

CHINESE JUSTICE: FROM THE PAST TO THE COVID-19 PANDEMIC

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ABSTRACT

The Western liberal notion of justice is generally associated with concepts such as fairness, righteousness, complete virtue, and equality. As an important virtue of social institutions, justice is a contextual notion which conveys different meanings in different cultures. Regardless of how many articles have discussed the Western concept of justice, very few have touched on its Chinese counterpart. Justice is translated into 'gongping' (公平) and 'zhengyi' (正义) in Chinese. It is difficult to find a simple Chinese term to describe the complete meaning of justice. An etymological approach was taken by analyzing the structure of four relevant Chinese characters in this paper. Moreover, since the Chinese justice has been deeply influenced by Confucianism, it is necessary to explore the meaning of justice in his celebrated work: the Analects. I conclude that the Chinese concept of justice entails connotations of fair distribution, righteousness, and equality. But the Chinese version of justice focuses on the collective interest in maintaining a harmonious society. Fairness and justice are important values embodied in Chinese laws and government reports. The Chinese notion of justice emphasizes the public interest which regards individual justice as an integral part of social justice. In public health emergencies, the state interest is closely linked with global interest. Fair distribution of genomic data abroad is in alignment with the Chinese concept of justice. I argue that the Chinese view of justice should be proposed for countries to take more responsibility in genomic data sharing to find more cures to end the pandemic.

INTRODUCTION

[1] « Justice » is a fundamental concept for multiple disciplines including law, ethics, religion, philosophy, etc. A good number of Western liberal literature have discussed this concept since Ancient Greece. Ulpian deemed that justice « renders unto others their due or what is their right (ius) » (Terence Cuneo, 2020). Aristotelian thought that justice should be distributed equally (Terence Cuneo, 2020). Locke argued that justice was associated with personal property. « Where there is no property, there is no injustice » (John Locke, 1690, p333). Utilitarianism scholars thought justice was meant to provide the greatest benefits of a society (David Miller, 2017). John Rawls argued for « Justice as fairness », which is based on the presumptions of the veil of ignorance, original state, lexical order, and rational being (reasonableness) to maximize their benefits (John Rawls, 1971).

[2] Regardless of many articles on Western liberal justice, some authors remarked the difficulty in determining the concept of justice in the ancient Chinese language (Huang, 2016, p. 596). Erin Cline compared the sense of justice by Confucius and Rawls which provided a common space for those two conceptions of justice. She argued that the Confucian justice was to cultivate the sense of justice (Erin Cline, 2012). Some authors have contributed to the analysis of Confucian justice. However, few of them have linked the Confucian justice with the Chinese government policy. This paper discusses the Chinese concept of justice from three different angles as compared to Western liberal justice. The first section analyzes the ancient concept of justice. The second section explores the contemporary concept of justice in China. The third section discusses the Chinese genomic data sharing policy during the COVID-19 pandemic and how the Chinese justice influences this policy.

THE CHINESE JUSTICE : FROM AN ETYMOLOGICAL PERSPECTIVE

[3] It is not easy to seek a single Chinese word to describe all meanings conveyed by the concept of justice. However, an etymological study may contribute to better understanding its underlying meaning.

[4] The Chinese translation for the word 'justice' includes « Gong Ping (公平) », « Zhengyi (正义) », « Gong Zheng (公正) ». The translation does not contain much useful information except some random symbols called « Chinese characters ».

[5] However, the structure of these characters can indicate its meaning. Unlike most Western languages which are alphabetic, the Chinese language is primarily pictographic or ideographic. The structure of each Chinese character outlines the blueprint of that specific character (Xu Shen 121). According to the abovementioned translation, four characters « Gong (公) », « Zheng (正) », « Yi (义) » and « Ping (平) » repeatedly appear in these three terms and comprise the basic translation for justice. The world-known work, *A Theory of Justice*, is also translated in to « Zheng Yi Lun (正义论) ». Therefore, these four characters are selected to explore the implicit meanings of the Chinese concept of justice.

[6] Chinese characters underwent a reform process to simplify them. Traditional Chinese characters are more complex but contain richer information. Therefore, for this study I mainly rely on the traditional Chinese. Simplified Chinese is used as an additional source. My analysis is mainly based on the « Shuo wen jie zi », the first Chinese dictionary analyzing the structure of the character. The title of the dictionary can be translated literally to « discussing writing and explaining characters » (Xu Shen, 121). The Kang Xi dictionary (1716) is also used for references to better understand those four characters.

YI 義 (TRADITIONAL) – 义 (SIMPLIFIED) – 仪

[7] « Yi » is constituted with two parts which are « sheep » on the top and « war » at the bottom. Sheep was typically used as a sacrifice to heaven before a war. Therefore, Yi suggests an appropriate ceremony before a

war or proper behavior (Xu Shen, 121). Yi (義) is also interchangeable with Yi (儀) which means etiquette or rites in ancient China. Rite (禮 Li) is much appreciated by Confucius in his works as the social norm in daily life (Huang, 2016, p.594). In this sense, the character '義' conveys a connotation of ritual propriety. This connotation is also supported by Huang Yushun. He thinks that « Yi (義) » means the principle of justice which includes the righteousness and appropriateness. He thinks righteousness requires equal treatment for all, while appropriateness means « social norms and their institutions are well adapted to the common way of life » (Huang, 2016, p.593).

ZHENG (TRADITIONAL) - 正 (SIMPLIFIED)

[8] Zheng is composed of two parts in which the top means « number one » and the bottom part means « stop ». The meaning of Zheng is to prevent wrong behavior. Therefore, the Chinese justice contains meanings to avoid wrongness and achieve rightness. Zheng can be further interpreted as a judgment for assessing whether a behavior is right or wrong.

GONG 公

[9] « Gong » comprises two parts. The top is number eight which means contradiction and the structure at the bottom means « private ». The entire character is the antonym of private. This character means « public », « fair », « not being biased to private interest ». Beyond the meaning of fairness, which is normally embedded in the Western concept of justice and mainly based on private property, Gong has a strong connotation of public interest.

PING 平

[10] From the structure of Ping, we can see this character is symmetrical and balanced. That is indeed the message conveyed by this character, which means equal, fair, balanced.

In summary, from the above analysis, a conclusion is drawn about the Chinese concept of justice which includes meanings of fairness, impartiality, and righteousness as well as, accounts for, public interests, social rites and etiquette.

THE CHINESE CONCEPT OF JUSTICE FROM A CONFUCIAN PERSPECTIVE

[11] As we know, the Chinese society is deeply influenced by Confucianism. In order to understand the Chinese concept of justice thoroughly, I shall refer to the famous Confucian work, the Analects.

JUSTICE : THE RULE OF VIRTUE IS MORE PRAISED THAN THE RULE OF LAW

[12] According to the section 16.1 of the Analects, « a real gentleman is not concerned about poverty, but about unfair distribution » (Students of Confucius, 479 BC - 221 BC). Lau translated this sentence into « for where there is even distribution, there is no such thing as poverty,...» (Lau, 2005, p. 230). From this sentence, we can conclude that fair distribution is highly valued by Confucius.

[13] Moreover, Western liberalism usually views justice as associated with law or legal rights (Li Lin, 2015, p1). By referring to the English dictionary, justice is written as « Justitia » in Latin which is associated with « right » « command » or « law » (Johnson, Todd, Chalmers, and Walker, 1835, p. 539). Likewise, the French translation for justice is also associated with law (droit), (L. Smith and H. Hamilton, 2020, p. 333). Aristotle also thought that the general concept of justice was « law-abiding » (Falcón y Tella, 2014, p. 7).

[14] In the Analects, Confucius discussed the conflict between law and other social norms such as filial piety or rites. Filial piety was praised as a higher value than legal norms for Confucianism. 'Qin Qin Xiang Yin' referred to the case where parents sin, their children should hide for them. The children would not be penalized for their behavior. Instead, they would be praised for their filial piety. In the Analects, the section 13:18 said "in our village, we have an example of an integral person. When the father stole a sheep, the son gave evidence against him." Confucius answered, "In our village those who are integral are quite different. Fathers cover up for their sons, and sons cover up for their fathers. Straightness is to be found in such behavior." (Lau, 2005, p. 181) From this

text, we can see Confucius prioritized filial piety above legal order. The rule of virtue was more praised than the rule of law.

[15] This view aligned with the Confucian governance model. Confucianism aimed to build a self-disciplined society, starting from each family, by using rites (Li) and filial piety. To be specific, within one's family, each member behaved in accordance with filial piety and rites. Children were subordinate to their parents. Young children were subordinate to their older siblings. Section 2.5 of the Analects discussed the meaning of filial piety. Confucius said « filial piety means never fail to comply. When your parents are alive, comply with the rites in serving them; when they die, comply with the rites in burying them; comply with the rites in sacrificing to them » (Lau, 2005, p.21).

[16] « Wulun » is the specific term describing five main relationships within a family and society. Wulun includes the relationship between father and son ; brothers ; husband and wife ; friends ; monarch and his ministers (Hsü Dau-Lin,1970 p27). Confucius believed that if individuals follow rules domestically and respect their parents and elders, they will also respect the social rules and will not break the law in society. He viewed filial piety as the root of humanity (Ren).

[17] According to the 1:2 of the Analects, « it is rare for a man whose character is such that he is good as a son and obedient as a young man to be inclined to transgress against his superiors ; it is unheard of for one who has no such inclination to be inclined to start a rebellion. The gentleman devotes his efforts to the roots, for once the roots are established, the Way will grow therefrom. Being good as a son and obedient as a young man is, perhaps, the root of a man's character » (Students of Confucius, 1:2, p.11).

[18] Respect for Li and filial piety and the rule of virtue are essential to make a thriving and prosperous country. As stated in the section of 12.11 of the Analects, Duke asked Confucius about governance. Confucius answered, « Let the ruler be a ruler, the subject a subject, the father a father, the son a son » (Lau 2005, p. 164). This means everyone strictly obeys the rites and behaves appropriately in accordance to their social identity.

[19] If everyone strictly complies with rites, a harmonious society is thus formed, and people are siblings in the society. The Analects regard this relation as the gentleman treats others with courtesy and complies with rites, all men are your brothers (Lau 2005, 12:5, p. 160). In this sense, Confucius deems the individual as an integral part of the family. Society is constituted by numerous families. The entire world is constituted by many different countries. In this sense, Confucianism is in alignment with relational autonomy that individuals cannot be completely isolated from others (Ma Yuanye, 2017, p. 196-205). Relational autonomy is premised on the fact that persons are socially embedded, and individuals' social status is shaped by intersection social determinants (Catriona Mackenzie and Natalie Stoljar, p. 2). Catriona Mackenzie and Natalie Stoljar agree that relational autonomy is a better approach to understand justice. Confucian justice aligns, to some extent, with feminist justice which emphasizes relational autonomy and for the interest of the majority. In Contrast, the premises for the concept of Rawls' justice is liberal politics where citizens are considered autonomous agents (Lin Delia, 2017, p. 81). Rawls justice is built on individual autonomy, in which persons can choose principles to impose upon themselves in a way which is independent of contingencies of social position, race, sex, or conception of the good (Rawls 1971, p. 221–27).

[20] Confucius also discussed the relation between virtue and law. He thought if people were governed by cruel law, they would not break the law because of fear of severe punishment, but they would feel no shame. If people were governed by virtue, they would comply with the rites and would have a sense of shame and thus self-correct their wrongdoings (Lau 2:3, p. 20). In this sense, a society with justice was a society that promoted values of virtue, filial piety, rites, and whose final goal was a harmonious family. The final goal of the Confucian governance model was to achieve a harmonious society where everyone would comply with certain social rules at their will. It was a paternalistic government's strategy to build a harmonious society where all people are ready to sacrifice for others to achieve social justice. It is a self-disciplined society where each citizen respects social order (Cline 2014, p.165-166).

[21] This view influences the attitude towards the conflict between private interest and public interest. Individuals are more inclined to sacrifice their personal interests for a collective goal. As the character 'gong' (公) shows, the pursuit of public interest is stressed in Chinese justice. The Analects

addressed this conflict between private and public interest by saying « A real gentleman values Yi (義) and a villain prioritizes his personal interest » (Li Ren 4:16). Lau translated « Yi » as « moral » (Lau 2005, p.52). It is evident that collective interests are much more appreciated than individual private interest by Confucius.

[22] By analyzing those four characters and Confucianism justice, the building block for the Chinese concept of justice, we can see justice contains values such as impartiality, fairness, equality which are also indicated in the Western concept of justice. However, what is unique in the Chinese concept of justice is the importance of respecting filial piety, rule of rites and the public interest. Public interest may override the private demand. Because the core value held by Confucius remains the rule of rites which is the way to create a harmonious society. Relational autonomy rather than individual autonomy is held by Confucius. Individuals are brothers if they respect certain rules. A concept of global justice is derived from this view which is discussed in Section 3. In addition, as aforementioned, Western liberal justice is associated with « rights » and « law ». But this is not the case for Chinese justice. The rule of virtue is preferred to the rule of law.

THE CONTEMPORARY CHINESE CONCEPT OF JUSTICE

[23] For this section, I discuss the contemporary Chinese principles of justice by reviewing the government documents, literature published by some renowned Chinese legal scholars, and Chinese legislation to draw a more concrete picture of the contemporary concept of justice.

[24] Before 1978, social justice was rarely seen in the Chinese legal discourses due to the prevalence of Chinese far-left politics. During that period, the promotion of Western justice is equivalent to Western values which is prohibited in the literature (Shen 1993, p.1). After the Open-Up and Reform Policy in 1978, the political environment has been less strict which resulted in a proliferation of discussion on social justice.

[25] In the 1990s, Shen remarked that justice is a relative and contextual concept. The purpose of justice is to see whether it promotes societal progresses and personal interests of a majority of people. For a communist country, it depends on whether it benefits the communist society (Shen Zonglin, 1993, p. 3). Shen was aware of the conflicting

interest between the state, the group, and the individual. He held a Confucian view that individuals are the indispensable component of society. Therefore, personal interest is naturally consistent with societal interest. Protection of the state interest is ultimately to secure each individual's interest. Private and group interests should serve the state interest, particularly in wartime. Legal norms cannot address conflicting interests alone. We should also refer to moral cultivation in policy and customs. Even though he is not against the pursuit of personal interest, Shen prioritized the collective interest (Shen 1992 p.8-9).

[26] It should be noted that Confucianism continues to play an important role in formulating contemporary justice. For instance, the Chairman of the Communist Party, Xi Jinping emphasizes the importance of social justice and collective interest, which is the value of '*Gong*' (公), by citing a proverb in the Book of Rites that « if gong is dominant in the society, the country must be peaceful » (Li Zhen and Li Jinze, 2018).

[27] Fairness and justice are two associated terms which often appear together in government reports. In 2010, Wen Jiabao, Premier of the P.R.C. at that time, declared that “our country must promote fairness and justice and realize the full development and freedom for the public. Fairness and justice are the basis for social stability. I think fairness and justice is brighter than sunshine.” at the press conference of the sessions of the National People's Congress and the Chinese People's Political Consultative Conference (Wang Hongxia, 2010, p.1). The same principle is readdressed in the State Council's Notice on the full implementation of legal administration and the National Communist Party's Decision on Several Important Issues about Fully Implementation and Deepening Reform.

[28] Xi Jinping also declared that fairness and justice are essential components of Socialism with Chinese characteristics at the 18th and 19th National Congress of the Communist party (NCCP). The report of the NCCP recognizes the unfair distribution of the social resources affecting some disadvantaged groups and calls for measures to provide them with more opportunities (Report, 2017, section 8). The report also discusses foreign affair policy which is “mutual respect, fairness and justice, win-win collaboration”. (Report, 2017, section 12). It further affirms upholding international fairness and justice. The Confucianism value which regards the whole world as an entire entity is reflected in the report, which affirms that no single country can be completely isolated from others, in

particular, to address global problems such as « infectious diseases, and climate change, terrorism, etc. » (Report, 2017, section 12). According to this report, a new identity of a global citizen should replace a national citizen to solve these global challenges. China will continue to play its part in actively developing a reciprocal global governance system by transparent discussion and collaboration (Report, 2017, section 12).

[29] Some legal scholars also elaborate on the concept of fairness and justice. Ni contends that fairness and justice are the innate demand for the Chinese society. Therefore, the final goal for social reform and development is to promote fairness and social justice. In order to realize this goal, we need to « rely on people, share benefits with people, and build a people-oriented society » (Ni 2018 p.1). He argues that to ‘cook a bigger cake’ so that everyone can share it, the first step is to ensure fairness and justice (Ni 2018). Xi Jinping also mentions that the role of judges is to keep the safety net for fairness and justice. Xi Jinping affirms that judicial justice is the core of the rule of law. He states that « the starting point and the final goal is for the Chinese people. Let the sunshine of fairness and justice shed light into people’s hearts ». The final goal of judicial justice is to « make the public feel fairness and justice for each case » (Peng 2013). Hu argues that the government should ensure each individual has equal opportunities. Quality of life is the criteria against which to assess fairness and social justice (Hu Yuhong 2018, p.1).

[30] It is noted that fairness and justice are interchangeable in the aforementioned literature and government documents. However, Li (2015) contends « fairness » (gongping), « impartiality » (gongzheng) and « justice » (Zhengyi) are the core value of the communist party (Li Lin, 2015, p.2). He argues that fairness and justice are synonymous but not interchangeable. Fairness means that similar situations receive a similar treatment. However, justice is a virtue entailed with a positive connotation that the distribution principle aligns with the specific moral system. Fairness and justice mean all social interests are well coordinated. Conflicts between citizens and other society members are well resolved (Li Lin, 2015, p. 2).

[31] The principle of fairness and justice are also integrated in current Chinese legal documents. The Article 6 of the Civil Code of the P.R.C. (2021) specifies the principle of « fairness (gongping) means civil entities shall follow the principle of fairness to reasonably determine the rights

and liabilities for each party ». It is a basic principle in the free market where each party is equal and enjoys no privilege. Obligations should be consistent with rights. Judges can use the principle of « fairness » as a legal basis if there is no specific legal provision to refer to.

[32] In addition, the principle of « impartiality » (Gongzheng) is a basic principle in Chinese administrative law. Luo regards « Gongzheng » « Zhengyi » as interchangeable terms. She further explains that the principle of Gongping means the administrative institutions and their staffs must exert their authority in compliance with the relevant law and treat any party impartially without discrimination on the basis of their identity, ethnicity, gender, and religion (Luo Zhimin, 2016, p 54).

[33] As we can see, the contemporary Chinese concept of justice is usually associated with 'fairness'. Some scholars further explained the difference between these two terms. Fairness (Gongping) indicates judicial justice. It is a legal principle specified in the Civil Code. In contrast, justice (Zhengyi) indicates ways to balance different interests and to promote the interest of the majority of people. Justice is a final goal and fairness is a judicial way to realize this goal. The concept of justice is influenced by Confucianism which deems each individual as part of the country. The collective interest is consistent with individual interest. The starting point to realize social justice from a collective angle is by ensuring the interest for the majority of population. In doing this, justice can be extended to a global context. The premise for Global justice is each country is interdependent parts which constitute the whole world. Global justice may be the key to address globally faced problems in the case of the COVID-19 pandemic. The next section discusses the policy shift towards Chinese genomic data sharing during the COVID-19 pandemic. A positive genomic sharing policy is consistent with the principle of global justice, which is derived from Chinese justice.

GLOBAL JUSTICE INFLUENCE ON GENOMIC DATA SHARING DURING THE COVID-19 PANDEMIC

[34] The year of 2020 has witnessed a global pandemic that has plagued the whole world. As of January 2021, the death toll has exceeded two million globally. The use of host and virus genome sequencing technology is essential for tracking the virus transmission, diagnosing the new cases,

and developing effective cures (Fang Wang et al. 2020). In order to benefit from these technologies, genomic data sharing is of significance. However, due to privacy concerns, ethical and regulatory barriers, cross-border genomic data sharing is always a challenge (Flora College, 2013, p. 339- 345; Edward S. Dove. 2015, p.679).

[35] Before the pandemic, China had adopted a strict genomic data sharing policy due to some historical incidents and biopiracy concerns. In the 1990s, Xu Xiping, a scientist from Harvard University collected blood samples from Chinese participants in a remote village without appropriate informed consent. The incident had focused the Chinese government's attention on the need of preserving Chinese human genetic resources (Sleeboom Margaret, 2005, p. 57). The government had later adopted the *Interim Management on the Human Genetic Resources* (Ineffective, 1997). Human genetic material and its associated data are under strict review and approval process for utilizing, preserving, and sharing. The new Regulation on Human Genetic Resources (2019) has followed the same process. As we can see before the pandemic, the role of justice is to protect the collective interest of Chinese human genetic resources and national security. Therefore, a stringent genomic data policy was developed to ensure the safety of the Chinese genetic resources.

[36] Since justice is contextual and ever-changing. During the pandemic, the collective interest deserving protection from Chinese justice became different. In an exceptional case like COVID -19, global health becomes at stake. In Chinese justice, the world is an integral entity and China is an indispensable part. To serve the global interest and solve the globally faced health emergency are to become the priority. A global justice concept that considers each country is related and should be solitary to address the global pandemic. After the breakout of the pandemic, the Chinese government granted an expedited process for COVID-19related projects sharing genomic resources. The processing time for acquiring the permit is shortened from two weeks to three days (Ministry of Science and Technology, 2020).

[37] In addition, even before the World Health Organization declared Novel coronavirus a 'public emergency of international concern' on January 30th of 2020, the Chinese Center for Disease Control and Prevention has shared viral sequencing globally since 5th of January with

the government's permit. The China Center for Disease Control and Prevention, the Chinese Academy of Medical Science and the Wuhan Institute of Virology under the Chinese Academy of Sciences, as designated agencies of the National Health Committee, submitted to the WHO the genome sequence of the novel coronavirus (2019-nCoV), which was published by the Global Initiative on Sharing All Influenza Data (GISAID) and shared globally. The WHO Director-General Tedros Adhanom Ghebreyesus thanked the Chinese government for its cooperation and transparency in isolating and sequencing the virus and has shared that genetic sequence with the WHO and the international community.

[38] However, different voices can be heard to criticize China delayed in releasing coronavirus information. The Associated Press deemed the WHO's praise for Chinese government's role in actively sharing genetic data of the virus as a strategy destined to "coax more information" from China (AP News, 2020). They blamed China for releasing the virus genomic data one week after three labs had fully decoded the information. In fact, this criticism actually proves how efficient and incredible an achievement China has made to share genomic data abroad. It is not an easy decision for any country to share genomic data outside the country. But China only took one week to decide on sharing its data abroad. From another perspective, in 2020 at the very early stage of the pandemic, it was difficult to predict it would become a global threat and to report to the WHO before solid evidence was established.

CONCLUSION

[39] The concept of justice is historical and contextual. The concept of justice based on fair distribution and impartiality was known in ancient China. However, the presumption for Chinese justice is that individuals are interdependent entities. Influenced by Confucianism, private interests are usually subordinate to the family and public interest. Justice is a virtue to sacrifice personal interests for the social collective interest, because personal interest should be consistent with the public interest.

[40] In the current society, promoting social fairness and justice are put on the political agenda and implemented by civil law and administrative law. The starting point and final goal are to ensure the livelihood and interests of the widest Chinese population. The state interest overrides the personal interest where these two interests are contradictory,

because no individual can survive without a strong country in the back. The personal interest must thus be aligned with the public interests.

[41] Social fairness and justice are also principles of global justice used in foreign affairs, which regard China as an integral part of the whole world. In particular, in the case of a global pandemic, there is no one, or no country, that can be isolated from the virus. The individual interest depends on the realization of the global interest. Thus, both the Chinese traditional justice and current justice policy propelled the Chinese government to share the data to address the challenge of COVID-19. Beyond conflicting interests as the national security, personal information, etc. the global interest overruns the rest. Swift and efficient sharing practices are aligned with the Chinese concept of justice. Chinese justice situated within a relational autonomy theory appears well suited to address public health emergencies of our time.

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