

A CONFUCIAN THEORY OF PROPERTY

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Table of Contents

I. INTRODUCTION	2
II. STRAND ONE: A CONFUCIAN THEORY OF PROPERTY WITH UTILITARIAN OVERTONES	7
III. STRAND TWO: A CONFUCIAN VERSION OF A “PERSONHOOD” AND “PERSONALITY & HUMAN FLOURISHING” MORAL THEORY OF PROPERTY	12
IV. STRAND THREE: A CONFUCIAN THEORY OF PROPERTY BASED ON ECONOMIC EFFICIENCY	17
V. CONCLUSION: BROADER, FAR-REACHING EFFECTS IN THE REAL WORLD OF A CONFUCIAN THEORY OF PROPERTY?.....	20

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Abstract

Based on an analysis of the teachings of Confucius and Mencius, this Article sets forth a Confucian justificatory theory of private property. I argue that such a theory is a pluralist theory, simultaneously based on numerous theoretical bases or strands. First, it justifies property based on a theory with utilitarian overtones – namely, that people will be better off in a private property regime as it will lead to a more stable, harmonious, and orderly society. Second, a Confucian theory of property justifies a private property regime as essential in allowing individuals to fulfill, express, and/or practice key, specific Confucian virtues, which in turn allows for full moral development (we might understand this conceptually as a Confucian version of a personhood/human flourishing theory of property). Third, it justifies property based on an economy efficiency theory – that is, private property is key to the smooth functioning of a trade-based economy. All three strands are linked together by a common concern for the moral development of the individual. This Article is important for two major reasons: first, it serves as a corrective to the often heard stereotype that Confucianism is not supportive of property rights; and second, it can contribute to the field of property theory as a whole by offering a coherent and integrated theory which weaves different justificatory property theories together.

I. INTRODUCTION

This Article aims to set forth a Confucian theory of property. A few preliminary remarks regarding methodology and terminology are in order. First, by “Confucian” or “Confucianism”, I refer to the teachings and thought of Mencius¹ (c. 372-289 B.C.) (as revealed through the *Mencius*, a text containing Mencius’s dialogues and teachings), and to a lesser extent, Confucius (551-479 B.C.) (as revealed through the *Analects*, a collection of Confucius’s sayings and teachings). While there are many philosophers in the Chinese Confucian tradition, a focus on Confucius and Mencius is warranted. Confucius was the first teacher and founder of the school of thought – Confucianism – which bears his name, and Mencius – who helped develop Confucius’s thought and whose interpretation and development of Confucian thought became the Confucian orthodoxy in Chinese history – is widely regarded as the second most important Confucian thinker after Confucius.² Furthermore, given the wide

¹ Mencius is also romanized as Mengzi.

² Daniel A. Bell, *Confucian Constraints on Property Rights*, in CONFUCIANISM FOR THE MODERN WORLD 218, 220 (Daniel A. Bell & Haim Chaibong eds., 2003). Of course, there may be other

range and breadth of Confucius's and Mencius's teachings, I focus only on those that I believe are pertinent to a theory of property. Second, by "theory", I mean a normative and justificatory theory of property (in contrast to an analytical or definitional theory of property) – that is, a theory that "attempts to provide a normative justification for allocating rights to material resources in a particular way."³ Furthermore, under the umbrella of justificatory theories of property, this Article focuses on general justificatory theories – that is, theories that seek to justify the general idea of having things controlled by private individuals, or put another way, theories that query why there ought to be property rights of any sort at all⁴ – and not the justification of, as Jeremy Waldron put it, "principles by which some people come to be owners of particular resources while others do not."⁵ Third, by "property", I mean private property (in contrast to common property or collective and state-owned property), which itself can be understood as rules of property organized around the notion that "contested resources are separate objects, each assigned to the decisional authority of some particular individual (or family or firm)."⁶ Additionally, with respect to private property types, the theory set forth by this Article has implications for both real property and personal property.

My thesis is as follows: I argue that a Confucian theory of property (as set forth in this Article) is a pluralist⁷ theory of property

Confucian thinkers that one can reference in producing a Confucian theory of property. However, I have chosen to focus on Confucius and Mencius, who, as Daniel A. Bell puts it, are the two "founding fathers" of Confucianism.

³ GREGORY S. ALEXANDER & EDUARDO M. PEÑA, AN INTRODUCTION TO PROPERTY THEORY 6 (2012). As Jeremy Waldron notes, there are two major philosophical and theoretical issues in property law – analytical (definitional) issues about the meaning and use of the key concepts in property law (e.g., questions such as "what is property?" and "what does ownership mean?") – and secondly, justificatory and normative issues in property law (e.g., questions such as, "what justifies the protection of private property?"). Jeremy Waldron, *Property Law*, in A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY 9, 9 (Dennis Patterson ed., 2d ed., 2010).

⁴ LAWRENCE C. BECKER, PROPERTY RIGHTS: PHILOSOPHIC FOUNDATIONS 23 (1977).

⁵ Waldron, *supra* note 3, at 16.

⁶ *Id.* at 12.

⁷ By "pluralist theory", I mean theories which take numerous relevant values into account and seek to synthesize them. Such theories are to be contrasted with "monist" theories, which only take one value into account. For example, in the realm of property theory, a pluralist theory of property seeks to synthesize different philosophical stances (e.g., utilitarianism, labor theory of property) into one single basic theory, whereas a monist property theory would seek to justify property by focusing on only one philosophical stance or value, such as utilitarianism or welfarism (i.e., a law and economics approach). For an example of scholarship attempting to develop a pluralist theory of property, see STEPHEN R. MUNZER, A THEORY OF PROPERTY (1990). For a critical review of Munzer's book, see Thomas W. Merrill, *Wealth and Property: Book Review of A Theory of Property by Stephen R. Munzer*, 38 UCLA L. REV. 489 (1990). For a discussion of pluralism and monism in normative legal theories generally, see Steven J. Burton, *Normative Legal Theories: The Case for Pluralism and Balancing*, 98 IOWA L. REV. 535 (2013). For an example of scholarship setting forth a monist theory of property (specifically, a non-pluralist defense of first occupancy theory in property theory), see Peter Benson, *Philosophy of*

which justifies property simultaneously on numerous theoretical bases or strands. First, it justifies property based on a theory which might be identified and understood conceptually as one with utilitarian overtones – namely, that more people and society as a whole will be better off in a private property regime because such a society will be more stable, harmonious, and orderly. Second, it justifies private property as being critically important and essential in allowing individuals to develop themselves by fulfilling, expressing, and/or practicing the key Confucian virtues such as *xiao* (filial piety)⁸, *li* (ritual propriety, rites, ritual)⁹, *yi* (righteousness)¹⁰ and eventually, *ren* (benevolence)¹¹. And, only through the fulfillment and practice of these key Confucian virtues, can an individual reach his/her full moral development and potential through self-cultivation. In comparative and more modern terms, this strand can be conceptualized as a Confucian version of a “personhood-inspired” or a “personality and human flourishing-inspired” theory.¹² Third, it justifies property based on what we might label an economy efficiency theory – that is, private property is key to a smooth functioning of a trade-based economy as well as ensuring productive, efficient division of labor. Each of these three strands comes together to comprise a unified, pluralist Confucian theory of property, linked by a common concern for the moral growth and development of the individual. This Article will proceed in multiple sections, each section addressing each of these theoretical strands in turn.

Property Law, in OXFORD HANDBOOK OF JURISPRUDENCE & PHILOSOPHY OF LAW 752-814 (Jules Coleman & Scott Shapiro eds., 2002).

⁸ *Xiao*, usually translated into English as “filial piety”, refers to respect and reverence for one’s parents, which is extended more broadly to one’s elders and teachers, and is considered the foundation for individual moral behavior. See LEE DIAN RAINEY, CONFUCIUS & CONFUCIANISM: THE ESSENTIALS 24 (2010).

⁹ *Li*, frequently translated into English as ritual, rites, and ritual propriety (I use these translations interchangeably in this Article), originally referred specifically to religious rituals, but in Confucian philosophy, its meaning was extended to include matters of etiquette and aspects of one’s entire way of life, including demeanor and dress – in the Confucian tradition, it has even become “co-extensive with all of ethics.” READINGS IN CLASSICAL CHINESE PHILOSOPHY 390 (Philip J. Ivanhoe & Bryan W. Van Norden eds., 2d ed. 2005).

¹⁰ *Yi*, or usually translated as “righteousness” in English, refers to “the disposition to disdain to do what is dishonorable, particularly a disdain to pursue profit at the expense of morality.” READINGS IN LATER CHINESE PHILOSOPHY: HAN DYNASTY TO 20TH CENTURY 409 (Justin Tiwald & Bryan W. Van Norden eds., 2014).

¹¹ For Confucius, *ren*, or usually translated as “benevolence” in English, referred to the “sum total of all virtuous qualities” or “the perfection of human character.” For Mencius, *ren* referred to a virtue similar to benevolence, compassion, and caring for others. Ivanhoe & Van Norden, *supra* note 9, at 391.

¹² Personhood theory and personality & human flourishing theory in property law argue that private property rights are justified because they play an important role in developing the individual person. In these theories, which are frequently understood as one theory, private property is seen mostly as things. Certain things become so closely tied with a person that they become part of the person and his personality. Therefore, honoring private property rights help individuals “live their lives on their own terms.” JOSEPH WILLIAM SINGER, PROPERTY 20 (4th ed. 2014). See also JOHN G. SPRANKLING, UNDERSTANDING PROPERTY LAW 21 (3d ed. 2012).

Through the above-positd Confucian theory of property, I hope to accomplish two broader scholarly goals. First, I hope this Article can help correct the still widely held view that Confucian thought is not supportive of, and even antithetical to, private property rights. Indeed, numerous scholars see Confucianism as being opposed to private property or portray Confucianism as a scapegoat of sorts in order to explain the weakness of private property protection in China and East Asia generally.¹³ Other scholars, notably Daniel A. Bell, do not take such a strong approach against Confucianism on the issue of property rights, but nevertheless choose to emphasize the Confucian tradition's constraints on property, rather than consider how the Confucian tradition can serve as a justification for private property.¹⁴ Chinese legal scholars have also had similar attitudes toward Confucianism. For example, Chinese legal scholars who have tried to develop and improve property rights protection in mainland China today have not looked to the Confucian tradition for values standing for property protection; rather, they have urged Beijing to look externally to foreign law (e.g., US, Japanese, and continental European law, especially German law) as models and precedents for property rights reform.¹⁵ Furthermore, mainland China's 2007 Property Rights Law – widely lauded as a key step forward in the Chinese government's efforts to protect private property – was strongly influenced by Western, liberal ideas of private property rights.¹⁶ In other words, Confucianism has not been considered as a possible resource for justifying property rights. Indeed, to my knowledge, this Article represents the first attempt to set forth a Confucian theory of property. It should be pointed out here that some legal historians have discussed the existence of property rights in pre-modern China, namely late imperial China, arguing that China was in fact a society where property rights “were well-defined”.¹⁷ However, their projects are primarily historical, not normative – that is, they seek to understand how property rights were protected (or not

¹³ As Peter K. Yu has noted, it has been “typical” in the past two decades for scholars to argue that “Asian culture, especially Confucianism, is hostile toward intellectual property reforms.” Peter K. Yu, *Intellectual Property and Asian Values*, 16 MARQ. INTELL. PROP. L. REV. 329, 340 (2012). For examples of academic arguments that Confucianism is responsible for the lack of property protections in China and East Asia more generally, see WILLIAM P. ALFORD, *TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION* (1995); John Alan Lehman, *Intellectual Property Rights and Chinese Tradition Section: Philosophical Foundations*, 69 J. BUS. ETHICS 1 (2006); Mo Zhang, *From Public to Private: The Newly Enacted Chinese Property Law and the Protection of Property Rights in China*, 5 BERKELEY BUS. L.J. 317 (2008).

¹⁴ Bell, *supra* note 2, at 218-35.

¹⁵ Pitman B. Potter, *Public Regulation of Private Relations: Changing Conditions of Property Regulation in China*, in *THE DEVELOPMENT OF THE CHINESE LEGAL SYSTEM: CHANGE AND CHALLENGES* 51, 51 (Guanghua Yu ed., 2012).

¹⁶ *Id.*

¹⁷ See, e.g., Madeleine Zelin, *A Critique of Rights of Property in Prewar China*, in *CONTRACT AND PROPERTY IN EARLY MODERN CHINA* 17, 19 (Madeleine Zelin et al. eds., 2004).

protected) in historical China and how such protections (or lack of protections) were manifested in state and society.

The second broader scholarly goal that I hope to accomplish is to contribute to the field of property theory as a whole. Specifically, I believe that a Confucian theory of property can provide a more unified, truly pluralist justificatory theory of property more generally. Such a theory of property is arguably needed, as many property theorists have noted that property theory has been based on a blend of different and often conflicting theories, such as Lockean property theory, utilitarian theory, liberty and civic republicanism theory, and personhood theory.¹⁸ These various theories have typically been “embedded in a general moral theory which makes it difficult to use one argument to support, augment, or restrict another.”¹⁹ This leads to the problem where these various theories fail to come together into a uniform theory of property and are instead akin to a “jigsaw puzzle whose pieces do not fit neatly together.”²⁰ Most scholars therefore continue to base their understanding of property on one theory, namely utilitarian grounds (perhaps partly to avoid the perils of the jigsaw puzzle).²¹ Indeed, the dominant account and justification of property continues to rest on utilitarian theory. Yet, as Stephen Munzer has noted, monist theorists such as these “attempt to reduce too much to a single perspective” and “obscure [. . .] the validity of other perspectives.”²² Lawrence Becker has also pointed out that philosophers too often have “pushed their points as partisans for a particular brand of moral theory, ignoring sound arguments from other sources”,²³ with the consequence that “property theories are divided against themselves.”²⁴ Some voices have called for a shift from this still-dominant utilitarian account and justification of property toward a more pluralist, general version,²⁵ but scholarly efforts have been relatively few in number, and none have looked outside the Anglo-American tradition for possible resources.²⁶ Therefore, I believe a Confucian theory of property – which I will set forth in this

¹⁸ SPRANKLING, *supra* note 12, at 12. This Article does not provide an overview of these various property theories. For an excellent overview of these justificatory theories of property, see ALEXANDER & PEÑA, *supra* note 3.

¹⁹ BECKER, *supra* note 4, at 3; see also SPRANKLING, *supra* note 12, at 12.

²⁰ SPRANKLING, *supra* note 12, at 12.

²¹ Abraham Bell & Gideon Parchomovsky, *A Theory of Property*, 90 CORNELL L. REV. 531, 542 & 547 (2005).

²² MUNZER, *supra* note 7, at 7.

²³ BECKER, *supra* note 4, at 2.

²⁴ *Id.* at 4.

²⁵ See, e.g., Gregory S. Alexander, *Pluralism and Property*, 80 FORDHAM L. REV. 1017 (2011).

²⁶ See, e.g., MUNZER, *supra* note 7; CAROL M. ROSE, *PROPERTY & PERSUASION: ESSAYS ON THE HISTORY, THEORY, AND RHETORIC OF OWNERSHIP* (1994); JOSEPH WILLIAM SINGER, *ENTITLEMENT: THE PARADOXES OF PROPERTY* (2000). I thank Joseph William Singer for pointing out these sources to me. See SINGER, *PROPERTY*, *supra* note 12, at 13 fn. 9.

Article – can help fill this void and specifically help solve the problem of a fragmented theory of property. While it cannot bring *all* of the various different strands of property theories together (e.g., a Confucian theory of property does not really address the liberty and civic republicanism theory), nevertheless, it can perhaps consolidate many of the most substantial theories into a coherent framework.

Before delving into the main body of this Article, it is important to make clear what this Article is not. There are two points to be made here. First, this Article is not a work on legal history or the history of legal thought – I am not principally concerned with laying out a history of Confucius’s or Mencius’s thought on property *per se*. As indicated earlier, this is a project in normative theory which seeks to identify, select, and explicate certain Confucian teachings and values which I believe are tenable to comprise a Confucian theory of property. That being said, this Article does pay attention to the historical context (especially as it pertains to property developments) in which Confucius, and especially Mencius, lived, to avoid an ahistorical reading or interpretation of the quoted primary sources. Second, this Article does not presume to suggest that it is presenting the Confucian theory of property – it only offers one possible viable Confucian theory of property based on my reading and interpretations of specific passages in the *Mencius* and the *Analects*.

As mentioned earlier where I set out the specifics of my thesis, this Article will proceed in four sections, each covering one theoretical base. Together, these four theoretical bases arguably comprise one unified, pluralist Confucian theory of property.

II. STRAND ONE: A CONFUCIAN THEORY OF PROPERTY WITH UTILITARIAN OVERTONES

Confucianism justifies property based on a theory of property with utilitarian overtones. Namely, Mencius argues that more people and society as a whole will be better off in a private property regime because such a society will be more stable, harmonious, and orderly. Mencius says:

This is the Way of the people: those who have their own permanent property (*hengchan* 恆產)²⁷ have a constant heart;

²⁷ It is important to note that while I follow Bryan W. Van Norden’s translation of the *Mencius* (see note 20 and accompanying text) in this Article, I disagree with his translation of *hengchan* as the general, broad concept of “constant livelihood”, and therefore, throughout this Article in the relevant passages from the *Mencius*, I have chosen to translate *hengchan* as “permanent property”, which is essentially interchangeable with the term “property” and can be understood generally as private property. Hence, I will translate this term as “permanent property” in the passages (to preserve fidelity to the original source), but in the Article I will otherwise simply refer to it as “property”. I should point out that there is scholarly debate over the proper translation and understanding of the term *hengchan* as it was used in the *Mencius*. For an overview of the debate, see Cui Jingmao (崔景茂), *Mengzi*

those who lack their own permanent property lack a constant heart. No one who fails to have a constant heart will avoid dissipation and evil. When they thereupon sink into crime, to go and punish them is to trap the people. When there are

Hengchanlun Benyi Bianzheng (孟子恒产论本意辩证) [*The Debate over the Real Meaning of Hengchan in the Mencius*], 33 DONG YUE TRIB. (东岳论丛) 42, 42-44 (2012). One group of scholars, including Van Norden, translate or understand *hengchan* as it appears in the *Mencius* in broader terms, namely as “constant livelihood” or its derivations. See, e.g., MENCIOUS: A NEW TRANSLATION ARRANGED AND ANNOTATED FOR THE GENERAL READER 35 (W.A.C.H. Dobson trans., Oxford U. Press 1963) (translated as “constant livelihood”); MENCIOUS 54 (D.C. Lau trans., Penguin Books 2003) (translated as “constant means of support”); THE WORKS OF MENCIOUS (James Legge trans., Clarendon, 1985), available at CHINESE TEXT PROJECT (Donald Sturgeon comp.), <http://ctext.org/mengzi/teng-wen-gong-i> (last visited Dec. 14, 2016) (translated as “certain livelihood”); A SOURCEBOOK IN CHINESE PHILOSOPHY 66 (Wing-Tsit Chan comp. & trans., Princeton U. Press, 1963) (translated as “secure livelihood”); Cui Jingmao, *supra* note 27, at 43 (arguing that *hengchan* should be understood as “livelihood” or “industry based on the land”); Li Yan (李埏) & Zhang Feng (章峰), *Mengzi de Jingtianshuo yu Hengchanlun Qianxi* (孟子的“井田说”与“恒产论”浅析) [*A Preliminary Analysis of Mencius’s Discourses on the Well-Field System and Hengchan*], 2 YUNNAN ACAD. RES. (云南学术探索) 20, 20-24 (1996) (interpreting *hengchan* as “livelihood”). However, another group of scholars, including leading Chinese scholars, argue that *hengchan* in the *Mencius* should be translated and/or understood as “permanent property” – i.e., “private property”. First, Hanyu Dacidian (汉语大词典) [*Comprehensive Chinese Word Dictionary*], recognized as the most authoritative Chinese dictionary and comparable to the *Oxford English Dictionary*, defines *hengchan* as referring to land, farms, buildings, or other immovable property, and also quotes this passage in the *Mencius* as support for this definition. See also HU JICHUANG, A CONCISE HISTORY OF CHINESE ECONOMIC THOUGHT 64 (1988) (translated as “permanent property”, which includes agricultural, industrial, and commercial properties, especially land); RUIPING FAN, RECONSTRUCTIONIST CONFUCIANISM: RETHINKING MORALITY AFTER THE WEST 65 fn. 32 (2010) (explaining why he has chosen to translate *hengchan* as “private property”); Ma Zhaoqi (马朝琦), *Mengzi Hengchanlun dui Jiejue Sannong Wenti de Qishi* (孟子“恒产论”对解决“三农”问题的启示) [*How Mencius’s Discourse on Hengchan Can Help Solve “The Three Rural Issues” Problem in China*], 40 J. ZHENGZHOU U. (PHIL. SOC. SCI. ED.) (郑州大学学报(哲学社会科学版)) 85, 85-87 (2007) (interpreting *hengchan* as “private property”); Zhang Lina (张丽娜), *Mengzi Sixiang de Chanquan Jingjixue Fenxi* (孟子思想的产权经济学分析) [*An Economic Analysis of Mencius’ Thoughts on Property*], 293 FOREIGN INVEST. CHINA (中国外资) 221, 221-22 (2013) (interpreting *hengchan* as “permanent property”); Liu Jiaming (刘甲明), *Chunqiu Zhanguo Shiqi Rujia de Chanquan Sixiang* (春秋战国时期儒家的产权思想) [*Confucian Views on Property Rights in the Spring & Autumn and Warring States Periods*], 32 J. LINYI NORMAL U. (临沂师范学院学报) 101, 101-03 (2010) (interpreting *hengchan* as long-term property, including land); MENCIOUS JINZHU JINYI (孟子今注今译) [*Mencius: A Modern Annotation and Translation into Modern Chinese*] 124 (Shi Ceigeng (史次耘) annot. & trans., Shangwu Book Company 1978) (interpreting *hengchan* as “permanent property”); MENGZI JINZHU (孟子今注) [*Mencius: A Modern Annotated Version*] 119 (Yang Bojun (杨伯峻) annot. and trans., Zhonghua Book Company 1988) (interpreting *hengchan* as “definite property and salary”). I believe this latter group of scholars is correct. Interpreting *hengchan* as “permanent property” also aligns with the context of the times in which Confucius and Mencius taught. During the later part of the Spring and Autumn Period (770-475 B.C.) – the time period in which Confucius taught – and the Warring States Period (475-221 B.C.) – the time period in which Mencius taught – the phenomenon of private ownership of land was developing throughout all Chinese states. See Zhang Chuanxi, *Growth of the Feudal Economy*, in THE HISTORY OF CHINESE CIVILIZATION, VOLUME 2: QIN, HAN, WEI, JIN, AND THE NORTHERN AND SOUTHERN DYNASTIES 139, 139 (Yuan Xingpei et al. eds., 2012).

benevolent people in positions of authority, how is it possible for them to trap the people?²⁸

Mencius's point above is clear. If people do not possess their own "permanent property" (which should be understood as private property²⁹), they will lack "constant hearts"— in other words, they become morally bankrupt. They will then proceed to engage in evil and immoral acts, sinking into crime. Without property, more and more people fall into moral turpitude. The logical extension of this is that society itself will become damaged, unstable, and disorderly, and everyone will be worse off in such a society. Therefore, social utility will be reduced considerably. It should be noted that Ruiping Fan has argued that Mencius did not advance a utilitarian argument for private property. Fan has posited that Mencius is not claiming in the passage above that property will maximize social utility or the social good, but is merely using the "disaster-avoidance reasoning" technique.³⁰ However, utilitarian theory in property law, as Jeremy Waldron notes, is basically the idea that people are better off in a private property regime than in other systems.³¹ Certainly, Mencius would agree that people are better off in a society characterized by order and stability, rather than disorder and crime, which would result if private property did not exist. Hence, he is setting forth here what we might label as a Confucian theory of property with utilitarian overtones.

Besides a justification of property based on social order, Mencius also argues that property can allow individuals to properly care for their families, which will also increase the overall social good, since families – the basic unit of Chinese society at the time – would be more materially well-off. According to Mencius:

... [A]n enlightened ruler must regulate the people's permanent property to ensure that it is sufficient, on the one hand, to serve their fathers and mothers, and on the other hand, to nurture their wives and children. In good years, they are always full. In years of famine, they escape death. Only then do they rush toward the good, and thus the people follow the ruler easily.³²

²⁸ Mencius 3A3.3. In this Article, unless otherwise noted, I use Bryan W. Van Norden's translation, as well as numbering of passages, of the Mencius. MENGZI: WITH SELECTIONS FROM TRADITIONAL COMMENTARIES 66 (Bryan W. Van Norden trans., 2008) [hereinafter referred to as MENGZI].

²⁹ See *supra* note 27 and accompanying text.

³⁰ FAN, *supra* note 27, at 66.

³¹ Waldron, *supra* note 3, at 17.

³² Mencius 1A7.21. MENGZI, *supra* note 28, at 14.

In the above passage, we can interpret Mencius as making two utilitarian-type arguments for property. First, property is justified because when people have it, they are better able to provide materially for their immediate family. This of course increases their family welfare (by making them “full”). Consequently, increased family welfare across society would lead to higher social welfare. Property also increases social utility by making sure people are prepared and protected against famines or other similar unforeseen disasters. Therefore, as Mencius points out, the government has a responsibility to ensure that the people have adequate property. However, the word “regulate” in the passage above also imposes a responsibility on the government to ensure that individuals do not have limitless property rights or amass property without limit – it suggests that the state must step in when necessary to “regulate” property when there is harm to society. Second, property is justified because people will “follow the ruler easily”. Obviously, we could argue that this does not increase social utility, especially if we take a liberal perspective; some might argue that what Mencius means here is that the people could be easily manipulated and controlled by the state. But I do not believe this interpretation is accurate. Mencius’s key point here seems to be that allowing for private property rights will lead to greater order in society and a positive relationship between the governed and the government. Property makes this relationship possible and better, and hence, will lead to a situation where everyone – including the government – is better off.

In the above examples, Mencius seems to be referring to property on a more general level. But he also specifically discusses the importance of people owning real property to provide for and maintain their material welfare and utility. For example, he posits:

If each household with a five-acre plot of land is planted with mulberry trees to raise silkworms, fifty-year olds can wear silk. If the care of chickens, pigs, dogs, and sows does not miss its season, seventy-year-olds can eat meat. If one [the government] does not steal the labor during the farming seasons of each hundred-acre field, a clan with many mouths can go without hunger.³³

Here, Mencius assumes already the notion that people must have their own land; only then will they be able to rear livestock and plant mulberry trees to provide for their family members, from young to old. In other words, land ownership is justified as it is key to maximizing social welfare for various age groups in society.

³³ Mencius 1A3.4. MENGZI, *supra* note 28, at 4-5.

Mencius also discussed the importance of real property ownership in his idealized land ownership model, the well-field system (*jingtianzhi* 井田制). Mencius argued that a square league of land should be divided into a pattern that looks like the Chinese character for well (*jing* 井) – i.e., a total of 9 separate fields. The well fields would be 900 acres, and in the middle would be the public field, a form of common property. However, eight families would each have their own private land – i.e., the other remaining 8 fields. They would ideally first farm the public field (which would presumably go to the entire state) before tending to their own private land. The public well would also build camaraderie and affection among the families.³⁴ While scholars still debate today whether the well-field system actually existed in Chinese history,³⁵ we can see that Mencius emphasized the importance of privately owned land in increasing social utility – he did not simply suggest that all fields should be publicly owned. Rather, Mencius’s point appears to be that, for the public field to be truly successful (and thereby benefit all members of society), families must also be placated with their own private land.

At this point, some might object to my interpretation of these passages regarding land ownership from the Mencius, claiming that all land was simply owned by the state and that there was no concept of private ownership during Mencius’s time. This, however, is false. Mencius lived during the Warring States period (ca. 471-221 B.C.), during which there was a shift from state to private ownership of land in all of the various Chinese states; there is ample historical evidence of transfer of lands and land transactions.³⁶ Indeed, even by Confucius’s time (the middle of the Spring and Autumn Period, 770-475 B.C.), private land ownership became increasingly common, and by Mencius’s time, land could be bought and sold freely like any other commodity.³⁷

A final point should be made in this section – as Jeremy Waldron notes, any utilitarian theory of property (and I would add, any theory of property with utilitarian overtones) must at least address the fact

³⁴ Mencius 3A13-20. MENGZI, *supra* note 28, at 67.

³⁵ HU, *supra* note 27, at 71. For further discussion of the scholarly debate over the existence of the well-field system in Chinese history, see Zhang Chuanxi, *Shang and Zhou: The Patriarchal Clan System and Related Institutions*, in THE HISTORY OF CHINESE CIVILIZATION VOL. 1: EARLIEST TIMES – 221 B.C.E. 205, 220-24 (Yuan Xingpei et al. eds., 2012).

³⁶ For a historical overview and examples of land transfers during this period, see Zhang Chuanxi, *Political and Social Development and Transformation during the Spring and Autumn and Warring States Periods*, in THE HISTORY OF CHINESE CIVILIZATION VOL. 1: EARLIEST TIMES – 221 B.C.E. 236, 257-260 (Yuan Xingpei et al. eds., 2012). See also CHO-YUN HSU, ANCIENT CHINA IN TRANSITION: AN ANALYSIS OF SOCIAL MOBILITY, 722-222 B.C. 110-116 (1965).

³⁷ Zhang Chuanxi, *Introduction to Volume II*, in THE HISTORY OF CHINESE CIVILIZATION VOL. 2: QIN, HAN, WEI JIN, AND THE NORTHERN AND SOUTHERN DYNASTIES 14, 14-41 (Yuan Xingpei et al. eds., 2012).

that not everyone may be better off in a private property ownership regime.³⁸ Aggressive utilitarian theorists may simply assert that the advantages enjoyed by those who have private property outweigh the disadvantages experienced by the have-nots.³⁹ Mencius and Confucius were both aware of the problem of uneven distribution of wealth. Mencius adopted a rather naturalist response to this problem, arguing in essence that in real life, there will always be winners and losers, and this is simply natural. To fail to recognize this or to try and change this, Mencius warned, would lead to disaster, thereby also hurting overall social utility:

Things are inherently unequal. One thing is twice or five times more than another, another ten or a hundred times more, another a thousand or ten thousand times more. If you line them up and treat them as identical, this will bring chaos to the world. If a fine shoe and a shoddy shoe are the same price, will anyone make the former?⁴⁰

As we have seen, a Confucian theory of property justifies property on what we might label as utilitarian terms. At the same time, Mencius (as seen in the passages above) does not solely fixate on the utilitarian value of property. He also simultaneously considers property key in the preservation and development of human morality, which he weaves rather seamlessly into the utilitarian justificatory framework. This is the subject of the next section.

III. STRAND TWO: A CONFUCIAN VERSION OF A “PERSONHOOD” AND “PERSONALITY & HUMAN FLOURISHING” MORAL THEORY OF PROPERTY

Simultaneously along with a justification with utilitarian overtones, a Confucian theory of property also justifies property based on what we might term a uniquely Confucian version of a “personhood-inspired” or a “personality and human flourishing-inspired” theory. Specifically, property is essential in allowing individuals to develop their moral character through self-cultivation and reach a point where they can possibly become a Confucian sage. Despite the oft-repeated stereotype of Confucianism as stressing group harmony over the individual, Confucianism is in fact very much concerned with the development of the individual and his/her “moral charisma or power.”⁴¹ Indeed, the Confucian answer to the question of how to live one’s life well is that the individual

³⁸ Waldron, *supra* note 3, at 18.

³⁹ Waldron, *supra* note 3, at 18-19.

⁴⁰ Mencius 3A4.18. MENGZI, *supra* note 28, at 73.

⁴¹ PHILIP J. IVANHOE, CONFUCIAN MORAL SELF-CULTIVATION 2 (Hackett Pub.) (2d ed. 2000).

must find happiness and help others in their everyday lives. The individual must also enjoy his/her time with family and friends and engage with ritual, tradition, and learning (largely for the sake of learning) to develop and practice the key Confucian virtues (such as filial piety, righteousness, and filial piety), all with the ultimate objective of making himself/herself a better, more moral person.⁴² This emphasis on personal moral cultivation is important, because it makes *private* property – not state or common property – all the more important, since the practice of filial piety, and indeed the entire project of Confucian self-cultivation, is inherently and highly personal and unique to each individual’s circumstances.

First, as a starting point, Mencius justifies property on a general level by arguing that without it, people cannot have adequate leisure time in order to develop themselves and their moral worth. Lamenting the poor welfare of people during his time, Mencius said:

Nowadays, the people’s permanent property is regulated so that it is neither sufficient to serve their fathers and mothers, and on the other hand, to nurture their wives and children. In good years, they are always bitter. In years of famine, they cannot escape death. How could they have leisure for cultivating ritual and righteousness?⁴³

In other words, without the safety of enough property, people will not have the time, physical strength, or cognitive ability to attend to their personal, moral development.

More specifically and interestingly, Mencius justifies property as essential in allowing individuals to fulfill, express, and/or practice specific, concrete Confucian virtues such as filial piety, ritual, and eventually, benevolence. It should be noted here that Ruiping Fan has argued that the Confucian virtue of benevolence “requires” not only a free market economic system, but also a “privately-owned economic system”.⁴⁴ Furthermore, Fan claims that only a privately owned economy can “embody the loving of humans”.⁴⁵ However, in my view, Fan does not adequately prove his premise and does not adequately refer to other passages in the *Mencius*– he anchors his argument on the earlier-discussed passage where Mencius said that property is necessary in order for people to have constant hearts and thereby avoid evil and disasters. Therefore, a private property institution is therefore justified because, according to Fan’s logic, benevolence requires the avoidance of disaster.⁴⁶ Another problem

⁴² BRYAN W. VAN NORDEN, INTRODUCTION TO CLASSICAL CHINESE PHILOSOPHY 38 (2011).

⁴³ Mencius 1A7.22. MENGZI, *supra* note 28, at 15.

⁴⁴ FAN, *supra* note 27, at 65.

⁴⁵ *Id.* at 65.

⁴⁶ *Id.* at 66-67.

with Fan's argument is that he focuses exclusively on the virtue of benevolence, without discussing the other major Confucian virtues, such as filial piety.

Indeed, without property, an individual cannot properly develop the virtue of filial piety or practice the proper rituals expressive of filial piety because he/she would be unable to provide for, and serve, his/her parents during, and equally important, after their death. For Mencius, this would be a moral disaster for the individual in question, as "serving one's parents is the root of all service"⁴⁷, and serving one's parents is the "greatest" form of service possible.⁴⁸ Similarly, for Confucius, filial piety lay at the root of the virtue of benevolence; he commented that "[a] gentleman works at the root. Once the root is secured, the Way unfolds. To respect parents and elders is the root of benevolence."⁴⁹ Thus, the importance of filial piety in the Confucian moral program cannot be overstated – for Confucians, filial piety comprised one of the first rungs on the ladder of moral development, for it taught an individual how to behave properly and morally within the family unit before "fac[ing] the world with its bewildering complexity".⁵⁰ Only after an individual learned how to act morally within the home, would he/she be prepared to extend his/her moral behavior to others outside the home.

In earlier passages, we saw Mencius justifying property because it allows individuals to properly serve and support their parents. Obviously, without property of his/her own, an individual has nothing to give to parents to support them in their lives. But equally important is the service of one's parents after their death through proper funeral and mourning rituals, which were of paramount importance through Chinese history. Indeed, the most original definition of the Confucian notion of *li* (ritual) was specifically religious and funeral rituals, such as sacrifices of food & wine, or other offerings to one's parents and ancestors. During Confucius's and Mencius's time, elaborate rules developed for proper funeral rituals and mourning practices for one's parents – for example, there were elaborate ritual rules pertaining to inner and outer coffins, special funeral garments, and goods to be buried with the corpse.⁵¹ While it is true that Confucianism stressed the appropriate, sincere feelings one should have when performing the funeral rituals for one's parents over simple, mere ostentatious display, (Confucius

⁴⁷ Mencius 4A19.2. MENGZI, *supra* note 28, at 98.

⁴⁸ Mencius 4A19.1. MENGZI, *supra* note 28, at 98.

⁴⁹ *Analects* 1.2. Unless otherwise noted, I rely on Simon Leys's translation of the *Analects*. THE ANALECTS OF CONFUCIUS 4 (Simon Leys trans., W.W. Norton 1997) [hereinafter referred to as ANALECTS]. I have modified Simon Leys's translation here; instead of "benevolence", he translates "*ren*" as "humanity".

⁵⁰ PAUL R. GOLDIN, CONFUCIANISM 34 (2011).

⁵¹ VAN NORDEN, *supra* note 42, at 27.

famously remarked in the *Analects* that to simply feed one's parents without the proper attitude of respect does not constitute filial piety but is rather no different than when you feed dogs and horses⁵²), without property, one cannot even begin to carry out the funeral rituals in the first place, since one lacks the personal tangible property (e.g., food, wine, coffins, etc.) necessary to perform the funeral rituals thereby unable to properly express filial piety.

In other words, property is essential to the practice of filial piety in arranging the proper ritual funeral for one's parent. In turn, filial piety itself lies at the root of moral self-cultivation and the path to the virtue of benevolence. Therefore, failure to carry out filial piety can lead to a failure to master benevolence and consequently, failure in moral self-cultivation. We can see the importance Confucianism placed on property in the performance of filial piety in Mencius's own expression of filial piety and practice of ritual in preparing and arranging his mother's funeral. There was a public controversy in Mencius's time over the fact that his mourning rituals for his mother's death were more lavish than for his father. Indeed, the controversy was so serious that a royal duke – planning on visiting Mencius for his advice on governance – was persuaded by one of his advisers not to go due to the lavishness Mencius bestowed on his mother's funeral.⁵³ One of Mencius's disciples tries to defend Mencius from accusations of such lavishness in the following way:

What?! What are you describing as lavish! Is it the fact that formerly [Mencius] was a noble, and later he was Chief Counselor, so for his father's ritual he used three *ding* tripods⁵⁴, but for his mother's ritual he used five *ding* tripods?⁵⁵

The royal duke then responded: “No. What I am speaking of is how fine the inner and outer coffins and funeral garments were.”⁵⁶ Mencius's disciple then gave a quick retort: “This is not what is called ‘lavish’. This is due to the difference between poor and wealthy.”⁵⁷ From this dialogue, we can see the importance of property, namely Mencius's personal property of the *ding* tripods which he used to properly bury his parents. Also, it is important to note that his disciple also did not criticize Mencius for being overly ostentatious or showy with the *ding* tripods, but rather suggested it was natural for Mencius to be generous, since he was not a poor

⁵² See *Analects* 2.7. ANALECTS, *supra* note 49, at 7.

⁵³ See Mencius 1B16.1. MENGZI, *supra* note 28, at 31.

⁵⁴ *Ding* tripods were ancient Chinese cauldrons, usually made of bronze, which were used for ritual offerings and funerals (for burying with the dead).

⁵⁵ Mencius 1B16.2. MENGZI, *supra* note 28, at 32.

⁵⁶ *Id.*

⁵⁷ *Id.*

man. Nor did Mencius's disciple suggest that only proper reverential attitude was enough and that the property (such as the *ding* tripods) played a superfluous, unnecessary role in the funeral rituals.

Indeed, Mencius himself addressed the funeral controversy, responding to one of his disciples who questioned him as to why the wood used for his mother's coffin was of "excessively high quality."⁵⁸ Mencius responded that everyone – from the ruler down to commoners – would also be similarly "excessive" in burying their parents if they had the means to do so.⁵⁹ Furthermore, he challenged his disciple with a rhetorical question, asking "does it not make the hearts of people happy to prevent the earth from touching the flesh of those who are transforming?"⁶⁰ Mencius later concludes by asserting that "I have heard that a gentleman will not, for the world, economize in regard to his parents."⁶¹ He makes clear how important it is to "prevent the earth from touching the flesh" of one's parents – i.e., the importance of performing the proper funeral rituals and having good quality coffins for one's parents' corpses. In other words, in order to "prevent the earth from touching the flesh", property – the coffins and the property necessary to buy or trade for the coffins – is essential. Moreover, by arguing that nobody would spare any expense with respect to their parents, Mencius is in fact implicitly assuming and recognizing that individuals have sufficient property themselves to employ or utilize.

Confucius also put forth the idea that carrying out rituals properly depended not only on one's attitude and sincerity, but also on having the right property, such as jade tablets and the correct attire. For example, the *Analects* relates the following description of Confucius:

When holding the jade tablet, he bowed as if bending under its weight. He placed his upper hand as for a salute, and his lower hand as for an offering. His expression reflected awe, he walked in short steps following a narrow path. In the ritual presentation of gifts, his expression was debonair.⁶²

The above passage highlights the importance of Confucius's notion that bringing the correct attitude to a ritual is of extreme importance – indeed, Confucius previously said about himself that: "If I do not sacrifice with my whole heart, I might as well not sacrifice."⁶³ But it is personal property – e.g., the jade tablet and the gifts – that make the expression of sincere attitude possible. It should

⁵⁸ Mencius 2B7.3. MENGZI, *supra* note 28, at 55.

⁵⁹ Mencius 2B7.3. MENGZI, *supra* note 28, at 55.

⁶⁰ Mencius 2B7.4-5. MENGZI, *supra* note 28, at 55-56.

⁶¹ Mencius 2B7.5. MENGZI, *supra* note 28, at 56.

⁶² *Analects* 10.5. ANALECTS, *supra* note 49, at 45.

⁶³ *Analects* 3.12. ANALECTS, *supra* note 49, at 12.

be noted that Confucius in another passage complains that “they speak of rites here, and the rites there – as if ritual merely meant offerings of jade and silk!”⁶⁴ However, Confucius is not denying the importance of property in ritual, but just re-emphasizing the importance of bring the right attitude to ritual. In other passage, we can see the importance of personal property in Confucius’s detailed instructions on how a gentleman – that is, a virtuous person – should dress according to ritual:

A gentleman does not wear purple or mauve lapels; red and violet should not be used for daily wear at home. In the heat of summer, he wears light linen, fine or coarse, but never goes out without putting on a gown. With a black robe, he wears lambskin; with a white robe, deerskin, with a yellow robe, fox fur. His indoor fur robe is long, with a shorter right sleeve. His nightgown is of knee length. Thick furs of fox and badger are to be used inside the house. Except when in mourning, he wears all his girdle ornaments. Apart from his ceremonial robe, which is of one piece, all his clothes are cut and sewn. At funerals, lambskins and black caps should not be worn.⁶⁵

Confucius is not some sort of legalist fashion policeman; rather, his point is that wearing the right clothes at the right settings is a ritual in and of itself as it allows us to express proper emotions, feelings, and moral conduct. But again, we see how essential personal property – here, a variety of clothes in different fabrics and colors – is to carrying out ritual correctly.

To summarize this section, we can see that a Confucian theory of property also incorporates a moral theory into the utilitarian strand discussed earlier in the Article. Namely, a Confucian theory of property justifies property as essential to allowing an individual to develop as a moral, virtuous person by giving him the ability and tools needed to perform rituals, express filial piety, and ultimately, achieve the Confucian cardinal virtue of benevolence.

IV. STRAND THREE: A CONFUCIAN THEORY OF PROPERTY BASED ON ECONOMIC EFFICIENCY

Thus far, this Article has attempted to show how a Confucian theory of property integrates both utilitarian-toned and personhood/human flourishing-toned theories of property seamlessly. In addition to these two strands, a Confucian theory of property is

⁶⁴ Analects 17.11. ANALECTS, *supra* note 49, at 87.

⁶⁵ Analects 10.6. ANALECTS, *supra* note 49, at 45.

also justified in economic efficiency, or what we might call “law and economics” terms. Specifically, Confucian property theory also justifies private property as key to a smooth functioning of a trade-based economy as well as ensuring productive, efficient division of labor.

As a starting point, it is important to defend that such a theoretical base is tenable because neither Confucius nor Mencius was opposed to wealth or its accumulation. Many scholars wrongly believed that Confucius, for example, disapproved of material wealth, and by extension, economic activities.⁶⁶ However, neither Confucius nor Mencius was against wealth – rather, they argued that one must act ethically in the pursuit of wealth.⁶⁷ In other words, one should not compromise his/her moral principles or contravene the virtue of righteousness in an effort to seek more profit. Indeed, we have to remember that neither Confucius nor Mencius was poor – Confucius was himself a member of the educated, lower aristocracy, and although we do not know much about Mencius’s life, it is highly likely that he owned some patrimony after his father’s early death, and that he also served for a period of time as a high minister in the state of Qi, which would have afforded him relative material comfort.⁶⁸ As a textual example which shows that Confucius did not lambast wealth and economic activities, the *Analects* records a dialogue between Zigong, one of Confucius’s disciples, and Confucius:

Zigong said: ‘Poor without servility; rich without arrogance.’ How is that? The Master [Confucius] said: Not bad, but better still, ‘poor yet cheerful; rich yet considerate’.⁶⁹

Zigong was a businessman, and according to Neo-Confucian scholar Zhu Xi (1130-1200), Confucius intended to acknowledge what Zigong had already achieved with his wealth, urging him to behave considerably and ethically. Confucius did not condemn Zigong’s wealth or urge him to give it all up.⁷⁰ Even more persuasive, Confucius himself admitted he would be willing to engage in economic activities – analogizing his sagely talent and knowledge to a piece of jade, Confucius explained to his disciples if the right time and offer came from a ruler willing to employ him, he would gladly sell his services:

⁶⁶ HU, *supra* note 27, at 45.

⁶⁷ *Id.* at 44.

⁶⁸ MENGZI, *supra* note 28, at xxiv.

⁶⁹ *Analects* 1.15. *ANALECTS*, *supra* note 49, at 5.

⁷⁰ CONFUCIUS, *ANALECTS WITH SELECTIONS FROM TRADITIONAL COMMENTARIES* 7 (Edward Slingerland trans., Hackett, 2003).

Zigong said: “If you had a precious piece of jade, would you hide it safely in a box, or would you try to sell it for a good price?” The Master [Confucius] said: “I would sell it! I would sell it! All I am waiting for is the right offer.”⁷¹

In the pursuit of economic activities, Mencius stressed the importance of a trade-based economy, and an efficient division of labor, all of which are made possible based on property and also the alienability of property. Mencius tells a story of Xu Xing, a man who went to travel to the state of Teng to become a subject of the ruler there. Chen Xiang, a Confucian student, followed Xu Xing as well to Teng. Mencius eventually has a discussion with Chen about Xu Xing. Specifically, Mencius asks if Xu Xing “weaves his silk cap” himself, and Chen replies that Xu Xing does not weave his silk cap himself, but rather exchanges his millet for it. Chen further relates that Xu Xing does not make the silk cap himself because that would interfere with his own farming activities. Mencius continues with this line of questioning, asking if Xu Xing casts himself the kettles, pots, and iron plow which he uses. Chen responds, as with last time, that Xu Xing does not cast these but exchanges millet for them.⁷² Mencius then replied:

Exchanging millet for tools does not harm the potter or blacksmith. And when the blacksmith exchanges tools for millet, does this hurt the farmer? Why does Xu Xing not become a potter and blacksmith, and only get everything from his own household to use? Why does he exchange things in such confusion with the various artisans? Why does Xu Xing not avoid all this trouble?⁷³

Chen then replies that the “activities of the various artisans inherently cannot be done along with farming.”⁷⁴ Mencius then gives what he believes is the proper answer, grounded in the importance of efficient division of labor and trade – he argues that there is a natural division of labor in society. Some people labor with their “hearts” and other with their “strength”, just like there are those that govern and those that are governed.⁷⁵ If everyone only could use the products they make themselves, this would lead the whole world, in Mencius’s view, “to run around to the point of

⁷¹ Analects 9.13. ANALECTS, *supra* note 49, at 41.

⁷² Mencius 3A4.3-4. MENGZI, *supra* note 28, at 69-70.

⁷³ Mencius 3A4.5. MENGZI, *supra* note 28, at 70.

⁷⁴ *Id.*

⁷⁵ Mencius 3A4.6. MENGZI, *supra* note 28, at 70.

exhaustion.”⁷⁶ Mencius boldly concludes that this system is “righteousness common to the world.”⁷⁷

Thus, as we can see, Mencius believed that a free-trade system based on a division of labor was not only efficient, but also a moral one. More significantly, property and its alienability – such as Xu Xing’s millet and the blacksmith’s creations – facilitate and make such a system possible. Without property, there would be nothing to trade. By moralizing this entire process (praising this system as “righteousness common to the world”), Confucian views on property integrate moral justifications seamlessly into economic efficiency justifications – a free-trade system founded upon property is moral because it lets people save their energies and lead efficient, productive, and healthy lives (otherwise, they would be exhausted in making every good themselves). In other words, as with strands one and two, a Confucian economic efficiency justification of property also shares a common concern for the moral development and moral perfection of the individual.

V. CONCLUSION: BROADER, FAR-REACHING EFFECTS IN THE REAL WORLD OF A CONFUCIAN THEORY OF PROPERTY?

This Article has attempted to set forth a viable Confucian theory of property based on the writings of Confucius and Mencius, arguably the two most important figures in the Chinese tradition. First and foremost, this Article has hopefully shown that it is indeed *possible* to produce a Confucian theory of property – it is not philosophically correct to consider Confucianism as simply antithetical or incompatible to property and property rights. Second, a Confucian theory of property is integrative, holistic, inclusive, and comprehensive – it simultaneously justifies property on utilitarian overtones, Confucian virtue, and economic efficiency grounds, while grounding all of them in a concern for the moral worth of the individual. Therefore, in our search for a truly pluralist theory of property, the Confucian tradition may be a worthy resource to consider.

To conclude, it might be interesting to consider this question: what broader, normative impact might a Confucian theory of property have in the actual world today? With respect to modern Chinese rule of law reforms – particularly in the area of property rights – reformers who are seeking to enhance private property protection in China should also look to the Chinese Confucian tradition itself – along with Western liberal traditions – for justification and the very vocabulary of their reformist platforms and

⁷⁶ *Id.*

⁷⁷ *Id.*

agenda. By justifying and couching their rule of law advocacy in Chinese traditional terms, reformers may make their arguments more persuasive and palatable to the Chinese leadership. This is particularly significant in China today, as Xi Jinping's administration has been – at the very least in political rhetoric – holding up classical texts, including Confucian texts, from the Chinese tradition as models for governance and reform. Therefore, justificatory theories based on Confucianism may have especially powerful persuasive force at the present.

