translation of into Thai of *The Analects* in Suwanna Satha-Anand (B.E. 2551). I have extensively consulted with major English translations of James Legge (1966), Arthur Waley (1993), D. C. Lau (1979), Brooks and Brooks (1979) and Roger T. Ames and Henry Rosemont Jr. (1998). I have also consulted with two experts in the ancient Chinese language and culture.

Please also see articles related to the main discussion of this paper in Qingping Liu (2003) and Chenyang Li (2006).

2 This English translation is based on my Thai translation of *The Analects*. I also consult the translation of Roger T. Ames and Henry Rosemont Jr. and that of James Legge. My English translation tries to keep as closest as possible to the original Chinese. All translations in this paper are based on this principle.

3 I generally use my own translation and that of Ames and Rosemont Jr. except for an important difference. The term “mien” in my English translation reads “follow,” while that of Ames and Rosemont Jr. reads “avoid punishment.” I use “follow” after consultation with expert in Chinese classical language.

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