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Does The *Dao* Support Individual Autonomy And Human Rights?

In the United States, “freedom” is arguably one of the most defining features of American culture and politics. Indeed, the U.S. National Anthem proudly describes the American flag waving over “the land of the free and the home of the brave.¹” This freedom is captured in the form of political and civil rights. These include the right to vote, to be free from discrimination based on gender, race, or sexuality; to free speech, religion, association, assembly, and press. These political and civil liberties are embodied in what the UDHR classifies as “first generation rights.” However, such freedoms are foreign to many Asian nations, namely those that identify with Confucianism.² For instance, China is one such nation that identifies with Confucianism³ and also denies the first generation rights to its peoples. In the 2014 World Report on Human Rights, it was noted that China “places arbitrary curbs on expression, association, assembly and religion; prohibits independent labor unions and human rights organizations; and maintains Party control over all judicial institutions.⁴”

Why are first generation rights so strongly promoted in the West, but condemned by Confucian nations? Essentially, the West values the first generation rights because such rights provide individuals with the ability to make their own choices and be autonomous. Although the

¹ "The Star-Spangled Banner: The Flag That Inspired The National Anthem." Smithsonian. <http://amhistory.si.edu/starspangledbanner/the-lyrics.aspx>.

² Fukuyama, Francis. "Confucianism and Democracy." *Journal of Democracy* 6.2 (1995): 20-33. See esp. pg. 23

³ Gardels, Nathan. "Xi Launches Cultural Counter-Revolution to Restore Confucianism as China's Ideology." *TheWordPost*. Huffington Post, n.d. <http://www.huffingtonpost.com/nathan-gardels/xi-jinping-confucianism_b_5897680.html>.

⁴ "World Report 2014: China." Human Rights Watch. <http://www.hrw.org/world-report/2014/country-chapters/china>.

concept of having a choice sounds appealing, it is also easy to realize that not every choice is a good one. Naturally, having a choice presupposes the fact that someone can choose what is good, what is bad, or something in between. Essentially, because within freedom lies the risk of choosing what is bad, Confucian nations do not glorify it like the United States does. In his article “The Confucian Conception of Freedom,” Chenyang Li explains that freedom is not a “supreme value” in Chinese thought.⁵ Rather than valuing the *condition* of being able to choose between good and bad, Li explains, Confucians value the *ideal* of choosing only the good. Indeed, he says that Confucians praise one “for choosing [only] the good, not for choosing *between* good and bad.”⁶

In addition to the good being an ideal for Confucians to achieve, it is also a right. In her article “A Confucian Approach to Human Rights,” May Sim explains that because of Confucianism’s emphasis on relationships, all people in a Confucian society are obligated to help others achieve any “Confucian goods” that may exist.⁷ Conversely, all people are entitled to pursue such goods. In effect, the good becomes a right to which all Confucian people are entitled. As Sim succinctly explains, since “there are basic goods and an obligation to foster them, then there are ‘basic’ or human rights.”⁸

What is the Good?

⁵ Li, Chenyang. "The Confucian Conception of Freedom." *Philosophy East and West* 64, no. 4 (2014): 902-19. See esp. pg. 912

⁶ Ibid, see esp. pg. 912

⁷ Sim, May. "A Confucian Approach to Human Rights." *History of Philosophy Quarterly* 21, no. 4 (2004): 337-56. See esp. pg. 348

⁸ Ibid, See esp. pg. 348

Although it is clear that Confucians have the right to achieve the good, to what exactly does the “good” refer? Naturally, many things can be classified as “good.” But in order to pursue them, one must first have a recognition of what, exactly, the Confucian conception of “good” is. By discerning what the good is, one can then determine the rights to which all Confucians are entitled.

In his book *Confucianism—the Secular as Sacred*, Herbert Fingarette agrees that the good of every Confucian is to follow the *Dao*. Indeed, he says that “following of the Way...is of ultimate and absolute value.”⁹ However, according to Fingarette, the *Dao* does not offer any crossroads. Rather, it is a strict, one-way street structured by ritual propriety (*li*).¹⁰ In effect, Confucians lack a true ability to make choices when it comes to pursuing it; “either one follows the Way or one fails...neither the doctrine nor the imagery [of the *Dao*] allows for choice...there is presumed to be only one right thing to do.”¹¹ Given the static nature of the *Dao*, Fingarette concludes that Confucians do not have the ability to be autonomous in following it.

Although I agree with Fingarette’s claim that the good of every Confucian is to follow the *Dao*, I disagree with his view that the *Dao* discourages individual autonomy. From my reading of Confucianism’s Four Books, I have concluded that the *Dao* not only has space for individual autonomy, but actually requires it. However, in order for individuals to be autonomous, they need to be granted with the first generation rights.

What Is The *Dao*?

⁹ Fingarette, Herbert. *Confucius—the Secular as Sacred*. New York: Harper & Row, 1972. See esp. pg. 20-22

¹⁰ Ibid, See. esp. pg. 19-20

¹¹ Ibid, See esp. 21

In order for one to be able to follow the *Dao*, one must first understand what, exactly, the *Dao* is. “*Dao*” is translated as the “Way,” but can refer to “the right Way of life, the Way of governing, the ideal Way of human existence, [and] the Way of the cosmos.¹²” However, it most often refers to the Way in which society is ruled and organized.¹³ Since this essay focuses on the rights of the individual in a Confucian society, we should discern the *Dao* in this latter context. Naturally, all governments are ruled and organized in order to achieve a certain goal. According to the *Great Learning*, the goal of every Confucian society is also “to illustrate illustrious virtue; to renovate the people; and to rest in the highest excellence.¹⁴” Ultimately, if the goal of every Confucian society is to exhibit virtue, then the *Dao* of a Confucian society is to illustrate virtue.

If the *Dao* refers to an illustration of virtue, then the aim of all Confucians should be to cultivate virtue. Such a task is certainly possible because, according to the *Mengzi*, human nature is to become virtuous. Indeed, Mengzi says that all humans have within their hearts certain feelings: compassion, disdain, deference, and approval and disapproval.¹⁵ These feelings are important because they are the “sprouts” of virtues. Compassion is the sprout of benevolence; disdain is the sprout of righteousness; deference is the sprout of propriety; approval and disapproval is the sprout of wisdom.¹⁶

¹² Ibid, See esp. pg. 19

¹³ Van Norden, Bryan W. *The Essential Mengzi: Selected Passages with Traditional Commentary*. Indianapolis: Hackett, 2009. See esp. pg. 141

¹⁴ Tzu, K'ung-fu. *Confucius: The Great Learning*. Trans. James Legge. N.p.: Forgotten Books, 2007. Print. See Pg. 1

¹⁵ *Mengzi* 2A 6.4

¹⁶ *Mengzi* 2A 6.5

How Does One Cultivate Virtue

Although it is clear that all humans can cultivate the virtue necessary to follow the *Dao*, does Confucianism offer any explanation on how this is done? Essentially, how is virtue cultivated? According to the *Great Learning* and the *Analects*, people can cultivate virtue by acquiring knowledge and observing ritual propriety (*li*). Indeed, in the *Great Learning* Confucius says that in order for people to cultivate their persons, they must “first rectific[y] their hearts...s[ee]k] to be sincere in their thoughts...[and] extend to the utmost their knowledge. Such extension of knowledge lay in the investigation of things.”¹⁷ Essentially, in order for the people to cultivate the virtue for which the *Dao* calls, the people need to begin by extending their knowledge and investigating reality. However, since following the *Dao* is the good to which all Confucians are entitled, then a Confucian society has an obligation to provide its people with education. In order to ensure that all people have the right to education, a Confucian society ought to provide them with the second generation rights. This generation of rights is social, economic, and cultural in nature; they include the right to education, housing, health, or employment. Essentially, since a right to education is a second generation right, a granting of this rights will ensure that Confucian citizens can obtain the knowledge necessary to cultivate virtue and follow the *Dao*.

The *Analects* also lays out a clear formula for how one can cultivate virtue. Indeed, Confucius says that observing ritual propriety allows one to achieve the highest Confucian virtue, *ren*:

Through self-discipline and observing ritually property one becomes authoritative [*ren*] in one’s conduct. Do not look at anything that violates the observance of ritual propriety;

¹⁷ Tzu, K'ung-fu. *Confucius: The Great Learning*. Trans. James Legge. N.p.: Forgotten Books, 2007. See Pg. 1

do not listen to anything that violates the observance of ritual propriety; do not speak about anything that violates the observance of ritual propriety; do not do anything that violates the observance of ritual propriety.¹⁸

Ren can be translated as authoritative conduct, benevolence, or humaneness, and refers to a “graded love for all human beings.”¹⁹ Since *ren* is the summation of human virtue,²⁰ one’s ability to practice this virtue will have the largest effect on one’s ability to follow the *Dao*. Indeed, Mengzi says that “The Way [*Dao*] is simply to harmonize with benevolence [*ren*] and put it into words.”²¹ Essentially, if a Confucian society is obligated to help its citizens follow the *Dao*, then it should promote ritual propriety (*li*). Moreover, a Confucian government can encourage the people to observe ritual propriety by promoting the second generation rights. Indeed, since *li* refers to a society’s cultural practices, and the second generation rights embody a society’s cultural rights, then by promoting this generation of rights a Confucian government can effectively promote ritual propriety (*li*).

Ultimately, it is clear that one can cultivate virtue by gaining knowledge and observing *li*. However, since the right to education and culture are captured in the second generation rights, then it is clear that a Confucian government ought to provide its citizens with this generation of rights.

¹⁸ *Analects*, 12.1

¹⁹ Sim, May. *Harmony and the Mean in the Nicomachean Ethics and the Zyongyong to Remastering Morals with Aristotle and Confucius*, 100-33. N.p.: Cambridge UP, 2007. See esp. pg. 117

²⁰ Van Norden, Bryan W. *The Essential Mengzi: Selected Passages with Traditional Commentary*. Indianapolis: Hackett, 2009. See esp. pg. 137

²¹ *Mengzi*, 7B16.1

The *Dao* And Autonomy

At this point, Fingarette's conclusion about the *Dao* is easy to understand. Again, Fingarette views the *Dao* as a single path with virtually no room for any choice or freedom. This explanation seems logical because the characteristics of the *Dao* do seem specific—in order to follow it, one must illustrate virtue, become educated, and adhere to society's norms and customs embodied in ritual propriety (*li*). With such a specific prescription of the *Dao*, is there any room for independent choice? Despite the fact that the *Dao* seems fixed, the *Mengzi* and the *Analects* explain how it also requires individual autonomy.

According to the *Mengzi*, there is another virtue, *yi* (righteousness/appropriateness), that is imperative to one's ability to follow the *Dao*. *Yi* refers to one's ability to avoid “what is shameful or dishonorable, even when one could acquire wealth or social prestige in doing so.”²² According to Mengzi, practicing *yi* allows one to achieve *ren*. “Where does he dwell? Benevolence [*ren*]. Where is his path? Righteousness [*yi*].²³” Moreover, in other passages, he explains that practicing *yi* allows one to follow the *Dao*. He says, “To want to meet the worthy without according with the Way [*Dao*] is like wanting someone to enter while shutting the door. Righteousness [*yi*] is the path and propriety (*li*) is the door.”²⁴

Although it is clear that *yi* is necessary to follow the *Dao*, what does this have to do with autonomy? As it turns out, the appropriate (*yi*) action varies depending on one's social role. For

²² Van Norden, Bryan W. *The Essential Mengzi: Selected Passages with Traditional Commentary*. Indianapolis: Hackett, 2009. See esp. pg. 140

²³ *Mengzi*, 7A33.3

²⁴ *Mengzi*, 5B7.8

instance, in the story of Feng Fu, Feng Fu is mocked for helping a mob catch a tiger because he is a distinguished official. “Feng Fu rolled up his sleeves and got out of his carriage to assist with the tiger. The mob was pleased, but those who were officials laughed at him.”²⁵ We can conclude that Feng Fu’s behavior is not appropriate for his role as an official because Mengzi uses this story to explain to Chen Zhen why his own social role does not permit him to ask for famine relief.

Yi is also situational; since no two situations are exactly alike, the appropriate action can vary by situation. For instance, imagine if the tiger was going after Feng Fu’s mother. Since *xiao* (filial piety) is one of the most important Confucian virtues, it would be more appropriate (*yi*) for Feng Fu to try to save his mother by capturing the tiger than it would be for him to behave like an official. Therefore, in order to ensure that Confucian citizens have the ability to choose the appropriate action, they need to have the ability to think autonomously. In this hypothetical story of Feng Fu, Feng Fu certainly needed to make an independent choice in order to perform the appropriate (*yi*) action. However, since the ability to be autonomous lies in the first generation rights, then Confucian citizens will need this generation of rights in order to exercise *yi*. Without such freedoms embodied in the first generation rights, Confucian citizens may be discouraged, mocked, or even legally restrained from the ability to practice *yi*. Again, an ability to practice *yi* is important because it allows one to follow the *Dao*. Ultimately, since it is clear that the first generation rights allows one to fully exercise *yi* and follow the *Dao*, then a Confucian government should grant its citizens with this generation of rights.

The *Analects* also provides evidence that the *Dao* requires a degree of individual autonomy. Indeed, Confucian says that *Dao* can be “broadened:” “It is the person who is able to

²⁵ *Mengzi*, 7B23.2

broaden the way (*Dao*), not the way that broadens the person.”²⁶ If it is true that people can broaden the *Dao*, then they need the institutional space in which they can do so. However, since the *Dao* refers to the way in which society is ruled and organized, then citizens will only be able to broaden it if they have access to the first generation rights. Only through the right to vote and the freedoms of press, speech, and assembly can Confucian citizens have the appropriate means to broaden the Way in which society is ruled and organized.

In a later passage, Confucian also explains that the *Dao* is able to grow from the *junzi*. Indeed, he says, “Exemplary persons (*junzi*) concentrate their efforts on the root, for the root having taken hold, the way (*Dao*) will grow therefrom.”²⁷ *Junzi* can be translated as a “superior” or “exemplary” person, and refers to someone who is extremely virtuous. The ability for the *Dao* to grow from the *junzi* is noteworthy because, even though the *junzi* has cultivated enough virtue to follow the *Dao* with precision, it is clear that he or she is still able to expand upon it. More importantly, it should be mentioned to that all people have the potential to become a *junzi*. According to the *Zhongyong*:

The proper way (*dao*) of exemplary persons (*junzi*) is both broad and hidden. The dullest of ordinary men and women can know something of it, and yet even the sages (*shengren*) in trying to penetrate its furthest limits do not know it all. The most unworthy of common men and women are able to travel a distance along it, yet even the sages in trying to penetrate to its further limits are not able to travel it all...The proper way of

²⁶ *Analects*, 15.29

²⁷ *Analects* 1.2

exemplary persons has its start at the simple lives of ordinary men and women, and at its furthest limits sheds light upon the entire world.²⁸

Ultimately, since all people have the potential to become a *junzi*, then it follows that the *Dao* can grow from all people.

Further supporting the idea that all people have an ability to contribute to the *Dao* is *Analects* 19.22, in which Confucius says:

The way (*Dao*) of Kings Wen and Wu has not collapsed utterly—it lives in the people. Those of superior character (*xian*) have grasped the greater part, while those of lesser quality have grasped a bit of it. Everyone has something of Wen and Wu’s way in them. Who then does the Master not learn from? Again, how could there be a single constant teacher for him?²⁹

Despite the fact that Confucius is a sage, he is still able to learn more about the *Dao* from the people. This has significant implications on a Confucian government because, if a Confucian society wants to better know the *Dao*, then it should ensure that it learns from all of its citizens. However, in order for a Confucian government to learn from its people, it needs to provide them with means of expression. Essentially, since the first generation rights provide one with the appropriate means to express their knowledge of the *Dao*, a Confucian nation needs to provide its citizens with this generation of rights.

Ultimately, it is clear that all people have a potential to grasp the *Dao* and expand upon it. However, in order for them to do this, they need access to the first generation rights. Again, all

²⁸ *Zhongyong*, 12

²⁹ *Analects* 19.22

people are entitled to the rights necessary to pursue the *Dao* because the *Dao* is indeed the Confucian good. Therefore, by granting its citizens with the right to participate in politics and the right to free speech, assembly, and press, a Confucian government is effectively granting its citizens with the means necessary to achieve the good to which they are entitled.

Conclusion

As initially explained, all Confucian peoples are entitled to pursue the good. According to Fingarette, one can effectively choose the good by following the *Dao*. Although I agree that the *Dao* is the good, I disagree with Fingarette's view that it offers no room for individual choice. Although the *Dao* does require one to illustrate virtue, acquire an education, and observe ritual propriety (*li*), I also argue that it requires individual autonomy. In the *Mengzi*, Mengzi explains that the *yi* (appropriateness or righteousness) is also required to follow the *Dao*. However, since *yi* varies by situation, Confucian citizens need the ability to make their own choices in order to achieve this virtue. And since the ability to be autonomous lies in the first generation rights, then Confucian citizens need this generation of rights in order to practice *yi* and follow the *Dao*.

In the *Analects*, Confucius provides evidence that the *Dao* is not entirely predetermined; people, in fact, contribute to its growth. However, since the *Dao* refers to the way in which society is ruled and organized, then people only contribute to it through the first generation rights in order to contribute to it. Essentially, by participating in politics and freely expressing oneself, one can effectively contribute to the way (*Dao*) in which society is ruled and organized.

The *Dao* also supports the second generation rights. Indeed, the *Great Learning* and the *Analects* explain that one can cultivate virtue by acquiring knowledge and observing ritual propriety (*li*). However, since the right to education and other cultural rights are embodied in the

second generation of rights, then a Confucian government is obligated to provide its citizens with this generation of rights as well.

Although scholars disagree on the compatibility between Confucianism and human rights, hopefully the analyses in this research can contribute to the ongoing debates. Moreover, given the significance of Confucianism in many Asian countries, hopefully it can contribute to a shifting view of the role of first and second generation rights in Confucian societies.

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