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Fan, Ruiping, *Reconstructionist Confucianism: Rethinking Morality After the West*

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Reconstructionist Confucianism is fascinating, provocative, and in several ways novel. It is the first English language, full-length effort to re-articulate Confucianism so that it speaks to the specific ethical challenges of the contemporary world. Fan's background as a bioethicist enables him to enter deeply into a series of moral and political issues. Furthermore, Fan's methodology is distinctive and his conclusions are quite at odds with much that has been written about contemporary Confucianism. As such, the book deserves broad attention: readers with a wide range of backgrounds and research agendas will find stimulating arguments to engage them. Having found *Reconstructionist Confucianism* to be so provocative, I will seek to return the favor by challenging Fan on a number of points. The contemporary, globally informed philosophical development of Confucianism is still in its infancy. We need to encourage multiple voices and then to engage with them both charitably and critically: this is the best way to seek the Confucianism—or perhaps Confucianisms—that can contribute the most to our various communities around the globe.

First, though, a brief summary of the book's contents. Its fourteen chapters are organized into four parts, the titles of which capture well their contents. Part I is labeled "Beyond Individualism: Familism as the Key to Virtuous Social Structure." There is no question that Fan's most important analytical category is the family, which he takes to be normatively central to Confucianism and descriptively central to contemporary Chinese mores. This emphasis on the family complements another of Fan's key notions, namely the prescriptive and descriptive importance of virtue-as-love. As he puts it, Confucianism's anti-egalitarian social theory teaches us to treat all people like (one or another grade of) relatives. This theme is developed in Part II, "Virtue as a Way of Life: Social Justice Reconsidered." Individual chapters in this part critique Rawlsian ideas of justice and argue for specific approaches to health care and eldercare. A new dimension of his anti-egalitarianism is introduced in Part III, titled "The Market, the Goodness of Profit, and the Proper Character of Chinese Public Policy." Among other issues, chapters in this part cover Fan's recommended political arrangements, reforms of the medical marketplace, Confucian business ethics, and a distinctive take on Confucian attitudes toward nature. Part IV, finally, is called "Rites, not Rights: Towards a Richer Vision of the Human Condition." A major

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concern of this part is to develop a theory of ritual, how rituals can and should change, and how different normative traditions might be able to deal more effectively with moral dissensus. Another key issue is diagnosing and seeking to resolve the moral vacuum that, Fan argues, exists in contemporary China. He believes that both the contemporary West and East are suffering from major but quite distinct moral crises, and argues that the East (and China in particular) will be best served if it can resolve its challenges by using its own resources. The book concludes with an Appendix presenting a "disputatious dialogue" between Fan, representing his vision of Confucianism, and Andrew Brennan, representing liberalism.

I begin my engagement with Fan's themes with reflection on some methodological issues. First, what exactly is "reconstructionist" Confucianism? Fan identifies it with the "project of reclaiming and articulating moral resources from the Confucian tradition so as to meet contemporary moral and public policy challenges" (xi). He criticizes two alternative approaches. If one merely seeks a "renaissance" of Confucian values, one will not critically draw on the failures of the past (40). On the other hand, he regularly distinguishes his method from the "reform" approach that he finds in "contemporary Neo-Confucianism." According to Fan, this latter group of scholars advocate greater changes than Fan himself; they strive to "recast the Confucian heritage in light of modern Western values." As a result, "Confucian heritage is in great measure colonized by modern Western notions" (xi). Fan does not develop this critique with any care—the identification of his targets and his arguments against them take place in a few scattered footnotes—and it is certainly open to question whether LIU Shu-hsien 劉述先 and MOU Zongsan 牟宗三 engage in "naïve presentism" as they "read social democratic concepts into Confucianism" (106n2; 108n8). I will say more about the matter of democracy and rule of law below. Fan is on somewhat more solid ground when, citing TU Wei-ming 杜維明 as his example of modern Neo-Confucianism, he notes a desire to separate inner virtues from outer ritual, and thus to "adapt the Confucian tradition to modernity by overlooking the ritual practices in Chinese moral lives" (166). It may indeed be the case that Tu and others downplay the ritual dimensions of Confucianism too far. The way Fan makes his case, though, brings in a second methodological issue that warrants scrutiny. When he refers to the "ritual practices in Chinese moral lives," he means actual Chinese lives today. Similarly, one of his arguments against the democratizing urged by "Neo-Confucians" is that it runs against the "background cultural understandings currently influencing the moral and political thought of many people in the Pacific Rim" (108n8). Elsewhere he argues that liberalism is not apt for areas in which "the Confucian tradition remains dominant in people's lives" (47). In other words, Fan combines a questionable descriptive claim about contemporary Chinese people (their dominant values are Confucian) with a tendentious normative claim (communities ought to stick with their dominant values). Whatever one makes of the normative claim, these arguments collapse if it turns out to be false that the Confucian tradition is still dominant. Perhaps recognizing this vulnerability, Fan goes to considerable lengths to argue that, notwithstanding the current "post-communist personality disorder," Chinese people are currently moving toward regaining what he calls the "basic Chinese personality form," which he then conflates with "the Confucian personality" (238-9). Among other things, the Confucian personality is said to offer "the most plausible account" of the moral and cultural sources of the post-1978 reforms in China. Readers can evaluate for themselves Fan's evidence for these claims; for myself, I find them unconvincing. Before moving on, let me note that Fan does not rely entirely on the justificatory structure I have just outlined. He often puts forward independent, prescriptive arguments that Chinese—and in many cases, Westerners as well—ought to adopt Confucian values and suitably reconstructed institutions. I will review some of these arguments below.

At the center of Fan's understanding of Confucianism is the family. Family interests are more important than individual interests; shared family decision-making is the model for exercising judgment; and roles within the family are the models for all human relationships. Indeed, Fan says that the main Confucian social ideal is to treat all people as relatives (29). Within the family, some relationships and responsibilities are stronger than others, and these inequalities undergird the broader anti-egalitarianism for which Fan argues. He sees the individual development of love and virtues as critical, but these are constituted via roles and relationships with close family members. It is a "gross exaggeration" to say that "I am nothing but my roles," but nonetheless "my identity cannot be established separate from my relationships with close relatives" (30). Many of these same themes have been developed by other scholars in recent years. What is striking and controversial are the subtle normative conclusions that Fan seems to draw from them. For instance, he argues in various places that the "natural" and "normal" type of family is heterosexual. The Confucian notion of the family, he says, "supports a web of sex- and age-specific orders of authority and obligation" (100; see also 32). Fan's book also contains some indications that he endorses a traditional patriarchal social structure. He typically avoids gendered pronouns, but in some instances uses "his" to refer to the family head and "she" to refer to a child who quits a job to take care of elderly parents (85, 99n19). In response, I believe that nothing about gender distinctions or roles actually follows from the general picture of families as meaning- and identity-constituting institutions. Only if we add that the specific external forms in which families were traditionally arranged in China continue to have normative priority can we conclude that a reconstructed Confucianism should be heteronormative and patriarchal. In his extensive treatment of ritual (*li*) in Chapter 11, Fan does in fact argue for considerable stability of ritual forms, as well as emphasizing that "Confucian rituals provide the specific content to Confucian ethics. Without attending to the Confucian rituals, Confucian ethics would be too abstract to stand clearly" (171). It is thus possible to read him as arguing that the traditional gender roles must remain constant, though it is not entirely clear (170; see also 32). Fan's detailed discussion of when and how ritual forms can change is valuable and deserves more attention than I can give it here. I worry, though, that Fan has tied the values of reconstructionist Confucianism so closely to the practices of traditional Chinese society that he risks contemporary irrelevance, notwithstanding his claim that "Confucian culture" persists. Furthermore, he risks endorsing forms of discrimination which are increasingly rejected around the world, and which have no deep justification in Confucian values (as Sin-yee Chan and others have shown).

It is impossible to read very many pages of Fan's book without noting his strong endorsement of private property and capitalism. Part of the context, quite explicitly, is his critique of socialist China, but what makes Fan's position unusual is that he tries to ground arguments against even modest welfare-state policies in an alleged Confucian support for free-market capitalism. In pursuit of this ambitious goal, Fan makes some points that are well-taken; certainly the often-heard claim that Confucianism is flatly opposed to commercial activity and profit is mistaken. But in trying to read support for a modern, private-property economy back into the Confucian classics, he stretches the texts beyond recognition. For example, consider Mencius's famous statement that common people without *hengchan* 恆產—typically translated as constant livelihood—will not have *hengxin* 恆心, or constant heartminds. (In contrast, virtuous people will have constant heartminds even in straitened circumstances, a sentiment that is confirmed elsewhere in the text.) Fan proposes to read *hengchan* instead as "private property," which then allows him to conclude that Mencius believes that a publically owned economic system will lead to "more immoral or even tragic outcomes" (65-6), since those without private property will stop at nothing. The problems with this reading, however, are numerous. Most basically, *heng* simply does not mean

"private." Second, Fan acknowledges that even in Mencius's idealized "well-field" system, the land that commoners cultivated for themselves could not be bought or sold: it belonged to the ruler. Finally, reading *hengchan* as "private property" renders the reasoning of the rest of the passage and the meaning of *hengxin* otiose. I think that we must conclude that Fan has overreached. Free-market capitalism—and modern socialism or welfare-state capitalism, for that matter—are simply too different from the socio-economic arrangements considered in the ancient Confucian texts. It is quite plausible to say that some form of capitalism is *consistent* with the Confucian tradition, though I would argue that there is considerably more concern for a welfare-state-like "safety net" than Fan is willing to acknowledge. Fan's stronger claim that Confucianism requires free-market capitalism is simply unconvincing.

Beyond labeling it as "Confucian aristocracy," Fan says comparatively little about the political system that his Reconstructionist Confucianism endorses. He dwells quite a bit on the issue of law, though, and I would like to explore how convincing his arguments are. There are two main issues: first, Fan's suggested handling of the famous "conflict" cases from *Analects* and *Mencius*, in which there appear to be conflicts between government authority and filial responsibilities; and second, Fan's proposal for Confucian "human rights." The conflict cases (*Analects* 13.18 and *Mencius* 5A3 and 7A35) are well-known, but Fan argues that they are often misunderstood as calling for virtuous people to "bend the law for the benefit of one's own family." To the contrary, he says they are really about "what kinds of laws a society should make" (37). For instance, with regard to *Mencius* 7A35 in which Mencius is speculating about what the sage-king Shun should do if his father were to kill someone, Fan says that Mencius "was making a legislative proposal: a law should be made to require the emperor to resign the position and be exiled with his parents…in order to save his parent's life." After all, Fan says, "as a Confucian moralist, Mencius could not encourage people to break a law if the law's requirements are well-constructed" (38). I find this fascinating, and agree with part of Fan's underlying motivation, but believe that Fan's specific idea is highly implausible, both textually and philosophically. The underlying idea that I endorse is that Confucians must be able to specify distinct senses for "rule of law" and "rule of virtue." Fan rightly criticizes the conflation of these notions, though he believes this is mainly a matter of the last one hundred years and the partial result of Western influence (39). It is indeed important that public laws have authority independently of anyone's claim to virtue, even though (as Fan goes on to suggest) it might well be the case that the laws in a Confucian society will take familial relations into account in a way, or to a degree, that other societies will not. However, this does not solve the matter of 7A35. First, there is no hint in the text (or anywhere else in the *Mencius*) that either Shun or Mencius had in mind a legislative proposal. What is illustrated is the perception-and-reaction of a sage to a challenging and complex situation, only one dimension of which had to do with the legal code. As such it fits with the extensive discussion throughout the *Mencius* of particularistic, situational responsiveness, which is several times put in terms of "discretion (*quan* 權)." Second, there are enormous barriers to solving conflict cases in the way that Fan recommends. For one thing, Fan's approach implies that Shun did not act ideally, since there was no suitably-qualified law in place. This runs against the tenor of the text and against explicit later interpretations. More fundamentally, Fan's solution would mean that we would somehow need laws to anticipate every possible tension between state authority and other responsibilities. It is not just that this seems complex or difficult, but—for familiar Wittgensteinian reasons—impossible.

If we turn to Fan's discussion of human rights, we see a hint of an alternative solution. Fan recognizes that classical Confucianism did not make use of a concept of human rights, but follows Joseph Chan in arguing that Confucianism both can and should add a kind of

rights language to its moral and legal framework. “Establishing Confucian rights would amount to adding a minimal self-asserting, entitlement language to the rich, other-regarding, virtue language of the Confucian framework” (58). There are a few things with which I would take issue here; I think the self- versus other-regarding distinction fits poorly with Confucianism, and also question his reading of liberal morality as largely devoid of content beyond general human rights. But the basic point—that Confucianism needs to add a notion of rights as a “fallback mechanism” to its normative discourse—seems to me to be correct. The key issues still to be settled are where the rights come from, what their content is, and how they are related to Confucianism. Fan makes a good start when he says that Confucian rights should be derived from a Confucian conception of virtues; the latter are more basic than are the rights. Still, if rights are to be able to serve their requisite function, they must have a status that allows them to overcome tendentious claims based on virtue. Fan sees that rights must be available in cases of “virtue failure,” but then owes us an account of their status that allows them to function in such a context. In short, in both his discussions of the conflict cases and human rights, Fan sees the special importance of law and rights, but does not quite see a way to set them apart from the moral values out of which they emerge. I submit that the logic of his argument has pushed him toward the views of one of the best-known “Neo-Confucians,” namely MOU Zongsan 牟宗三 and his argument that in order to ensure the possibility of full virtue, virtue must limit itself by adhering to independent standards of law and rights (see Angle 2009, Chapter 10). This is not, *pace* Fan’s brief criticisms, a simple reading-in of contemporary Western concerns, but rather an argument that Confucianism for its own deep reasons must develop the resources of law and rights in a way that the tradition had previously never fully realized. Just like Fan, Mou argues for a change—the explicit articulation of rights—but unlike Fan, he has given us good Confucian reasons for the change.

There is a great deal more in Fan’s rich book than I have been able to deal with in this brief review. In particular, I have not dealt with Fan’s many and detailed proposals relating to healthcare and bioethics. Instead, I have focused on more general issues relating to Fan’s version of Confucianism, which I have found to be intriguing and challenging. It is tempting to see Fan as motivated in part by independent commitments to free-market capitalism, social conservatism, and religious theism (see 148), but then again, who among us approaches the Confucian tradition without a diverse intellectual and moral background? Who is devoid of experiences in a world very different from ancient China? None of us. I think this has two consequences. First, we should critically reflect on our own assumptions and starting points. While I do not think that the argument of MOU Zongsan that I have just mentioned reflects any colonization by Western thought, I do think that we scholars working to develop Confucian philosophy need to try our best to see that stimuli from contemporary experiences or ideas do not undermine the deep values and practical orientation of the Confucian tradition. We also must do our best to take one another’s arguments about the future possibilities and direction of Confucianism in their own terms, and not simply reject a proposal because of the background influences that may have helped to motivate it. I hope to have approached Professor Fan’s *Reconstructionist Confucianism* in precisely this spirit and encourage a broad readership to do the same.

Reference

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