

# Chapter 5

## Jiang Qing on Equality

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### 5.1 Introduction

China has become a worldly economic power. Its financial policy, import and export trade, and market changes have begun to exert significant influences on the world economy. Chinese people have generally recognized that China should continue with its economic reforms and maintain a market economy. In contrast, opinions regarding political reforms and their objectives, as well as China's political future, are still divided among the people. No doubt, Deng Xiaoping's decision to table political disputes and give priority to economic development has gained China a huge national wealth. But this policy has also plunged Chinese society into political puzzlement and a moral vacuum. It is now high time to ponder where China is morally and politically heading. What should be a legitimate Chinese political system has become an unavoidable issue to address.

Liberal scholars believe that China must establish a Western-type democratic political system. In their opinion, liberal democracy is the “common law” of human society that represents the most legitimate and even a history-ending political system for mankind. The notion of human equality – roughly the idea that everyone is born equal and should be treated as equals – has been taken as the most important foundation of liberal democracy. This notion serves over and over again as the source of new principles and rules to push all contemporary societies to move in the direction of liberal democracy. Indeed, even in China's current political discussion, equality and democracy seem to have become the only politically correct language: whether you are a leftist or rightist, liberal or conservative, radicalist or traditionalist, socialist or capitalist, you will unexceptionally have to appeal to these “golden words” to convey your political ideals. Even contemporary neo-Confucians have enthusiastically recast their

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Confucian social and political aspirations in terms of equality and democracy, although the original Confucian concept of virtue, the doctrines of human nature, and familial and social rites do not have much to do with equality or democracy.

However, while so many scholars seem to be obsessed with the ideas of equality and democracy, Jiang Qing, an exemplary Confucian gentleman in contemporary mainland China, distinguishes himself by insisting that “the future of China’s politics should be the ‘kingly way’ rather than liberal democracy” (Qing 2004, p. 292).<sup>1</sup> He also clearly points out that equality should not be a fundamental principle for morality, politics, or law. His courage is laudable and his thought is original. In Confucian studies, his focus has been on the political Confucianism of the *Gongyang* School (公羊學), which has been overlooked intentionally by contemporary neo-Confucians with Mind Confucianism (心性儒學) as their focus. Through exploring Confucianism by giving equal weight to “the Three Powers (Heaven, Earth and Human)” in pursuing a legitimate political system, Jiang has proposed that a new Confucian political system must be legitimate in the triple senses of the Confucian *Dao*: “Heavenly *Dao*” (transcendent legitimacy), “Earthly *Dao*” (legitimacy in history and culture) and “Human *Dao*” (legitimacy in terms of the people’s will). Accordingly, he criticizes the modern Western liberal democracy as an improper one-sided politics – it gives top priority to public opinion, yet overlooks its legitimacy in a transcendent sense as well as historical and cultural senses. In order to distinguish the Confucian political system that he proposes from other systems, he gives it the provocative name of “kingly way politics” (王道政治). Although this proposal needs further exploration, revision, and perfection in theory as well as in practice, it will have far-reaching influences on contemporary Chinese politics.<sup>2</sup>

This chapter does not intend to address Jiang’s kingly way politics in detail. Instead, it intends only to explore his view on equality. As previously mentioned, equality, as a fundamental concept in liberal democracy, has become a secular idol for many people in contemporary politics. In their opinion, equality is not only one of the most important justifications of liberal democracy, it is also an inevitable result of the practice of liberal democracy. They are contemptuous of the “kingly way politics” that Jiang advocates primarily because it is a hierarchical system, thus going against the principle of equality. In today’s media it is usually assumed that the idea that “all men are created equal” is self-evident and irrefutable. Some adopt such “truth” as an incontrovertible social ideal to steer political reforms and they attempt to eliminate any inequality wherever it is found in society. For them, because “kingly way politics” does not embody such truth, much less pursue this ideal, it is inevitably outmoded and unjustified. Accordingly, in order to remove the barriers that have hindered people from understanding, discussing, and receiving Jiang’s kingly way politics, it is necessary to study, clarify, and comprehend Jiang’s view on equality. This is the main objective of this chapter.

Modern Western philosophy has witnessed an abundance of writings on equality and a popularity of widespread egalitarian theories of various kinds. This chapter will not deal with those strong egalitarian assumptions and requirements in the theories of equality, because Jiang himself has made no comments on them in any systematic way. Instead, given that many people are really interested in certain *liberal* ideas of equality, and that the form of these ideas is that everyone should be treated equally in a certain way, this chapter will address the three following important types of such ideas based on Jiang's relevant critiques: (1) morally everyone has an equal right to self-determination (in particular, the right to reject the moral teachings or instructions from sages); (2) politically everyone has an equal right to vote (which includes the so-called universal suffrage, ensuring "one citizen, one vote"); and (3) legally everyone has a legal right to equality before the law. Against these popular ideas Jiang has offered thought-provoking arguments that deserve our careful exploration.

## 5.2 Moral Equality

The liberal moral principle of equality is not a statement of facts, but a normative demand. Those who embrace the principle know that, as a matter of fact, there exist many differences or inequalities among individuals. Such inequalities are reflected in numerous areas of natural state and social conditions, such as age, appearance, height, sex, IQ, EQ, knowledge, ability, family, nationality, state, occupation, status, income, wealth, etc. It is in part because of the existence of these factual inequalities that modern liberal scholars require that individuals must be made equal in terms of a fundamental moral requirement, that is, the requirement of basic moral rights. In particular, they stress that everyone is entitled to the equal right of self-determination – one is free to choose any conception of the good or way of life as one sees fit, as long as it is consistent with other individuals' similar freedoms and rights. In this sense, they conclude, all individuals are morally equal.

Of course, liberal scholars do not have to deny that some individuals may have higher moral value than others – for example, great contemporary liberal thinker John Rawls' moral value must be higher than that of a loafer who does nothing but count blades of grass every day. However, they insist that such differences in moral value should not affect their equal status in moral decisions: everyone should enjoy the equal right to choices in life. This right, from the liberal view, should include a right to free choice in the content of one's moral education: even if an individual should be obliged to receive some basic education in empirical knowledge, legal requirements, and critical thinking, etc., one should not be bound to receive education about any particular moral tradition or value. Rather, it is entirely up to each individual (or an organization or association which one freely chooses to join) to decide what moral education one should accept or reject. Government must stay neutral in this regard – its

public schools should not implement moral education in favor of any particular moral tradition or religion. Everyone is thus morally equal in this sense. To this view, Jiang's following comments constitute a direct response:

Confucians do not accept this thought [of moral equality]. . . . As Mencius says, things in the world are different by nature—this is how things are. . . . Though everyone may pursue the ideal of cultivating oneself as a gentleman (*junzi*), it is impossible in reality that they can all attain this ideal. Instead, the difference between gentlemen and non-gentlemen always exists. In light of this, Confucians prompt people to accept the values adopted by sages with the arrangements of 'rites and music' (*liyue zhidu*), so that our society is of a divine structure consistent with the 'heavenly law' and that common people are educated towards goodness . . . . According to Confucianism, people are different by intelligence: those who are intelligent are entitled to govern those who are not and gentlemen to educate and enlighten base people—right of this kind is naturally entitled by sages and it may be called "inalienable divine rights" . . . in reality, there are indeed some in society that need to be educated and enlightened by others, for example, children by adults, base people by gentlemen, and common people by sages. A so-called 'egalitarian society' without such education and enlightenment is hardly imaginable—it can be nothing but a bundle of 'worker ants' with mediocre intelligence and of low morality who act by instinct (Jiang, pp. 125–128).

It is obvious that Jiang's Confucian view is vastly different from the liberal one that advocates the neutral stand of the state in moral education. Of course, Jiang needs to elaborate on what precise system of "rites and music" China should adopt in contemporary society and how it should spread sages' teachings in an "arranged" way rather than "neutrally" leaving the function of moral education to the folk and individuals. There are many questions that will not be expounded here for the time being. In any case, Jiang's logic is clear and coherent: if we admit that people's moral values are different in terms of loftiness and baseness, then we should accept that sages have the right to educate common people. Since sages have the loftiest moral values that humankind can possess and their teachings and instructions can elevate the values of life, why not accept this reality of inequality? Since liberal scholars stress that everyone has the equal right to choice in terms of morality, individuals are entitled to reject the teachings of sages. Jiang argues clearly that man should not have this right, because sages have the "inalienable divine right" to educate common people. No doubt, different scholars may attempt to refute this privilege given to sages by Jiang, armed with modern theories of various kinds. However, considering that most issues involved are theoretical and of little practical significance, such theories will not be discussed in this chapter. There are two views, however, that border on relativism and are particularly popular with many young people, rendering them worthy of a response. The first view is that there is no point in differentiating people by high and low moral standards: maybe I am dumber, duller, and lazier than you, but I remain on an equal footing with you as far as morality is concerned; I am against the assertion that you are a sage and I am a base person; as the Chinese saying goes, "you take your bright road, and I will cross my log bridge;" although we are different in moral life, our various ways of life are still of the same moral value; thus you

have no right to educate and enlighten me, or interfere with my way of life. To those who hold this view, Jiang's following comments constitute a response:

Throughout human intellectual history, whenever it comes to values or morality, hierarchies and differences are involved. Egalitarianism, however, erases these differences, elevates equality in mere form to an essential value, and even to the most important value in politics. Modern people are prone to strive for equality to sages. They believe that they have the freedom to choose their own morality and spiritual life—this is their right that no one else can interfere with, including those sages of all generations. Why? Because those sages are humans as I am and my freedom should not be subject to others' interference. In this way, modern people have found a perfect excuse for their rejection of the teachings and education of sages and have made peace with this situation. However, it has never occurred to them that sages are not ordinary people as they are and that the differences between them are as vast as those between humans and apes. Sages have cultivated their natural endowments to the fullest and exemplified the excellence of humanity; they are sagely inside and kingly outside, they complete themselves as well as other things and assist the transforming and nourishing power of Heaven and Earth, thereby forming a trinity with Heaven and Earth—what about you? Your life is still at the stage of natural life; you haven't increased that "little bit difference" that distinguishes you from brutes; you are still in a state of moral or intellectual darkness, ignorant of the ultimate meaning and value of life, missing the Way for improvement and direction, and still fully engaged in the undertaking of satisfying your desires for food, sex, fame and status. Under these circumstances, what makes you believe that you are justified to reject the teachings from sages? Yes, you have your human rights, but sages have the divine right that precedes human rights. With this divine right endowed by Heaven, they are entitled to teach and enlighten common people who are obliged unconditionally to accept the teachings and enlightenment. What is at stake here is the recognition of natural differences, which are not a matter of freedom and equality but acceptance of the arrangements set out by Heaven. In ancient times, common people took it for granted that they should be instructed and enlightened by sages, because they knew what and who they were and that they could absolutely not seek equality with their instructors and enlighteners. They were keenly aware that they were born to receive such teachings and enlightenment, which may elevate their lives, transform themselves from ordinary, pathetic, base people into respectable gentlemen, and bring them good. So, they were pleased to be educated and enlightened. Nowadays, however, under the influences of the liberal egalitarian values, people have developed an egoism to make excuses for rejecting the sages' teachings with a series of "freedom and equality" talk. What effect can this do to sages? It is modern people who have been most severely affected. It is the result of their own choice that they are degrading and reducing themselves to the state of natural life (Jiang, pp. 50–52).

Harsh as his words seem to be, Jiang has honestly managed to give an upright response to the relativist view. Indeed, this view is, as a matter of fact, built on an assumption that one's own lifestyle, whatever it is, is of the same moral value as those of others and even sages. This relativist view is as radical as it is abstract for gaining a firm footing in further discussion, for a bit of comparative evaluation will readily reveal its extremity. Jiang did mention one crucial difference between a sage and a common person: a saint's judgment is different from that of a common person's. Unlike the latter, the former's heart has not been seized by

selfish desires and can thus know clearly what is good and what is bad so that it may pursue goodness and purge the world of badness (Jiang, p. 190).

What is worthy of in-depth exploration is the second more complicated view: even if I admit the moral differences between sages and common people, I still need to know which moral tradition to follow because in different moral traditions different sages are established and worshipped, who voice different ideas and implement different education and enlightenment. If I am supposed to accept the teachings of those Confucian sages, it must be proved to me that the morals preached by Confucianism are more superior or right than other morals. Yet no one can prove this, so this sort of issue should be left to my own choice, and the state should not meddle in my moral education. Based on this reasoning, everyone should have the equal right of choice of morality, including the right to reject the education and enlightenment of Confucian sages. The logical strength of this view lies in the fact that it is true that no one can complete such a proof without begging the question, because no one can do such a proof by standing outside of all moral traditions. However, acknowledging this fact does not mean that we have to accept the conclusion drawn in this view. As far as I can see, Jiang may use his argument for the legitimacy or justifiability of “earthly law” (i.e., the legitimacy of history and culture) to refute this conclusion. Although his argument has been developed to justify the legitimacy of a Confucian political system, I think it is equally thought-provoking and instructive for moral education.

Among the Three Powers [i.e., Heaven, Earth, and Human], Earth refers to a specific geographical space where all humankind’s activities have originated, unfolded, developed, and continued. Human beings have never been separated from this geographical space or its history and culture. Human history is always closely associated with Earth. It is for this reason that the Chinese often refer to history and culture as *shidi* [literally “history and geography”] and Earth in the Three Powers represents the legitimacy of history and culture in a country. In the “kingly way politics”, Earth does not refer to nature, which should instead belong to the realm of “heavenly law”. The legitimacy of history and culture is special and different from that of “heavenly law” and that of “humanly law” [public opinion]. Unlike the legitimatization of “heavenly law” which involves substantial values or of “humanly law” which allows an evaluation of the public opinion, the legitimacy of history and culture is completely formal and does not involve any value judgment. The legitimacy of a regime depends on whether it has inherited the dominant, orthodox historical and cultural tradition approved over a long stretch of time by the outstanding members of the nation in question and the broad masses of the people. Analogically speaking, this is like offspring paying tributes to their ancestors in the shrine. They acknowledge that their lives originate with their ancestors but do not inquire about their ancestors’ vices or virtues, nor do they deny their blood relation to their ancestors because of the historical mistakes that the latter may have committed. So in this sense, legitimatization of history and culture is only in form, not in substance. As long as a regime inherits the orthodox historical and cultural tradition, it meets the requirements of its legitimatization [no critical retrospective of Enlightenment rationalism is needed here]. As far as China is concerned, the orthodox historical and cultural tradition is Confucianism, which has been universally acknowledged by the elite members of the Chinese nation and the Chinese people in a broad sense. History has proven and will continuously prove that a regime in China can be

legitimate, or can acquire the legitimacy of history and culture, only if it inherits the Confucian tradition. Regrettably, many Chinese, especially those influenced by Western rationalism and the spirit of the Enlightenment, seem to have failed to understand this. They can only conceive of legitimacy from the rationalist perspective, but not from the perspective of tradition, history and culture. They do not know that tradition is a constituent of legitimacy. As a result, under the influences of the modern Western ideological trend characterized by liberty and democracy, they are particularly unfamiliar with and averse to the legitimacy of history and culture. They should be “enlightened” by the historical and cultural tradition rather than the modern Enlightenment that they preach (Jiang, pp. 352–354).

When this reasoning is applied to morality, it suggests that if one lives in a society where Confucian morals are predominant, it is legitimate for one to receive considerable education concerning Confucian morals. Likewise, if one lives in a society where Christian morals are predominant, it is equally legitimate for one to receive considerable education concerning Christian morals. I think Jiang’s reasoning is tenable. First of all, one’s perception of morality and relevant actions are inevitably related to those of other people existing in one’s same historical and geographical environment. These “other people,” from a Confucian point of view, include not only your current family members, neighbors, teachers, classmates, etc., but also your ancestors. These people naturally educate or influence you with their morals and actions. It is also canonically appropriate for them to do so in order to live their lives consistent with their moral beliefs. Hence, in a society where Confucian morals are predominant, it is legitimate to enforce the education and enlightenment of Confucian sages, and it is equally legitimate for one to accept such education because it is taken for granted by the society. This legitimacy cannot be negated by the fact that one cannot prove that Confucian morals are the “best” or “most superior” over others in the world, because their establishment in the society is formal, not substantial: as a moral being, man cannot avoid receiving a moral education, the tenets of which are not necessarily those that can be proved to be the best, but those predominant in one’s region. Given the fact that China is a society where Confucian morals are predominant, it is legitimate for China to spread the teachings of Confucian sages through moral education.

Some may want to argue that, more often than not, many different moral traditions exist in one cultural and geographical environment. A person’s lifestyle may be the result of the combined effects of many different moral traditions and values. For example, it is often agreed that the Chinese lifestyle embodies the mores and values of three religions, i.e., Confucianism, Buddhism and Taoism. Therefore, there is no reason for the state to implement only the teaching of the Confucian sages in its moral education. This is to say, that even if it is legitimate for the state to enact the teachings of sages, the teachings should not be limited to one tradition. Yet, according to Jiang, any stable country, even if it is a multi-ethnic country with multiple traditions, must unite its people under a predominant ideology and give it the footing of a kind of a “national church” by constitution (Jiang, p. 48). Even in a society with diversified values, not all values are of the same weight. There exists a set of

“predominant values”, which has acquired its predominance by winning the long-term support of the elites and the public in the country (Jiang, p. 347). As far as China is concerned, “when Confucianism gained its predominance as a result of Chinese intellectual consensus during the Han Dynasty, the Chinese had gradually realized after the test of hundreds of years that the theories of Confucianism were superior to [or, in today’s language, more advanced than] the theories of other schools and that it represented the most advanced culture of the time” (Jiang, p. 61). Despite the fact that there have been “varied beliefs or philosophies” among the common people or even the imperial family, Confucianism has always been adopted in China as the “official and canonical” system of basic principles (for state governance) and major mores (for guidance of life), despite the existence of Taoism, Buddhism, and theories originating from numerous thinkers in the Spring and Autumn and Warring States periods (Jiang, p. 47). Therefore, even though there exist different moral traditions in Chinese society, it is not inappropriate for the state to enforce the moral teachings of the Confucian sages.

Liberals may retort that contemporary China is quite different from traditional China. It cannot be more obvious that the influences of the Confucian tradition on modern China have been significantly weakened (even Jiang himself has acknowledged the disintegration of the Confucian ritual system as well as the loss of Confucian learning and the Way in modern China). Chinese society is becoming increasingly diversified. Not only are Buddhism and Taoism, the traditional rivals of Confucianism, no less influential than Confucianism, the influence of Western religions (such as Christianity) is also increasing. In this situation, liberal scholars believe that no matter what China was in the past, today’s Chinese government should stay neutral – it ought not to take advantage of its administrative power, policies, or funds to promote or sponsor the Confucian religion and its set of morals, but to safeguard everyone’s equal rights so that individuals may freely choose the morality they will hold.

However, even though Jiang admits the thorough disintegration of the Confucian tradition in the contemporary Chinese political system, he does not deny that Confucian morals still exert their powerful influence on the Chinese way of life. In particular, he has seen clearly that the Chinese are still unwilling to accept moral individualism because the Confucian communitarian moral view is still deeply rooted in their minds: “Confucianism stresses universal but differentiated love for all the people under Heaven. Confucian individuals must practice this love in taking care of their community and cultivate themselves in interpersonal relationships, such as the relations between monarch and official, father and son, husband and wife, brothers, friends, family, clan, society, state, etc.; that is, they should not live their moral lives as isolated individuals. . . The value of the individual has to be realized in communitarian morality” (Jiang et al. 2005, *Dialogue at Longchang*, p. 206, unpublished manuscript). Therefore, the vast majority of modern Chinese still hold a non-individualist and non-instrumentalist view of the common good, which differs from the liberal view that the common good is nothing but the sum



of the values of all distinctive individuals. The Chinese still believe that a society is an organic body with intrinsic values (i.e., their common good) that cannot be completely reduced or degraded into individual values. Thus, the state must have its people pursue and realize such a common good. The virtues and values preached by Confucianism, such as benevolence (*ren*), righteousness (*yi*), rites (*li*), wisdom (*zhi*), integrity (*xin*), kindness (*ci*), filial piety (*xiao*), loyalty (*yi*), and harmony (*he*), respecting the old and looking after the young, valuing peace, caring for the disadvantaged, and so on, remain the common values for modern Chinese society.<sup>3</sup> Even today, the vast majority of Chinese still believe that it is the state's bounden duty to preach and promote these values and it should not maintain a neutral attitude towards them in comparison to other moral values.

Finally, the claim that common people should receive the teachings of the sages arranged by the state does not imply moral or spiritual dictatorship. Jiang has made it clear that the canonization of Confucian morals and the deprivation of common people's right to reject the teachings of the sages means that the government can require and arrange for the teaching of Confucian classics in schools, but may not muffle the different perspectives at the schools. In fact, Confucianism, marked by its tolerance in history, advocates the "kingly way" that prevails upon others by virtue and generosity, rather than the "hegemonic way" of social Darwinism that subdues others by power and might. What I have attempted to do is to use Jiang's arguments to justify the Chinese government requiring every school to offer and every individual to receive basic education in Confucian morals, while leaving enough room for each school to develop freely. That is, what can be rightly required is only the active provision of basic education in Confucian morals, rather than forced prohibition of other kinds of moral education, in the Chinese educational system. In this way, Jiang has successfully argued against the view that one has the freedom to refute the moral teachings of the Confucian sages. In other words, it is not true that the government should remain neutral regarding moral education so as to maintain moral equality between the sages and the common people in choosing the basic substance of one's moral education in China.

### 5.3 Political Equality

In contemporary politics, the principle of equality requires universal suffrage that ensures "one person, one vote": all citizens, regardless of what they are or where they reside in a state, are entitled to equal legislative representation, as long as one is an adult who has not been deprived of the political right due to criminal conviction. This principle requires that everyone have an equal right to political participation. Originally, classical liberal writers were not entirely in favor of this kind of political equality. For example, when John Stuart Mill defended a representative democratic system, he asserted that those

well-educated, wise, and knowledgeable should enjoy the privilege of casting more than one vote (Mill 1991, chapter 8). However, in the present world, elitism is silenced while the “one person one vote” egalitarianism is embraced. Some individuals have even taken this kind of egalitarianism as their life cause. Most politicians are keen on using anti-elitist speech to curry favor with the public. However, in Jiang’s opinion, a “differential voting system” should be used to replace the “one person one vote” system. He states,

As far as the voting system is concerned, the Confucian “kingly way politics” cannot accept the universal suffrage adopted by Western countries that gives everyone the right to cast a vote regardless of their virtues and vices. Because, as Confucians see it, people in real life are unequal: they are different in morality, intelligence, knowledge, ability and many other aspects... Therefore, when designing a political system, we should take into account and pay due attention to these differences, rather than apply the absolute equality of a “transcendent world” politics to this world’s politics. When it comes to an electoral system, we cannot practice “one person one vote” regardless of all the differences among them, because this equality in form may cause inequalities in effect. For instance, an 18-year-old unemployed young man cannot be compared to a 60-year-old professor, whether in intelligence, or learning, or social experience, or the sense of social responsibility. To exaggerate this difference, let’s compare an 18-year-old man with Confucius. Their differences, in Nietzsche’s words, would be greater than “those between man and ape”. If each of the two is entitled to one vote, qualified state leaders may not be elected because the former is a moron who lacks the judgment to tell who the fittest candidate is. Moreover, this may constitute the greatest unfairness for the latter by reducing his virtues, intelligence, knowledge, and social experience, as well as sense of social responsibility to the rank of the former, which is, in effect, a slight and humiliation. As Aristotle pointed out long ago, ignoring the existing factual inequalities amounts to the greatest inequality of all. Yet this is exactly what the “one person one vote” election does. Hence, a differential voting system should be adopted in place of the “one person one vote” system. That is, those who are virtuous, intelligent, knowledgeable and have rich social experience as well as a strong sense of social responsibility should be entitled to cast more votes than those who do not have these qualifications (Jiang 2004, pp. 384–385).

Some may reject Jiang’s view immediately by saying that a “differential voting system” is in fact not as reasonable as it seems to be: some people are intelligent but not knowledgeable, some receive considerable education but lack experience, some are able but not virtuous, and still others, though smart and able when young, are now stupefied and muddled in old age. So who in the world should be given the right to cast more votes? It appears that factors such as income and wealth should also be taken into consideration. For instance, should the number of votes a person is entitled to cast be in proportion to the taxes one pays? If those who do not pay any taxes have the right to vote, does this constitute encouragement for lazy and shiftless people to live on welfare? One can see that, in the opinion of these people, even though the “one person one vote” system is not the best, it is most likely the fairest and most practical system in comparison with others.

Jiang does not answer these questions directly. I think he would approach this question from the perspective of the historical and cultural traditions of a specific country. Take China as an example. Traditional Confucian intellectuals

have always shown a moral concern and a sense of historical mission for the well-being of the world. This tradition has been handed down to the current intellectuals and has won recognition and respect from the vast majority of the Chinese. In fact, the way of selecting for worthiness and talents favored by Confucianism involves exams (i.e. “imperial examinations”), not only voting. Even today, it may remain a decent way of selecting public servants (see, e.g., Bell 2006, chapter 6). To say the least, if China adopts a voting system, it should be a “differential voting system”. Of course, as for the details, more discussions are needed. However, given the Confucian tradition, Chinese people would be more likely to accept more than one vote for intellectuals rather than “one person one vote”. The former would be a more appropriate way of selecting for worthiness and talents in Chinese society.

## 5.4 Legal Equality

“Equality before the law” has been a basic principle of modern societies ruled by law. Some people understand this principle as the very principle of equality to which one should never be opposed, even if one is not in favor of any other principle of equality. For them, we have every reason to support “equality before the law” as a reasonable society. However, a real issue is what exactly this principle of equality means. People’s understanding of this principle is often ambiguous or simply misleading. The most important question is what does “equality” mean in this principle? Some analyses indicate that the word “equality” adopted in this principle may have been misused because the principle in essence does not demand “equalization”: it does not require that everyone has exactly the same legal rights or obligations, and neither does it require that everyone receive the same legal treatments (Letwin 1983, p. 46). For example, the constraints of the law on children are naturally different from those of adults, and it has become common practice in modern society to formulate special laws for ethnic minorities. Indeed, this principle may accurately be described as a “universal” norm that requires all individuals be protected and bound by law. That is, this principle implies that no one should be outside of law – it is universal; but it does not imply that everyone should be treated similarly under the law – it is not egalitarian. Specifically, this principle states that whoever one is – king, president, or civilian – one cannot be unconstrained by law or above the law. It may also be taken as stating that everyone should enjoy fair juridical procedures and that judges should not have too much unjustified discretionary power. However, it cannot be saying that everyone receives the same legal treatments.

Confucianism does not object to this general norm – everyone should be bound by the law. In the past Chinese dynasties, Confucian scholars and the literati have tried every means of restricting the power of rulers in terms of rules, rituals, institutions and laws, although they were not fully successful. Some

rulers and ministers often tried to trespass the rituals and rules of Chinese society, but Confucians never attempted to seek legal equality because it is not a Confucian ideal (moral or legal – see below for further explanation). In mentioning Confucian ideals, some may contend that traditional Confucian society only had criminal laws to punish people and had no constitutional or civil laws to protect the people. In response to this assertion, Jiang points out,

Criminal law was not the only kind of law China had in ancient times . . . China had its constitutional law too, which was called “rituals” (*li*). These rituals were China’s fundamental regulative systems, including the *mingtang* (“bright hall”) system, the throne succession system, the *taifu* (literally “prince’s teacher”) system, the “three highest-rank officials” system, the “prime minister” system, the “offering sacrifices to Heaven” system, the *chadi* (offering sacrifices to ancestors) system, the *chaopin* (“dukes or princes paying visits to the monarch to show their respect and obedience”) system, and other systems concerning the Imperial College, retirement, and resignation. All these systems revolved around the rituals and made structural and procedural arrangements for the creation and implementation of state power. Therefore. . . constitutional law does not exist only in the West; China has it, too. Most modern Chinese, being stereotyped by the US and French statutory constitutional laws, have failed to understand that unwritten law is . . . more consistent with the spirit of constitutional law. For instance, though the UK has no written constitution, the customs and conventions left over through hundreds of years are more effective than a constitution and need no altering—as is the case with the French constitution – or amending – as is the case with the US constitution. As far as constitutional law is concerned, the essential value hidden behind it counts the most. This kind of law was called *yifa* in ancient China. *Yifa*, in today’s words, is the fundamental or constitutional principles that are superior to the constitution itself, because they guide the formulation of a constitution and serve as the origin and basis of the constitution. By writing *Spring and Autumn Annals*, Confucius had in effect laid down the fundamental principles of Chinese constitutional formulations for later generations. To be more specific, Confucius established the constitutional principle of the “kingly way politics”, whose legitimacy is based on the aforementioned triple senses of the Confucian *Dao* and ensured by the checks and balances of the three powers. These constitutional principles, when embodied, become the rituals, i.e., . . . constitutional law (Jiang, pp. 423–424).

As one can see, Jiang has clearly demonstrated that there was a kind of constitutional and civil law – the ritual systems – in Chinese tradition. The principle of such laws requires that law bind everyone, including the emperor. However, this principle is not an “equalizing” demand for the same juridical and legislative treatment for everyone. That demand would run counter to the spirit of differentiation embodied in the Confucian rituals. As Jiang argues,

The spirit that underlies the rituals is differentiation. . . Confucians believe that we can establish a modern legal and political system according to this spirit. For the sake of . . . justice, we should design a system to ensure that the worthy and talented can obtain the power, money and honor they deserve. This system of “rituals” guarantees a relatively fair allocation of social resources, such as power, according to people’s virtues and abilities. To be more exact, those who are virtuous and able will be given more power, while those who are not will be given none. This is “differentiation” and a system created in accordance with this spirit is that of “rituals”. In fact, the “tricameral Confucian legislature” developed by me is consistent with the ritual system in light of such a spirit of differentiation. . . In fact, there is no system that can ensure everyone to

obtain an equal share of power (Jiang et al. 2005, *Dialogue at Longchang*, p. 217, unpublished manuscript).

His argument is clear: the Confucian spirit of differentiation embodied in the rituals runs counter to the idea of equalization by law. This point is so significant that it requires further clarification. Indeed, even liberal scholars admit that the requirement of equal treatment is directed at those in similar situations, not at those in different situations. The question then becomes, what are the pertinent factors on which we can tell whether two situations are different or similar? Liberal scholars stress that many personal features, such as age, gender, intelligence, health, wealth, social status, etc., should not be included as pertinent factors. That is, from the liberal view, differences in these personal features should not constitute a relevant difference for legal treatment. For example, the situation in which a son breaks his father's leg is similar to that in which a father breaks his son's leg. The differences between the father and the son regarding their respective age and social status should not make a difference in the terms of legal liability.

For Confucians, these classifications reflect a kind of individualism and egalitarianism that is at odds with the Confucian values of relationalism, familialism, and communitarianism. As Confucians see it, a father thrashing his son is quite different from a son thrashing his father, although both may be acting wrongly. From a Confucian perspective, the father is responsible for educating his son and though it is not right for him to thrash his son, he is excused to a certain extent. In contrast, the son who thrashes his father commits a hideous crime because he transgresses the bottom line of human morality. Hence, for Confucians, the two situations are different. The father and the son should be given different punishments. This Confucian account of differentiation should not only be conceptually analyzed, but should also be perceived and felt with the "heart" in considering human nature and relations. Traditional Chinese law, which has been heavily influenced by Confucian values, indeed represents many types of differentiation. They may not all be right, but they should not be rejected simply because they do not embody the liberal principle of equality (see, e.g., Fan 2004).

Under the influence of the Western liberal principle of equality before the law as well as the United Nation's *Convention on the Rights of the Child* (1990), China has followed certain Western societies in promulgating a "Law for the Protection of the Child", which stipulates that children have the same rights as adults. Jiang criticizes such emulating conduct. Indeed, for over the past 100 years, the Chinese government has formulated a series of laws in the terms of modern Western liberal and individualist values. Such laws include those of marriage and other so-called civil laws. Although these laws still maintain some Confucian ethical values (for example, the Law of Marriage still ordains that children are obliged to support their elderly parents), their keynote is that of modern Western liberalism and egalitarianism. For example, the modern

Chinese marriage law grants an absolute right of self-determination to the child, denying any right of the parents in such decisions, as was upheld in the Confucian tradition. Such laws significantly deviate from an authentic Chinese life and are morally misleading. It should be of great importance today to review these laws, rectify their faulty prescriptions, and overcome their negative influences.

Jiang has considered this issue at a deeper level. In his view, we need to think about the relation between the “rule of virtue” and the “rule of law” for contemporary society. As he sees it, the modern Western rule of law is defective in its orientation:

From the Confucian perspective, the Western idea of the rule of law regards law as the foundation of state governance. It dismisses the important role of virtue in ruling a state. What underlie the “rule of law” are the “supremacy of law” and the “primacy of rights”. These are hard to have accepted by Confucianism because it gives top priority to virtue. The fundamental idea of Confucianism is not the rule of law, but the rule of virtue. It regards universal human morality as the basis of governance, and this universal human morality is the “common way” and the “common sense” embodied in the Chinese sages’ doctrine of “fundamental principles” (*yili*). Nevertheless, Confucianism does not object to using law in governance. Rather, it holds that law should be put in a proper place, namely, playing the function of assisting virtue cultivation in ruling a society. Therefore, a Confucian way of ruling a state is virtue first, law second. In other words, Confucians think that law is only of instrumental value (Jiang, p. 260).

As Jiang sees it, if we continue to follow the Western idea of the rule of law by stressing the primacy of rights, we shall end up living clad in an “armor of rights”. That way of life is not only tiring, but is also short of encouragement for self-improvement (Jiang, p. 261). Furthermore, the central principle of Western civil law is a *Vertragsprinzip*, a principle of contract in terms of the careful calculation of personal interests. Such a principle should not apply to our religious, political, public, marital, or family life (Jiang, p. 264). I think all these criticisms stand to reason. However, the task that lies ahead of Confucian scholars in contemporary society is to expound and implement the Confucian rule of virtue with the aid of law. Certainly, one possibility, like ancient China, is to get our work done through ritual systems maintained by common people, without a series of statutory laws to be promulgated. However, the difficulty is that the Confucian ritual systems have long been disintegrated. More and more people are willing to have disputes settled by the courts, which require laws as a basis for judgment. If, as Confucians hold, law can be used to aid virtue, then the issue will not be whether we should formulate laws, but what laws to formulate. This is to say, even if Confucians are primarily in favor of the rule of virtue rather than the rule of law, it does not mean that they do not want to formulate and use laws. Rather, they must explore precisely what kind of laws China should formulate in order to cultivate virtue. Importantly, given the Confucian spirit of differentiation in virtue cultivation, as Jiang understands it, Chinese laws based on Confucian thought should not be made in terms of the modern Western principle of equalization for legal treatments.

## 5.5 Formal Vs. Substantive Equality

Thus far I have shown Jiang's sharp critiques of the modern Western views of equality, in particular, the concepts of moral equality, political equality, and legal equality implicit in modern Western views.<sup>4</sup> However, it is necessary for Jiang to improve his expression of the Confucian ideas of equality. Throughout his books and articles, he often states that Confucianism does not overstress formal equality (*xingshi pingdeng*), but seeks substantive equality (*shizhi pingdeng*). At one place, he explains from his understanding that the Confucian concept of "substantive equality" takes into consideration the particular differences among individuals to derive an actual equality that gives different individuals their due. Accordingly, he concludes, formal equality is in essence an inequality under the guise of equality, while substantive equality is an actual equality although it does not appear to be so (Jiang 2003, pp. 355–356). I think this explanation of the Confucian view of equality is incorrect. As I see it, the right way of putting it is that Confucianism does not object to the idea of formal equality, but it is opposed to the idea of substantive equality.

"Formal equality" basically means that "the same should be treated similarly, and the different should be treated differently." Confucianism does not object to this idea, because if two situations are really the same, we have no reason to treat them differently. But Confucianism does not emphasize this idea, because it recognizes as a matter of fact that there are rarely same or identical situations in human society. In order to find "same situations", one has to highlight some features and ignore others, although all of them are involved in the situations. For example, the formal equality of opportunity for jobs in contemporary society usually means that we should only consider an applicant's knowledge and talents, and should not consider their background, nationality, age, gender, etc. If the knowledge and talents of two applicants are judged to be the same, then their situations are taken to be the same, regardless of differences in their background, nationality, age, or gender. This is to say that only abstracting or excluding some relevant factors from consideration draws out such "formally equal situations". They are not really identical situations if all relevant factors are considered.

The problem is that those factors that are excluded from consideration under formal equality are the very important factors that significantly affect a person's acquisition of knowledge or talents. Indeed, a person's knowledge and talents do not come out of thin air, but are, to a great extent, attributable to one's family background and educational environment. This is why some liberal scholars have been discontent with the principle of formal equality and want to seek a principle of substantive equality. For example, contemporary liberal scholar John Rawls argues in *A Theory of Justice* that the equality of formal opportunity is not sufficiently fair; instead, he puts forth the principle of equality of *fair* opportunity requiring that a society must provide opportunities for public education to those members who are disadvantaged by their

familial or social backgrounds. This principle of so-called fair opportunity is a principle of substantive equality. It does not require the equality of formal opportunity based on the consideration of knowledge and talents, but the equality of “fair” opportunity based on the consideration of people’s familial and social backgrounds. However, depending on what factors are considered and made equal, some scholars hold squarely different views of substantive equality from that of Rawls. For example, Amartya Sen, a Nobel Prize laureate in economics, has published a series of works contending that we should use capacity, rather than primary goods, such as income, wealth, and opportunity, to assess the substantive equality or inequality among people. This is because, in his opinion, two persons with the same income or opportunity are unequal in capacity and quality of life if, for example, one of them is healthy while the other is ill. Accordingly, instead of the principle of fair opportunity that Rawls argues for, Sen upholds a principle of capacity to determine substantive equality.

All these views of substantive equality are essentially different from what the Confucian tradition and Jiang’s reconstruction of Confucianism are primarily concerned with. As is well known, Confucianism does not pursue equality, but upholds filial piety (*xiao*), humanity (*ren*), and harmony (*he*). It does not advocate egalitarian love, but differentiated love (*cha deng zhi ai*). In social systems and interpersonal activities, Confucianism stresses ritual observation and urges people to practice the spirit of differentiation so that there is affection (*qin*) between parents and child, righteousness (*yi*) between ruler and subject, different function (*bie*) between husband and wife, proper order (*xu*) between senior and junior, and fidelity (*xin*) between fellow citizens. The Confucian ideal is to establish a harmonious, rather than egalitarian, society in which individuals can cultivate virtue and take care of each other. In addition, Confucianism wants the government to care for the weak and poor in society. But this care should be different from that stemming from Western egalitarianism or liberalism in the terms of substantive equality. The welfare system in a Confucian society is built out of considerations of virtue cultivation, character development, and family values, rather than out of the utopian ideal of everyone having equal rights. The objective of this system is not to eradicate the differences of the people in any special “substantive” aspect – wealth, income, fair opportunity, or capacity – because this kind of substantive equalization goes against the basic Confucian moral commitment of universal but differentiated love.

Some might say that we do not have to adopt the meaning of those Western terms: even if “substantive equality” in Western philosophy refers to equality in wealth, income, fair opportunity, or capacity, we can still use it with a different meaning. For instance, like Jiang, we may use it as an equivalent to the meaning of “equality in participating in ritual activities”, that is, the “actual equality” achieved by giving differences their due. In my opinion, there is no point to playing with such words. This usage of “substantive equality” cannot help elucidate the character of Confucian moral views, and



neither can it clarify the major differences between Confucianism and Western egalitarianism and liberalism regarding the idea of equality. In addition, there are conventional language rules for the use of the term “equality”, and breaking such rules will only lead to vagueness or ambiguity in one’s expression. This is true in both the Chinese and English languages. For example, if we state that a stone is equal (or unequal) to a rabbit, no one will understand what we are getting at. But if we say that since a rabbit can run and a stone cannot they are unequal in the capacity of movement, we can make ourselves understood. This is to say, the word “equality” is used for comparing the degrees of a quantifiable property shared in different subjects/objects – so that we may conclude that these subjects/objects are equal or unequal regarding this quantifiable property. Accordingly, in our proper language usage “equality” means “sameness in degree” rather than “sameness in kind”, and “inequality” means “difference in degree” rather than “difference in kind” (see Letwin 1983, pp. 10–11). If we take a comprehensive look at people’s activities and treatments in the Confucian hierarchy of rituals, it is hardly possible for us to abstract a quantifiable property (either income, wealth, fair opportunity, or capacity) from cardinal Confucian concerns that Confucianism would require everyone to possess “in the same degree”, because this requirement would be at odds with the Confucian ideal of a harmonious society where relatives should be loved and the worthy should be respected more than others. In Confucianism, there are also such concepts as “fairness” (*gongping*) or “justice” (*gongzheng*), but their meanings are not identified in terms of equality, as is the case in modern Western theories. So, my conclusion is, Confucianism does not object to the requirement of formal equality, but it rejects any sense of substantive equality imposed on the people by the government. I believe Jiang would support this conclusion.

## 5.6 Concluding Remarks

This chapter shows that Jiang has offered thought-provoking arguments to challenge the nature of egalitarian society. In such a society everyone is equal to others in the sense that one is morally self-determining, is politically entitled to cast one vote, and is equal to others before the law. A fundamental defect of such a society, Jiang contends, is that it does not draw most of the people towards virtue and goodness. From his view, even if this society is just and fair in a certain sense,

the vast majority of the common people will not be motivated to cultivate their virtue without the incentives or stimulation offered by a good system, even if a few sages and virtuous individuals may still develop an inclination towards goodness. This is because even though humans are by nature good, they are not good in reality. As [ancient Confucian scholar] Dong Zhongshu puts it, human nature may have a potential for goodness but is not actually good yet, just as crops may yield rice but are not rice yet.

Therefore, just as we grow crops into rice through irrigation and cultivation, we must develop a good system to help people develop their potential for goodness. Hence. . . unless a good social environment and political system are constructed, individual self-improvement and perfection will be impossible (Jiang, pp. 420–421).

Indeed, Confucianism has long recognized the implausibility of egalitarianism. When the short-lived Chinese “egalitarianism” budded in the Mohist School in ancient China, Confucianism was already sophisticated enough to realize its problems. Today, under the influence of contemporary Western theories, equality has become the most legitimate principle in morality, politics, and law. However, a careful review of Jiang’s Confucian views on these issues can help us recognize the problems with these Western theories and help us devote our efforts to the real Confucian ideals, thereby bringing benefits to Chinese society and the whole world.

## Notes

1. Unless otherwise indicated, all citations of Jiang’s words in this chapter are from his 2004 work.
2. See chapters by Wang Ruichang and Daniel Bell in this volume for more discussion of Jiang’s tri-cameral proposal.
3. In liberal scholars’ words, these values might be said to constitute the Chinese’s “overlapping consensus” and thus can be justifiably applied to public education. In fact, when Chinese liberal scholars stress the variety and diversification and thus resort to the principles of Western liberalism for guidance, they have, to a great extent, imposed the pluralistic features of modern Western society on China. It is true that different concepts or ideological systems exist side by side in any society and group; however, the degree of difference in Chinese society is in no way comparable with that in modern Western society. Even if Daoism, Buddhism and other religions in China hold different religious views from Confucianism, they have shared with Confucian morality in essential matters. Hence, in my opinion, it is groundless in China to resort to the liberal principles of neutrality regarding moral education.
4. Jiang’s thoughts regarding gender equality and the Confucian Three Bonds (*sangang*) are illuminating. See Wang Tangjia’s chapter in this volume for a discussion of Jiang’s thought-provoking ideas on this topic.

## References

- Bell, D. A. 2006. *Beyond Liberal Democracy*, part II, chap. 6. Princeton: Princeton University Press.
- Fan, Zhongxin. 2004. “Nature, Advantages & Disadvantages of the System of Harbouring Relatives (*Rongyin*)—The Meaning of the Common Choice by China and Other Countries.” In *Clashes of Ideas on Confucian Ethics*, edited by Guo Qiyong, 636–663. Wuhan: Hubei Education Press.
- Jiang, Qing. 2003. *Political Confucianism* (Zhengzhi Ruxue). Beijing: Sanliang Press.

- Jiang, Qing. 2004. *Life Religion and Kingly Way* (Shengming xinrang yu wangdao zhengzhi). Taipei: Yangzheng Hall Culture.
- Letwin, W. 1983. "The Case against Equality." In *Against Equality*, edited by William Letwin, 1–63. London: Macmillan Press.
- Mill, J. S. 1991. *Considerations on Representative Government*. Buffalo, NY: Prometheus Books.
- United Nations Office of the High Commissioner for Human Rights. 1990. *Convention on the Rights of the Child*. New York: United Nations.