

Rituals of Freedom: Austro-Libertarian Themes in Early Confucianism

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Confucianism: The Unknown Ideal

When scholars look for anticipations of libertarian, classical liberal, and Austrian ideas in early Chinese thought, attention usually focuses not on the Confucians, but rather on the Taoists, and in particular on Laozi (Lao-tzu), reputed author of the Taoist classic *Daodejing (Tao Te Ching)*.¹ In *Libertarianism: A Primer*, for example, David Boaz identifies Laozi as the “first known libertarian,”² and Boaz’s *Libertarian Reader* is subtitled “Classic and Contemporary Writings from Lao-tzu to Milton Friedman.”³ No Confucian thinker makes an appearance in either work. Murray Rothbard likewise declares, in the first chapter of his *History of Economic Thought*: “The Taoists were the world’s first libertarians, who believed in virtually no interference by the state in economy or society, and the Confucians were middle-of-the-roaders on this critical issue”⁴ – a characterization of Confucianism that, coming from Rothbard, amounts to irrevocable damnation and consignment to outer darkness.⁵

¹ The two most familiar systems of romanization for Chinese are Pinyin and (at least in English-speaking countries) Wade-Giles, with the former now beginning to displace the latter. The two systems are different enough that terms in one system are often unrecognizable in the other; throughout this essay I employ Pinyin, but for the reader’s convenience I give the Wade-Giles equivalent (when it differs from the Pinyin) in parentheses at the first occurrence of each term. (Terms in quotations are left as is.)

² Boaz (1997a), p. 27.

³ Boaz (1997b).

⁴ Rothbard (1995), p. 23.

⁵ The only Confucian to earn Rothbard’s praise (pp. 26-7) as a proto-libertarian is the 2nd-century BCE historian Sima Qian (Ssu-ma Ch’ien), about whom more below; but Rothbard does not identify Sima as a Confucian or see any continuity between his ideas and the distinctive themes of the Confucian tradition.

Whatever Boaz and Rothbard agree on must practically be libertarian orthodoxy; nevertheless, I wish to venture a dissent. It is true that Taoist writings often contain magnificent insights into the effectiveness of spontaneous order and the evils of coercion and governmental control; and it is likewise true that the Confucians can all too often be hidebound, preachy, starchy apologists for an authoritarian status quo. If that were the whole story, the Taoists would have to win hands down. But it is not the whole story; and once the whole story is on the table, I think it will become clear that, from a libertarian perspective, the Taoists have been overrated and the Confucians underrated.

The Taoists were deeply suspicious of statism, yes, and God love 'em for it; but *why* were they so? To a significant degree, it was because they associated statism with other things that *also* aroused their suspicion: reason, language, commerce, civilization. The notion that those things could exist and flourish *without* centralized government control was as foreign to the Taoists as to any statist; they accepted the connection, but reversed the evaluation.

With regard to reason and language, one of the central messages of Taoism is that all abstract categories and linguistic distinctions falsify our lived experience – a doctrine that has traditionally been anathema to libertarians.⁶ The Taoists oppose government control because it is too *rational*; trying to impose planning on society and trying to impose coherence on one's own thoughts are equally bad, and for the same reasons. The Confucians, by contrast, resemble contemporary libertarians in their stress on logical consistency and precision in terminology. Indeed, they are strikingly reminiscent of today's libertarians in their obsession with what Confucians call the “rectification of names”⁷ – dissolving pernicious ethical and political mystification by applying the proper descriptions to social phenomena⁸ – whereas for the Taoists, all such classifications are arbitrary and optional, since “the Way that can be spoken is not the constant way” and “the name that can be named is not the constant name.”

⁶ For Friedrich Hayek and Ayn Rand on this issue, see Long (2001), pp. 406-418.

⁷ *Lunyu (Lun Yü)* 13.3, Huang (1997), pp. 132-33; *Xunzi (Hsün-tzu)* 22, Watson (1963), pp. 139-156.

⁸ The Confucians even anticipate the ordinary-language strategy of philosophers like Wittgenstein and Austin, to correct philosophical confusions by appeal to “the agreed usage of names.” (*Xunzi* 22; Watson (1963), p. 145-6.)

With regard to commerce and civilization, here is Laozi's sketch of the Taoist utopia:

Lessen the population. Make sure that even though there are labor saving tools, they are never used. Make sure that the people look upon death as a weighty matter and never move to distant places. Even though they have ships and carts, they will have no use for them. ... Make sure that the people return to the use of the knotted cord [in lieu of writing]. ... Then even though neighboring states are within sight of each other, [and] can hear the sounds of each other's dogs and chickens ... people will grow old and die without ever having visited one another.⁹

No writing, no education, no material improvements, no travel or trade, no curiosity – this is not exactly the Hayekian “Great Society.” Anarchic it may be, but it is less the dynamic market-based anarchism of Rothbard than the primitivist, acorn-munching anarcho-stagnation of Rousseau's *Second Discourse*.¹⁰ If this is the price of freedom, statism begins to look good.¹¹ The early Confucians, by contrast, may not be as radical in their anti-statism as the Taoists, but in my estimation they make up for this flaw by firmly yoking their anti-statism to the cause of civilization, commerce, and the Great Society; their overall program thus looks a lot more like contemporary libertarianism than the

⁹ Laozi, *Daodejing* 80; Ivanhoe and Van Norden (2001), p. 199. Bao Jingyan (Pao Ching-yen), a later Taoist singled out for praise by Rothbard (pp. 25-6), offers a similarly primitivist portrait:

In earliest antiquity there were no rulers and no officials. ... There were no trails and paths through the mountains, and neither boats nor bridges existed in the waters. When streams and valleys offered no passage, there was no spreading land-ownership encroachment Purity and naïveté resided in all breasts, so calculating thoughts did not arise. People munched their food and disported themselves; they were carefree and contented. ... They have no spreading lands to arouse avarice, they have no walled cities to be taken as useful, they possess no gold and gems that others might covet (*Baobuzi (Pao-p'u-tzu)* 48; Hsiao (1979), pp. 624-7.)

¹⁰ There is even a flavour of Pol Pot; one wonders in particular how the sage advice to “Lessen the population” is going to be implemented.

¹¹ As I have written elsewhere:

[T]he Taoists challenged the dominant preference for form and limit and determinacy, singing the praises of water and nothingness and indescribability. In contrast to the Confucian doctrine that one should shape and polish oneself like jade, the Taoists upheld the ideal of indefinite original simplicity as symbolized by the “uncarved block.” It's wrong to try to impose order on things rather than letting them be governed by their own natural impulses. Taoists are often hailed as precursors of libertarianism because of their recognition of spontaneous order; this is true as far as it goes, but it's important to realize that the Taoists had no great attachment to order in any case. Lao-tzu ... upholds as his social ideal a small village whose members have few possessions, cannot read or write, count on their fingers, and never dream of traveling even as far as the next village. That they also have no need of rulers is still not enough to make this a utopia in most libertarians' eyes. (Long (1999).)

Taoist program does. One Confucian text, while noting approvingly Laozi's hostility to despotism,¹² sharply criticizes Laozi for wanting to "drag the present age back to the conditions of primitive times and to stop up the eyes and ears of the people"; the best ruler instead "accepts the nature of the people," which is to long for "beautiful sounds and forms," "ease and comfort."¹³

Let a Hundred Schools of Thought Contend

Confucianism, like Chinese philosophy more generally, emerged during a lengthy period of political fragmentation in the wake of the collapse of the Zhou (Chou) Dynasty; this five-century interregnum between the Zhou and Qin (Ch'in) dynasties, running from the 8th through 3rd centuries BCE, is called the Eastern Zhou period.¹⁴ As in Renaissance Italy, political decentralization fostered bloody warfare on the one hand, and economic and cultural flowering on the other. As Burton Watson writes:

The old ruling house of Chou, which once claimed sovereignty over all these so-called feudal states, had dwindled into utter insignificance, its territory shrunken For the first time in history, if traditional accounts are to be believed, China was left without even a nominal Son of Heaven, and no one knew where to turn his eyes in the hope of peace and unity. ... [T]his period was an age of political instability and ferment, of incessant intrigue and strife.

Paradoxically, it was also an age of prosperity and cultural progress. Trade flourished, cities increased in size, men traveled freely from one state to another, and literacy and learning spread beyond the narrow confines of the ruling class.¹⁵

The Eastern Zhou was an era of increased social mobility, both upward and downward. Within the rigid social stratification that had prevailed before the collapse, few could hope to rise in social status, yet few had reason to fear a fall in status either. But if

¹² *Shiji (Shih Chi)* 122; Sima (1993c), pp. 379-80.

¹³ *Shiji* 129; *ibid.*, pp. 433-4.

¹⁴ The Eastern Zhou period is often further divided into the Spring-and-Autumn period (8th-5th c.) and the Warring States period (5th-3rd c.). The name "Eastern Zhou" derives from the location of the nominal capital maintained by what was left of the Zhou royal house during this era; the preceding era, that of the Zhou Dynasty proper, is called the Western Zhou.

¹⁵ Watson (1963), p. 3.

there's anything that commercial trade and military conquest have in common, it is their tendency to cause dramatic changes in social status. One of the most affected groups was the *shi* (*shih*) class; under the old régime, these had been the lowest rung of the ruling class – stewards, scholars, and minor officials. In the event of a military invasion, members of the *shi* class could fall in status quickly, losing their posts and finding themselves dispossessed; but they also had unprecedented opportunities to rise in status, by becoming political advisors to the emerging new régimes. It is from this situation that Chinese philosophy emerged.¹⁶

Social mobility and political decentralization worked together to create the ideal conditions for the development of philosophical ideas. On the one hand, the *shi* class, educated and cultured, with new prospects of upward mobility and new insecurities about downward mobility; on the other hand, a crazy-quilt of newly independent states, run by self-proclaimed kings desperate to hold on to the territories they had won by conquest: quite simply, the kings needed political advisors, and the *shi* needed steady employment. Watson describes the process:

The rulers of the various states, roused by the fierce competition for survival, cast about for ways to improve the efficiency of their administration, win the support of their people, and enrich their domains. In response to their call, thinker after thinker came forward to offer his analysis of the problem and propound his solution.¹⁷

In short, Chinese philosophy was born out of *intellectual competition*. If you're a *shi* down on your luck and looking for advancement, you need to persuade potential employers to accept *your* political advice over that of your rivals; hence you must be able to come up with *convincing reasons* for preferring your ideas – and since your rivals are doing likewise, you need to be able to *rebut* their claims. The art of argument and debate thus grows ever more sophisticated.¹⁸

¹⁶ The fullest study of social mobility during the Eastern Zhou period, and of the role of the *shi* class in the birth of Chinese philosophy, is Hsu (1965).

¹⁷ Watson (1963), pp. 3-4.

¹⁸ Competition may well be a cross-cultural precondition for the emergence of philosophy. Where the dominant worldview has no rivals, or where its proponents have the power to crush any rivals with

The resulting era of cultural creativity is sometimes called the “hundred schools” period. Of these competing intellectual approaches, the four most influential were the Confucians, the Taoists, the Mohists, and the Legalists. Each of these four schools of thought had both libertarian and anti-libertarian aspects. The Mohists, for example, condemned aggressive warfare as mass murder,¹⁹ proclaimed the value of each individual, criticized rent-seeking and wasteful expenditure in the state bureaucracy, developed a subjective theory of economic value, and recognized that money and goods “mutually express each other’s prices.”²⁰ On the down side, Mohists denounced art and culture in the name of utility, suppressed personal attachments in the name of impartiality, and demanded unquestioning submission to centralized authority in the name of social order.²¹

impunity, there is no *need* to come up with arguments; authoritative assertions will do. In India, as in China, philosophy had its birth in competition – not so much competition for political influence as competition, between classes (brahmin vs. kshatriya) and among sects (Hindus vs. Jains vs. Buddhists), for *religious* authority. As for Greece, philosophy there emerged from a culture whose basic institutions (popular assemblies, jury courts) centered around public debate, and where success in persuasive argumentation was accordingly the path to power and prestige. In none of these three cultures was any one group in a position (though not for lack of trying!) to impose a uniform set of ideas on the entire society. It is perhaps significant, and salutary, that neither Greece nor China possessed a set of comprehensive and authoritative “sacred scriptures” on the model of the Bible or the Qur’an. (Homer and the *Book of Odes* don’t really fit the bill.) India had the Vedas, but they were not universally accepted.

¹⁹ As did the Confucians; see, for instance, *Mengzi* 4A15, 6B8, 7B1-4, Lau (1970), pp. 124, 178, 194-5; cf. *Xunzi* 15, Watson (1963), p. 69.

²⁰ Hu (1988), ch. 4; cf. Graham (1978).

²¹ Nevertheless, I can’t let the Mohists pass without putting in a good word for them, because they are the most consistently underrated thinkers of ancient China. Mozi (Mo-tzu), the 5th-century BCE founder of Mohism, was the first major thinker after Kongfuzi; in terms of sheer intellectual ability, he and his followers were arguably the most talented philosophers of ancient China. As Chad Hansen forcefully explains:

Confucian accounts have routinely maligned Mozi. He is *the most important* philosopher in the early half of the classical period. ... Writing argumentative essays and engaging in philosophical reflection both start with Mozi. He distinguishes between traditional mores and morality proper. He formulates a unique version of utilitarianism and argues for that theory and for an explicit political theory. He offers an interesting version of a state of nature justification for social organization. He works out a coherent pragmatic epistemology and both an operational and a historical theory of language. *And* he gives arguments! ... Imagine saying all this to a professional philosopher and adding, “His disciples launched the analytic study of language, logic, geometry, and economics and wrote a behaviorist nominalist essay on language titled *Word and Object*. Oh, and by the way, almost everyone who writes on the subject agrees that he was philosophically shallow and unimportant.” (Hansen (1992), pp. 95, 388n.)

The Mohists may not have been the wisest of China’s early thinkers (all that utilitarianism and authoritarianism, ugh), but they were probably the smartest.

The Legalists had exactly *one* libertarian idea: that an automatically-functioning incentive system can operate successfully *without* having to depend on virtuous motivations in the participants. This is also the essential insight behind the classical liberal approach both to markets (Adam Smith’s “invisible hand”) and to political constitutions (Immanuel Kant’s “nation of demons”).²² No other Chinese school grasped this thought as clearly; the Confucians, as we shall see, came close, but usually insisted that such an incentive framework can operate successfully only when embedded in the context of a virtuous culture. The Confucians had a point, of course – one that libertarians often acknowledge.²³ But if the Legalists overestimated the independence of such incentive systems from cultural preconditions, the Confucians correspondingly underestimated it; so the Legalists had a point too. Unfortunately, none of the Legalists’ *other* ideas was even remotely libertarian; their political program was characterized by amoral power-worship, ruthless brutality, and the micromanagement of every aspect of society. When Legalist theorists came to power during the mercifully short-lived Qin Dynasty, they instituted such a totalitarian reign of terror – book-burnings, weapons confiscations, mass executions, the usual – that the philosophy of Legalism became universally execrated throughout all later Chinese history.²⁴ Like Robespierre, many of the major Legalist thinkers met with violent deaths at the hands of the bloody and

²² In the case of anarcho-capitalism, of course, the market *is* the political constitution.

²³ As Chris Sciabarra writes:

To what extent does this framework *itself* require a certain constellation of philosophical, cultural, and historical preconditions? ... Any framework for political ethics and institutions of law must be comprehended in terms that are relevant, understandable, and applicable to the specific society within which it is manifested and developed. Severing principles from the context they require, and within which they gain meaning, freezes the living dynamism of the process itself. (Sciabarra (2000), pp. 341-50.)

²⁴ At least until the Cultural Revolution, when the Maoists, appropriately enough, found the Legalists *simpatico* and officially “rehabilitated” them. Some western scholars have also been indulgent; Raymond Dawson, for example, opines that the Qin Dynasty “may be seen as a stage in the increasing centralization and bureaucratization of China, exposed to vilification because it trod on many toes in its rush to create something lasting and inevitable.” (Introduction to Sima (1994), p. xii.) Although the Qin Dynasty lasted less than two decades, among its physical legacies are the foundations of the Great Wall of China (to defend the undefendable borders of an overextended empire) and the army of over 7000 terra-cotta warriors unearthed in 1974 at Xi’an (to grace the Emperor’s massive and costly tomb). Ayn Rand’s savage essay “The Monument Builders” (Rand (1964), pp. 100-107) was not written about the Qin Dynasty – but it could have been.

paranoid régimes they had helped to establish;²⁵ it is difficult to avoid agreeing with Sima Qian's judgment that they got what they deserved.

Power and Market

While no school of early Chinese thought is *consistently* libertarian, the Confucians score higher than any of the others. In what follows I shall draw primarily on six sources for early Confucian ideas:

1. The *Lunyu* (*Lun Yü*), or “Analects,” which record the (often cryptic) oral teachings of the movement's founder, Kongfuzi (K'ung-fu-tzu; 6th-5th c. BCE), better known by his latinized name “Confucius.”
2. The *Mengzi*, eponymously titled after the second major Confucian thinker, whose (much less cryptic) ideas it records: Mengzi (Meng-tzu; 4th c. BCE), also latinized as “Mencius.”
3. The *Xunzi*, likewise eponymously titled after its author, Xunzi (Hsün-tzu; 3rd c. BCE), the third major Confucian thinker.
4. The *Liji* (*Li Chi*) or “Record of Rites,”²⁶ a compilation of Confucian material from many hands and of uncertain date, often purporting to record teachings of Kongfuzi omitted from the *Lunyu* (perhaps for being insufficiently cryptic).
5. The *Shiji* (*Shih Chi*), or “Historical Records,” written by the Confucian historian Sima Qian (Ssu-ma Ch'ien; 2nd c. BCE), whose jaundiced view of the state may stem in part from his having been castrated for venturing a mild criticism of the emperor.
6. The *Yantielun* (*Yen T'ieh Lun*), or “Discourses on Salt and Iron,” the record of a 1st-century BCE debate between Confucian economic advisors and their Legalist opponents.

Taoism often receives undeserved credit for what are properly Confucian ideas. The libertarian notion of *spontaneous order*, for example, appears to have originated in the Confucian tradition, only to be borrowed by Taoist writers and put forward as a Taoist invention (muddling it up with primitivism in the process). This fact has been obscured by the fact that “Laozi,” the purported author of the *Daodejing*, has traditionally been identified with Lao Dan (Lao Tan), an older contemporary of Kongfuzi. This would

²⁵ *Shiji* 6, 68, 87; Sima (1993a), pp. 38-40, 98-99, 199-206.

²⁶ The celebrated “four books of Confucianism” are the *Lunyu*, the *Mengzi*, and two chapters of the *Liji*.

place the *Daodejing* in the 6th century BCE, making its author the earliest proponent of spontaneous order in Chinese literature. Both Boaz and Rothbard accept this early date; but contemporary Sinologists are now in near-unanimous agreement that the *Daodejing*, whatever its author's real name, is a product of the 3rd century BCE (or the late 4th, at the earliest). This redating means that the spontaneous-order teachings of "Laozi," like those of his Taoist contemporary Zhuangzi (Chuang-tzu), were composed *after* the spontaneous-order teachings of Confucians like Kongfuzi and Mengzi.

The natural universe, Kongfuzi observes, maintains order without giving commands,²⁷ and the ruler should do likewise, remaining motionless like the north star and letting the people revolve spontaneously around him.²⁸

If you yourself are correct, even without the issuing of orders, things will get done; if you yourself are not correct, although orders are issued, they will not be obeyed.²⁹

Was not Shun one who ruled by means of *wuwei* [non-action]? What did he do? He made himself reverent and took his position facing south [i.e., adopted the ritual posture of the Emperor], that is all.³⁰

Mengzi concurs with Kongfuzi's preference for spontaneous order over imposed order:

There was a man from Sung who pulled at his rice plants because he was worried about their failure to grow. Having done so, he went on his way home, not realizing what he had done. "I am worn out today," said he to his family. "I have been helping the rice plants to grow." His son rushed out to take a look and there the plants were, all shriveled up. There are few in the world who can resist the urge to help their rice plants grow.³¹

It is in reading such Taoist-sounding passages as these that we need to remind ourselves who came first.

²⁷ *Lunyu* 17.18, Huang (1997), p. 170; cf. *Mengzi* 5A5, Lau (1970), p. 143; *Xunzi* 17, Watson (1963), pp. 79-88.

²⁸ *Lunyu* 2.1; Huang (1997), p. 52.

²⁹ *Lunyu* 13.6; *ibid.*, p. 134.

³⁰ *Lunyu* 15.5; Ivanhoe and Van Norden (2001), p. 41.

³¹ *Mengzi* 2A2, Lau (1970), p. 78.

Kongfuzi's enthusiasm for spontaneous order translates into a distinct lack of enthusiasm for the institution of punishment:³²

If you govern them with decrees and regulate them with punishments, the people will evade them but will have no sense of shame. If you govern them with virtue and regulate them with the rituals, they will have a sense of shame and flock to you.³³

Ji Kang-zi asked Master Kong [= Kongfuzi] about government, saying: "If I kill those who have lost the Way to move closer to those who possess the Way – what do you think of it?"

Master Kong replied: "Sir, in conducting government, why must you resort to killing? If you desire goodness, the people will be good accordingly. The gentleman's moral character is wind and the small man's moral character, grass. When the grass is visited by the wind, it must surely bend."³⁴

If truly efficacious people ... were put in charge of governing for a hundred years, they would be able to overcome violence and dispense with killing altogether.³⁵

Later Confucians generally have a more favorable attitude toward punishment,³⁶ but still favour moderating its harshness; in particular, the common practice of punishing the entire family for the act of an individual is forcefully rejected.³⁷

³² One passage in the *Lunyu* attributes to Kongfuzi the thought that "if tortures and penalties are not just right, the people will not know where to put their hands and feet," but this is widely thought to be a later interpolation. (*Lunyu* 13.3; Huang (1997), pp. 132-33.)

³³ *Lunyu* 2.2; *ibid.*, p. 52.

³⁴ *Lunyu* 12.19; *ibid.*, p. 130.

³⁵ *Lunyu* 13.11; Ames and Rosemont (1998), pp. 164-5.

³⁶ This is especially true of Xunzi, the most tough-minded and regulation-happy of the early Confucians; see *Xunzi* 18 (Knoblock (1994), p. 37). But contrast the 2nd-century BCE Confucian Jia Yi (Chia I): When punishments and penalties accumulate, the people turn away in resentment When they are bludgeoned with laws and commands, and as the application of laws and commands reaches the point of saturation, the prevailing mood among the people is one of sadness. (*Han Shu* 48; Hsiao (1979), p. 479.)

³⁷ *Mengzi* 1B5, Lau (1970), p. 65; *Xunzi* 24 (Knoblock (1994), p. 166-67; *Shiji* 10, 102, Sima (1993b), pp. 290, 470-71.

The Confucian position contrasts with that of the Legalists, who argued that punishments should be as harsh as possible, to maximize their deterrent effect. Leading Legalist theoretician Han Feizi, for example, writes:

Even the nimble Lou-chi could not climb a city wall ten spans high, because it is too precipitous; but lame sheep may easily graze up and down a mountain a hundred times as high, because the slope is gradual. Therefore the enlightened ruler makes his laws precipitous and his punishments severe.³⁸

Hence Legalists favoured punishing minor transgressions as harshly as major ones, a policy later implemented in the Qin Dynasty. Sima Qian takes obvious satisfaction in describing the way in which this policy backfired:

[A]n order came for a force of 900 men from the poor side of the town to be sent to garrison Yuyang. Chen She and Wu Guang were among those whose turn it was to go, and they were appointed heads of the levy of men. When the group had gone as far as Daze County, they encountered such heavy rain that the road became impassable. It was apparent that the men would be unable to reach the appointed place on time, an offence punishable by death. Chen She and Wu Guang accordingly began to plot together. “As things stand, we face death whether we stay or run away,” they said, “while if we were to start a revolt we would likewise face death. Since we must die in any case, would it not be better to die fighting for our country?” ...

Chen She ... led a band of some hundred poor, weary soldiers in revolt against Qin. They cut down trees to make their weapons and raised their flags on garden poles, and the whole world gathered like a cloud, answered like an echo to a sound, brought them provisions, and followed after them as shadows follow a form. In the end the leaders east of the mountains rose up together and destroyed the house of Qin.³⁹

When minor and major transgressions are punished equally harshly, people will be willing to commit a major transgression to avoid being caught for a minor one – a point also made nowadays by libertarian critics of “three strikes – you’re out” laws. For all their vaunted insight into incentive structures, the Legalist architects of the Qin legal

³⁸ *Han Feizi* 49; Watson (1964b), p. 103.

³⁹ *Shiji* 6, 48; Sima (1993a), p. 80, (1993b), pp. 1-2; the latter part of this passage is Sima’s quotation of an earlier account by Jia Yi.

system failed to grasp this crucial principle – a failure that ultimately led to the collapse of their régime.

There is more to libertarianism than its specific policy proposals. Libertarianism encompasses a vast body of social theory regarding human nature, human action and interaction, and the human good; and we shall see that this body of social theory intersects with Confucianism at a number of points. Still, similar recommendations for public policy are an especially clear sign of affinity between libertarians and Confucians.

Confucian writings are characterized by unrelenting hostility to governmental abuse of power. Mengzi condemns the seizing of private property for government use,⁴⁰ while Sima Qian complains that the building of the Great Wall “made free with the strength of the common people.”⁴¹ Sima also quotes approvingly a negative portrait of government functionaries from the possibly invented Sima Jizhu (Ssu-ma Chi-chu):

Bowing and scraping, they appear before the ruler; fawning and flattering, they speak their piece. Banding together for greater power, leading each other on with promises of profit, they flock together into cliques to drive out honest men. Seeking position and fame, living off the public funds, they devote themselves to private advantage, pervert the ruler’s laws, and prey upon the farmers. Using their offices to terrorize others, taking advantage of the power of the law, they seek by every violent and unlawful means to win gain. They are in fact no different from a bunch of bandits who swoop down upon men with drawn swords.⁴²

Mengzi condemns imperialist expansionism:

A benevolent man would not even take from one man to give to another, let alone seek territory at the cost of human lives. ... Those who are in the service of princes today all say, “I am able to extend the territory of my prince, and fill his coffers for him.” The good subject of today would have been looked upon in antiquity as a pest upon the people. To enrich a prince who is neither attracted to the Way nor bent upon benevolence is to aid a Chieh [i.e., a tyrant].⁴³

⁴⁰ *Mengzi* 3B9; Lau (1970), p. 113.

⁴¹ *Shiji* 88; Sima (1993a), p. 213.

⁴² *Shiji* 127; *ibid.*, p. 427.

⁴³ *Mengzi* 6B8-9, Lau (1970), p. 178.

In wars to gain land, the dead fill the plains; in wars to gain cities, the dead fill the cities. This is known as showing the land the way to devour human flesh. Death is too light a punishment for such men.⁴⁴

And Xunzi argues that a ruler who favours peace and commerce will “hold his armies in reserve and give his soldiers rest”; he can “sit back at ease and goods will pile up, all will be well ordered, and there will be enough of all things to go around.”

When it comes to weapons and military supplies, his war-loving enemies will day by day be smashing and destroying theirs and leaving them strewn over the plains of battle, while he polishes and mends his and stacks them away in his arsenal. As for goods and grain, his enemies will day by day be wasting theirs and pouring them out to supply the campgrounds, while he gathers his in and stores them in his granaries and supply houses. ... In this way his enemies will daily pile up depletion while he piles up abundance Therefore he can stand by and wait for the decay of his enemies⁴⁵

The Confucians also had a generally libertarian – well, classical liberal – attitude toward taxation. Xunzi writes:

The tax on the fields shall be one tenth. At barriers and in markets, the officials shall examine the goods but levy no tax. The mountains, forests, lakes, and fish weirs shall at certain seasons be closed and at others opened for use, but no taxes shall be levied on their resources. ... Goods and grain shall be allowed to circulate freely, so that there is no hindrance or stagnation in distribution Thus the people living in lake regions have plenty of lumber and those living in the mountains have plenty of fish. ... Such goods service above to adorn worthy and good men, and below to nourish the common people and bring them security and happiness. This is what is called a state of godlike order.⁴⁶

Sima Qian observes that taxes on shipping discourage trade, making goods scarcer and more costly;⁴⁷ hence he cites the maxim: “Wealth and currency should be allowed to

⁴⁴ *Mengzi* 4A14; *ibid.*, p. 124.

⁴⁵ *Xunzi* 9; Watson (1963), pp. 53-4.

⁴⁶ *Xunzi* 9; *ibid.*, pp. 43-4. For similar advice, see *Mengzi* 1B5, 2A5; Lau (1970), pp. 65-66, 82.

⁴⁷ *Shiji* 30; Sima (1993c), p. 81.

flow as freely as water!’⁴⁸ One modern scholar observes that the Confucians “observed the problem of taxation from the viewpoint of production, which was rather exceptional in the history of ancient financial thought.”⁴⁹

Like Adam Smith, the Confucians insist that the “wealth of nations” should be measured in terms of the wealth of the populace, not of the government. Xunzi writes:

[A ruler] who pays attention only to the collection of taxes will be lost. Thus, a king enriches his people, a dictator enriches his soldiers, a state that is barely managing to survive enriches its high officers, and a doomed state enriches only its coffers and stuffs its storehouses. But if its coffers are heaped up and its storehouses full, while its people are impoverished, this is what is called to overflow at the top but dry up at the bottom.⁵⁰

Accordingly, the Confucians advocated a maximum tax rate of about ten or eleven percent.⁵¹ (The rate actually prevailing was rarely below twenty, and often much higher.) The Confucians’ maximum rate was also the minimum; Mengzi states that while a higher rate would be rapaciously tyrannical, a lower rate would be barbarically uncouth.⁵² Well, I didn’t promise libertarian purity.

Confucianism has a reputation of being suspicious of commerce and trade, foreign trade especially; but this reputation stems from a later period when the Confucians had established themselves as a privileged bureaucratic and intellectual class, hostile to social mobility and to the new ideas that foreign trade brings.⁵³ While early Confucianism contains both pro-commerce and anti-commerce strand, the pro-commerce strands predominate. Admittedly, the Confucians do emphasise agricultural over mercantile pursuits,⁵⁴ yet Xunzi and Sima Qian, for example, sing the praises of foreign trade:

⁴⁸ *Shiji* 129; *ibid.*, p. 437.

⁴⁹ Hu (1988), p. 53.

⁵⁰ *Xunzi* 9; Watson (1963), p. 38.

⁵¹ *Lunyu* 12.9, Huang (1997), pp. 127-8; cf. *Liji* 39.10, 29.20, Chan (1963), pp. 94, 106.

⁵² *Mengzi* 6B10, Lau (1970), p. 179.

⁵³ See Levathes (1994).

⁵⁴ *Shiji* 30; Sima (1993c), p. 84.

In the far north there are fast horses and howling dogs; China acquires and breeds them and puts them to work. In the far south there are feathers, tusks, hides, pure copper, and cinnabar; China acquires them and uses them in its manufactures. In the far east there are plants with purple dye, coarse hemp, fish, and salt; China acquires them for its food and clothing. In the far west there are skins and colored yaks' tails; China acquires them for its needs. ... Thus, wherever the sky stretches and the earth extends, there is nothing beautiful left unfound, nothing useful left unused.⁵⁵

The region west of the mountains is rich in timber, bamboo, paper mulberry, hemp, oxtails for banner tassels, jade and other precious stones. That east of the mountains abounds in fish, salt, lacquer, silk, singers, and beautiful women. The area south of the Yangtze produces camphor wood, catalpa, ginger, cinnamon, gold, tin, lead ore, cinnabar, rhinoceros horns, tortoise shell, pearls of various shapes, and elephant tusks and hides, while that north of Longmen and Jieshi is rich in horses, cattle, sheep, felt, furs, tendons, and horns. Mountains from which copper and iron can be extracted are found scattered here and there over thousands of miles of the empire, like chessmen on a board. ... All of them are commodities coveted by the people of China, who according to their various customs use them for their bedding, clothing, food, and drink, fashioning from them the goods needed to supply the living and bury the dead.⁵⁶

Mengzi expresses a dim view of entrepreneurial profit:

In antiquity, the market was for the exchange of what one had for what one lacked. The authorities merely supervised it. There was, however, a despicable fellow who always looked for a vantage point and, going up on it, gazed into the distance to the left and to the right in order to secure for himself all the profit there was in the market. The people all thought him despicable, and, as a result, they taxed him. The taxing of merchants began with this despicable fellow.⁵⁷

For Xunzi, by contrast, when “farmers labor with all their energy to exhaust the potential of their fields” and “merchants scrutinize with keen eyes to get the utmost from their

⁵⁵ *Xunzi* 9; Watson (1963), pp. 43-4.

⁵⁶ *Shiji* 129; Sima (1993c), p. 434.

⁵⁷ *Mengzi* 2A10; Lau (1970), p. 92.

goods,” this is a symptom of positive social order and “perfect peace.”⁵⁸ And Sima, in his praise of Kirzner-style entrepreneurial alertness, waxes nearly Randian:

These, then, are examples of outstanding and unusually wealthy men. None of them enjoyed any titles or fiefs, gifts, or salaries from the government, nor did they play tricks with the law or commit any crimes to acquire their fortunes. They simply guessed what course conditions were going to take and acted accordingly, kept a sharp eye out for the opportunities of the times, and so were able to capture a fat profit. ... There was a special aptness in the way they adapted to the times All of these men got where they did because of their devotion and singleness of purpose. ... [T]here is no fixed road to wealth, and money has no permanent master. It finds its way to the man of ability like the spokes of a wheel converging upon the hub, and from the hands of the worthless it falls like shattered tiles. ... Rich men such as these deserve to be called the “untitled nobility”⁵⁹

Sima adds that “Poverty and wealth are not the sorts of things that are arbitrarily handed to men or taken away,”⁶⁰ but instead track the absence or presence of effort and skill. Kongfuzi had complained that one of his disciples, Zigong (Tzu-Kung), “refused to accept the decree of Heaven and went into trade.”⁶¹ But Sima disagrees with Kongfuzi’s judgment:

By buying up, storing, and selling various goods in the region of Cao and Lu, he [Zigong] managed to become the richest among Confucius’ seventy disciples. While Yuan Xian, another of the Master’s disciples, could not get even enough chaff and husks to satisfy his hunger, and lived hidden away in a tiny lane, Zigong rode about with a team of four horses attended by a mounted retinue, bearing gifts of bundles of silk to be presented to the feudal lords, and whatever state he visited the ruler never failed to descend into the courtyard and greet him as an equal. It was due to Zigong’s efforts that Confucius’ fame was spread over the empire.⁶²

⁵⁸ *Xunzi* 4 (Knoblock (1988), pp.195.

⁵⁹ *Shiji* 129; Sima (1993c), p. 453.

⁶⁰ *Shiji* 129; *ibid.*, p. 435.

⁶¹ *Lunyu* 11.18; Huang (1997), p. 120.

⁶² *Shiji* 129; Sima (1993c), p. 438.

For Sima, anyone who forgoes productive work, choosing dependence on others without feeling shame, can “hardly deserve to be called human.”⁶³ Xunzi also expresses enthusiasm for economic prudence and providence: if all people “gave free rein to their desires,” never deferring consumption or conserving for the future, then “the material goods of the whole world would be inadequate to satisfy them.” A person who “consumes his provisions in an utterly extravagant manner, not considering the consequences,” will, in Xunzi’s gentle description, inevitably “freeze, starve, be reduced to holding a begging gourd and sack, and will wind up as a skeleton lying in a drainage ditch.” The inculcation of “regulations, ritual, and moral principles” leads human beings to “consider the long view of things” and thus to “moderate what they expend and control what they desire, harvesting, gathering, hoarding, and storing up goods in order to perpetuate their wealth.”⁶⁴

The Confucians also recognized the importance of the division of labour, and the existence of mutual gains from trade. Mengzi observes:

To trade grain for implements is not to inflict hardship on the potter and the blacksmith. The potter and the blacksmith, for their part, also trade their wares for grain. In doing this, surely they are not inflicting hardship on the farmer either. ... [I]t is necessary for each man to use the products of all the hundred crafts. If everyone must make everything he uses, the Empire will be led along the path of incessant toil.⁶⁵

If people cannot trade the surplus of the fruits of their labours to satisfy one another’s needs, then the farmer will be left with surplus grain and the women with surplus cloth. If things are exchanged, you can feed the carpenter and the carriage-maker.⁶⁶

And Xunzi concurs:

The farmers do not have to carve or chisel, to fire or forge, and yet they have all the tools and utensils they need; the artisans and merchant do not

⁶³ *Shiji* 129; *ibid.*, p. 449.

⁶⁴ *Xunzi* 4 (Knoblock (1988), pp.193-5.

⁶⁵ *Mengzi* 3A4; Lau (1970), p. 101.

⁶⁶ *Mengzi* 3B4; *ibid.*, p. 109.

have to work the fields, and yet they have plenty of vegetables and grains.⁶⁷

[T]he accomplishments of a hundred workmen goes to support a single individual. Yet an able man cannot be skilled in more than one line, and one man cannot hold two offices simultaneously. If people all live alone and do not serve one another, there will be poverty.⁶⁸

The Confucians hit upon other economic principles as well. Mengzi, for example, sees that the relative values of two kinds of good depends on their specific amounts of the goods in a given context:

‘Which is more important, the rites or food?’

‘The rites. ...’

‘Suppose you would starve to death if you insisted on the observance of the rites, but would manage to get something to eat if you did not. Would you still insist on their observance?’ ...

‘In saying that gold is heavier than feathers, surely one is not referring to the amount of gold in a clasp and a whole cartload of feathers?’⁶⁹

Mengzi thus comes tantalizingly close to discovering the marginalist-subjectivist solution to the diamond-water paradox. He also understands the dangers of governmental interference with market prices. The utopian theorist Xuzi (Hsü-tzu)⁷⁰ had advocated the equalization of prices:

If we follow the way of Hsü Tzu there will be only one price in the market, and dishonesty will disappear from the capital. Even if you send a mere boy to the market, no one will take advantage of him. For equal lengths of cloth or silk, for equal weights of hemp, flax, or raw silk, and for equal measures of the five grains, the price will be the same; for shoes of the same size, the price will also be the same.

Mengzi replies:

⁶⁷ *Xunzi* 9; Watson (1963), p. 44.

⁶⁸ *Xunzi* 10; Fung (1952), p. 295.

⁶⁹ *Mengzi* 6B1; Lau (1970), p. 171.

⁷⁰ Not to be confused with the Confucian Xuñzi (Hsün-tzu).

That things are unequal is part of their nature. ... If you reduce them to the same level, it will only bring confusion to the Empire. If a roughly finished shoe sells at the same price as a finely finished one, who would make the latter? If we follow Hsü Tzu, we will be showing one another the way to being dishonest.⁷¹

The *Yantielun* concurs that if we “standardize the price,” then consumers will be left with “no choice at all between the good and the bad” products.⁷² (Here Mengzi and the *Yantielun* have anticipated the libertarian case against rent control: if landlords are forbidden to charge more for a well-maintained property than for a badly-maintained one, they will have no incentive to keep their properties in good repair, and so consumers will be deprived of the opportunity to choose higher quality housing.) Sima Qian too is aware of the operations of the price system: “when a commodity is very cheap, it invites a rise in price; when it is very expensive, it invites a reduction.”⁷³ In an early foray into public-choice analysis, he tells how a bureaucratic agency established to regulate the iron and salt industries ended up being captured by the very merchants it was supposed to regulate; he also understands the connection between price inflation and the expansion of the money supply.⁷⁴

In the *Yantielun* we find the Confucians arguing:

[T]he physical strength of people may vary; in some regions they are stronger, and in others weaker, presenting quite different conditions. The need may be for larger or smaller implements, circumstances may demand here one shape, there another; localities vary and practices change, and in each particular situation, each implement has its advantages. As the government imposes a single standard for all, iron implements are deprived of their specific aptness, and the farmers lose thereby the particular advantages of each.⁷⁵

⁷¹ *Mengzi* 3A4; Lau (1970), p. 104.

⁷² *Yantielun* 36; Hsiao (1979), p. 463.

⁷³ *Shiji* 129 (1993c), p. 434.

⁷⁴ *Shiji* 30; *ibid.*, p. 69-71.

⁷⁵ *Yantielun* 5; Hsiao (1979), p. 463.

Here we see a striking anticipation of Friedrich Hayek's idea that a central planner must necessarily lack "knowledge of the particular circumstances of time and place" on which individual economic actors base their decisions.⁷⁶

But the Confucians did not merely notice this or that economic principle; they also grasped the *form* and *ground* of economic principles in general. In a passage reminiscent of Menger's and Mises' critiques of economic historicism, Xunzi writes:

Abandoned incorrigible people say: Ancient and present times are different in nature; the reasons for their order and disorder differ. And many people are thus misled. ... But why cannot the Sage be so deceived? I say it is because the Sage measures things by himself. Hence by himself he measures other men; by his own feelings he measures their feelings Past and present are the same. Things that are the same in kind, though extended over a long period, continue to have the self-same principles.⁷⁷

Not only does Xunzi acknowledge the *necessity* and *universality* of economic principles, he also recognizes their dependence, not on empirical observation, but on introspection.⁷⁸

Hence the Confucians anticipate the praxeological method of Austrian economics, as described by Hayek:

[I]n discussing what we regard as other people's conscious actions, we invariably interpret their action on the analogy of our own mind; that is, we group their actions, and the objects of their actions, into classes or categories which we know solely from the knowledge of our own mind. ... [It] follows that it is not only impossible to recognize, but meaningless to speak of, a mind different from our own. What we mean when we speak of another mind is that we can connect what we observe because the things we observe fit into the way of our own thinking. ... If we can understand only what is similar to our own mind, it necessarily follows that we must be able to find all that we can understand in our own mind. ... Where we could no longer interpret what we know about other people

⁷⁶ Hayek (1980), p. 84.

⁷⁷ *Xunzi* 5; Fung (1952), p. 284.

⁷⁸ The *Liji* makes a similar point:

The *Book of Odes* says, "In hewing an axe handle ... the pattern is not far off." If we take an axe handle to hew another axe handle and look askance from one to another, we may still think the pattern is far away. Therefore the superior man governs men as men, in accordance with human nature (*Liji* 29.13; Chan (1963), pp. 100-101.)

by the analogy of our own mind, history would cease to be human history
.....⁷⁹

The Market for Liberty

Confucians, as we have seen, favour a political order within which market principles are free to operate. But they go one step further: they apply market principles to the political order itself. Workers, Mengzi tells us, should be paid for their actual accomplishments, not for their good intentions.⁸⁰ The ruler, too, is seen as a person selected to provide a service; if he does not do his job, he should be discharged:

[MENGZI] ‘If the Marshal of the Guards was unable to keep his guards in order, then what should be done about it?’

[KING XUAN] ‘Remove him from office.’

[MENGZI] ‘If the whole realm within the four borders was ill-governed, then what should be done about it?’

The king turned to his attendants and changed the subject.⁸¹

As a service provider, the ruler must compete for customers with the rulers of rival states. If a ruler adopts *laissez-faire* policies and cultivates good will, merchants, farmers, and scholars from rival states will vote with their feet, coming to settle in his kingdom;⁸² or if they cannot come to him, they will entreat him to come their state and liberate them. Thus Kongfuzi:

When the Duke of She asked about government, the Master said: “Make those nearby pleased and those far off flock to you.”⁸³

And Mengzi:

⁷⁹ Hayek (1980), pp. 63-75.

⁸⁰ *Mengzi* 3B4, Lau (1970), p.109.

⁸¹ *Mengzi* 1B6; *ibid.*, pp. 66-7.

⁸² “This expectation derives some substance from the mobility of populations at this period; rulers were in fact competing to attract knights with new ideas and skills to their courts ... and peasants to their still unopened lands.” (Graham (1989), p. 114.)

⁸³ *Lunyu* 13.16; Huang (1997), p. 136.

If you honour the good and wise and employ the able so that outstanding men are in high position, then Gentlemen throughout the Empire will be only too pleased to serve at your court. In the market-place, if goods are exempted when premises are taxed, and premises exempted when the ground is taxed, then the traders throughout the Empire will be only too pleased to store their goods in your market-place. If there is inspection but no duty at the border stations, then the travellers throughout the Empire will be only too pleased to go by way of your roads. If tillers help in the public fields but pay no tax on the land, then farmers throughout the Empire will be only too pleased to till the land in your realm. If you abolish the levy in lieu of corvée and the levy in lieu of the planting of the mulberry, then all the people of the Empire will be only too pleased to come and settle in your state.⁸⁴

Now in the Empire amongst the shepherds of men there is not one who is not fond of killing. If there is one who is not, then the people in the Empire will crane their necks to watch for his coming. This being truly the case, the people will turn to him like water flowing downwards with a tremendous force. Who can stop it? ... Now if you should practise benevolence in the government of your state, then all those in the Empire who seek office would wish to find a place at your cart, all tillers of land to till the land in outlying parts of your realm, all merchants to enjoy the refuge of your market-place, all travelers to go by way of your roads, and all those who hate their rulers to lay their complaints before you.⁸⁵

And Xunzi:

[I]n ancient times there were men who began as rulers of a single state and ended by becoming rulers of the world, but it was not because they went about making conquests. They conducted their government in such a way as to make all men wish to become their subjects, and in this manner they were able to punish the violent and suppress the wicked. Thus when the Duke of Chou marched south, the states of the north were resentful and asked, “Why does he neglect only us?”; and when he marched east, the states of the west grew angry and asked, “Why does he leave us to the last?” ... As for men of talent, wise counselors, and brave and fierce warriors, his enemies will day by day be destroying and wearing theirs out in strife and battle, while he attracts more and more of them to his state In the states of his enemies relations between ruler and minister, superior and inferior will be pervaded by bitterness and day by day grow more harsh and strained; while with him such relations will be marked by warmth and will daily become closer and more affectionate. ... If a ruler is

⁸⁴ *Mengzi* 2A5; Lau (1970), p. 82.

⁸⁵ *Mengzi* 1A6; *ibid.*, pp. 54-58.

arrogant and cruel in his behavior, attends to affairs in an irrational and perverse manner, selects and promotes men who are insidious and full of hidden schemes, and in his treatment of the common people is quick to exploit their strength and endanger their lives but slow to reward their labors and accomplishments, loves to exact taxes but neglects the state of agriculture, then he will surely face destruction. ... He who chooses well may become a king; he who chooses badly will be destroyed.⁸⁶

If a ruler loves righteousness, the Confucians maintain, “people from other states will flock to him with their children swaddled on their backs.”⁸⁷ But “when wealth is gathered in the ruler’s hand, the people will scatter away from him.”⁸⁸ “If a ruler ill-uses his people to an extreme degree,” Mengzi remarks, “he will be murdered and his state annexed; if he does it to a lesser degree, his person will be in danger and his territory reduced.”⁸⁹ His ministers will, quite properly, either depose him or abandon him for another state;⁹⁰ his subjects will not fight to defend him.⁹¹

A king who rules unjustly has no legitimate claim on his subjects’ obedience:

Duke Ding said: “One remark that can lose a state – is there such a thing?”

Master Kong replied: “One remark cannot do something like that. However, there is one close to it. One man’s saying goes: ‘I find no joy in being sovereign except that, whatever I say, no one disobeys me.’ If what he says is good and no one disobeys him, is it not good? If it is not good and no one disobeys him, is it not almost true that one remark can lose a state?”⁹²

King Xuan of Qi asked, “Is it the case ... that Wu struck down [his ruler] Zhou? ... Is it acceptable for subjects to kill their rulers?”

Mengzi said, “One who violates benevolence should be called a ‘thief.’ One who violates righteousness is called a ‘mutilator.’ A mutilator and

⁸⁶ *Xunzi* 9; Watson (1963), p. 53-55.

⁸⁷ *Lunyu* 13.4, Huang (1997), p. 133; cf. *Liji* 29. 20, Chan (1963), p. 106.

⁸⁸ *Liji* 39.10; *ibid.*, p. 93.

⁸⁹ *Mengzi* 4A2; Lau (1970), pp. 118-119.

⁹⁰ *Mengzi* 5B9; *ibid.*, p. 159.

⁹¹ *Xunzi* 9; Watson (1963), pp. 52-53.

⁹² *Lunyu* 13.15; Huang (1997), pp. 135-6.

thief is called a mere ‘fellow.’ I have heard of the execution of a mere fellow ‘Zhou,’ but I have not heard of the killing of one’s ruler.”⁹³

Here we find Mengzi invoking the Confucian doctrine of “rectification of names” to justify regicide. Kongfuzi had taught: “Let a sovereign act like a sovereign, a minister like a minister, a father like a father and a son like a son.”⁹⁴ The line could also be translated “Treat sovereigns as sovereigns, treat ministers as ministers, treat fathers as fathers, treat sons as sons,”⁹⁵ but the essential point remains the same: each social role defines a code of proper behaviour for the holder of that role, as well as for others in relation to the holder.⁹⁶ But Kongfuzi had also taught that speech must be “in accordance with actuality,” so that “the gentleman only applies names that can be properly spoken.”⁹⁷ Mengzi infers that a ruler deserves the title of “king” only so long as he lives up to the job description;⁹⁸ otherwise he becomes a mere “fellow,” and defying him involves no disloyalty. One earns the right to royal office by winning the support of the people; in short, the Mandate of Heaven (i.e., legitimacy) accrues to the service provider who outdoes his competitors in pleasing and attracting customers.⁹⁹

The Confucian defense of revolution has obvious classical liberal parallels; but in applying market principles to competition among political jurisdictions, the Confucians more specifically anticipate the core idea of anarcho-capitalism. Where the Confucian theory falls short of anarchism is in the assumption that each service provider must enjoy a territorial monopoly. Non-territorial providers of protection services in ancient China did exist: the so-called “knights.” As Watson explains:

⁹³ *Mengzi* 1B8, Ivanhoe and Van Norden (2001), pp. 120-21.

⁹⁴ *Lunyu* 12.11; Huang (1997), p. 128.

⁹⁵ What Kongfuzi *literally* says is typically cryptic: “Sovereign sovereign, minister minister, father father, son son.”

⁹⁶ For a similar idea in Stoicism, see Epictetus, *Discourses* II. 10.

⁹⁷ *Lunyu* 13.3; Ivanhoe and van Norden (2001), pp. 34-5.

⁹⁸ This idea too has parallels in early Greek thought; one of the earliest statements is in Xenophon, *Memorabilia* 3.9.

⁹⁹ *Mengzi* 5A5; Lau (1970), p. 143.

The knights or cavaliers, noted for their daring and strict code of honor, often acted as local “bosses” in defiance of the government authorities, guaranteeing protection to people who sought their aid or hiring out their services in the conduct of private vendettas.¹⁰⁰

Most Confucians, however, looked askance at these wandering freelance vigilantes. An important exception, however, is Sima Qian, who hails the knights as champions of the defenseless, carefully distinguishing those who offered genuine protection from those who were mere thugs.¹⁰¹ Unfortunately, he does not consider how the Confucian principle of competing jurisdictions might be applied to this type of informal protection service.

Free Riders of the Purple Sage

The Confucian notion of rulers as service providers who must please their customers in order to succeed may help to explain an otherwise puzzling idea of Mengzi’s: the well-field system – so called not for any reason involving wells, but because *jing*, the character meaning “well,” is written as a tic-tac-toe grid of nine squares, and so serves as an appropriate symbol of the land division system here described.¹⁰²

Benevolent government must begin with land demarcation. When boundaries are not properly drawn, the division of land according to the well-field system and the yield of grain used for paying officials cannot be equitable. ... A *ching* [*jing*] is a piece of land measuring one *li* [one-third of a mile] square, and each *ching* consists of 900 *mu*. Of these, the central plot of 100 *mu* belongs to the state, while the other eight plots of 100 *mu* each are held by eight families who share the duty of caring for the plot owned by the state. Only when they have done this duty dare they turn to their own affairs.¹⁰³

¹⁰⁰ Watson (1964b), p.105n.

¹⁰¹ *Shiji* 124; Sima (1993c), pp. 409-412.

¹⁰² Scholars disagree over the extent to which the well-field system is based on traditional feudal practice as opposed to being Mengzi’s own invention. But certainly the system was not the norm in Mengzi’s own day.

¹⁰³ *Mengzi* 3A3, Lau (1970), pp. 99-100. Each of the private plots would thus measure about 8 acres.

This foray on Mengzi's part into social engineering, compulsory equalization, and collectivized agriculture might seem as far from libertarianism as anything could be. But Mengzi's motivations for favouring it may be at least partly libertarian in spirit. To begin with, notice that this system makes it very difficult for the government to raise the agricultural tax above the preferred Confucian level of about eleven percent (one part in nine). If the government simply took one part in nine from each family's private yield, then no great change in the system would be required for the government to raise the tax rate to twelve or fifteen or twenty percent. But under the well-field system, *private plots are tax-exempt*. When the government collects its one-part-in-nine tax by taking all the yield of the common plot and none of the yield of any of the eight surrounding private plots (which amounts to a one-part-in-nine tax on each family's output), there is no way to increase the tax without rearranging the land boundaries. The well-field system thus establishes a higher psychological hurdle for tax increases than would a more conventional means of taxation.

An apparent disadvantage of the system, however, is the disincentive farmers have to devote productive labour to the central plot, from which they will reap no returns. The well-field system might seem to threaten a public goods problem twice over: each family in a given *jing* has an incentive to free-ride on the contributions of the other families within that *jing*, and each *jing* as a whole has an incentive to free-ride on the contributions of every other *jing*.

Was Mengzi too economically naïve to realize that people will be disinclined to expend labour from which they cannot profit? I don't think we should be quick to assume the answer is yes; after all, Mengzi made precisely the point at issue in his refutation of Xuzi's price-equalization scheme: "If a roughly finished shoe sells at the same price as a finely finished one, who would make the latter?"¹⁰⁴

If we proceed on the assumption that Mengzi was no fool about economic incentives, I think we can detect a libertarian method in the apparent madness of the well-field system. First of all, public goods analysis predicts that people will, *ceteris paribus*,

¹⁰⁴ *Mengzi* 3A4; *ibid.*, p. 104.

contribute *less* to a public good than to a private one, not (absent unrealistic *homo economicus* assumptions) *none*. As I have written elsewhere:

Public goods can be funded through reliance on custom, morality, and non-material rewards. Many public goods are already so funded; volunteer fire departments are an obvious example. ... Morality – the conviction that we are obligated to do our part – also plays an important role in overcoming free rider problems. When we consider the millions that are contributed to charity, telethons, *etc.*, there is no reason to doubt that there would be at least as much voluntary support forthcoming for the funding of public goods.¹⁰⁵

But the extent of people's willingness to fund governmental services will presumably vary with the extent of the government's success at pleasing the populace. As a ruler grows more unpopular, the amount of time and effort his subjects are willing to devote to augmenting public revenue by cultivating the common plot will decline. Mengzi's well-field system can thus be seen as a scheme of voluntary taxation, whereby bad conduct on the part of the ruler will automatically trigger a decline in the ruler's income. Since the one-part-in-nine tax on agriculture is one of the few taxes Confucians *don't* seek to eliminate, implementation of the well-field system would make the vast bulk of government revenue depend on voluntary contributions – which, I suggest, was its point. The well-field system functions as a kind of choke collar: once it is in place, misrule automatically leads either to financial incapacitation of the ruler, or to negative feedback prompting reform. Mengzi thus accords with Isabel Peterson's advice that a constitutional structure should be designed so as to allow the general population to exercise their natural constitutional function of *veto power*.¹⁰⁶ The well-field system simultaneously makes it harder for the sovereign to increase the rate of taxation, and easier for the taxpayer to *de facto* lower it. And by specifying that the agricultural tax must fall entirely on the common plot, Mengzi makes government revenue depend on the general degree of public-spiritedness – in other words, on a factor that, as Mengzi sees it, rises or falls with the ruler's success or failure. This interpretation is admittedly speculative, since Mengzi never explicitly describes the well-field system as a

¹⁰⁵ Long (1994).

¹⁰⁶ Paterson (1993).

constitutional constraint on government; but then he might well *not* describe it that way up front, if he were trying to persuade unwary rulers to adopt it.

As for Mengzi's reasons for channeling such contributions through the *jing*, libertarians have long pointed out that cooperation and mutual aid are better able to overcome public goods problems in the context of close-knit communities whose members know and can monitor one another;¹⁰⁷ and this is indeed how Mengzi conceives of a *jing*: "If those who own land within each *ching* befriend one another both at home and abroad, help each other to keep watch, and succour each other in illness, they will live in love and harmony."¹⁰⁸ Again, as I have written elsewhere:

Those wishing to solicit contributions to some worthy cause will raise much more money if they devolve responsibility by assigning local people to collect from friends, family, and co-workers. This strategy is employed with great effectiveness by the United Way. Social pressure, and the desire to look good in front of one's peers, are powerful incentives¹⁰⁹

If my interpretation is correct, many traditional criticisms of the well-field system turn out to miss the mark. It has been pointed out, for example, that as existing plots get fused through marriage and as increase in population requires new plots, the equal-holdings requirement would break down.¹¹⁰ This is true enough; but it counts as a criticism of Mengzi only if the main point of the well-field system is economic equality, which on my reading it is not. Yet another criticism runs as follows:

Economic relations among different *jing* and with the outside world were practically nonexistent. Even if they were able to be self-contained and self-sufficient in food and clothing, where would, for example, the weapons for self-defense and the medicines for sickness come from?¹¹¹

¹⁰⁷ cf. Beito (2000).

¹⁰⁸ *Mengzi* 3A3, Lau (1970), p. 100.

¹⁰⁹ Long (1994).

¹¹⁰ Hu (1988), p. 73.

¹¹¹ *Ibid.*, p. 73.

But the assumption that each *jing* must be “self-contained and self-sufficient” is open to question. Why would Mengzi sing the praises of unregulated trade and division of labour if he favoured a system of autarky? Finally, commentators have generally assumed that Mengzi intends the cultivation of the common plot to be carried out under coercive supervision:

The flaw in the [well-field] system was that the peasants were hardly disposed to work efficiently on manorial land unless they were supervised by bailiffs.¹¹²

The system of assisting on public farms but paying no land tax, which [Mengzi] so heartily endorsed, was, in the eyes of modern political economy, nothing but a kind of compulsory labour service, a nonmonetary form of land tax. ... [T]he communal farms were to be tilled by compulsory labour service, which had to be carried out under supervision. But a small state with a territory of one thousand square *li* would have one thousand *jing* and one thousand pieces of communal farmland. How many officers would have to be employed for such supervisory work ...?¹¹³

I suspect Mengzi was well aware that it would not be practical to implement the well-field system except on an *unsupervised* and therefore *voluntary* basis, and that this, for him, was an argument in the system’s favour rather than against it.

The Ethics of Liberty

As we have seen, the Confucians are quick to point out the beneficial social consequences of *laissez-faire*. But it would be a mistake to infer that the Confucian case for liberty is purely consequentialist. Respect for the choices of others is not just good social policy; it is also a principle of interpersonal ethics:

Zigong asked, “Is there one teaching that can serve as a guide for one’s entire life?”

The Master answered, “Is it not *shu* [reciprocity]? Do not impose upon others what you yourself do not desire.”¹¹⁴

¹¹² Hsu (1965), p. 108.

¹¹³ Hu (1988), pp. 70-74.

¹¹⁴ *Lunyu* 15.24; Ivanhoe and Van Norden (2001), p. 42.

This statement of the Golden Rule is echoed repeatedly throughout the early Confucian writers, and recommends a broad disposition to behave cooperatively toward others.¹¹⁵ But the Rule is *not* understood to require cooperative behaviour toward those who refuse to respond in kind; the Confucian sage is not a pushover:

Someone asked, “What do you think of the saying, ‘Requite injury with ... kindness ...?’”

The Master replied, “With what, then, would one requite kindness? Requite injury with uprightness, and kindness with kindness.”¹¹⁶

To practice *shu* is to cultivate a *reciprocating* disposition.

The Confucian version of the Golden Rule is often stated more specifically in terms of social roles:

Being unable to serve your lord yet expecting obedience from a servant is a failure to liken-to-oneself. Being unable to give parents their due yet expecting sons to be filial is a failure to liken-to-oneself. Being unable to be respectful to a younger brother yet expecting a younger to take orders from you is a failure to liken-to-oneself.¹¹⁷

There are four things in the Way of the superior man To serve my father as I would expect my son to serve me To serve my ruler as I would expect my ministers to serve me To serve my elder brothers as I

¹¹⁵ *Lunyu* 5.12, 12.2, Huang (1997), p. 74, 125; *Mengzi* 7A3, Lau (1970), p. 182; *Xunzi* 30, Graham (1989), p. 20; *Liji* 29.13, 39.10, Chan (1963), pp. 92, 101; *Shizi* (*Shih-tzu*), Graham (1989), p. 20.

Libertarians have sometimes expressed a preference for the Confucian formulation of the Golden Rule over the Christian version, on the grounds that the Confucian version is characteristically negative (the so-called “Silver Rule”) rather than positive. But this is a confusion, for three reasons. First, there is nothing un-libertarian about positive obligations as such; what is un-libertarian is the *enforcement* of positive obligations. (For that matter, the enforcement of negative obligations is *equally* un-libertarian, except in the single case of the obligation to refrain from *aggression* – which is surely just *one* of our negative obligations.) Second, as Nivison points out, Confucian authors in any case alternate freely between negative and positive formulations, and seem to have regarded them as equivalent. And third, the two formulations *are* equivalent, as Nivison likewise shows: “If, having promised to appear this evening, I had not done so, I would still have done something, namely, breaking a promise. Not doing something to another is always, under another description, doing something to that person, and conversely.” (Nivison (1996), p. 62.) Hence the importance of defining libertarian rights in terms of *aggression*, rather than, say, harm.

¹¹⁶ *Lunyu* 14.34; Ivanhoe and Van Norden (2001), p. 39.

¹¹⁷ *Xunzi* 30; Graham (1989), p. 20.

would expect my younger brothers to serve me To be the first to treat friends as I would expect them to treat me¹¹⁸

What a man dislikes in his superiors, let him not show it in dealing with his inferiors; what he dislikes in those in front of him, let him not show it in preceding those who are behind; what he dislikes in those behind him, let him not show it in following those in front of him; what he dislikes in those on the right, let him not apply it to those on the left; and what he dislikes in those on the left, let him not apply it to those on the right. This is the principle of the measuring square.¹¹⁹

There is an important difference between , e.g., saying “treat your parents as you would want your *parents* to treat you” and saying “treat your parents as you would want your *children* to treat you.” The former saying homogenizes and flattens out the moral landscape, giving recognition only to those most generic obligations that every human has to every other human – and so is to that extent less useful as moral advice. The latter saying, by contrast, allows the variety of moral obligations to track the variety of different social relationships. By endorsing the latter version, Confucians forge a link between the virtue of reciprocity and the “rectification of names.”

While Confucians are quick to point out the beneficial consequences of the virtue of reciprocity,¹²⁰ they are equally quick to insist that virtue should always be valued as an end in itself and not merely as a strategy for achieving beneficial consequences. Part of their point – a point familiar to libertarians from Hayek and Rothbard¹²¹ – is that a virtuous disposition will be unstable, and so will not reliably secure beneficial consequences, unless it is valued for more than those consequences:

He who seeks only to preserve his life at all cost will surely suffer death. He who strives only for profit at all cost will surely suffer loss. He who thinks that safety lies in indolence and idleness alone will surely face danger. He who thinks that happiness lies only in gratifying the emotions will surely face destruction.

¹¹⁸ *Liji* 29.13; Chan (1963), p. 101.

¹¹⁹ *Liji* 39.10; *ibid.*, p. 92.

¹²⁰ Consider, e.g., this strikingly Randian-sounding dictum: “That man lives owes to uprightness; that a crooked man lives with impunity owes to sheer luck.” (*Lunyu* 6.19; Huang (1997), p. 83.)

¹²¹ Hayek (1976), ch. 7; Rothbard (1994), p. 27. See also Long (2000), pp. 110-11.

Therefore, if a man concentrates upon fulfilling ritual principles, then he may satisfy both his human desires and the demands of ritual; but if he concentrates only upon fulfilling his desires, then he will end by satisfying neither.¹²²

Hence the path to good consequences leads through the renunciation of consequentialism. Kongfuzi says that although “Wealth and rank are what men desire,” nevertheless “If you come by them undeservingly, you should not abide in them.”¹²³ Mengzi adds that if it were “necessary to perpetrate one wrongful deed or to kill one innocent man in order to gain the Empire,” a true Confucian would have to refuse.¹²⁴ Indeed, someone whose motivations are purely strategic would be less than human:

No man is devoid of a heart sensitive to the suffering of others. ... Suppose a man were, all of a sudden, to see a young child on the verge of falling into a well. He would certainly be moved to compassion, not because he wanted to get in the good graces of the parents, nor because he wished to win the praise of his fellow villagers or friends, nor yet because he disliked the cry of the child. From thus it can be seen that whoever is devoid of the heart of compassion is not human¹²⁵

From these quotations it might be inferred that what the Confucians are rejecting is not consequentialism *per se* but only an egoistic version of it. But Mengzi – who declares himself equally opposed to the egoistic consequentialism of Yangzi (Yang-tzu) and the utilitarian consequentialism of Mozi¹²⁶ – does not reject self-interest as the foundation of moral motivation:

A man loves all parts of his person without discrimination. ... The parts of the person differ in value and importance. ... A man who cares only about food and drink is despised by others because he takes care of the parts of smaller importance to the detriment of the parts of greater importance. ... He who is guided by the interests of the parts of his person that are of

¹²² *Xunzi* 19, Watson (1963), pp. 90-91; cf. *Lunyu* 4.12, Huang (1997), p. 69; *Mengzi* 1A1, 6B4, Lau (1970), pp. 49, 173-4.

¹²³ *Lunyu* 4.5; Huang (1997), p. 67.

¹²⁴ *Mengzi* 2A2; Lau (1970), p.79.

¹²⁵ *Mengzi* 2A6; *ibid.*, p. 82. Sima Qian appears to disagree; see *Shiji* 129, Sima (1993c), pp. 446-7.

¹²⁶ *Mengzi* 3B9; Lau (1970), p. 114.

greater importance is a great man; he who is guided by the interests of the parts of his person that are of smaller importance is a small man.¹²⁷

Likewise, the *Xunzi* quotes Kongfuzi as giving his approval to the formula “The wise man causes others to know him, and the humane man causes others to love him,” higher approval to the formula “The wise man knows others, and the humane man loves others,” and highest approval to the formula “The wise man knows himself, and the humane man loves himself.”¹²⁸

Fish is what I want; bear’s palm is also what I want. If I cannot have both, I would rather take bear’s palm than fish. Life is what I want; dutifulness is also what I want. If I cannot have both, I would rather take dutifulness than life. ... If there is nothing a man wants more than life, then why should he have scruples about any means, so long as it will serve to keep him alive? ... Yet there are ways of remaining alive and ways of avoiding death to which a man will not resort.¹²⁹

For the Confucians, as for Plato and Aristotle, virtue is not the choice of altruism over self-interest, but rather the choice of a higher over a lower conception of self-interest – where virtue is understood as a *component* of, rather than an external *means* to, one’s own well-being.

What determines whether a person chooses to gratify his greater or lesser self? Like their Greek counterparts, the Confucians hold that all action embodies normative judgments; the rightness or wrongness of those judgments determines the rightness or wrongness of the subsequent actions:

All men will abide by what they think is good and reject what they think is bad. It is inconceivable, therefore, that any man could understand that there is nothing in the world to compare to the Way, and yet not abide by it.¹³⁰

¹²⁷ *Mengzi* 6A14-15; *ibid.*, p. 168.

¹²⁸ *Xunzi* 29 (Knoblock (1994), p. 255.

¹²⁹ *Mengzi* 6A10; Lau (1970), p. 166.

¹³⁰ *Xunzi* 22; Watson (1963), p. 152.

Hence Confucians, again like their Greek counterparts, place great emphasis on moral education as a means of inculcating the correct values. Yet human beings are not conceived as passive objects waiting to be molded; on the contrary, they are expected to take an active role in shaping and forming themselves. And whether they do this or not is ultimately up to their own choice. As Kongfuzi explains:

Is humanity [= the virtue, not the species] so remote? If I desire humanity, there comes humanity!¹³¹

Take, for example, building a mountain. It is left uncompleted for want of one basketful. It stopped because I stopped. Take, for example, leveling land. Though I have dumped only one basketful, it progressed because I went ahead.¹³²

Ranyou said, “It is not that I do not delight in the Master’s Way, it is simply that my strength is insufficient.”

The Master said, “Those for whom it is genuinely a problem of insufficient strength end up collapsing somewhere along the Way. As for you, you deliberately draw the line.”¹³³

Mengzi concurs that “The trouble with a man is surely not his lack of sufficient strength, but his refusal to make the effort,”¹³⁴ adding that unlike in the case of external goods, where between seeking and getting lies a gap containing method and luck, in the case of virtuous action to seek is to get.¹³⁵ And Xunzi writes:

The sage is a man who has arrived where he has through the accumulation of good acts. ... Why is it, then, that everyone is not able to accumulate good acts in the same way? I would reply: everyone is capable of doing so, but not everyone can be made to do so.¹³⁶

¹³¹ *Lunyu* 7.29; Huang (1997), p. 93.

¹³² *Lunyu* 9.19; *ibid.*, p. 105.

¹³³ *Lunyu* 6.12; Ivanhoe and Van Norden (2001), p. 17.

¹³⁴ *Mengzi* 6B2; Lau (1970), p. 172.

¹³⁵ *Mengzi* 7A3, *ibid.*, p. 182.

¹³⁶ *Xunzi* 23, Watson (1963), p. 167; cf. *Mengzi* 1A7, Lau (1970), pp. 55-56.

But how is this Confucian endorsement of free will to be reconciled with the equally Confucian claim that no man can understand the Way and yet not abide by it? Is moral error a failure of knowledge or of will?

The Confucians offer a striking – and, to libertarians, a strikingly familiar – answer: correct understanding, *so long as we have it*, is sufficient for right action, but whether we achieve and maintain such understanding is a matter of free choice.

The mind is the ruler of the body and the master of its godlike intelligence. It gives commands, but is not subject to them. Of its own volition it prohibits or permits, snatches or accepts, goes or stops. ... What it considers right it will accept; what it considers wrong it will reject. Hence we may say that it is the nature of the mind that no prohibition may be placed upon its selections.¹³⁷

‘Though equally human, why are some men guided one way and others guided another way?’

‘The organs of hearing and sight are unable to think and can be misled by external things. When one thing acts on another, all it does is attract it. The organ of the heart can think. But it will find the answer only if it does think; otherwise it will not find the answer.’¹³⁸

This theory of free will is of course essentially the same as that of Ayn Rand:¹³⁹

The process of reason, of *thought* ... is not automatic nor instinctive nor involuntary nor infallible. Man has to initiate it, to sustain it and to bear responsibility for its results. ... Man has the choice to think or to evade – to maintain a state of full awareness or to drift from moment to moment, in a semi-conscious daze, at the mercy of whatever associational whims the unfocused mechanism of his consciousness produces. ... An animal's consciousness functions automatically; an animal perceives what it is able to perceive and survives accordingly, no further than the perceptual level permits and no better. ... Man is the only living species who has to perceive reality – which means: to be *conscious*—by choice.¹⁴⁰

¹³⁷ *Xunzi* 21; Watson (1963), p. 129.

¹³⁸ *Mengzi* 6A15; Lau (1970), p. 168.

¹³⁹ I believe something like this theory can also be found in Aristotle, Epicurus, and Aquinas, but I shall not defend that claim here.

¹⁴⁰ Rand (1961), p. 15.

For the Confucians, as for Rand, our lower animal functions respond automatically to stimuli; but intellectual awareness is under our direct control. Free will is not in the first instance the ability to initiate physical motions, but rather the ability to think.

Where the Taoists favour adaptive flexibility and going with the flow, the Confucians stress the conscious, willful effort of self-cultivation: ‘Like carving, like filing; like chiseling, like polishing.’¹⁴¹ But just *how* artificial a product is Confucian virtue? On this issue, Mengzi and Xunzi disagree: Mengzi thinks human nature is basically good, and self-improvement is a matter of developing one’s natural tendencies; Xunzi, by contrast, thinks human nature is naturally bad, so that self-improvement is less a matter of self-realization than of self-restraint.¹⁴²

This disagreement should not be overstated; the two thinkers’ views are not as far apart as they might seem. Xunzi says human nature is bad, but he does not deny that human beings are in principle perfectible:

Any man in the street has the essential faculties needed to understand benevolence, righteousness, and proper standards, and the potential ability to put them in practice. ... If the man in the street applies himself to training and study, concentrates his mind and will, and considers and examines things carefully, continuing his efforts over a long period of time and accumulating good acts without stop, then he can achieve a godlike understanding and form a triad with Heaven and earth.¹⁴³

Nor does Xunzi deny that human beings have a natural inclination toward virtue; but he takes this desire as evidence of our natural badness, since we would not have an inclination *toward* virtue if we were virtuous already:

Every man who desires to do good does so precisely because his nature is evil. ... What a man already possesses in himself he will not bother to look for outside. ... Ritual principles are certainly not a part of man’s original nature. Therefore, he forces himself to study and to seek to possess them. An understanding of ritual principles is not a part of man’s

¹⁴¹ *Lunyu* 1.15; Huang (1997), p. 50.

¹⁴² Kongfuzi had taught: “By nature, people are close to one another; through practice, they drift far apart.” (*Lunyu* 17.2; Huang (1997), p. 165.) But he neglected to specify whether this original human nature is good, bad, or neutral, thus opening the door to later controversy.

¹⁴³ *Xunzi* 23, Watson (1963), p. 166-7; cf. *Xunzi* 8, Knoblock (1990), p.73.

original nature, and therefore he ponders and plans and thereby seeks to understand them.¹⁴⁴

Likewise Mengzi says human nature is good, but he never suggests that we pop out of the womb fully virtuous; on the contrary, our innate tendencies toward goodness must be carefully nurtured and cultivated. If we expose ourselves to bad influences instead of good ones, the seed of virtue within us will never bear fruit:

A man's letting go of his true heart is like the case of the trees and the axes. When the trees are lopped day after day, is it any wonder that they are no longer fine? ... [G]iven the right nourishment there is nothing that will not grow, and deprived of it there is nothing that will not wither away.¹⁴⁵

Hence Mengzi and Xunzi agree that we have a natural inclination toward goodness, an inclination that can blossom into full-fledged virtue if – but only if – properly trained. So what, exactly, do they disagree about? Well, for one thing, Xunzi thinks of a thing's *nature* as its *default* tendency: the way it will turn out if left to its own devices. To train and cultivate something is to *interfere* with its natural state, to impose an artificial order upon it:

If the gentleman does not use the power inherent in his circumstances to control them, then he will have no means to develop their inherent possibilities. Now the mouth and stomach of a man can only lead to smacking and chewing away, feasting and gorging himself to satisfaction. How can they be aware of ritual principles and his moral duty? ... If a man lacks a teacher and the model, then his mind will be just like his mouth and stomach.¹⁴⁶

Man's nature is evil; goodness is the result of conscious activity. ...[A]ny man who follows his nature and indulges his emotions will inevitably become involved in wrangling and strife, will violate the forms and rules of society, and will end as a criminal. Therefore, man must first be transformed by the instructions of a teacher and guided by ritual principles That part of man which cannot be learned or acquired by effort is

¹⁴⁴ *Xunzi* 23; Watson (1963), pp. 161-2.

¹⁴⁵ *Mengzi* 6A8; Lau (1970), p. 165.

¹⁴⁶ *Xunzi* 4 (Knoblock (1988), p. 192.

called the nature; that part of him which can be acquired by learning and brought to completion by effort is called conscious activity.¹⁴⁷

Mengzi, by contrast, does not regard all external influence as unnatural interference; instead, he distinguishes between influences that work *with* and influences that work *against* a thing's natural tendencies. His attitude is closer to the Aristotelean dictum that "art completes nature."¹⁴⁸

'Human nature is like the *ch'i* willow. Dutifulness is like cups and bowls. To make morality out of human nature is like making cups and bowls out of the willow.'

'Can you ... make cups and bowls by following the nature of the willow? Or must you mutilate the willow before you can make it into cups and bowls? If you have to mutilate the willow to make it into cups and bowls, must you, then, also mutilate a man to make him moral? ... Human nature is good just as water seeks low ground. ...'¹⁴⁹

The heart of compassion is the germ of benevolence; the heart of shame, of dutifulness; the heart of courtesy and modesty, of observance of the rites; the heart of right and wrong, of wisdom. Man has these four germs just as he has four limbs. For a man possessing these four germs to deny his own potentialities is for him to cripple himself If a man is able to develop all these four germs that he possesses, it will be like a fire starting up or a spring breaking through.¹⁵⁰

You must work at it [= innate moral potential] and never let it out of your mind. At the same time, while you must never let it out of your mind, you must not forcibly help it grow either. ... There are some who leave their plants unattended, thinking that nothing they can do will be of any use. They are the people who do not even bother to weed. There are others

¹⁴⁷ *Xunzi* 23; Watson (1963), p. 157-8.

¹⁴⁸ cf. Ayn Rand's description of architectural method:

The house on the sketches had been designed not by Roark, but by the cliff on which it stood. It was as if the cliff had grown and completed itself and proclaimed the purpose for which it had been waiting. The house was broken into many levels, following the ledges of the rock, rising as it rose, in gradual masses, in planes flowing together up into one consummate harmony. The walls, of the same granite as the rock, continued its vertical lines upward; the wide, projecting terraces of concrete, silver as the sea, followed the line of the waves, of the straight horizon. (Rand (1993), p. 125.)

¹⁴⁹ *Mengzi* 6A1-2; Lau (1970), p. 160.

¹⁵⁰ *Mengzi* 2A6, *ibid.*, pp. 82-83; cf. *Mengzi* 7B31, *ibid.*, p. 200.

who help the plants grow. They are the people who pull at them. Not only do they fail to help them but they do the plants positive harm.¹⁵¹

The influence of moral education on human nature is not like tugging on plants or mutilating them, but like *watering* them; one should teach “by a transforming influence like that of timely rain.”¹⁵² As I have written elsewhere:

Lao-tzu and Chuang-tzu regarded natural spontaneity and conscious effort as opposed; they favored the former and devalued the latter. One should adapt oneself to one's circumstances rather than trying to adapt one's circumstances to oneself. Go with the flow, let things be. Hsün-tzu was the opposite; he agreed that natural spontaneity and conscious effort were opposed, but he reversed the valuations. The natural tendency of things is toward evil, unless they have order imposed on them from without. This was true of human beings as well, he thought; people's natural tendencies are corrupt, and moral education runs against the natural grain. A virtuous person is as much an artificial product of a craftsman's skill as is a vase or a table – form and definition successfully imposed on recalcitrant material. Mencius rejects both these approaches. For him they are opposite sides of the same coin: the mistaken assumption that natural spontaneity and conscious effort are opposed. Rather, conscious effort is precisely what human beings naturally, spontaneously, tend to do. Thus Mencius shares Hsün-tzu's preference for deliberate self-improvement – carving and polishing oneself like jade. But he believes, with the Taoists, that success lies in going with rather than against the natural grain of things, and he makes fun of those who “try to help their plants grow” by tugging impatiently on them and thus killing them.¹⁵³

Whatever their disagreements, Mengzi and Xunzi share a common model of moral education: People are born with innate dispositions toward virtue, and also with innate dispositions toward material satisfaction. If the latter are cultivated at the expense of the former, a person will achieve *neither* virtue nor material satisfaction. Hence it is crucial that the dispositions toward virtue be cultivated – which will not happen without *both* the appropriate social environment *and* voluntary self-application. Once the dispositions toward virtue *have* been fully developed, the person will tend to be generally successful

¹⁵¹ *Mengzi* 2A2, *ibid.*, p. 78.

¹⁵² *Mengzi* 7A40, *ibid.*, p. 191.

¹⁵³ Long (1999).

at satisfying his materialistic dispositions as well – but will now identify with, and find greater value in, the former than rather than the latter, and so will be committed to morality for its own sake.

Given Confucianism’s affinity with rights-based libertarianism, it is not surprising that Confucians had to wrestle with the same sorts of purism-versus-pragmatism dilemmas that often occupy libertarians today. The *Lunyu* records a dispute between Kongfuzi and his disciple Zigong over whether the compromises of a certain Guan Zhong (Kuan Chung) were justified by their benefits:

[ZIGONG] “Guan Zhong was not a man of humanity, was he? When Duke Huan killed Prince Jiu, he not only was unable to die [i.e., chose not to commit suicide] but became the duke’s prime minister, instead.”

[KONGFUZI] “Guan Zhong helped Duke Huan become overlord of the various princes and set everything right in the empire. The people to this day benefit from his favors. But for Guan Zhong, we would be wearing our hair loose with our garments fastened on the length [like barbarians]. How could we expect him to be obstinately truthful like a common man or a common woman and hang himself in a gully without anyone knowing about it?¹⁵⁴

Similarly, Mengzi and Wan Zhang (Wan Chang) disagree as to the propriety of accepting benefit from corrupt rulers:

[MENGZI] ‘When a superior honours one with a gift, to accept it only after one has asked the question “Did he or did he not come by it through moral means?” is to show a lack of respect. That is why one does not refuse.’

[WAN ZHANG] ‘Cannot one refuse, not in so many words, but in one’s heart? Thus while saying to oneself, “He has taken this from the people by immoral means,” one offers some other excuse for one’s refusal. ... suppose a man waylays other men outside the gates to the capital. Can one accept the loot when the robber makes friends with one in the correct way and treats one with due ceremony? ... Now the way feudal lords take from the people is no different from robbery. ...’

[MENGZI] ‘Do you think that if a true King should arise he would line up all the feudal lords and punish them? Or do you think he would try reforming them first before resorting to punishment? To say that taking

¹⁵⁴ *Lunyu* 14.17, Huang (1997), p. 144; cf. *Lunyu* 17.6, *ibid.*, p. 167.

anything that does not belong to one is robbery is pushing moral principles to the extreme.’¹⁵⁵

In this exchange Mengzi takes the side of moderation and compromise. But another passage shows him to have a button-pushing abolitionist streak as well:

Tai Ying-chih said, ‘We are unable in the present year to change over to a tax of one in ten and to abolish custom and market duties. What would you think if we were to make some reductions and wait till next year before putting the change fully into effect?’

‘Here is a man,’ said Mencius, ‘who appropriates one of his neighbour’s chickens every day. Someone tells him, “This is not how a gentleman behaves.” He answers, “May I reduce it to one chicken every month and wait until next year to stop altogether?”’

‘When one realizes that something is morally wrong, one should stop it as soon as possible. Why wait for next year?’¹⁵⁶

Sima Qian is another Confucian who seems to be of two minds on this issue. While he admires those who “stick fast to their doctrines and observe every minute principle of duty” over those who “bob along with the current of the times,”¹⁵⁷ he also recognizes the advantages of flexibility, and confesses himself torn¹⁵⁸ between the ideal of going with the flow (favoured by the Taoist-influenced Confucian Jia Yi) and the orthodox Confucian Qu Yuan’s obstinate refusal to, in an appealing phrase, “round the corners of my squareness.”¹⁵⁹ Kongfuzi himself advises: “When the state possesses the Way, speak uprightly and act uprightly; when the state loses the Way, act uprightly, but speak modestly.”¹⁶⁰

¹⁵⁵ *Mengzi* 5B4; Lau (1970), pp. 153-4.

¹⁵⁶ *Mengzi* 3B8; *ibid.*, pp. 112-113.

¹⁵⁷ *Shiji* 124; Sima (1993c), p. 411.

¹⁵⁸ *Shiji* 84; Sima (1993b), pp. 451-2.

¹⁵⁹ *Ibid.*, p. 441.

¹⁶⁰ *Lunyu* 14.3; Huang (1997), p. 140.

Taking Rites Seriously

We've seen that early Confucianism contains a strong pro-market streak; but aren't the Confucians also famous for being staunch upholders of social hierarchy and hidebound tradition – thus aligning their total program more closely with contemporary conservatism than with libertarianism? Such has certainly been the interpretation fostered by the authoritarian-communitarian “Asian Values” movement. But it is not the only defensible interpretation. It is true that Confucianism can often be more hierarchical and traditionalist than any libertarian – even a paleo – could be comfortable with. Xunzi, for example, enunciates a principle that few libertarians would care to endorse:¹⁶¹ “To discuss things in terms that do not agree with your teacher is called ‘rebellion.’ To teach in a fashion that does not correspond to what your teacher taught is called ‘subversion.’”¹⁶² This is the sort of thing that gives Confucians a bad name.¹⁶³ Nevertheless, I shall argue that the core insights of Confucian traditionalism point most naturally in a libertarian rather than in a conservative direction.

Thus far I have said little or nothing about what is probably the most distinctive feature of the entire Confucian system: the emphasis on *li*, a term variously translated as “ceremony,” “etiquette,” “protocol,” “rites,” and “ritual propriety.” As Confucians use the term, *li* stands for the entire inherited body of customary practices, traditions, and conventions governing early Chinese society. Kongfuzi sees himself above all as a preserver of *li*: “I transmit rather than innovate. I trust in and have a love for antiquity.”¹⁶⁴ It was the Confucian veneration of *li* that prompted Mozi's famous criticism:

¹⁶¹ At least not as a *universal* principle. A *selective* application of this principle is not unknown among libertarians!

¹⁶² *Xunzi* 27; Knoblock (1994), p. 226.

¹⁶³ In fairness to Xunzi, however, the remark might have been directed against a *specific* target who arguably deserved these epithets and worse besides: Xunzi's most famous student, Han Feizi, who abandoned Confucianism for Legalism, becoming one of the leading theoreticians of the Qin Dynasty's New Order.

¹⁶⁴ *Lunyu* 7.1; Ivanhoe and Van Norden (2001), p. 19.

The Confucians say: “The superior man must use ancient speech and wear ancient dress before he can be considered benevolent.” But we answer: The so-called ancient speech and dress were all modern once, and if at that time the men of antiquity used such speech and wore such dress, then they must not have been superior men. ... Again the Confucians say: “The superior man should be a follower and not a maker.” But someone must have invented the ways which the Confucians follow, so that in following them they are, by their own definition, following the ways of inferior men.¹⁶⁵

But this Mohist critique is less apt than it might seem; for what the Confucians mean by transmitting-rather-than-innovating does not involve a slavish adherence to the past.¹⁶⁶ Kongfuzi notes cases in which he is willing to reflect critically on traditional practice, and accept alterations in ceremonial forms:

A cap made of hemp is prescribed by the rites, but nowadays people use silk. This is frugal, and I follow the majority. To bow before ascending the stairs is what is prescribed by the rites, but nowadays people bow after ascending. This is arrogant, and – though it goes against the majority – I continue to bow before ascending.¹⁶⁷

Kongfuzi’s recommended attitude toward change is not prohibition but caution: “If, for three years [after his father’s death], he does not change his father’s Way, he may be said to be filial.”¹⁶⁸ As a recent commentary points out: “The emphasis in this passage ... is

¹⁶⁵ *Mozi* 39; Watson (1967), pp. 127-8.

¹⁶⁶ As Herbert Fingarette writes:

We must begin by seeing Confucius as a great cultural innovator rather than as a genteel but stubbornly nostalgic apologist of the status quo ante. ... He talked in terms of restoring an ancient harmony; but the practical import of his teaching was to lead men to look for new ways of interpreting and refashioning a local tradition in order to bring into being a new, universal order to replace the contemporary disorder. ... [H]e saw – as an *ideal* – the possibility that all the known peoples might be unified and pacific if all adopted a single, humane set of practices and ideas. ... He saw how miraculous a power, how humane a power was inherent in well-learned conventional practices as distinguished from force, threats and commands. (Fingarette (1998), pp. 60-63.)

¹⁶⁷ *Lunyu* 9.3; Ivanhoe and Van Norden (2001), p. 24. The *Liji*, by contrast, attributes to Kongfuzi the claim that only one who possesses *both* virtue *and* supreme political authority has a right to introduce innovations in *li*. (*Liji* 29.28; Chan (1963), pp. 110-11.) But the passage in question also has Kongfuzi referring to social conditions that did not arise until the Qin dynasty, a century and a half after Kongfuzi’s era, and so is not authentic. (Fung (1962), p. 370.) In any case, Kongfuzi clearly doesn’t regard the kind of reform-from-within he advocates as *innovation*.

¹⁶⁸ *Lunyu* 1.11; Huang (1997), p. 49.

on reforming the ways of the father only after having fully embodied and understood them, and then only with due deliberation.”¹⁶⁹ Mengzi likewise endorses the use of reason and independent judgment in applying the requirements of *li*: although ritual forms prescribe that “in giving and receiving, man and woman should not touch each other,” nevertheless “in stretching out a helping hand to the drowning sister-in-law one uses one’s discretion.”¹⁷⁰ What Confucians condemn as “innovation,” then, is not any and all changes in the *li*, but only changes that attempt to construct social practices *de novo* rather than reforming existing practices from within; it is, in effect, the difference between neologism and Esperanto. This of course is a point made familiar to libertarians by Hayek:

What makes men members of the same civilization and enables them to live and work together in peace is that in the pursuit of their individual ends the particular ... impulses which impel their efforts towards concrete results are guided and restrained by the same abstract rules. If emotion or impulse tells them what they want, the conventional rules tell them how they will be able and be allowed to achieve it. ... If we are to make full use of all the experience which has been transmitted only in the form of traditional rules, all criticism and efforts at improvement of particular rules must proceed within a framework of given values which for the purpose at hand must be accepted as not requiring justification. We shall call ‘immanent criticism’ this sort of criticism that moves within a given system of rules and judges particular rules in terms of their consistency and compatibility with all other recognized rules in inducing the formation of a certain kind of order of actions.¹⁷¹

[M]any of the “mere habits” and “meaningless institutions” that we use and presuppose in our actions are essential conditions for what we achieve; they are successful adaptations of society that are constantly improved and on which depends the range of what we can achieve. While it is important to discover their defects, we could not for a moment go on without constantly relying on them.

The manner in which we have learned to order our day, to dress, to eat, to arrange our houses, to speak and write, and to use the countless other tools and implements of civilization, no less than the “know-how” of production

¹⁶⁹ Ames and Rosemont (1998), p. 280.

¹⁷⁰ *Mengzi* 4A17, Lau (1970), p. 124; cf. *Mengzi* 6B1, *ibid.*, p. 171.

¹⁷¹ Hayek (1976), pp. 12-24.

and trade, furnishes us constantly with the foundations on which our own contributions to the process of civilization must be based.¹⁷²

Michael Polanyi likewise writes:

To learn by example is to submit to authority. ... By watching the master and emulating his efforts in the presence of his example, the apprentice unconsciously picks up the rules of his art These hidden rules can be assimilated only by a person who surrenders himself to that extent uncritically to the imitation of another. A society which wants to preserve a fund of personal knowledge must submit to tradition.¹⁷³

Hence the Confucian insistence that a person cannot progress if he “lacks a teacher and the model.”¹⁷⁴

Confucians sometimes speak as though the *li* are the products of deliberate design:

[A]ll ritual principles are produced by the conscious activity of the sages The sage gathers together his thoughts and ideas, experiments with various forms of conscious activity, and so produces ritual principles and sets forth laws and regulations.¹⁷⁵

Nevertheless, at other times Confucians recognize that the *li* embody the experiences of many different people, rather than being constructed from scratch by a handful of sages:

From whom did Zhong-ni [= Kongfuzi] learn? ... The Way of Wen and Wu [the ancient sage-kings] had not crumbled to the ground. It was still there among men. The worthy remembered its major tenets; the unworthy remembered its minor tenets. None did not possess a portion of the Way of Wen and Wu. From whom did the Master not learn? And yet what regular teachers did he have?¹⁷⁶

And this too is a Hayekian idea:

¹⁷² Hayek (1960), p. 34.

¹⁷³ Polanyi (1974), p. 53.

¹⁷⁴ *Xunzi* 4 (Knoblock (1988), p. 192.

¹⁷⁵ *Xunzi* 23; Watson (1963), p. 160. It's significant that this passage is from *Xunzi*, the most constructivist-oriented of the early Confucians.

¹⁷⁶ *Lunyu* 19.22; Huang (1997), p. 182.

The successful combination of knowledge and aptitude is not selected by common deliberation, by people seeking a solution to their problems through a joint effort; it is the product of individuals imitating those who have been more successful and from their being guided by signs or symbols, such as prices offered for their products or expressions of moral or aesthetic esteem for their having observed standards of conduct – in short, of their using the results of the experiences of others.¹⁷⁷

Kongfuzi accordingly proclaims that the *li* he treasures been evolved and improved through a gradual process of incremental reform-from-within, progressing from the Xia (Hsia) dynasty to the Shang-Yin dynasty down to the Zhou dynasty:

The Yin followed the rituals of the Xia; what has been reduced and augmented is known to us. The Zhou followed the rituals of the Yin; what has been reduced and augmented is known to us.¹⁷⁸

The Zhou dynasty looked back to the Xia and Shang dynasties. Such a wealth of culture! I follow the Zhou.¹⁷⁹

Confucians often imply that the presumption against altering such *li* is nearly overwhelming: “Unless the advantages are a hundredfold one does not change the laws. Unless the advantages are tenfold one does not alter the ritual vessels.”¹⁸⁰ Nevertheless, the revisions in *li* recommended by early Confucians are often quite radical – e.g., the notion that rank should be based on merit rather than birth:

Although a man may be the descendant of kings, dukes, or high court ministers, if he cannot adhere to ritual principles, he should be ranked among the commoners. Although a man may be the descendant of commoners, if he has acquired learning, is upright in conduct, and can

¹⁷⁷ Hayek (1960), pp. 28-9.

¹⁷⁸ *Lunyu* 2.23; Huang (1997), p. 57. Kongfuzi goes on to add: “Whoever may succeed the Zhou, even a hundred dynasties hence, things are predictable.” This last line might seem to run afoul of Hayek’s insight that “The mind can never foresee its own advance.” (Hayek (1960), p. 24; cf. *Liji* 2, Fung (1952), p. 340.) But I don’t think Kongfuzi is claiming that the specific alterations are predictable, but only that the general principle underlying them is so.

¹⁷⁹ *Lunyu* 3.14; Ames and Rosemont (1998), p. 84.

¹⁸⁰ Du Chi (Tu Ch’ih), quoted in *Shiji* 68; Sima (1993a), p. 92.

adhere to ritual principles, he should be promoted to the post of prime minister or high court official.¹⁸¹

This recommendation was certainly not an endorsement of traditional practice. Typically, of course, Confucians sought a traditional precedent for such meritocracy; unable to find it in the three preceding dynasties, they appeal to the legendary pre-dynastic sage-kings Yao and Shun, each of whom supposedly selected a worthy commoner as his successor. This is perhaps rather like invoking *Beowulf* to justify a change in parliamentary procedure; but it is a typical move within a precedent-based system. As Blackstone observes in his *Commentaries on the Laws of England*:

The doctrine of the law then is this: that precedents and rules must be followed, unless flatly absurd or unjust: for though their reason be not obvious at first view, yet we owe such a deference to former times as not to suppose they acted wholly without consideration. ... [A judge is] sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one. Yet this rule admits of exception, where the former determination is most evidently contrary to reason But even in such cases the subsequent judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For if it be found that the former decision is manifestly absurd or unjust, it is declared, not that such a sentence was *bad law*, but that it was *not law*; that is, that it is not the established custom of the realm, as has been erroneously determined.¹⁸²

Xunzi recommends a similar approach: “Where laws exist, to carry them out; where they do not exist, to act in the spirit of precedent and analogy.”¹⁸³ This too agrees with Hayek’s judgment that when there is “no known rule to guide him, the judge will still not be free to decide in any manner he likes”; even if the judge has to revise the existing rules, the new rule “still must be consistent with the existing body of such rules in the

¹⁸¹ *Xunzi* 9, Watson (1963), p. 33; cf. *Lunyu* 7.7, 13.2, 15.39, Huang (1997), pp. 87, 132, 158; *Mengzi* 1B5, Lau (1970), p. 67. For the new attitude of intellectuals toward social mobility during the Eastern Zhou period, see Hsu (1965), ch. 6.

¹⁸² Blackstone (1765), pp. 67-73.

¹⁸³ *Xunzi* 9; Watson (1963), p. 35.

sense that it serves the same order of actions as these rules.”¹⁸⁴ As Fung Yu-lan puts it, Kongfuzi is not so much “a transmitter and not a creator” as he is “a creator *through* being a transmitter.”¹⁸⁵

A helpful analogy for understanding *li* is the phenomenon of *language*. (Indeed, it may be more than an analogy.) Like the *li*, language is a conventional – but not deliberately constructed – set of practices that evolves through successful adaptation to circumstances. As Rand writes:

The growth of language follows the growth of knowledge and the expansion of human activities. It is a vast, anonymous process, with many variations (in the optional area), many changes, false starts and short-lived attempts. Yet certain basic principles can be observed, demonstrating, not the arbitrary character, but the objectivity of that process. ... [A] word survives and gains general usage only when and if it designates an actual category Many slang terms are coined every year, by one group or another; some of them become fashionable, enjoy a brief, artificial popularity of random mouthing ... and vanish, like the stale debris of some noisy party. But a few slang expressions survive and become part of formal language – the apt, incisive ones that designate some aspect of reality for which no formal term had previously existed¹⁸⁶

All education, including moral education, is a matter of becoming initiated into a system of practices. Here we may again take language as a model. Learning a language is not just a matter of being shaped and molded by a teacher as clay is molded by a potter; the conscious effort and cooperation of the student are required. Hence Kongfuzi says: “If I hold up one corner of a problem and the student cannot come back to me with the other three, I will not attempt to instruct him again.”¹⁸⁷ On the other hand, conscious effort and cooperation alone are not enough; I do not count as having mastered a language just because I tried my best. Moreover, learning a language is not a matter of rote memorization alone; I have to be able to *feel* the meaning of the language, and to use it *creatively* to construct new sentences of my own – aspects that have their parallel in the

¹⁸⁴ Hayek (1973), pp. 115-6.

¹⁸⁵ Fung (1952), p. 65.

¹⁸⁶ Rand (1997), pp. 691-2.

¹⁸⁷ *Lunyu* 7.8; Ivanhoe and Van Norden (2001), p. 20.

Confucian mastery of ritual. “‘The rituals, the rituals,’ they say. Do they merely refer to jade and silk?’”¹⁸⁸

Modern readers often find it difficult to sympathize with the Confucian emphasis on arcane ceremonial detail. Recall Kongfuzi’s fussing about whether to bow before or after ascending the stairs;¹⁸⁹ isn’t this just a picky convention of no importance? What difference does it make? Well, it’s also a matter of mere convention that the spoken phrase “thank you” differs in meaning from the somewhat similar-sounding phrase “f**k you.” But *given* that convention, it’s not a matter of indifference which phrase one uses.¹⁹⁰ Likewise, it may be a matter of convention that bowing before ascending (or bowing at all) is a mark of respect in a particular culture; but given that convention, one cannot do otherwise without being disrespectful.

This analogy may be rejected, however, on the grounds that the person who says “f**k you” rather than “thank you” *intends* to give offense. So long as my bowing after ascending is *meant* respectfully, why should my expression of respect be constrained by conventional forms? Well, suppose I say “Hitler may have won World War II,” mistakenly believing (as many do) that this means the same thing as “Hitler might have won World War II.” My having *intended* something true doesn’t change the fact that, given the established rules of grammar, what I have actually said is false. Since libertarians tend to be more than usually persnickety about precision in language, perhaps they should not find Confucian persnickety about ritual so uncongenial.

This does not mean that the Confucian attitude toward *li* is immune from criticism. Suppose the only word or phrase meaning “thank you” in the English language were five hundred syllables long; in that case, one would continually be forced to choose between rudeness and massive inconvenience – a situation for which a revision of the language would seem to be the remedy. Likewise, if existing conventions stipulate that I cannot

¹⁸⁸ *Lunyu* 17.10; Huang (1997), p. 168.

¹⁸⁹ *Lunyu* 9.3; Ivanhoe and Van Norden (2001), p. 24.

¹⁹⁰ Likewise, Xunzi says that although which names go with which objects is a matter of convention and depends on social consensus, the fact that our naming practices are better when they are clear and consistent is *not* a matter of convention (*Xunzi* 22; Watson (1963), p. 144.)

express appropriate respect for you without going through a lengthy ceremonial rigmarole, perhaps it's time for a revision of existing conventions. While the Confucians are in principle open to this kind of argument, in practice they arguably do tend to underestimate the advantages of simplifying the requirements of *li* – as for instance in the case of the Confucian insistence on the “three years’ mourning” for one’s parents, a period of fairly extreme asceticism and self-denial.

The Confucians, however, typically maintain that existing ceremonial traditions are not *merely* conventional – that they embody a peculiarly natural or appropriate response:

When the gentleman is in mourning: eating delicacies, he does not relish their good taste; listening to music, he does not feel any happiness; living at home, he does not enjoy its comfort. Therefore, he does not do so. ... A son does not leave his parents’ arms until three years after his birth. The three-year mourning is a universal mourning under Heaven.¹⁹¹

The claim that traditional conventional forms do a better job of expressing our sincere feelings than would our own spontaneous improvisation becomes more plausible when we contrast the powerful simplicity and grace of traditional wedding vows with the embarrassing gaseous tripe that couples tend to come up with when they write their own vows.¹⁹²

Respectfulness without the rituals becomes laboriousness; discretion without the rituals becomes apprehensiveness; courage without the rituals becomes rebelliousness; straightforwardness without the rituals becomes impetuosity.¹⁹³

Even if you had the keen eyes of Li Lou and the skill of Kung-shu Tzu, you could not draw squares or circles without a carpenter’s square or a pair of compasses; even if you had the acute ears of Shih K’uang, you could not adjust the pitch of the five notes correctly without the six pipes; even if you knew the way of Yao and Shun, you could not rule the Empire equitably except through benevolent government. ... The sage, having

¹⁹¹ *Lunyu* 17.20; Huang (1997), p. 171.

¹⁹² This is not to say that the traditional vows have not benefited from revision – e.g., by eliminating the wife’s promise to obey the husband. But this is reform-from-within, not wholesale invention. See also Doody (****)’s critique of the revised Anglican liturgy.

¹⁹³ *Lunyu* 8.2, Huang (1997), p. 95; cf. *Liji* 25, *ibid.*, p. 25.

taxed his eyes to their utmost capacity, went on to invent the compasses and the square, the level and the plumb-line, which can be used endlessly for the production of squares and circles, planes and straight lines, and, having taxed his ears to their utmost capacity, he went on to invent the six pipes which can be used endlessly for setting the pitch of the five notes, and, having taxed his heart to its utmost capacity, he went on to practise government that tolerated no suffering, thus putting the whole Empire under the shelter of his benevolence.¹⁹⁴

Authentic expression of one's feelings is a skill like any other, one that can be honed and perfected through the trial of many generations' experiences – and one whose exercise requires appropriate means.

According to the Confucians, the *li* represent stylizations and refinements of our spontaneous affective reactions:

Presumably there must have been cases in ancient times of people not burying their parents. When the parents died, they were thrown in the gullies. Then one day the sons passed the place and there lay the bodies, eaten by foxes and sucked by flies. A sweat broke out on their brows, and they could not bear to look. The sweating was not put on for others to see. It was an outward expression of their innermost heart. They went home for baskets and spades.¹⁹⁵

The relative degree of affection we ought to feel for our relatives and the relative grades in the honoring of the worthy give rise to the rules of propriety.¹⁹⁶

Smiles and a beaming face, sorrow and a downcast look – these are expressions of the emotions of joy or sorrow which come with auspicious or inauspicious occasions, and they appear naturally in the countenance. Songs and laughter, weeping and lamentation ... appear naturally in the sound of the voice. ... The beginnings of these two emotions are present in man from the first. If he can trim or stretch them, broaden or narrow them, add to or take from them, express them completely and properly, fully and beautifully ... then he has achieved true ritual. Therefore it is said that human nature is the basis and raw material, and conscious activity is responsible for what is adorned, ordered, and flourishing. If there were no human nature, there would be nothing for conscious activity

¹⁹⁴ *Mengzi* 4A1; Lau (1970), p. 117.

¹⁹⁵ *Mengzi* 3A5; *ibid.*, p. 105.

¹⁹⁶ *Liji* 29.20; Chan (1963), p. 104.

to work upon, and if there were no conscious activity, then human nature would have no way to beautify itself. Only when nature and conscious activity combine does a true sage emerge¹⁹⁷

On the Confucian view, emotions naturally tend to express themselves in a ritual or ceremonial form: “When joy arises how can one stop it? And when one cannot stop it, then one begins to dance with one’s feet and wave one’s arms without knowing it.”¹⁹⁸ A similar idea is found in Sartre and Wittgenstein:

Joy is a magical behavior which tends by incantation to realize the possession of the desired object as an instantaneous totality. To dance and sing for joy represent symbolically approximate behavior, incantations. ... the dance mimics the possession.¹⁹⁹

When I am furious about something, I sometimes hit the ground or a tree with my stick, and the like. But I certainly don’t think the ground is to blame or that this hitting can help at all. I give vent to my anger. And that is what all rites are like. ... The important thing is the similarity with an act of punishing, but nothing more than similarity is to be found.²⁰⁰

This is very much in line with the explanation of funeral rites offered in the *Liji*:

In dealing with the dead, if we treat them as if they were entirely dead, that would show lack of affection and should not be done; or, if we treat them as if they were entirely alive, that would show lack of wisdom and should not be done. ... Filling the mouth (of the dead) with uncooked rice ... arises from a feeling which cannot bear that it should be empty. The idea is not that of giving food, but of serving beautiful things (to the dead).²⁰¹

To paraphrase Wittgenstein: the important thing is the similarity with an act of feeding, but nothing more than similarity is to be found.

¹⁹⁷ *Xunzi* 19; Watson (1963), pp. 101-2.

¹⁹⁸ *Mengzi* 4A27; Lau (1970), p. 127.

¹⁹⁹ Sartre (1965), p. 236.

²⁰⁰ Wittgenstein, quoted in Edwards and Eidinow (2001), p. 204.

²⁰¹ *Liji* 2; Fung (1952), pp. 345-6.

The development of full-fledged ceremony out of the ceremonial impulses latent in ordinary emotions is described by Rand:

[D]ance represents a stylized version of man's body in action [and] an abstraction of man's emotions in the context of his physical movements. ... Every strong emotion has a kinesthetic element, experienced as an impulse to leap or cringe or stamp one's foot, etc. ... We can observe a different sense of life in a man who characteristically stands straight, walk fast, gestures decisively – and in a man who characteristically slumps, shuffles heavily, gestures limply. This particular element – the overall manner of moving – constitutes the material, the social province of the dance. The dance stylizes it into a *system of motion*²⁰²

For the Confucians, too, this is the origin of ceremonial performance. As Xunzi writes:

Music is joy, an emotion which man cannot help but feel at times. Since man cannot help feeling joy, his joy must find an outlet in voice and an expression in movement. The outcries and movements, and the inner emotional changes which accompany them, must be given full expression in accordance with the way of man. Man must have his joy, and joy must have its expression, but if that expression is not guided by the principles of the Way, then it will inevitably become disordered. The former kings hated such disorder, and therefore they created the musical forms of the odes and hymns in order to guide it.²⁰³

The *li* are both *expressive* and *educative* of our natural sentiments – though, typically, where Mengzi stresses the expressive function, Xunzi stresses the educative:

What is the origin of ritual? I say: man is born with desires. If his desires are not satisfied for him, he cannot but seek some means to satisfy them himself. If there are no limits and degrees to his seeking, then he will inevitably fall to wrangling with other men. ... The ancient kings hated such disorder, and therefore they established ritual principles in order to curb it, to train men's desires and to provide for their satisfaction.²⁰⁴

For Xunzi, our capacity to develop and make intelligent use of social conventions is what distinguishes us from, and enables us to master, the lower animals:

²⁰² Rand (1975), pp. 66-67.

²⁰³ *Xunzi* 20; Watson (1963), p. 112.

²⁰⁴ *Xunzi* 19; *ibid.*, p. 89.

[T]hat by which humans are human is not that they are special in having two legs and no feathers, but that they have distinctions. ... Of distinctions, none are greater than social divisions, and of social divisions, none are greater than rituals Grasses and trees have life but are without awareness. Birds and beasts have awareness but are without standards of righteousness. [Humans] are not as strong as oxen or as fast as horses, but oxen and horses are used by them. How is this so? I say: It is because humans are able to form communities while the animals cannot. Why are humans able to form communities? I say: It is because of social divisions. How can social divisions be put into practice? I say: It is because of standards of righteousness. ... Thus, that people can order themselves with the four seasons, control the ten thousand things, and bring benefit to all under Heaven is for no other reason than that they get these things from social divisions and standards of righteousness.²⁰⁵

If *language* is allowed to stand in for *li* in general, then Rand's theory is remarkably parallel to Xunzi's. For both thinkers, the ability to "control the ten thousand things" derives from human beings' superiority to animals: "while animals survive by adjusting themselves to their background, man survives by adjusting his background to himself. If a drought strikes them, animals perish – man builds irrigation canals; if a flood strikes them, animals perish – man builds dams"²⁰⁶ And for both thinkers, this superiority consists in the capacity to master an abstract symbolic code: without *language*, Rand says, a human being would be "a creature who is neither human nor animal, with all the power of a human potential, but reduced to a sub-animal helplessness; a savage, violent, hostile creature fighting desperately for self-preservation in an unknowable world"; if one wishes to "transform this creature into a human being ... the only means that can do it [is] *language*"²⁰⁷ Rand endorses Maria Montessori's statement that the acquisition of language enables children to "find themselves ... in the world of objects and of words which surround them, for they have an inner guide which leads them to become active and intelligent explorers instead of wandering wayfarers in an unknown land."²⁰⁸ "The

²⁰⁵ Xunzi 5, 9; Ivanhoe and Van Norden (2001), pp. 257-259.

²⁰⁶ Rand (1961), p. 15.

²⁰⁷ Rand (1985), pp. 92-3.

²⁰⁸ Montessori (1965), p. 137; quoted in Rand (1999), p. 138.

purposeful, disciplined use of his intelligence,” Rand holds, “is the highest achievement possible to man: it is that which makes him human”;²⁰⁹ and she expresses a Xunzi-like contempt for systems of education that give free rein to untutored impulses, regard the conceptual faculty as an “unnatural burden,” and encouraging the learner to “act on his spontaneous urges and feelings in order to express his subconscious desires, hostilities and fears.”²¹⁰

Scholars have long puzzled over the following exchange in the *Lunyu*:

Zi-gong asked: “What do you think of me?”

The Master said: “You are a utensil.”

Zi-gong said: “What utensil?”

The Master said: “A *hu* or a *lian* [i.e., a sacred ceremonial vessel].”²¹¹

In his invaluable study *Confucius: The Secular As Sacred*, Herbert Fingarette interprets this passage as follows:

It is sacred not because it is useful or handsome but because it is a constitutive element of the ceremony. ... It is therefore a paradox as utensil, for unlike utensils in general, this has no (utilitarian) use external to ceremony itself but only a ritual function. ... By analogy, Confucius may be taken to imply that the individual human being, too, has ultimate dignity, sacred dignity by virtue of his role in rite, in ceremony, in *li*. ... To become civilized is to establish relationships that are not merely physical, biological or instinctive; it is to establish *human* relationships, relationships of an essentially symbolic kind²¹²

The seventh chapter of the *Liji*, a late insertion that betrays Mohist and especially Taoist influence, makes Kongfuzi say that the emergence of *li* represented a decline from a primitive era of simplicity and impartiality.²¹³ But from a genuinely Confucian perspective, treating *li* as an obstacle to the expression of authentic feeling is like treating grammar as an obstacle to speech and thought. Grammar is simultaneously the medium

²⁰⁹ Rand (1999), p. 60.

²¹⁰ Ibid., p. 53.

²¹¹ *Lunyu* 5.4; Huang (1997), p. 72.

²¹² Fingarette (1998) 75-76.

²¹³ *Liji* 7; Fung (1952), pp. 377-8.

in which I initially formulate my thought, the tool that facilitates the expression of my thought, and the structure that imposes discipline and clarity on both thought and expression. So it is with *li*.²¹⁴

For Mengzi, virtue is simply a matter of appropriate behaviour:

The way of Yao and Shun [virtuous sage-kings] is simply to be a good son and a good younger brother. If you wear the clothes of Yao, speak the words of Yao and behave the way Yao behaved, you *are* a Yao. On the other hand, if you wear the clothes of Chieh [an infamous tyrant], speak the words of Chieh and behave the way Chieh behaved, you *are* a Chieh. That is all.²¹⁵

It's important to see, however, that Mengzi is *not* saying that one can be virtuous just by going through the external motions without meaning them. That's because just going through the motions does *not* count as "behaving the way Yao behaved." (*He* didn't just go through the motions.) Virtuous conduct cannot be identified in purely physical-behavioural terms, but is partly defined in terms of the attitudes manifested (not alongside it but) *in* it.²¹⁶

²¹⁴ cf. Richard Mitchell:

Language is the medium in which we are conscious. ... To understand the world, we make propositions about, and those propositions are both formed and limited by the grammar of the language in which we propose. (Mitchell (1979), pp. 5-12.)

Writers do not write grammar any more than readers read grammar. Both, unless they are mere reciters and receivers of communications, do the work of the mind in grammar, for that work can be done in no other medium. ... "Good grammar," in the fullest sense of the term, is neither an embellishment nor an accessory to anything else. It is the Law by which meaning is found and made. (Mitchell (1985), p. 6.)

Rand likewise describes language as "*primarily* a tool of cognition – *not* of communication, as is usually assumed." (Rand (1990), p. 69.) Where Xunzi treats *li* as necessary to prevent the natural manifestations of our likes and dislikes from being unruly, the *Liji* says that without *li* there would *be* no "visible manifestation" (ruly or otherwise) of inner likes and dislikes. (*Liji* 7; Fung (1952), p. 338.)

²¹⁵ *Mengzi* 6B2, Lau (1970), p. 172; cf. *Mengzi* 3B4, *ibid.*, p.109.

²¹⁶ cf. Hayek (1980), ch. 3. Fingarette draws a connection between the Confucian view of *li* and the view of Wittgenstein and Austin that asserts "a radical, logical gap between the language of 'action,' 'mind' and, in effect, what I have here called the ceremonial act and on the other hand the mathematical-physical language of physical science." (Fingarette (1988), p. 14, n. 9.)

Nowadays filial piety merely means being able to feed one's parents. Even dogs and horses are being fed. Without reverence, how can you tell the difference?²¹⁷

To feed a man without showing him love is to treat him like a pig; to love him without showing him respect is to keep him like a domestic animal. ... Respect that is without reality will not take a gentleman in merely by its empty show.²¹⁸

Or, as Fingarette suggests:

It is thus in the medium of ceremony that the peculiarly human part of our life is lived. The ceremonial act is the primary, irreducible event; language cannot be understood in isolation from the conventional practice in which it is rooted; conventional practice cannot be understood in isolation from the language that defines and is part of it. ... [T]he aim cannot be determined except as a feature of the behavior in the context, and the behavior cannot be understood except as interpreted in terms of some aim.²¹⁹

Chad Hansen charges that the *Lunyu* vacillates as to whether inward character or outward ceremonial conduct is more fundamental, and concludes that the work records a dispute between “two warring theories” within the early Confucian movement.²²⁰ But Hansen's division of early Confucianism into a “traditionalist,” ritual-centered faction (exemplified by Xunzi) and an “innatist,” character-centered, “anti-language” faction (exemplified by Mengzi) is overstated. (As evidence that Mengzi is “anti-language,” i.e., against shaping our natural impulses through conventional forms, Hansen cites Mengzi's advice not to help our plants to grow – but forgets that Mengzi also advises us not to neglect watering and weeding.) For Hansen, Mengzi and Xunzi are disagreeing as to which of the two factors – inward virtue and outward ritual – comes *first* and *produces* the other. But Hansen mistakes a difference in emphasis for a difference in doctrine;

²¹⁷ *Lunyu* 2.7; Huang (1997), p. 53.

²¹⁸ *Mengzi* 7A37, Lau (1970), p. 190.

²¹⁹ Fingarette (1998) pp. 14, 54; for similar views in Wittgenstein, and their application to Austrian praxeology, see Long (unpublished).

²²⁰ Hansen (1992), p. 60.

neither factor is prior, for the two constitute a unified whole, separable only in abstraction:

The way the mouth is disposed towards tastes, the eye towards colours, the ear towards sounds, the nose towards smells, and the four limbs towards ease is human nature, yet therein also lies the Decree. That is why the gentleman does not describe it as nature. The way benevolence pertains to the relation between father and son, duty to the relation between prince and subject, the rites to the relation between guest and host, wisdom to the good and wise man, the sage to the way of Heaven, is the Decree, but therein also lies human nature. That is why the gentleman does not describe it as Decree.²²¹

When rites are performed in the highest manner, then both the emotions and the forms embodying them are fully realized [F]orm and meaning, and emotion and practical use, are treated as the inside and outside or the front and back of a single reality²²²

To paraphrase Kant: rituals without sincerity are empty; sincerity without rituals is blind.

The Machinery of Freedom

Fingarette offers an interpretation of the operation of *li* that libertarians should find extremely congenial:

In well-learned ceremony, each person does what he is supposed to do according to a pattern. My gestures are coordinated harmoniously with yours – though neither of us has to force, push, demand, compel, or otherwise “make” this happens. Our gestures are in turn smoothly followed by those of the other participants, all effortlessly. If all are “self-disciplined, ever turning to *li*,” then all that is needed – quite literally – is an initial ritual gesture in the proper ceremonial context; from there onward everything “happens.” ... Confucius characteristically and sharply contrasts the ruler who uses *li* with the ruler who seeks to attain his ends by means of commands, threats, regulations, punishments and force The force of coercion is manifest and tangible, whereas the vast (and sacred) forces at work in *li* are invisible and intangible. *Li* works through spontaneous coordination rooted in reverent dignity. ... I see you on the street; I smile, walk toward you, put out my hand to shake yours. And behold – without any command, stratagem, force, special tricks or tools,

²²¹ *Mengzi* 7B24; Lau (1970), pp. 198-99.

²²² *Xunzi* 19; Watson (1963), pp. 94-96.

without any effort on my part to make you do so, you spontaneously turn toward me, return my smile, raise your hand toward mine. We shake hands – not by my pulling your hand up and down or your pulling mine but by spontaneous and perfect cooperative action. ... It is in just such ways that social activity is coordinated in civilized society, without effort or planning, but simply by spontaneously initiating the appropriate ritual gesture in an appropriate setting. ... These complex but familiar gestures are characteristic of human relationships at their most human: we are least like anything else in the world when we do not treat each other as physical objects, as animals or even as subhuman creatures to be driven, threatened, forced, maneuvered.²²³

The practice of *shu*, reciprocity, is thus not just one ritual observance among others; rather, reciprocity is the very *form* of ritual observance.

The fact that rituals operate without the use of coercion is an advantage, both morally and in terms of efficiency; but it is a disadvantage when it comes to the ease of *recognizing* their effectiveness. The Confucian Jia Yi writes:

Propriety [i.e., the Rites] is a thing that interdicts actions prior to their occurrence; the laws' interdictions fall only after the event. It is for that reason that the effects of using laws are easily seen, but the results produced by propriety are difficult to know.²²⁴

It is the familiar problem of “what is seen and what is not seen.” The drawback of invisible hands is that it takes libertarian spectacles to see them.

As Fingarette points out, the ability to achieve results via social incantation rather than via coercion depends on the existence of shared traditions and conventions:

There is no power of *li* if there is no learned and accepted convention, or if we utter the words and invoke the power of the convention in an inappropriate setting In short, the peculiarly moral yet binding power of ceremonial gesture and word cannot be abstracted from or used in isolation from ceremony. ... No purely physical motion is a promise; no word alone, independent of ceremonial context, circumstances and roles can be a promise.²²⁵

²²³ Fingarette (1998), pp. 7-11.

²²⁴ *Han Shu* 48; Hsiao (1979), p. 479.

²²⁵ Fingarette (1998) pp. 12-14.

And the same point is made by Hayek:

That the existence of common conventions and traditions among a group of people will enable them to work together smoothly and efficiently with much less formal organization and compulsion than a group without such common background, is, if course, a commonplace. But the reverse of this, while less familiar, is probably not less true: that coercion can probably only be kept to a minimum in a society where conventions and tradition have made the behavior of man to a large extent predictable.²²⁶

François Jullien divides early Chinese thinkers into “moralists” (mainly Confucians), who advise bringing about social benefits through the “inspirational force of virtue,” and “realists” (mainly Taoists and Legalists), who instead advise setting automatic self-regulating institutional mechanisms in motion by exploiting the “propensity of the situation.”²²⁷ What Jullien misses is that, for the Confucians, the first strategy can be realized only *in* and *through* the second. (Recall also the well-field system.)

For Hayek, the connection between individual liberty and evolving tradition is threefold. *First*, shared traditions make noncoercive social coordination feasible. *Second*, the evolution of such traditions will tend to favour *laissez-faire*, because *laissez-faire* is more efficient and so tends to outcompete rival social systems. *Third*, a libertarian social milieu, by granting the greatest scope to competition among modes of action, provides the optimum conditions for the evolution of traditions. The Confucians clearly grasp the first two points; it is less clear whether they have considered the third.

To a contemporary libertarian, the Confucian idea of setting vast social forces in motion through “an initial ritual gesture in the proper ceremonial context” irresistibly suggests two things. One of these is the Internet. (The ancient Confucians would no doubt take great satisfaction in the fact that the systems of rules that structure and enable the transmission of information on the Internet are called “protocol”!) The other is the operation of the market. Kongfuzi does not appear to draw the latter connection, but Sima Qian does:

²²⁶ Hayek (1980), pp. 23-4.

²²⁷ Jullien (1999), p. 66.

Society obviously must have farmers before it can eat; foresters, fishermen, miners, etc., before it can make use of natural resources; craftsmen before it can have manufactured goods; and merchants before they can be distributed. But once these exist, what need is there for government directives, mobilizations of labour, or periodic assemblies? Each man has only to be left to utilize his own abilities and exert his strength to obtain what he wishes. Thus, when a commodity is very cheap, it invites a rise in price; when it is very expensive, it invites a reduction. When each person works away at his own business then, like water flowing downward, goods will naturally flow forth ceaselessly day and night without having been summoned, and the people will produce commodities without having been asked. Does this not tally with reason? Is it not a natural result?²²⁸

Sima's reference to the automatic self-correcting mechanism of the price system also has an obvious parallel in Hayek:

[I]n a system in which the knowledge of the relevant facts is dispersed among many people, prices can act to co-ordinate the separate actions of different people The marvel is that in a case like that of a scarcity of one raw material, without an order being issued, without more than perhaps a handful of people knowing the cause, tens of thousands of people whose identity could not be ascertained by months of investigation, are made to use the material and its products more sparingly; that is, they move in the right direction.²²⁹

Fingarette's analysis suggests that the consistent Confucian must be "a kind of anarchist in the respect that he is radically opposed to the use of force, compulsion, coercion, or punishments in government or in human affairs generally."²³⁰ Henry Rosemont also agrees that Confucianism has affinities with anarchism – *not*, however, both Rosemont and Fingarette are quick to insist, with *individualist* anarchism, God forbid, with its emphasis on "individual choice" at the expense of "rootedness in tradition

²²⁸ *Shiji* 129; Sima (1993c), p. 434.

²²⁹ Hayek (1980), p. 87.

²³⁰ Fingarette (1978), pp. 513-14. Against this interpretation, Benjamin Schwartz has pointed out that, as the Confucians see it, "The order that the *li* ought to bind together is not simply a ceremonial order – it is a sociopolitical order in the full sense of the term, involving hierarchies, authority, and power." (Schwartz (1985), p. 68.) This is true enough; but the interesting question is not whether the early Confucians were conscious and consistent anarchists (clearly they were not) but whether anarchism represents the most coherent development of their understanding of *li*.

and ceremony,”²³¹ and its distasteful association with the “rugged individualism” of contemporary libertarianism,²³² but rather with the *communitarian* anarchism of “Kropotkin, or the participants in the various Christian utopian movements.”²³³ While Confucians and libertarians admittedly both place “a premium on spontaneity,” the libertarian, we are told, sees spontaneity as “the purest expression of individualism,” while the Confucian instead sees spontaneity as “the fruit and flower of having cultivated, assimilated into oneself, and finally achieved creative mastery of supra-individual norms.”²³⁴

This contrast, however, caricatures both libertarianism and Confucianism. First, if libertarian individualism is truly incompatible with deference to “tradition and ceremony,” then Fingarette and Rosemont will have a hard time explaining how Friedrich Hayek, one of the twentieth century’s chief theoreticians of libertarian individualism (and, while not an anarchist himself, a great inspirer of anarchists), can teach that “true individualism” requires the “willingness to submit” to “the traditions and conventions which evolve in a free society and which, without being enforceable, establish flexible but normally observed rules,” conformity to which is both “an essential precondition for the gradual evolution and improvement of rules of social intercourse” and “an indispensable condition if it is to be possible to dispense with compulsion.”²³⁵ And second, if Confucianism truly has greater affinity with Kropotkin than with capitalism, how are we to explain the fact that Confucian thinkers consistently rejected the Kropotkin-style autarky and collectivist primitivism of the Taoists in favour of a global network of commerce and trade? (Even Mengzi’s well-field system, which is as close to Kropotkin’s collectivist agrarian mini-utopia as Confucianism gets, is 89% private property.)

²³¹ Fingarette (1978), p. 514.

²³² Rosemont (1978), p. 518.

²³³ *Ibid.*, p. 518.

²³⁴ Fingarette (1978), p. 514.

²³⁵ Hayek (1980), p. 23.

Conceived in Liberty

When the Confucians first formulated their radical *laissez-faire* policies, they had never yet had an opportunity to see them implemented. (Many Confucians believed, or pretended to believe, that these policies had been in effect during the Western Zhou period, but this is a fantasy.) The fall of the despotic Qin dynasty, and the consequent rise of the Han, gave Confucian theorists an unprecedented opportunity. Widespread revulsion against the excesses of Qin led to an anti-authoritarian backlash against the Legalists and even the milder Mohists. *Laissez-faire* theorists like the Confucians and Taoists were in high demand, and many soon found themselves in positions of influence.²³⁶

That influence shows. Emperor Gaozu (Kao Tsu), whom Sima calls a “great sage,”²³⁷ founded the Han Dynasty on the basis of the following minimalist program:

I hereby promise you a code of laws consisting of three articles only: He who kills anyone shall suffer death; he who wounds another or steals shall be punished according to the gravity of the offense; for the rest I hereby abolish all the laws of Qin.²³⁸

Of course he didn't really mean it, and the laws of Han soon outgrew the promised confines. Even so, however, the early years of the Han dynasty were a period of relative liberalization. Sima describes the period as follows:

Formerly, in the time of the Qin, the net of the law was drawn tightly about the empire and yet evil and deceit sprang up on all sides; in the end men thought of nothing but evading their superiors and no one could do anything to save the situation. At that time the law officials worked to bring about order, battling helplessly as though against fire or boiling water. Only the hardest and cruellest of them were able to bear the strain of office and derive any satisfaction from the task; those who cared for justice and virtue were left to rot in insignificant posts. ... When the Han arose, it lopped off the harsh corners of the Qin code and returned to an

²³⁶ The *laissez-faire* tendencies of the early Han have led some scholars to assume that the primary influence on its policies must have been Taoist; but, as we have seen, this is an unwarranted assumption. Certainly the overall Han program of legislation looks more Confucian than Taoist.

²³⁷ *Shiji* 16; Sima (1993b), p. 88.

²³⁸ *Shiji* 8; *ibid.*, p. 62.

easy roundness, whittled away the embellishments and achieved simplicity; the meshes of the law were spread so far apart that a whale could have passed through and the common people were orderly and content.²³⁹

After the Han rose to power, the barriers and bridges were opened and the restrictions on the use of the resources of mountains and lakes were relaxed. As a result, the rich traders and great merchants travelled all around the empire distributing their wares to every corner so that everyone could buy what he wanted.²⁴⁰

Emperor Wen, one of Gaozu's early successors, abolished the practice of punishing an entire family for the transgressions of an individual;²⁴¹ abolished mutilation as a category of punishment;²⁴² and abolished taxes on agriculture.²⁴³ He also abolished the laws defining a "category of offences known as 'criticism and evil talk,'" on the grounds that when officials "do not dare to express their feelings in full," then the emperor "has no way to learn of his errors" and cannot hope to "attract worthy men from distant regions";²⁴⁴ this is one of the earliest instances of the epistemological argument for free speech.

In *Shiji*, Chapter 10, Sima Qian makes it sound as though Wen embraced all these measures spontaneously, out of virtue; but Chapter 102 makes clear that he often had to be prodded and shamed by his Confucian advisor Zhang Shizhi (Chang Shih-chih) into adopting them.²⁴⁵ Still, Han Emperors were proddable and shameable, which is more than can be said for their Qin predecessors.

The heyday of Confucianism's influence did not last however; its radicalism soon became inconvenient to those in authority. The Confucian theory of revolution, in

²³⁹ *Shiji* 122; Sima (1993c), pp. 379-80.

²⁴⁰ *Shiji* 129; *ibid.*, p. 440.

²⁴¹ *Shiji* 10; Sima (1993b), p. 290.

²⁴² *Shiji* 10; *ibid.*, p. 301.

²⁴³ *Shiji* 10; *ibid.*, p. 301.

²⁴⁴ *Shiji* 10; *ibid.*, p. 296.

²⁴⁵ *Shiji* 102; *ibid.*, pp. 470-71.

particular, was a double-edged sword; it had been used to justify the overthrow of the Qin dynasty and the ascendancy of the Han, but now that the Han rulers were consolidating their hard-won hegemony, they found the doctrine less appealing. Wen's successor, Emperor Jing (Ching) – a ruler with whom many things began to take a turn for the worse – advised scholars that further discussion of that particular doctrine could be perilous to health and longevity.²⁴⁶ Legalists began to return to positions of power and influence; they were so much better than Confucians at saying things that rulers wanted to hear. Confucians who stuck to their principles found themselves fighting a rearguard action and becoming increasingly irrelevant. Those who were more flexible could join the privileged class of Confucian bureaucrats created by Jing's successor, Emperor Wu (2nd c. BCE) – the ruler responsible for Sima Qian's castration. (Sima's crime was “deceiving the Emperor” – that is, giving him advice he didn't want to hear.) Before long, Confucianism had been “tamed,” and largely fused with Legalism. The Confucianism that became the official state philosophy for most of China's subsequent history was a new Confucianism, friendlier to state power and more hostile to the market.

The *laissez-faire* policies of the Han dynasty did not last. In the 1st-century BCE “Discourses on Salt and Iron,” we learn what was beginning to take their place:

In antiquity to accomplish things by virtue was the honored way, while employing military means was despised. Confucius said: ‘If remoter people are not submissive, all the influences of civil culture and virtue are to be cultivated to attract them’ Now we are abandoning ethics and relying on military force, raising up armies to attack them, placing garrison forces on the borders to defend against them. We expose our soldiers to dangers, station armies off in the wilds, and maintain these for long periods. The transport of provisions for them will be unending. Without, we make our soldiers on the frontiers endure hunger and cold, while within the country the common people must toil and suffer. We have established salt and iron monopolies that have now enlarged the profit [to the state], and the offices of government use that to sustain [the military]; that is not a good policy.²⁴⁷

When laws and commands are many, the people become uncertain about which [forbidden action] they should be avoiding. ... The laws of Ch'in

²⁴⁶ *Shiji* 121; Sima (1993c), pp. 363-4.

²⁴⁷ *Yantielun* 1; Hsiao (1979), pp. 458-9.

were as profuse as autumn tendrils and their network was as thick as congealed tallow. Yet higher and lower were alike in evading them, so treachery and deceit burgeoned. ... Now, today, the regulations and commands run to over a hundred articles; their text is voluminous, and the crimes they define carry heavy penalties. The way the provinces and constituent states apply them gives rise to doubt and uncertainty; whether transgressions shall be considered slight or serious is up to the officials. Even those versed in their meanings do not know how to apply them, all the less so do the simple people. The texts of the regulations and commands lie gathering dust and being eaten by bookworms on the office shelves. The officials cannot read them all, and all the less can the simple people do so. This is why law suits grow ever more numerous and why infractions committed by the multitude are ever more manifold.²⁴⁸

In these words of protest, an embattled cadre of 1st-century BCE Confucians bore witness to the accelerating pestilence of a swollen imperial state that had been conceived in liberty two centuries earlier. They speak for us.

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²⁴⁸ *Yantielun* 55; *ibid.*, p. 466.

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