



How is justice understood in classic Confucianism?

Christophe Duvert

Department of Law, Soongsil University, Seoul, Korea

ABSTRACT

In Sinicized Asia, justice, conceptualized and institutionalized in its current form on a Western mold is part of a singular and ancient Confucian legal tradition.

In this paper, it will be argued that Confucians initially articulated the concept of justice in relation to their own explanation of the world and their ideal, which distinguishes and rewards men's actions according to their merits and social condition.

It will be shown that Confucius's thinking is primarily political and suggests ways of harmoniously organizing and reforming society in which justice is conceived both as a principle of government, a principle of social conduct and one of the essential virtues, or a 'moral sense' that everyone must possess, while, in practice, Confucian justice will put forward the imperatives of retributive justice. This, despite its philosophical aversion for sanctions and for what upsets harmony.

KEYWORDS

Justice; Confucianism; virtue; government; social conduct; harmony

Introduction

Confucianism as a global ideology in East Asia¹ may appear to have been, at least, partially replaced by modern values and laws, but this should not lead to ignoring a long-standing millennia tradition, and despite the existence of a current true appetite for modern Western values and political ideals, their assimilation remains difficult. Nowadays, ancient and modern values seem to coexist without questioning a supposed synthesis. For example, 'freedom', 'rule of law', 'justice', 'democracy' or 'equality' have, for several decades, been regularly mentioned in Asia in political, journalistic and intellectual discourse, like obvious evidence, but reality shows that these are still quite foreign concepts. A hundred years ago, Asian languages did not always have terms to qualify them (Weber, 1951, p. 147)² and they still remain sometimes blurry. After their introduction, these concepts did not necessarily find a match in their language, and linguistic equivalents imbued with a different cultural content were associated with them. This is the case of the principle of justice. Until toward the end of the nineteenth century in East Asia, private and public affairs entered the field of *yi* 義³ which meant among other possible meaning justice, equity, appropriateness or rectitude. Political philosophy as well as methods of conflict resolution developed within the scope of this central Confucian virtue. To bring, or rather, to administer justice could abstractly consist in 'determining who violated justice (*yi* 義), punishing the guilty, and restoring harmony in society' (Kim, 2012, p. 51).

At the end of the nineteenth century, the Japanese were among the first to undertake the translation of new Western philosophical concepts using Chinese characters. In 1885, justice referred to *gōngyì* 公義, by association of the Confucian value *yì* 'justice' and *gōng*, which had the meaning of 'public affairs' or 'public'. Another translation was proposed for justice: *gōngdào* by association of *gōng* 'public affairs' and *dào* 道 'the Way' of Taoism (Kato & Maruyama, 1998, p. 233). But, it is finally the term *zhèngyì* 正義 that will prevail from the first part of the twentieth century to mean 'justice'.⁴

While, for example, a French dictionary gives the definition of 'moral principle that requires respect for law and equity' (Larousse, 2011, p. 602), the term 'justice' *chōng'ui* is understood in South Korea as 'the correct morals that man must follow' (Tusandong'a sasöp'yŏnjipkuk, 1997, p. 1947).⁵ The differences of definition provided by French and South-Korean dictionaries suggest the conceptual differences contained in the word. These differences are not just a problem of pure semantics and provide information on the expectations of inhabitants of the Sinicized world with regard to their society and to their judicial system and refer to the questioning of the term justice, its polysemy and the aporia of its substance. They lead to the question of what did the term justice, *yì* 義, referred to in traditional Confucian thought?

Conceptualized and institutionalized in its current form on a Western mold, justice is part of a singular and ancient Confucian legal tradition. Compared to the Western 'legalistic' tradition, the Confucian tradition is more based on ethics than on the law to such an extent that it has been described as 'alegalistic'⁶ by one of his brightest observers (Hahm, 1967, p. 6). Some Asian legal philosophers have little in common with the theory of Western justice, which is too logical and argumentative. They prefer to conceptualize justice as something inclusive that pursues harmony (Choi, 2009, p. 309). In fact, East Asian traditional legal thought has long drawn its particularities from its history and in particular from Confucianism that penetrated China and then the Sinicized world and whose adoption profoundly changed the region. Confucian philosophy produced there a remarkably powerful political instrument, used by the elites to reinforce an authoritarian central power. This ideology based on knowledge, virtues and accepted standards of behavior, contributed to shape a theory and practice of justice whose influence continues until today.

Confucians initially articulated the concept of justice in relation to their own explanation of the world and their ideal, which distinguishes and rewards men's actions according to their merits and social condition.⁷ To them, the idea that men are intrinsically equal was not a valid assertion and respect for social stratification was (and may be still) considered sacred. Consequently, every man had to know his rank and duties in the social organization. The neo-Confucians later reinforced the invariably subordinate or dominant character of any orderly social relationship. This denial of equality, naturally recognized to any man, deprived him of the opportunity to participate in public affairs reserved for the higher categories. Likewise, the denial of equality was tantamount to denying him any freedom, for liberty meets in Confucian Asia with the arbitrary will of the hierarchical superior, even the most virtuous and the best-intentioned of men. Following the exegetes of Confucius thought, East Asians have long considered that the law was not self-sufficient and that it should be administered by a leader developing a culture of 'the rule of man' (normally virtuous) at the expense of 'the rule of law'.

In this context, the judiciary is conceived not as a debtor of justice, as in the West, but as a debtor of order. The philosophy that supports this organization proposes a concept

of justice that has little analogy with those practiced in the West. Justice is understood as a personal and public virtue, but does not include the concepts of freedom, equality or sovereignty of law.

The path of Confucian justice, which considers that every case is unique and that there are no two identical cases, prefers to take into consideration the situation, the merits and the status of the people. It does not want to be bound by general principles inapplicable to a particular case with all the risks of injustice ... Thus, despite the existence of laws and an organized state power including a judicial organization, it is possible to affirm that, in most East Asian countries, until very recently, justice did not mean 'right' or 'law'. East Asians have long relied on the strength of sanctions, moral persuasion, ethics and personal and public exemplarity of individuals to apply justice rather than uniform legal standards that do not take into account the particularities of each situation and each individual.

It was not before the end of the nineteenth century that East Asia opened itself and embarked on a path of westernized modernity that was both desired and constrained. It will operate through internal and external struggles a profound transformation of its institutions and ways of thinking by gradually transplanting (depending on the country), first by Europeans, then by the Japanese colonizer and then by the Americans, the Western legal model and its concept of justice and some Western institutions and values, but without regard to centuries of tradition and respect for Confucian values and also 'without adaptation or consideration for the context and views of the [...] people' (Kim, 2000, p. 10). After years of sometimes authoritarian rule or sometimes democratic regime, some of these values nevertheless seem to be partially failing to penetrate the ways of life of some East Asians, despite a remodeling of the judiciary and despite the enactment of laws establishing rights and obligations based on equality and freedom. The long-standing conflict of values that has nurtured relations between East and the West is still unresolved and the question of how Asian societies can successfully amalgamate them into their system remains relevant. To understand the ideal of justice East Asians may set for themselves and could, beyond the facade, eventually penetrate the judiciary and society, it appears necessary to look back at how the original Confucianism seeks to define all the ideas that are related to that principle.

Enlightening the notion of justice in the light of the particularity of the Confucian philosophy must provide opportunities for understanding the former and current Sinicized world that has experienced many upheavals and whose current understanding is blurred.

The purpose of Confucius's philosophy does not always appear clearly, but can be summed up by an apocryphal phrase attributed to him: 'I seek an all-pervading unity'. The search for unity is a quest for harmony, *hé* 和, reached in the balance between two, or more, tensions or extremes. To achieve this, everyone must be faithful to their own nature, linked to their social position. The philosophy of Confucius is an ethics of being based on a formal explanation of nature. It encloses the universe in a system of formal representations, in particular numeral, often articulated around dualities or sometimes trinities. Many duos of complementary opposites (Sky/Earth or empty/full) structure the Confucian thought without being disjunctively dualistic. They become ternary when they integrate the human element or the vital breath of the *ki*, connecting these opposite notions to each other. Dǒng Zhòng Shū⁸ theorizes a system in which 'the universe consists of ten parts: heaven, earth, yin, yang, the five elements (metal, wood,

water, fire, earth) and man'; 'Heaven, earth and man are the origin of all things'; 'Heaven gives birth, earth gives food and man gives perfection'(Dubois, 1979, p. 351). The five elements, also called five transformation states, also interact. This attempt to account for the phenomena of the universe by yin and yang and the five elements is similar to an almost materialistic cosmology (devoid of spirituality). Applied to man, this cosmology of the universe and nature offers a metaphysical justification of social order, of human nature, or of political changes in history. This is how, for example, the five virtues are correlatively associated with the five elements.⁹

In the same way that the order of the universe and the human order are aligned structurally, men's activities and the phenomena of nature interpenetrate each other. This core idea offers a practical and unchanging course of action for leaders who need only to be concerned about their inner development and then settle the details of their lives, their families, and by extension, bring peace to their kingdom as well as harmony in the world and the universe. The introduction of the second part of the *Yi King* [*The Book of Changes*], in its presentation of the thirty-first Hexagram *Hsien*, summarizes in these terms the genesis and the project of human society and even offers some lines of definition of justice, a tool of regulation of human relations:

Heaven and earth exist, so the universality of things exists. The universality of things existing, then men and women exist. Men and women existing, the husband and the wife exist. The husband and the wife existing, then the father and the son exist. The father and the son existing, then the prince and the subject exist; the prince and subject existing, then the superior and the inferior exist; the superior and the inferior existing, then are instituted the rites and the equity to regulate the relations. (Kao, 1938, p. 63)¹⁰

Confucius's thinking suggests ways of organizing and reforming society, and its aim is primarily political. It offers, beyond self-improvement, a guide for the people and their leaders. This reform begins with the individual whose first task is the mastery of knowledge and sincerity. Once acquired, he must make his word trustworthy. He can then develop his own personality and then, analogically, reform his family circle, to finally organize the state and exercise power. The virtues and basic principles upon which the individual relies to achieve these ends vary among authors, sources and translations. The doctrine generally retains five that include 'rites' *lǐ* 禮, 'righteousness/justice' *yì* 義, 'loyalty/fidelity' *zhōng* 忠, 'humanity/benevolence' *rén* 仁 and 'filial piety' *xiào* 孝, and of course, the 'knowledge' *shì* 識 that one acquires by 'studying' *xué* 學.

In private life as in public affairs, everyone must cultivate personal virtues, while respecting the duties of the five social relations whose final object is universal harmony. These five mutual duties, or five relations *wǔlún* 五倫 *oryun*, define the moral precepts or 'great laws' (Couvreur, 1956b, p. 22) of the five social relations prescribed by Mencius as follows: 'affection between the father and the son, justice between the prince and the subject, distinction between husband and wife, gradation between persons of different ages, fidelity between friends'. Before specifying: 'the husband deals with external affairs, and the wife with domestic affairs; the husband commands, and the woman obeys. The younger ones show respect to those who are older than them, and give them the first places' (Couvreur, 1956c, p. 425).

This arrangement of human relations involves duties, both on the side of the sovereigns who must work on themselves in order to perfect themselves, then love the people, reform them morally, and provide them with the means necessary for the maintenance of their daily life, as well as on the side of the people, who must, in turn, fully serve the one who dominates and protects them. This idea of mutuality of duties has become one of the main principles of Confucianism. Making the content and the existence of reciprocal duties depend on the social status of their author, which comes from a natural hierarchical order, provides a definition of Confucian equity which constitutes one of the key aspects of the understanding of justice, as it has developed widely in the Sinicized world, where it continues to prevail today.

I—a principle of government

'Justice' *yì* 義 is very frequently mentioned in the Confucian doctrine. It is a principle of government, a principle of social conduct and one of the essential virtues, or a 'moral sense' that everyone must possess. The term 'justice' which many translators propose for convenience to the Chinese character *yì* 義 does not always carry a clear and identical meaning in Confucian literature and does not automatically correspond to the meaning Western philosophy would be tempted to attribute to it. The term *yì* 義, usually translated by 'justice', is sometimes preferably translated by 'just obligation', 'sense of justice', 'equity', 'righteousness', 'duty', 'rectitude', 'fairness', 'correctness', 'appropriateness', 'etiquette', 'moral responsibility' which does not facilitate the researcher's work. These nuances impose at the same time rigor in the work of contextualization and modesty in the assertions.

'Justice' *yì* 義 is, nevertheless, one of the essential notions of Confucian thought. It is essentially a virtue that serves, especially with that of humanity, as a principle of application of the abstract natural order. This great virtue, which is at once a principle of social organization and of personal development, founds, with humanity, the Confucian system of thought. To practice justice leads to the fulfillment of all human duties. Thus, Mencius can declare: 'To abide in the virtue of humanity, and to follow the path of justice, is the whole occupation of a truly great man' (Couvreur, 1956c, p. 623). Justice is the 'right' mode by which the virtue of humanity applies to different social relations. In other words, justice is in theory, on a personal level, the right evaluation of our actions by which we know what we must do and how to do it.¹¹ At the level of society, the virtue of justice plays a dual role: it sets the social duties of every individual and organizes the sharing of power and material goods, thereby preventing troubles in the society. In reality and practically, it is supported by the rites that act along with the judicial trial for its implementation.

Respect for mutual duties

Through justice, the resources essential to life can be divided by allocating a share to each according to his abilities, his merits and his condition. This should be done while setting limits to what everyone can appropriate or possess. This is the way to reduce the desire and, to a fair extent, to meet the needs of all. It is also to offer men the path of harmony and peace. Social life is established on the basis of this just distribution.

Justice is the way of distributing goods, responsibility and offices, but it also performs an even more important function in regulating the social duties that human relations entail. Justice, according to the Confucians, does not consist in claiming rights but in applying a sum of duties. Therefore, 'he who seeks his own utility (to understand: his own interest, his advantage, his rights) hurts justice' (Couvreur, 1956a, p. 80). Justice is a duty that binds one another the people to the rulers because 'if the prince does not know his duties, the people will ignore his own' (Couvreur, 1956c, p. 465). Further on, Mencius formulates the idea of reciprocity of duties even more clearly when he mentions: 'the mutual justice of the prince and the subject' (Couvreur, 1956c, p. 641). In the *Book of Rites*, justice concerns everyone and expressly equates to duties: 'justice consists in that, everywhere under the sky, men, of whatever rank, all perform their duties' (Couvreur, 1950b, p. 493).

The *Li Ki* sets out the list of reciprocal duties that define justice. What is justice?

Fatherly tenderness, filial piety, the gentleness of elders towards the younger ones, the deference of the cadets for the elders, the equity of the husband, the obedience of the woman, the benevolence of the elderly, the submission of the young men, the humanity of the sovereign and the fidelity of the subjects. These are the ten things that make up justice for men. (Callery, 1853, p.45)

This philosophy of justice, which singles out reciprocal and relative duties, is based on the observation that not all men are worth the same, that they are not equal. This principle of inequality of men makes it possible to classify them in categories according to their value. What must be remembered, beyond the multiple categories which vary according to the doctrines and which give rise to the social classes and the theory of the division of labor, is that they all establish a hierarchy between the beings who are bound by ties of domination and subordination to roughly distinguish two main categories: the superior men, on the one side and on the other side, those subordinate to them. The upper class includes leaders, fathers, husbands and older people; the lower class is made up of obedient followers, sons, women and younger people. Each of these two classes is obliged by equity to fulfill its own duties toward the other.

Governing by setting an example

The rulers must be protective and benevolent while in return, the inferiors must be always ready to perform the acts of respect and submission that fall to them. This ideal of behavior that everyone must respect is described in *Doctrine of the Mean*:

In a high rank, he does not vex his inferiors; in a lower rank he does not seek the favor of the great. He makes himself perfect, [he is attentive to his duties] and asks nothing of anyone; also he never complains. (Couvreur, 1956b, p. 9)

The superior man refrains from all arrogance and the inferior man obediently accepts his situation. Thus further: 'In an elevated position, he does not sweat with pride; in a lower rank, he does not resist the authority' (Couvreur, 1950b, p. 468).

Without these distinctions between men, no one could hold the power necessary to authority. In the absence of authority, anarchy is inevitable. It is this difference between beings that founds Confucian equity on which justice is defined. The eminent scholar Xunzi justifies accordingly his development:

If the sharing of material goods were to be done in an equal proportion for all, there would certainly be people who would receive nothing. If all men were placed in the same social situations, the order would no longer exist. If there were no distinction among men, no one would have the authority to command. Heaven is above, earth is down; the wise kings are constituted to order society according to the very norms of this distinction (which is expressed in the relations between heaven and earth). Two nobles of the same social position cannot use each other, and two individuals without authority cannot control each other. This is the natural law. When men are in the same conditions, pressed by the same passions and the same needs, they argue among themselves to try to monopolize the necessities of life, since material things are not unlimited. From their dispute arises disorder and disorder causes ruin. The wise kings hated disorder among men; that is why they have established standards of honesty and fairness to adjust the sharing (of goods and offices) so that there is a difference between rich and poor, between the nobles and vulgar men, so that they depend on each other and live together in peace. (Kao, 1938, p. 71)

Confucius corroborates this differentiation on which justice is founded when he says: 'Justice consists in treating everyone as they should be; the main duty it imposes is to honor the sage' (Couvreur, 1956b, p. 13). The duty of the just man is to treat everyone according to his rank, and in particular, to give in to the prince endowed with justice and righteousness. It is this obedience to justice embodied by the superior that makes man righteous and upright.

The latter must not only obey the prince, the father, the sage, but also accept to be led by him. It is the necessary condition to guarantee and offer the common good for all. To fulfill one's duties is a constraint imposed by justice which implies that the ruling class is given what is due to it for the service it renders itself to society. The reciprocity of duties is therefore justified in the name of justice, but also more prosaically by an alleged mutual dependence born of the natural division of tasks that each performs in society. Ideally, leaders devote themselves body and soul and selflessly to the higher interests of the service of the state and to the moral good of the people and society, leaving to ordinary people the burden to provide the material elements necessary for daily subsistence and to provide for the needs of their leaders. In other words, harmonious society is built around another duality represented by 'muscles and brain'. Thus, when the division of tasks, titles, distinctions and functions between the rulers themselves and between the rulers and the people is operative, then perfect harmony reigns in society and the inequalities between men are no more perceived as the oppression of the strong on the weak and the small, but presents itself as a formidable necessity useful to the whole social body.

According to the *Analects*, the higher category must be irreproachable in the performance of its duties and must be the first to comply with justice in order to set a good example for the directed category. 'The emperors have rewarded and punished according to justice; to their example' (Couvreur, 1956a, p. 152). If the powerful perform their duties perfectly, then they are able to induce the inferiors to fulfill theirs; if not, inferiors will not obey them. This deep conviction of the Confucianists is repeatedly asserted in the *Analects*: 'If the prince loves justice, none of his subjects will dare to refuse him obedience' (Couvreur, 1956a, p. 122), or in Mencius: 'If the prince is human, in the administration everything will be human; if he is righteous, everything will be righteous; if he is irreproachable, everything will be irreproachable' (Couvreur, 1956c, p. 481). However, in social relations, the fundamental principle is that everyone has the

obligation to fulfill exactly his personal duties toward others as he would like others to fulfill theirs toward him, but he should never expect reciprocity from them. This is what Confucius says when he says that 'he who blames himself severely for his faults and summons others with indulgence avoids discontent'. This, ideally, is the spirit of the virtue of justice. Justice must be the guiding principle to correct oneself and not to rectify others. As a result, one who does not correct himself, while he corrects others, does not act in justice and is not considered fair by others. Thus, the main duty that justice imposes on the people is to honor virtuous and capable men. The wise prince must therefore constantly improve himself, that is to say that he must, by setting an example, fulfill his duties of justice toward his subjects, but also, for example, toward his parents, to be worthy of their respect.

A principle of harmonious justice

Justice is a method of government for internal use that primarily concerns the wise persons. The most virtuous leaders, those who are the most capable of practicing virtues, including that of justice, occupy the highest positions while the less virtuous will inherit less important offices. Xunzi explains it as follows: 'Establish positions according to virtue, [...] then all things are in their proper place and, in due course, all cases find their solution' (Kao, 1938, p. 73). Confucius also erects justice in principle of people's government by the leaders when he congratulates a State official who perfectly practiced the virtues of 'deference to his equals, respect for his superiors, benevolence towards the people, and justice towards his subjects' (Couvreur, 1956a, p. 40). What is important, according to him, is to take justice as a rule. Questioned later on the administration of affairs of the kingdom, the Master replied that one 'must apply his mind to affairs relentlessly, and treat them with justice' (Couvreur, 1956a, p. 116). In the *Analects*, Confucius specifies: 'Governing the empire, the wise do not want or reject anything obstinately. Justice is his rule' (Couvreur, 1956a, p. 31). That is to say, the sovereign must not be prejudiced or obstinate in his manner of regulating public affairs, and he must position himself only according to justice and not according to his interests. The practicability of the thought of Confucius, who knows everything about the shortcomings of men, assigns to justice the fight against the corruption of the elites. An individual virtue distinguishes the value of the people, the wise being poured into justice while the vulgar man deals with his own business.¹² Therefore, men refer to it to resist the lure of gain. 'In the face of a pecuniary advantage, do not violate justice to benefit from it' (Couvreur, 1950a, p. 3). Also, according to him:

the sage gives special attention to nine things. He puts effort in properly seeing what he is looking at, [...] when he is discontent, he thinks of the unpleasant consequences of anger; in front of a good to acquire, he consults justice. (Couvreur, 1956a, p. 158)

In the same way, further: 'This is a true disciple of wisdom, who, [...] in the face of a profit to be made, consults justice' (Couvreur, 1956a, p. 183). According to *Li Ki*, the sage does not seek to own land, because 'the possession of justice [...] for him, is tantamount to the possession of land' (Callery, 1853, p. 172). In his practice of power, the wise man must never be corrupted by honors or money. Xunzi is convinced of this: 'If he were promised an empire with a view to bring him to commit an act of injustice, he would not turn his eyes to look at such a gift. He stands unwavering in righteousness and uprightness until death' (Kao, 1938, p. 58, note 4).

Confucian doctrine condemns 'interests' as a motive for human actions, considered as the main source of all social issues. Indeed, the quest for profit creates antagonisms between men instead of uniting them in a bond of reciprocal generosity. The virtue of justice allows everyone to be happy and satisfied to receive what is due to him and to fulfill his duties, without ulterior motives, according to his rank. The temptation of possession excites human feelings, generates a perpetual struggle between men constantly tempted to seize new wealth. If the self-interest dictates the acts of the one who performs his reciprocal duties, that is to say that he fulfills his duties toward his neighbor only insofar as they serve him to improve his situation and provide him a personal benefit, so this situation can only lead to unrest in society! In this sense, Mencius threatens the powerful with the risks of revolt if they are more concerned with their own interests than with those of the people. Thus, to Houei, king of Leang, who asks him about the means of increasing his power, Mencius replies: 'If the prince says: By what means shall I increase the wealth and power of my kingdom? The great prefects will say: By what means will we increase the wealth and power of our houses? The learned men and the people will say:

By what means will we increase our wealth and our particular influence? The great and the small will fight among themselves wealth and power; the kingdom will be in danger. [...] if wealth and power go prior justice, inferiors will be satisfied only when they have taken everything away from their superiors. (Couvreur, 1956c, p. 299)

However, the condemnation of interest as a principle of action does not mean that Confucians reject material goods. Justice must be the rule of actions and be above any idea of interest or material advantage. Confucians believe that happiness for all is to be found in the practice of the virtues of humanity and justice that create 'an atmosphere of freedom, peace and harmony in which everyone will have the opportunity to acquire the necessary means to his daily life and live safely' (Kao, 1938, p. 98).

This is why Mencius states that 'never has a benevolent man abandoned his parents, nor a just man preferred his interest over his duties to his prince'. Then to complete his thought: 'Talk about humanity and justice; it's enough' (Couvreur, 1956c, p. 301).

Justice is therefore to be placed above all, because, says Confucius, recognition and wealth obtained by unjust means appear 'like clouds fluttering in the air' (Couvreur, 1956a, p. 65). Justice is above life itself. Mencius says: 'I love life, and I also love justice. If I cannot keep both at the same time, I will sacrifice my life, and I will keep justice' (Couvreur, 1956c, p. 572).

But, justice in government affairs is also a wishful thinking, an inaccessible ideal, from the mouth of Confucius himself who confesses that 'to practice justice (in public affairs), in order to extend the influence of his virtue, is a principle I learned from the ancients, but I have not seen anyone follow' (Couvreur, 1956a, p. 162). It becomes therefore necessary to find a reasoning that can bring people's adherence to his doctrine. For rulers who are not convinced to use justice toward their subjects, Confucius deploys the argument of profitability. If the one who administers public affairs is only engaged in amassing wealth, it inevitably produces only misfortune and great damage. 'Justice is much more profitable to the state than income' (Couvreur, 1956d, p. 26). Justice is the best way for the powerful to sit down or keep his power. If he always follows 'the great way (of duty and justice)', he will make 'all his subjects obedient to his laws' (Couvreur, 1966, p. 450).

After Confucius who justifies his work by the disorder that reigns in society, which makes him declare: 'if good order reigned in the empire, I would have no reason to work at reform it', the Confucian doctrine is always trying to establish or maintain order. It deplores a troubled order and often refers to the 'disorder' caused by those who are not virtuous or who practice evil virtues. It praises the qualities of princes who manage to preserve 'the empire in perfect order' (Couvreur, 1966, p. 147). The administration of public affairs is facilitated by the establishment of order. So the Master explains that 'if the prince likes to keep order ... the people are easy to manage' (Couvreur, 1966, p. 144). And, what creates disorder is the lack of justice: 'What must worry [*sic*] is [...] the lack of justice' which is understood by Confucius as the lack of harmony, that is, 'lack of union and concord'. What troubles unity is an injustice that 'disturbs the peace of the citizens, and brings internal discord' (Couvreur, 1966, p.158, note 3.). Disorder comes from the lack of virtue of justice whatever the other qualities or the rank of the one who created it. This is why Confucius says that 'a man raised in dignity who has bravery, but does not respect justice disturbs the good order' (Couvreur, 1956a, p. 173).

Moreover, the conservative Confucian order is taking shape in immobilism. Movement, 'tremors' creates disorder. 'In acting, there will be danger; whatever the movement, it will be dangerous' (Philastre, 1992, p. 909). The movement may cause the justice to loose. 'Shaking, trembling with fear; justice is not yet reached' (Philastre, 1992, p. 945). To frolic in their actions, prevents men to reach the path of justice and to conform to it.

The quest for harmony that justice pursues is not only about the state of relationships between people or between all the elements that make up the universe. It also refers to the coordination and the combination of the sounds that must match. Metaphorically first, the harmony is defined by the tension that constitutes the agreement born of different notes and produced by different instruments. Confucian justice is part of the same process of seeking agreement between different points of view, values, facts or hierarchies to form a perfectly tense note. This music of Confucian justice is written without partition (without rules) or rather on the blank page of an unwritten score (the stave of which would constitute the framework of the five relations), in an apparent improvisation which is, in reality, made possible and successful harmonically only by the work produced, in time, during the rehearsals (rites). In real life, music, or rather, a certain music has an influence on men which preoccupies the Confucians, especially positively when it contributes to the moderation of morals thus acting as an instrument of justice. Indeed, in Confucian philosophy, in ancient historical narratives, justice is often associated with music. Depending on the situation, it constitutes its means (if it is harmonious), its disruptive element or its counterpart. According to the rationalist Xunzi, music is the physical incarnation of man's natural inclinations, the means of expressing their feelings. But the joy or the sadness that it conveys must be restrained otherwise it leads to disorder. More generally, it can be usefully aggressive when supporting an army that attacks or represses. It can also take a humbly courteous form when it makes people obey. That is the reason why Xunzi says that '[music] is a great factor of order under the sky, it is the fiber of which is woven the right harmony' (Kamenarovic, 1987, p. 242). But it is also the expression of the instincts of the man whose feelings make him slave. It is then understood as a deception. Kings establish or 'regulate' music in this way, according to the doctrine which goes so far as to define and distinguish the songs, the tunes

and even the notes, suitable of those who are not, in order to make it conform to the 'Just principle'. This principle of justice serves to correct the natural aspirations of man or to channel them in order to maintain the social order. By means of 'appropriate' songs, man corrects himself and unfolds his virtue. But even more, music is a practical remedy. Thus, the one who knows the tunes very quickly takes a decision in the face of a case and not only seeks his personal interest because 'he who knows how to make a quick decision is bold; he who does not seek to take everything for himself is right'. The commentary also asks: 'Can a man, without the help of music, preserve his boldness or his justice?' He is assisted in this task by the rites. Indeed, 'Music imitates the harmony that exists between heaven and earth' while the rites reproduce 'the order (the gradation) that exists in the things of heaven in those of the earth' (Couvreur, 1950a, p. 60). For example, the musical knife that the *Book of Rites* recommends to use preferably when one indulges in certain sacrifices because, 'it makes a harmonious sound first, then it cuts' (Callery, 1853, p. 66). Indeed, this ceremonial knife contains in the end of its sculpted handle a raptor head inside which a metal ball sounds when used. The sound produces kindness and harmony while the slicing blade symbolizes justice. Is it a way of saying that justice must be tempered by kindness, as Callery implies? According to Xunzi's interpretation, justice acts rather as a threat to those who would be carried away in the torment of rhythmic feelings. Another passage of *Li Ki* (Callery, 1853, p. 38) provides an example of this proximity between music and justice. It mentions an ancient feast given to the elders. During this ceremony, the musicians sing a famous ode that lifts the soul,¹³ then the participants mingle in choreographic evolutions. When the song is over, people of different ranks who have mixed together, separate and go back to their seats. The party ends with a wise conversation about duties (for example, between father and son or between the lord and his subjects). This ritual feast symbolically delivers a definition of justice that does not need to rectify or to punish since the music is appropriate, but still put things back in order by naming (and dividing). After the music which encourages the virtues of humanity, but which creates a tolerable organized disorder, the distinction between the sovereign and the subjects, between nobles and ordinary men, is then re-established so as to maintain order and the hierarchy that governs relations between people.

Justice is thus built in sound harmony, whether it be musical when the music is well regulated by the prince, or it is in the sweetness of words, even in silence.

The beginning of urbanity and justice consists in properly composing one's exterior, preserving the equality of one's face, and keeping one's word soft. When the exterior is well composed, the face is always equal and the language is soft, urbanity and justice are complete. (Callery, 1853, p. 177)¹⁴

The commentary on the 52nd *Ken* hexagram offers another perfect illustration: 'immobilize the corners (angles) of the mouth; by justice and righteousness' (Philastre, 1992, p. 958). A man in his actions and in his speech must bring 'the greatest circumspection' (Philastre, 1992, p. 958); he must control himself. The best way for this is 'to stop or immobilize the angles of the mouth' (Philastre, 1992, p. 958), that is to say, to be silent, or to stand still is a means of justice. The commentary explains that by 'immobilizing the lips, the word will not come out of the mouth poorly and will only come in order and opportunely. If words erupt inconsiderately, ill-timed, it will result in regrets; but by

stopping them on the lips, the regrets will dissipate' (Philastre, 1992, p. 958). The word (but also sound and music) that comes out of the mouth is also symbolic. To immobilize the commissures of the lips means 'immobility in what is average, between extremes, in justice' (Philastre, 1992, p. 958). It is therefore recommended to prevent his lips from moving so as not to fail in justice. This mistrust of sound and speech is corroborated by the Master when he says: 'The wise man is modest in his words, and he does more than he says, that is to say his conduct is always above its precepts' (Couvreur, 1956a, p. 140).

II—a moral of self-development

In the *Analects*, Confucius, to recall the importance of the Tao in his eyes, questions: Can someone leave the house if not through the door? Why does no one walk by the path of the Tao? This questioning in the form of regret is immediately followed by the critical explanation of the Master who regrets that men know that, to go out, you have to go through the door, but do not know that, to act righteously, you have to go through the path of virtue.

Without venturing into the origins of one of the least historically established notions (Granet, 1934/1988, p. 250), the study of the understanding of Confucian justice would not be complete without mentioning the role played by one of the pillars of Chinese thought commonly referred to as « Tao » dào 道, namely, the 'Way'.¹⁵

The way of justice

The design and objectives of Tao vary depending of its schools of thought. Spiritualists, especially the Taoist, see it as both a principle of immanent order in all areas of the real and an efficient and orderly mode of conduct acting as a regulating power of social and human life. The more secular schools, including Confucians and neo-Confucians, adhere to the second part of the definition and take the Tao as a behavioral pattern to follow in order to maintain everything in harmony (Javary, 1997, p. 1491). The annotators of *The Book of the Way and Virtue* thus summarize the duality of the Tao:

There are two ways (two Tao), one ordinary (that of the Confucians) which is the way of justice, rites, prudence; it can be uttered by speech and its name can be named. The other is the sublime Way (Tao) of which Lao Tzu speaks. This Way, which hovers over the century, has no shape, no color, and no name. If you look for it, you do not see it; if one listens to it, one does not hear it: that is why it is not likely to be spoken by word, nor designated by name. (Lao-Tseu, 1842, p. 2, note 1)

The first article of *The Doctrine of the Mean* provides the following definition:

The law which the sky has engraved in the heart of man is called the natural law. The direction given by the natural law is called the Way. To follow this way and show it to others is called teaching. It is not permitted to deviate a moment from the path of virtue. If it were allowed to deviate, it would not be the Way... (Couvreur, 1956b, p. 5)¹⁶

Natural Law has two aspects: one static, the other dynamic. The first is a state of constant equilibrium *zhōng yōng* 中庸 that scholars translate as 'Constant Mean', 'Middle Way', 'Right Way' or 'Unswerving Pivot'. To live according to the natural law, one must know the Middle Way, it is the static dimension, while continually producing

efforts in advancing or walking in the Middle Way, it is its dynamic dimension. The Middle Way is realized in the harmony of life. 'When the Middle Way and the perfect harmony have attained their highest degree everywhere, everything is in its place in heaven and on earth, and all beings are born and prosper' (Couvreur, 1956b, p. 4). The natural law therefore institutes in each of us what distinguishes good from evil, the right from the unjust. But to act in accordance with this internal direction requires vigilance and constant work because not exercising control over the movements of our heart leads us to deviate from the path. The quest and perseverance in the Middle Way is difficult to obtain. It requires great moral strength, continuous work, constant vigilance and strength of character that most men, even the greatest, lack.

The justice that Confucius and his followers are calling for is on the steady path of the right balance. The warning to the reader presented in the preamble of *The Doctrine of the Mean* admirably summarizes the sense of conduct that the Tao expresses: 'The middle is the right way for all beings, and constancy is the invariable law that governs them' (Couvreur, 1956b, p. 4). An English equivalent, reductive but evocative, would make it correspond to the *right track*, a formula that must be understood both literally and figuratively. The straightness and rightness embodied in the path of the just, or Constant Mean, is the prescription of a search for perfection, of good, of justness, that the wise man must follow physically and morally in all his relations with others and in all his actions. 'He who perfects himself embraces what is right and good, and attaches himself to it with all his might' (Couvreur, 1956b, p. 16). Justice, says Mencius, is 'the way that man must follow' (Couvreur, 1956c, p. 575). This morally superior path that must be taken is invariably in the middle. Indeed, 'to agree to justice, while standing in a Middle Way, constitutes a happy omen' (Philastre, 1992, p. 167). As a result, he who 'always follows the high road, justice' (Couvreur, 1956c, p. 438) is a great man. Therefore, justice is found as much as in moral righteousness, 'perfection is the quiet house, and righteousness is the right way of man' (Couvreur, 1956c, p. 474), than in physical rectitude: 'in action, justice is not to go beyond the point you have to reach and not to fall short of it' (Philastre, 1992, p. 53). Therefore, justice is lacking to those who deviate from the path by wanting, for example, 'to drill or cross a wall to steal' (Couvreur, 1956c, p. 646).

A sentence pronounced by Prince Ki in response to Emperor Ou Wang, who wonders how to explain to men the great laws of society and the mutual duties, perfectly summarizes this moral and physical path of the Confucian virtue of justice: 'Nothing inclined, nothing that is not united; let's practice justice' (Couvreur, 1897, p. 201). However, the 'Middle' that the Confucians call for does not correspond to equidistance (Cheng, 1997, p. 181). It is not limited to the ease of a 'neither ... nor' or a 'half-and-half'. Nor is it content with the clever compromise offered by the 'middle way' in all circumstances. It is more about pursuing and achieving a kind of perfect efficiency. Moreover, the Confucian thinkers place the 'Middle', not in the middle but at the end or at the top of the 'utmost beam' *jí* 極 which structures the whole of the philosophical-cosmological edifice which founds the universe. The concrete illustration of this 'Middle' *zhōng* 中 *chung* is provided by the perfect gesture that the archer must produce to reach the center of the target.¹⁷ The correctness of this shooting, by extension that of human actions, is the ideal that everyone must aim for.

The virtue of justice

Among the virtues that every man who claims to be wise must practice is justice. Confucius says: 'The wise man takes justice as a basis [...], he always cherish it sincerely' (Couvreur, 1950a, p. 151). But, it remains to know what 'justice' means ... For Mencius the question of the definition of justice does not arise because all men are the same, the meaning of justice is similar for all. So he says that 'all men enjoy flavors the same way' (Couvreur, 1956c, p. 567), before asking, 'What are these objects upon which all men bear similar judgments? I say that these are the principles of honesty and justice and the applications of these principles' (Kao, 1938, p. 65). Everyone knows what justice is, says Confucius. That is the reason why it is not, or only partially, defined, by default, in negative. Thanks to justice, 'there is no bias or abuse' (Philastre, 1992, p. 899). In positive terms, it is 'what suits'. Justice is 'this disposition that leads us to treat men and things as it should be' (Couvreur, 1956c, p. 558).

Justice is defined as the appropriateness of our actions. Its origin is double. It has its source in morality (goodness) and nature (harmony). Even if it comes sometimes from Heaven or Providence,¹⁸ its essence is perfectly human.

According to Chinese philosophers, justice is inside man or outside him. When it is in him, it is a moral principle, a virtue or a human feeling that everyone must cultivate. *The Book of Changes* refers to it in these terms: 'the word justice means the feeling of justice of the heart' (Philastre, 1992, p. 945). Or again: 'Justice, or Middle, is the symbolic image of the heart' (Philastre, 1992, p. 1064). Justice according to *Li Ki* is based on kindness. 'Justice determines the part of work that each must perform; it is the measure of the kindness he has to display' (Couvreur, 1950a, p. 532). Whoever performs his duty according to his wealth, his status and his talent and shows that kindness directs his actions, shows justice and has nothing to blame himself with.

Mencius considers that is not a man

whose heart does not know the compassion, or would not be ashamed of his faults and would not despise the faults of others, or cannot refuse anything to himself and give in anything to another, or put no difference between good and evil. Compassion is the principle of benevolence; shame and horror of evil are the principle of justice. (Couvreur, 1956c, p. 476)

The shame and the horror of evil is justice, a 'disposition which leads us to treat men and things as it should be' (Couvreur, 1956c, p. 565). Then further, according to Mencius, in negative, the virtue of justice is obtained by refusing to 'commit certain evil actions' (Couvreur, 1956c, p. 618).

Every man naturally has four principles in him, as he has 'the four limbs'. Mencius says, 'What the wise man holds of nature, are the virtues of benevolence, justice, urbanity¹⁹ and prudence: They have their roots in the heart' (Couvreur, 1956c, p. 617).

The precept of goodness being, according to Confucius, innate in man, it suffices to cultivate it. This can be done following two axes: by moderating emotional overflows on the one hand and in harmony according to the order of reason on the other hand. It is therefore necessary for man to make serious and constant efforts, first to maintain this innate goodness, then to develop that other synonym of justice, which is the 'righteousness of the heart', *zhèng xīn* 正心 *Chōngsim*, until to the highest degree of

perfection. Thus, depending on translations, man perfects himself by 'regulating the movements of his heart' (Couvreur, 1956d, p. 17), such expression reflects the idea of an imbalance to be ironed out, a harmony to be found back, or even through the 'correction of the heart' (Kao, 1938, p. 52), a requirement which is based only on a morality. Thus, when 'the heart is affected by what makes angry the irascible, by what makes the shaking of the fearful, the saddening of the demented, he no longer enjoys his rectitude' (Couvreur, 1956d, p. 17).

The need to moderate our effusions is then expressed:

When there is no feeling of joy, anger, sadness or pleasure in the soul, it is said that it is in equilibrium. When these feelings are born in the soul without exceeding the right measure, they are said to be in harmony. (Couvreur, 1956b, p. 5)

To make good use of feelings and to satisfy this moderation, one must rely on rites and education. At the forefront of the principles to be taught is sincerity. All morality depends on that sincerity and the satisfaction it gives to our nature. According to Xunzi, it is sincerity that allows us to commit righteous deeds.²⁰ From this sincerity of the will therefore depends the possibility of justice.

But, if the justice by which we treat everything properly is outside of us, and not in ourselves, that is to say, if we consider that it does not belong to human nature and its intrinsic qualities but of the *natural*, cosmological nature, it is then dictated to us by the 'rational' order of nature and by the duties modeled from it. According to Xunzi, the principles, according to which the 'right principle' can be defined, are also found in nature. According to him, the cycles of transformation of nature form a harmonious model of life. Nature thus offers man the means to create his own culture and his vocation is to use this model of organization and order. That is why Lao Tzeu says,

When I'm with someone older than me, I respect him because of his age; this superiority of age is not in me. Likewise, when I see a white object, I say it is white; whiteness is outside of me. For this reason, I say that justice is not in us. (Couvreur, 1956c, p. 560)

But when the values of goodness (inner) and duties (external) oppose, on what principles does the virtue of justice come into place? Rites offer solutions by determining, for example, that in the house (interior), the feeling would prevail over the justice, and that outside the house, the justice allows to limit them. *Li Ki* explains that a son in mourning for his father or mother should not be required for a public service. Conversely, the subject is obliged to do for his prince what he did for his father. So to make him mourn for three years, as on the death of his father, is considered worthy of justice (Couvreur, 1950b, p. 701).

III—a regulative tool

Justice and rites

The Chinese character 禮 *lǐ* 'rite' also covers multiple meanings. It originally refers to religious rites. Rites may be understood, depending on the context, as 'rules of decorum', 'protocol', 'politeness', 'etiquette', but, under other circumstances, they may also mean 'ceremonial' 'urbanity', 'personal morality', 'manners', 'courtesy', 'good manners', 'proprieties', 'social order', etc. These rites act as rules of conduct and are considered to

be 'the fruits of justice, that is, the expression of what is just and reasonable, the expression of duty' (Couvreur, 1950a, p. 531). The writings of Xunzi insist that justice does not have its source in human nature but in rites. This is what must be understood when he says:

I therefore affirm that the reunion of heaven and earth gives birth to the ten thousand beings, that the response of yin and yang is the motor of all transformations and evolutions, and that the combination of nature and culture allows what is under heaven to be in order. (Kamenarovic, 1987, p. 233)

Justice, which is a 'moral sense' for Xunzi, is associated with the rites 禮 and no longer to humanity *ren* 仁. Rites act as a regulative instrument of justice, insofar as they define and explain the virtue of justice in detailed application formulas that cover various times, places and circumstances of life. Rites are extremely important because they are the means without which one cannot behave judiciously or appropriately in personal or social life. 'He who does not know the rules and usages [rites 禮] will not be consistent in his conduct' (Couvreur, 1956a, p. 193). Xunzi corroborates this necessity of rites, a regulating instrument of personal life, without which man cannot live, and of social life without which business fails and the state is in disorder.

In the individual life, rites have the function of moderating the passions, by determining the right pace which allows to give them birth. The rites 'serve to shape one's temper, to strength the will and to guide the intelligence' and finally 'to determine a polished and harmonious outer outfit by rendering every action virtuous' (Kao, 1938, p. 99).

Justice needs rites to fulfill its essential role of rectifying morals. Observance of the rites is the effective means of achieving this mastery or correction. Confucius explains that 'the rules of conduct are like dikes protecting from the excesses of the people'. According to him, the rites are intended to 'preserve the people from their mistakes', which allows him to say: 'he who makes excessive courtesies is tiring²¹; he who is circumspect is fearful; he who is brave beyond measure causes disorder; he who is frankly offended offends by too strong opinions' (Couvreur, 1956a, p. 73). The books of Confucian rituals are full of prescriptions of how men should behave. They advise, for example, humility, silence, the avoidance of shameless looks, or early morning awakening. They also indicate the correct pace of steps, position of hands, mouth, etc. (Yi, 2011, p. 18). Their main function is always to conform human actions to 'Middle' grounds in order to produce an irreproachable conduct, that is to say in the right way and without excess. Although the rites concern mainly actions (external), they also have a psychological performative influence on the inside of the man and serve effectively to perfect his character. The way to act according to justice is to develop one's inner goodness but also to treat one's external appearance (one's physical appearance) well because 'when deportment stops for a moment from being ordered and respectful, laziness and carelessness creep in the heart' (Couvreur, 1950b, p. 104). Here lies the current source of aesthetic passions of East Asians for whom the physical appearance is not only the expression of an exacerbated narcissism or a matter of social survival, but also the demonstration of a strong personal ethics.

In social life, rites act as the instrument of justice in determining how to perform the social duties imposed by social relations and also prescribe the rules and

ceremonies governing public, civil or religious events, so that harmony and order reign in society. Therefore, 'the accomplishment of duty, inner virtue, benevolence, justice cannot reach their perfection without the help of rules of decorum (rites)' (Couvreur, 1950a, p. 5). Socially, rites offer everyone a model of conduct by determining the rules to be respected in their relations with others. As rites give rules that cover all the many circumstances of life, no social action can be properly accomplished without them. Rites create a common set of rules that everyone can rely on to regulate their actions. They are then used to curb or prevent outbursts and excesses, which poison relationships, and thus help to resolve conflicts between men. For this reason, Confucians compare rites to dams preventing men from departing from the right path. They act as an agent of control *a priori* in order to prevent the causes of possible troubles by inspiring a feeling of honor to the one who respects them and of shame to the one who would commit the imprudence to ignore them. This is why the sage who 'prescribes ceremonies that serve to regulate actions', 'excites, encourages to follow his precepts, and inspires the shame to depart from them' (Couvreur, 1950b, p. 491). Rites arrive at this result when they are repeated to the point of penetrating moral standards and becoming habits adopted by all. The observance of rites imposed on men by habit and social pressure, format them to conform to good and not to commit evil. This is what Confucius says when he says: 'If the prince commands the people by showing his good examples and creates unity by regulating the customs, the people are ashamed to do wrong, and become virtuous' (Couvreur, 1956a, p. 10).

Rites also have a social marker function; a symbolic function without which the Confucian vision of justice would have no object. Indeed, the rites highlight the difference or separation that must exist 'between the prince and the subject, between the man and the woman...' (Couvreur, 1950b, p. 422). It is therefore thanks to rites that kinship bonds are brought out, that what is doubtful is settled, 'a difference is made between the similar and the dissimilar, and the true and the false' (Callery, 1853, p. 2). Ceremonial rites help to maintain social order. To do this, they 'maintain differences' (Couvreur, 1950b, p. 56) between the ranks and conditions existing in the society. The social distinctions that rites maintain are supposed to engender respect. In doing so, the rites fulfill their role of upholding order and justice. While rites ensure a figurative separation of persons according to their rank and their dignities, justice accomplishes this separation literally. Finally, rites play a role in the judicial application of justice: 'Whether it is to separate people who argue, or to end a trial, we cannot succeed, without good manners' (Callery, 1853, p. 2). The suppression of rites would cause disorder and would inevitably lead to uncertainty in the hierarchy of social relations as defined in the five social relations.

Trial and sentences

Theoretically, the interest in the virtue of justice and the worship that is dedicated to it makes useless the establishment of a judicial system responsible for justice. In fact, justice in society is obtained preventively through internal development that leads to avoid troubles. So Confucius says, 'Hear the litigants and deliver justice, I can do it, just like any other. The important thing would be to make sure there were no more litigants'

(Couvreur, 1956a, p. 116). If the cultivation of the personal virtues, the performance of rites or the threat of penalties fail to impose the justice in a preventive way, recourse to the trial becomes ineluctable. The justice is then repressive or sometimes gratifying. Thus, the warlord Fang Chou 'gave his orders with clarity, and (*sic*) punished and rewarded with justice' (Couvreur, 1966, p. 206). Moreover, recourse to the trial is despised by the Confucians. The interpretation of *Song*, the sixth hexagram of *the Book of Changes*, justifies this contempt as follows. The man must prevent at all costs the lawsuits because the trial which is pushed to its end, meaning the lawsuit that was started with the goal of winning, leads to the abyss since in normal times, 'the wise puts above all the right way and righteousness 'and not triumph. Withdrawing from an already started trial produces something good. 'If the trial does not continue despite the talks, the case will resolve itself' (Harlez, 1959, p. 65).

The translation of justice into reality is therefore based on the practice of personal virtues and rites, but it is seconded by the threat of punishment. In fact, when wisdom is not sufficient, justice is then imposed by the intimidation represented by the great punishments of death, prison, exile and corporal punishment. Confucius explains: 'If the prince leads the people by means of the laws and keeps the people in unity through punishments, the people abstain from doing wrong' (Couvreur, 1956a, p. 10). Classical texts are full of references to punishment and sometimes emphasize the need to 'make criminal laws, to regulate justice' (Couvreur, 1897, p. 376). This practical part of the philosophy of justice of Confucius consists, for the minister of justice,²² in applying the great punishments, in order to make the teaching of the five social virtues effective, and to help the sovereign to govern well. In inflicting punishment, his goal is to no longer feel the need to punish, so 'the people no longer deviate from the middle way (of the right way)' (Couvreur, 1897, p. 37).

One of the most beautiful passages of Li Ki summarizes the Confucian reasoning and the place occupied by justice:

All beings scattered between the sky above and the earth below, have a different way of existing: from there, the institution of rites (which establish distinctions between men). In their revolution, heaven and earth do not stop, and their combined action gives birth to all things; hence the creation of music. In the spring everything grows, in summer everything grows up (without distinction of good or bad plants, it is the image of) humanity (which makes one indistinctly love all one's fellow man). In autumn we harvest, in winter we put in storage (all the products of the earth, good and bad, it is the image of) justice (which punishes or rewards with an equal impartiality). Humanity has relation to music; justice has to do with rites. Music is intimately linked with harmony (feelings); it follows the higher principle (*iañ*) and goes to heaven: the rites distinguish the things that suit; they depend on the inferior principle (*in*) and move towards the earth. Also, the eminent sages (of antiquity) created the music to answer the sky, and instituted the rites to make the earth. When rites and music are performed with perfection, heaven and earth also carry out their duties. (Callery, 1853, p. 89)

Conclusion

In today East Asia, modern legal institutions and new values such as law, liberty or equality do not seem to be able to really alter the traditional value system, which still constitutes one of the foundations of social ethics today.²³ The twofold Confucian and

modern philosophical legacy which defines the principle of justice by aggregating concepts as disparate as equity, morality, exemplarity and duties, on the one hand and equality, individual rights and freedom, on the other, raises the question of their compatibility. Indeed, despite a strong belief in the new ideals advocated by East Asian countries and their institutions, including the principle of justice, their assimilation by society is only partially achieved and a synthesis combining them with the values of tradition Confucian remains to be invented.²⁴

Notes

1. In this article, we refer to East Asia as an ensemble, including China, Korea, Japan and Vietnam, also called 'Confucian world' or 'Sinicized world'.
2. For a long time, the word freedom has remained foreign to the Chinese language, and a fortiori to Korean and Japanese language.
3. For the Romanization of certain expressions or concepts used in the Sinicized world and written using Chinese characters, we chose to indicate it with the Pinyin method. For the Romanization of Japanese terms, we chose the Hepburn system and for the Romanization of Korean terms, we chose the McCune-Reischauer's method.
4. The first sinogram of the word justice, *zhèng* 正 has several meanings. Used as an adjective, it means 'correct'. In verbal form, it means to 'rectify'. The very same term *zhèngyì* 正義 meaning justice is currently used in its different forms in Chinese *zhèngyì* 正义, in Japanese *seigi* せいぎ, and in Korean *chōng'ui* 정의. The phonetic disparity is due to the distinct natural evolution of languages but is not as important as the various systems of romanization might suggest: it is actually the same word 'justice' *zhèngyì* 正義.
5. A dictionary of 1946 defines justice as a 'moral obligation of righteousness' (國語辭典 *Kugōsajōn*, 1946, p. 961).
6. This claim has since been challenged by part of the research that seeks to demonstrate the ancient existence of a social organization based on the law.
7. To go back to the types of justice distinguished by Aristotle, the Confucian tradition theoretically corresponds more to distributive justice exercised according to the merits and condition of each, than to the commutative justice that arbitrates relations according to arithmetical equality. In practice, it will put forward the imperatives of retributive justice. This, despite its philosophical aversion for sanctions and for what upsets harmony. For further discussion, see Murphy & Weber (2016).
8. Dōng Zhòng Shū (董仲舒) (179 ?-104 B.C.)
9. Some of which are represented on the national flag of South Korea.
10. For another translation, see, for example, Paul-Louis-Félix Philastre:

heaven and earth existing, the existence of all things follows immediately; hence, the distinction of the sexes, and from this the relation of husband and wife. The relation of husband and wife necessarily results, in turn, from that of father and child, and likewise of the latter, that of prince and subject. From the latter, still results the relation of superiority and inferiority, from which follows, as a consequence, that the ritual rules and the reciprocal duties can be defined. (Philastre, 1992, p. 585)

11. *Yi* is the standard by which all acts must be judged while there is no further standard by which *yi* itself can be judged (Confucius, 1979, p. 27).
12. Couvreur writes that the vulgar man aspires to 'attract favors'. *ibid.*
13. To sing this musical ode that is one of the oldest and most appropriate, the musicians physically and symbolically climb into the reception room located above the ground.
14. Of course, at the same time, there is straightness in the performance of duties.

15. The term 'Tao' refers to multiple meanings. Depending on authors, times and contexts, it is: the way, the element, the rule, the truth, virtue, justice, order, equity, etc.
16. Other translations speak of 'repairing', 'restoring' or 'bringing back' the way, indicating that this subtle and complex precept is difficult to access or conceal and that even if theoretically all men can or must know, it is not really within the reach of anyone.
17. Archery is still among the sports practiced and prized by South Koreans.
18. 'Heaven afflicts the wicked, as justice demands' (Couvreur, 1966, p. 450). Or again: 'Nothing escapes the eyes or the terrible justice of the Heaven'. *ibid.* p. 373, note 162. This 'Heaven' cannot be understood as a deity, but rather as an intelligent and impersonal force, the prescriber of the world.
19. This term is also often translated by courage or bravery.
20. The man who commits a fair act becomes reasonable; from reason, he becomes pure; being pure enough, he becomes somehow perfect and can then reform others.
21. The translation of the term *excessive* by Couvreur does not include the word 'rites' existing in the original Chinese text in which it is clearly used to condemn what is done outside of them, what exceeds them. So, to 'he who is brave excessively causes disorder', one will prefer, for example, 'courage not regulated by the rites causes disorder'.
22. The biographers of Confucius say that he himself served as Minister of Justice before leaving for fourteen years of wandering.
23. Besides, or even more than the respect of the law, 'the respect of the public morality', *gōngzhòngdàodé* 公眾道德 *kongjungdodök*, inherited from Confucianism, which is based on the respect of an individual moral and ethics, still forges the impassable guide-marker of justice.
24. On this question, the point of view of ordinary people and elites, to which jurists belong, diverge as much as they overlap. The latter, who are conservatives in their majority, seem as much in favor of Confucianism as they are attached to the new Western legal values and believe that Confucianism must not reject any of the prescriptions of the philosophy of human rights, and that there is no intrinsic tension between them. At the same time they assert that while Western and Confucian ideas are conceptually compatible (which remains questionable) they differ in practice (Choi, 2000, p. 69). In reality, scholars struggle to produce a convincing conceptual synthesis of these various propositions. Chungying Cheng suggests, for example, a two-step approach. For the realization of a society and a just human life, it is necessary that people first learn the Confucian norms and develop caring, compassion and respect for each other so that they can then make sure that they have certain 'rights'... (Cheng, 1998, p. 151).

References

- Callery, J.-M. (1853). *Li-ki ou Mémorial des rites [book of Rites]*. Turin: Imprimerie royale.
- Cheng, A. (1997). *Histoire de la pensée chinoise [History of Chinese thought]*. Paris: Seuil.
- Cheng, C. (1998). Transforming Confucian virtues into human rights: A study of human agency and potency in Confucian ethics. In W. T. de Bary & T. Weiming (Eds.), *Confucianism and human rights* (pp. 142–153). New York: Columbia University Press.
- Choi, C. (2000). 東asia 法哲學의 基礎 [Foundations of East Asian case law]. *Söultaehakkyo 法學*, 41 (1), 60–76.
- Choi, C. (2009). *East Asian jurisprudence*. Seoul: Seoul National University Press.
- Confucius. (1979). *The analects*, (D. C. Lau, Trans & Intr.). London: Penguin Books.
- Couvreur, S. (1897). *Chou King [The book of history]*. (Trans.). Ho kien Fou: Imprimerie de la Mission Catholique.
- Couvreur, S. (1950a). *Mémoires sur les bienséances et les cérémonies [Book of Rites]* (Vol. I, (Trans.)). Paris: Les Belles Lettres.
- Couvreur, S. (1950b). *Mémoires sur les bienséances et les cérémonies [Book of Rites]* (Vol. II, (Trans.)). Paris: Les Belles Lettres.

- Couvreur, S. (1956a). (Trans.). In P. Palpant (Ed.), *Entretiens de Confucius et de ses disciples [Analects]*, (pp. 5-194). Paris: Club des Libraires de France.
- Couvreur, S. (1956b). (Trans.). In P. Palpant (Ed.), *L'Invariable Milieu [Doctrine of the Mean]*, (pp. 4-24). Paris: Club des Libraires de France.
- Couvreur, S. (1956c). *Œuvres de Meng Tzeu [Mencius]*. (Trans.). Paris: Club des Libraires de France.
- Couvreur, S. (1956d). (Trans.). In P. Palpant (Ed.), *Ta Hio, La Grande Étude [The great learning]*, (pp. 3-26). Paris: Club des Libraires de France.
- Couvreur, S. (1966). *Shi jing [The Book of Songs]* (4th ed.)(Trans.). Taipei: Kuangchi Press.
- Dubois, C. (Ed.). (1979). Dictionnaire encyclopédique Larousse. In *[Larousse encyclopedic dictionary]*. Paris: Larousse.
- Granet, M. (1934/1988). La pensée chinoise. In *[Chinese thought]*. Paris: Albin Michel.
- Hahm, P.-C. (1967). *The Korean political tradition and law*. Seoul: Seoul Computer Press.
- Harlez (De), C. Trans (1959). *Yi King, Le Livre des mutations [The Book of Changes]*. R. de Becker(Ed.) Paris: Denoël
- Javary, C. J. D. (1997). *Encyclopédie des religions [Encyclopedia of religions]* (Vol. II). Bayard: Paris.
- Kamenarovic, I. P. (1987). *Xunzi*. (Trans.). Paris: Les Éditions du cerf.
- Kao, J.-B. (1938). *La philosophie sociale et politique du confucianisme [The social and political philosophy of Confucianism]*. Paris: Éditions franciscaines.
- Kato, S., & Maruyama, M. (1998). *Pönyökkwa ilponüi kündae [Translation and modernity of Japan]*. Seoul: Yeesan.
- Kim, C. J. (2000). Korean attitudes towards law. *Pacific Rim Law & Policy Journal*, 10(1), 1–46.
- Kim, M. S.-H. (2012). *Law and custom in Korea*. New York: Cambridge University Press.
- Lao-Tseu. (1842). *Tao te king [the book of the way and virtue]*, (S. Julien Trans). Paris: Imprimerie Royale.
- Larousse, C. (2011). *Le Petit Larousse illustré 2012 [Illustrated 2012 small Larousse dictionary]*. Paris: Larousse.
- Philastre, P.-L.-F. (1992). (Trans.). In P. Palpant (Ed.), *yi king [the book of changes]*, (pp. 6-1270). Paris: Zulma.
- Tusandong'a sasöp'yönjipkuk. (1997). *Tong'a saegugösjön [Dictionary of New Korean Tong'a]*. Seoul: Tong'ach'ulp'an.
- Weber, M. (1951). *The religion of China: Confucianism and Taoism*, (H. Gerth, Trans.). New York: The Free Press.
- Yi, I. (2011). *Principes essentiels pour éduquer les jeunes gens, [Essential Principles for Educating Young People]*, (I. Sancho, Trans.). Paris: Les belles lettres.
- 國語辭典 *Kugösajön [Korean dictionary]*. (1946). Seoul: 朝鮮圖書刊行會 Chosöndosöganhaenghoe, 正文館 Chöngmungwan.

Copyright of Asian Philosophy is the property of Routledge and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.