

THE PEOPLE'S REPUBLIC OF CHINA AND THE UNITED STATES OF AMERICA CONSTITUTIONAL THEORY AND PRACTICE: DEVELOPING AN ORGANIC CONTRACT

Abstract

This paper discusses the instrumental social contract and the organic theories of political constitutions to develop what is called an organic contract theory. Chinese, especially Confucian, political philosophy provides an organic theory that is not based on a transcendental religious perspective, so it deployed to provide an alternative perspective on the natural, organic elements in human history, society and political order. The organic contract theory proposes that historically humans have always lived in some type of social and political arrangement, and those arrangements have been renegotiated in different instrumentalist, contractual, formats. The organic contract approach uses the gregarious character of people and our interrelatedness to develop what is called the existential parity to develop a stronger case for the equal consideration of the interest of others. This political form of parity is used to argue for the existential commitment that people must live and work together with a moral duty to be responsible for and have an obligation to show concern and provide care for the life and well-being of others. These ideas are used to develop the organic contract theory, which is used to dispel the problematic relationship between reason and culture. This research is offered to open new horizons for improving political constitutional theory.

Key words: social contract, Instrumentalism, organic political theory, human rights, equality, freedom, equal consideration of interests, existential parity, existential commitment, organic contract theory.

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I. Introduction

The instrumental and organic theories are distinguished for heuristic purposes — the separation rarely occurs in practice. Contractarians usually ground the social contract in an organic reason or natural right, and organic theorists will describe natural ties in terms of divine or natural compacts. I advance a comparative syncretic approach to political philosophy based on a synthesis of the Euro-American social contract theory and Confucian (Rujia 儒家) organic philosophy.

I argue that these philosophies perpetuate distinctive social and political values exhibited in the respective theories of human nature and human rights, or the lack of human rights, that serve as the foundations of the political constitutions of the People's Republic of China and the United States of America. The role of historical growth and development that is crucial for an understanding of an organic contract position focuses on the way that social contracts naturally development and restructure or create new forms of social, economic and political interaction and

institutions. It will prove advantageous to draw upon the Confucian organismic approach, rather than Euro-American organic theories, because the Confucian tradition was not biased toward transcendental monotheistic or absolutistic ideas¹. Out of the variance and diversity of Euro-American and Chinese philosophy, I distill a refreshing blend in what I call the “existential commitment”. I show that a new theoretical justification for political constitutions, the “organic contract”, can be developed out of these two traditions.

Liberal democratic theory features individual realization as an end and social relations as a means to that end; collectivism emphasizes the priority of social realization over individual attainment. The traditional (pre-Qin, before 221 B.C.E.) Confucian, that is, Confucius (Kongzi 孔子), Mencius (Mengzi 孟子), Xunzi (荀子), model of human nature maintains that personal and political realizations are coextensive. A person’s accomplishment in self-cultivation attunes the tone and rhythm for the achievement of social harmony, while society contributes to people’s personal growth. Speaking generally of state Confucianism, it is especially the ruler’s self-cultivation that not only orchestrates social order, but also the ruler’s personal attainment in ritual action that harmonizes society and the cosmos. We must keep in mind that the consequence of the ruler’s position is partly due to the fact that the ruler reflects and represents the concerns of the community.

In most political thought, including Confucianism an analogy is drawn between cultivating one’s character and the appropriate nature of the state, especially the fulfillment of life and political administration. For the organismic elements in Confucianism, the means of promoting life permeate the world, and so personal

attainment, in general, and the ruler’s self-cultivation, in particular, are assisted by social, especially political, institutions. The fulfillment of life occurs within the natural environment and simultaneously enhances those environs, promoting further cultivation. The consummate exemplar of humanity, embodied in the ruler, is the person who holds that pivotal position between the heavens above, and the masses below. The ruler is supposed to integrate with the environs and set a model for the people to follow, and the ruler should comply with the opinions and hearts of the masses, creating an atmosphere that complements nature. For Confucian thought, an individual achieves personhood (*ren zhe* 人者) through the creative performance of ritual action (*li* 禮), and other modes of self-cultivation such as study (*xue* 學), and virtuous action (*de* 德). The ruler as consummate model of humanity is an organically rooted attainment, not a given. This attainment is not an indivisible personal realization, but a creative act of integration which is conducive to the fulfillment of life in others. I suggest a hypothetical thought experiment namely that we entertain the possibility that these traditional Confucian values regarding the ruler be transferred to the democratic citizen as law maker, or citizen-ruler — that the contemporary social political arrangement would be enhanced if the citizen-ruler behaved like a Confucian “prince of virtue” (*junzi* 君子, usually translated as “gentleman”).

Conservative, and liberal democratic political theories hold a different conception of persons from that of the Confucian. There is a tendency in contemporary political theory to emphasize individualism, freedom, equality, and independence. Immanuel Kant set the groundwork for much of contemporary political theory. Although Kant usually refers to rights as civil rights created under the social contract, he does allow for one innate right, namely, freedom, which contains innate equality, and independence — that is to be one’s own

¹ David L. Hall and Roger T. Ames explicate the unique character of Chinese philosophy in contrast to Euro-American philosophy. See, *Anticipating China Thinking Through the Narratives of Chinese and Western Culture*, (Albany: State University of New York Press, 1995).

master (*sui juris*) and to be irreproachable (*justi*) [1. — P. 43–44]. Actually the classic contractarians (Hooker, Hobbes, Locke, Rousseau) give the inalienable rights of freedom, equality, and independence to pre-contractual individuals.

When Kant and others refer to “individual”, or “person” the reader considers such notions as rationality, autonomy, freedom, inscrutability, and so on. When the term “person” (*ren* 人) occurs in the Chinese context, the reader should deliberate on such alternative images as parity, integration, human exemplar, and creative achievement through self-cultivation, especially through the performance of ritual action¹. Many Euro-American conceptions of “equality”, especially mathematical equality or identity theory, accept a static, non-temporal, and substantialistic approach. Chinese political theory did not develop around the concept of “equality”, but rather one of “parity”. “Parity” is based on a dynamic understanding of an interactive articulation of social context and history. Philosophy, especially comparative philosophy, requires not only a comparison and contrast of theories, but also a critical reformulation such that new ideas and theories are put forward in the pursuit of wisdom or justice². Synthesizing Euro-American and Chinese theories, I develop a dynamic conception of human nature to ground political constitutions. This comparative philosophical understanding of human nature resonates with a Feminist, “care ethic”, critique of abstract impersonal duty ethics by advancing a concrete Confucian person-to-person kindness³.

¹ In the Confucian tradition, the importance of ritual-action (*li* 禮) cannot be overstated. It not only plays a pivotal role in the *Analects*, *Mencius*, and *Xunzi*, but also forms the subject of one of the five classics, the *Book of Rites* or *Liji* (禮記).

² Eliot Deutsch employs such a creative constructivist approach in *Creative Being the Crafting of Person and World*, (Honolulu: University of Hawaii Press, 1992).

³ One of the most powerful Feminist criticisms of deontological ethics is given by Sarah Lucia Hoagland, *Lesbian Ethics*, (Palo Alto: Institute of Lesbian Studies, 1988).

What is needed in political theory and practice is a worldview in which self-interest and other-interest are mutually created and coextensive. Blending the organic elements of Chinese, Confucian and Taoist, philosophy with Euro-American, Kantian and Rawlsian, considerations, one can distill such a worldview. In the Confucian world, each and every person counts, no one is expendable⁴. In the Taoist world, each and every thing contributes to the natural harmony⁵. From these worldviews where the particular creates the context, I develop the concept of “existential parity” where each and every thing is on a par or ratio balance with every other, and parity is a temporal historical concept. Particulars as different as they are, because of their historical interaction with each other, ameliorate those differences, and simultaneously enhance those differences in a dynamic harmony. Parity does not mean identical sameness — it means that each particular contributes its uniqueness, and the particulars are not equal. Parity is not an equal opportunity; some individuals will naturally take advantage of opportunities more skillfully than others, and they should be the leaders. Parity provides the existential perspective from which equal consideration of interests could be reconceived and defended.

Ontologically parity is the importance of each unique foci contributing to the field of interrelated processes in nature. Each contribution is significant, but each

⁴ Confucian contextualism is based on graded love such that not every human form will be counted among the persons. In the Confucian texts, it is clear that the tribal groups do not count as much as the Chinese, that the masses do not count as much as the nobles.

⁵ In the *Zhuangzi* chapter two, this notion of comprehensive parity is presented by Zi Qi 子綦 in describing the piping of nature as: “Blowing on the myriad things in a different way, so that each can be itself — all take what they want for themselves, . . .”. This passage emphasizes the difference, the unique particularity and participation of each and every member. *A Concordance to Chuang Tzu*, Harvard-Yenching Index Series No. 20, (Cambridge: Harvard University Press, 1956), 3/2/9.

is different. Sociologically speaking, a conception of parity proposes that each citizen must be viewed with equal significance and rights under the law. John C.H. Wu notes that in practice traditional Chinese law did recognize a rule of law.

From the Hans to the Manchus, there were some mediocre and weak monarchs, but there have been no despots and tyrants who placed themselves above the law. In this it can be truthfully asserted, that under the old system all persons were equal before the law [2. — P. 396].

The truth here is limited to legal theory. A hierarchical social system precludes mathematical equality. And a social system based on parity also recognizes that certain people because of their social size, position, and the quality of their performance require more social privileges, and thereby, have greater social responsibility. For example, the officials of a state require greater access to the means of fulfilling life because they presumably can deliver it to the masses who need it most.

This idea of existential parity develops a moral corollary — what I call the **existential commitment**. Existential commitment is a moral attitude of responsibility and obligation to show concern and provide care for the life and well-being of others¹. The ontological and cosmological understanding of the interrelatedness of particulars persuades a moral agent to acknowledge one's moral obligation to promote the interests of others. From the perspective of existential parity, the value of others is understood to be of significance for oneself. The existential commitment is informed by the "respect for persons" notion developed from Kant through Ronald Dworkin; one of the most basic forms of social responsibility is to respect others. The existential commitment is a stronger position. It is not merely a social convention, agreement, or a theo-

retical starting point; it is a constitutional characteristic of existing in a world of interrelationships. The mutually defining self/other relation can be understood in terms of the part/whole or individual/society relationship.

Society from the Confucian organic perspective is a dynamic unity in the diversity of the various social roles in their harmonious interconnectedness, or to paraphrase Rawls, society is a dynamic union of diverse social unions [3. — P. 527]. Confucius was faced with the practical problem of adjusting social disorder which was running rampant, and so he was not concerned with abstract social theory. He sought an applicable direct person-to-person approach which could be practiced and instituted openly, through education. For Confucianism, society is defined in terms of the quality of the self-cultivated person's performance of social roles².

I further argue that one can avoid the problem of perfectionism by adopting a worldview which does not assert the priority of the whole over the sum of the parts by ratifying a perspective of interrelated foci and giving an existential priority to the interdependent foci³. For example,

² For example, the manner in which people behave when they interact with their neighbors defines the neighborhood they live in. A criminal creates the criminal element in society: society, the interaction of roles, is criminal wherever he performs. This is not to say that the responsibility of the crime rest solely upon the criminal himself — because of the interdependency of roles, the non-criminal elements in society that allow for an unjust distribution of wealth and other social-economic factors are also responsible for the crime.

³ Although I agree with Rawls that perfectionism is distasteful and to be argued against in a just society, nevertheless I disagree with his reading of F.W. Nietzsche which leads Rawls to discredit him as a perfectionist, see *A Theory of Justice*, pp. 25, & 325. I agree that Aristotle and others hold a doctrine of perfectionism; however, if it is true that Nietzsche's point of view is basically "existential" — particular truths precede universal truths (which are lies according to Nietzsche), — then Nietzsche cannot be a perfectionist. Though Nietzsche might have held some opinions in his personal life which sound elitist or perfectionistic, I do not read such ideas in his

¹ My debt to J.P. Sartre's idea of the intersubjectivity of human freedom should be obvious. See, "Existentialism is a Humanism", in *Existentialism from Dostoevsky to Sartre*, Walter Kaufmann (ed), (New York: New American Library, 1975).

the Confucian *junzi* (君子 prince of virtue, consummate or authoritative person) is not a type of perfectionistic personality because the *junzi* is not a teleological product. The *junzi*, like any other holder of a social position or role, is created by his or her interrelationships with others; there is no pre-given model of the consummate person in Confucianism. The Confucian consummate person is not the perfection of an ideal, but the completion or achievement of one's expression of human kindness (*ren* 仁) and rightness (*yi* 義) in one's interpersonal relationships¹. These human interactions never occur between abstract bearers of rights and liberties, abstract individuals, rather it is the interaction of persons, people fulfilling certain social and political roles, such as family member, citizen, friend, and so on. These roles and interactions are always changing in a temporal context.

Generally, much of Western contemporary political theory begins with the assumption that the individual is discrete, atomic, and indivisible. The self-governing individual is a rights bearer, predisposed as a rational self-interested (or disinterested) agent endowed with freedom, equality and independence to govern one's own life both personally, in private, and as public legislator. Although most of the Chinese conceptions of the person are

biased by a species of feudal economy and male dominated social institutions which tend to devalue the commoner's political position and civil privileges (note the concept of "rights" is absent in classical Chinese philosophy), nevertheless two points must be kept in mind: first, that the notion of "parity" does not allow one, at least in theory, to discredit the significance of the unique particular or the other; and second, many Chinese political thinkers are well aware that the commoners as a whole are the seat of political power. As the *Lüshi chunqiu's* (吕氏春秋 ca. 240 B.C.E.) "Venerating Impartiality" (*Guigong* 贵公) chapter is noted for stating: "The empire is not one man's possession but belongs to the people of the empire". [4. — P. 76]. Thus, the ancient Chinese perspective need not entirely differ from the modern worldview.

Elements of both conservative and liberal political theory focus on the "atomic individual" who is discrete, independent, and self-contained in reason and Utilitarian self-interest or Kantian disinterest which stands in marked contrast to the Confucian account of the person as a social moral achievement, where "person" is interpreted in social and environmental terms. The general conception of the person in Confucian, Mohist, and Daoist thought is that one must practice different forms of self-cultivation to attain a degree of authoritativeness or genuineness. One's person-making is not a natural given, rather one must work at achieving and maintaining it through self-cultivation. This traditional Chinese conception of person is not that of an "atomic individual", but one of achieving a level of person-making in which the person is organismically interrelated to all other particulars. To be engaged in the process of person-making is to place oneself at the pivotal point of morality both socially and environmentally. The existential commitment finds a balance and harmony between these two diverse theories to syncretize the uniqueness of the abstract individual and the homo-

philosophy. For example, consider the passage Rawls cites to show Nietzsche's apparent perfectionism: "Mankind must work continually to produce individual great human beings . . . how can your life, the individual life, retain the highest value, the deepest significance? . . . Only by your living for the good of the rarest and most valuable specimens". I interpret this kind of passage to be a challenge to each one of us to manifest our creativity and dreams to our fullest. Because Nietzsche argued aggressively against Darwin's views, his use of "specimens" cannot mean individuals of a greater species; rather it should be read as the particular manifestation of the *Übermensch*, the existential attitude or choice to create through and beyond human life.

¹ The Confucian sage (*shengren* 聖人), like the Confucian dao, 道 way or tradition, is not something fixed and pre-established; rather they are negotiated, put into practice, or "traveled on" in one's particular interactions with others.

geneity of integrated persons to offer a new position which is both rationally and practically powerful, and harmoniously and symmetrically beautiful.

There is an emphasis on the rational aspect of human nature within the Euro-American philosophic traditions. This is especially true for Utilitarian and Kantian sociopolitical thought; whether humans are seen as self-interested pleasure maximizers, or as self-disinterested individuals bound to adhere to their duty in both cases humans are rational agents. In Kant's moral theory the rational agents follow universal principles of logic; the rational logical agent is the moral agent. In daily non-moral affairs, for Kant, practical, hypothetical, reasoning is employed. In Utilitarianism, by maximizing self-interested pleasures or goods, the agent is fulfilling its rational dispositions. Most Confucian and Daoist philosophers emphasizes a non-systematic aesthetic model of people achieving person-making through creative actions, especially ritual actions for the Confucians. This creative achievement occurs on both a personal level of creative appropriation of one's culture and environment, and an historical level of maintaining and renewing cultural tradition. The existential commitment advocates a complete and comprehensive theory of human nature which portrays humans as creatively rational.

The challenge both theoretically and practically is to synthesize with reason and aesthetic creative quality the Euro-American conception of the individual as "indivisible", and the Chinese understanding of the consummate model of person-making as one who is an integrated and interconnected "administrator" of cosmic, historical, and social order. The achieved person is in a sense extraordinary not just because she or he is self-contained and inscrutable, but also because such a person has embraced the social and environmental context in such a way that one is consciously and intentionally aware of one's interdependent and co-creative re-

lationships with social and environmental conditions. The existential commitment meets this challenge.

To extract the full importance of the Confucian worldview I suggest that we take seriously, at least as a thought experiment, the notion that with democracy the common person becomes king, and so we the people take the position of ruler, or law maker, acknowledging that our self-cultivation makes significant and meaningful contributions to the ambience and harmony of our society — where the person as citizen-ruler is an achievement of self-cultivation which has political significance. The achievement of citizenship assumes that the self-cultivating person attends to her or his existential commitment and behaves responsibly. There is always the threat, from the Euro-American perspective, that when people see themselves as discrete, equal, and independent actors that they will act solely out of self-interest, instead of disinterest, in such a manner that they harm others or the environment though without violating any legal code. In a society where people understand that human actions, enlightened or not, have sustained and broad impact, there would be a wide moral base in society at large in which one could secure the integrity of the individual person within political institutions. That is, where the majority of people are sensitive to the necessity of each particular contributing to social order, then, the minority interests — even the individual person's interests — will be guarded. Fairness and due process would be bolstered in a society where its citizens are oriented toward the achievement of person-making.

The citizen as law-maker, like the traditional Confucian ruler, or consummate model of person-making, holds the highest and most powerful position of authority and majesty in the state — it should be clear that such a person does not rule by coercion alone or even in the main. Although the citizen-ruler is a person of authority, one is not an authoritarian.

The citizen-ruler sets the example of self-cultivation and person-making, but does not dictate it. Such a person is the authoritative “author” of both social and political order, but is neither the strong arm or the big man. The citizen-ruler provides for the people but does not “possess” them or “steer” (*gubernare*) them. It is through the citizen-ruler’s achievement of self-cultivation that one is able to attract and employ adequate public servants — what the classical Chinese texts refer to as “the scholar-knights of the way” (*you dao zhi shi* 有道之士) — who will administer law and order for the people. The consummate person, or sage citizen-ruler, provides the authoritative model for others to emulate on the social level, and generates the atmosphere in which others may benefit from the bounty of the cosmic environment [5. — P. 180]¹.

Where the traditional Euro-American theories focus on the independent inscrutable individual as rights bearer, and the Confucian model focuses on developing an authoritative exemplar or a sage ruler, the syncretic holistic approach I am developing here seeks to integrate both perspectives. Like the ancient sage rulers, the contemporary citizen holds that pivotal position which influences social cultural and environmental conditions. The individual’s political rights need to be legally safeguarded by values such as independence and inscrutability, but on the

social moral level the person must take responsibility for her or his own achievement of person-making by maintaining awareness and the proper intentionality concerning both one’s interdependency, and one’s responsibility for environmental, and especially, social conditions. The sage citizen is able to maintain awareness of one’s pivotal position in co-creating self, others, and the world. Thus, it is not so much a question of a person’s inscrutability which counts on the social moral level. The sagacious citizen-rulers are the most suitable and scrutinize-able persons because their actions have far reaching and long lasting social and cosmic effects. This type of sage citizen-ruler is not independent and inscrutable, but rather is totally interdependent and must be open to being scrutinized and receiving remonstrance from others. Because the citizen-rulers are author of social, legal, and political order, and hold the crucial positions of responsibility, being open to being scrutinized, they stand as authoritative historical moral exemplars for the tradition. Because the citizen-rulers are scrutinize-able, they leave their mark through historical transformations either as a positive exemplar, a sage, or as a negative one, a criminal.

Freedom plays a pivotal role in the Judeo-Christian tradition, and Euro-American ethics and political philosophy. Philosophers and theologians, generally speaking, have devoted much attention to the question of human freedom. Since Augustine at least, the concept of free will has played a central role; and many moral philosophers, from Plato to Kant, have argued that people are predisposed to behave freely, at least, when they act morally. It is often presented as a God given, or innate natural right which grounds all moral and political actions. In traditional Chinese religio-philosophical literature the concept of “freedom” is not explicitly discussed. One can, however, extract the implicit position on freedom. In the traditional Chinese philosophies, a person’s “freedom” is directly correlated

¹ Hall and Ames depict the “authority” of authoring oneself and correlatively one’s context.

In authoring oneself, one also authors an ambience, an order, within which one finds one’s environmental resources for life and activity. One construes a world and thereby creates a cosmos of possibilities for self-actualization. In so doing there emerges a world potentially alien to others. No one, on these conditions, has a right to authority over others, so the problem that arises in the authoring of a world in the process of self-actualization is one of insuring insofar as possible that one’s creative actions do not have disruptive consequences. In accordance with the vision that one eschews power relations grounded in dualism in favor of creative relations grounded in polarity, the authoring of self and world includes the offering of self and world for the enjoyment of others.

with one's ability to act spontaneously and creatively. One attains freedom from a naive unreflective understanding of how one's social and environmental context conditions one's life to achieve a sustained awareness and intentional understanding that one's context is just as dependent on one's own life as one is dependent on the environment. One achieves this freedom through the recognition that one's spontaneous and creative actions generate an aesthetic moral context. For the Confucians, the ruler, as one engaged in person-making, achieves a deeper realization of freedom through one's more highly developed expression of self-cultivation and refinement in ritual action. The free person is one who can cultivate the sense organs, biological drives and desires to fulfill life in a spontaneous and creative fashion. Therefore, from the syncretic position of the existential commitment one should distinguish one's political and legal freedom which may be natural, innate or biological from one's moral and aesthetic freedom that is a human achievement gained through the quality of one's actions.

II. Constitutional Consequences

Euro-American essentialistic, universalistic conceptions of human nature, and inalienable human rights are clearly contained in the Virginia Bill of Rights, the Declaration of Independence, and the Constitution of the United States. The developmental and achievement orientation of ancient Chinese sociopolitical philosophy provides a marked contrast. Individually and socially humans are what they make of themselves. Elements of creative person-making from traditional Chinese philosophy blend nicely with Marxist notions of creative productivity. This kind of constructivist thinking emerges in the modern Chinese constitutions most markedly in regard to class rights. Andrew Nathan noted six points of commonality among the diversity of the twentieth century Chinese constitu-

tions: 1) rights are not derived from human dignity but political membership; 2) rights change over time; 3) rights are programmatic; 4) the government has the power to limit rights; 5) there is no check on the government's power; and 6) the constitutions do not provided for an effective exercise of popular sovereignty [6. — P. 121–122]. This last point is clearly stated in the *Constitution of the People's Republic of China*, adopted December 4, 1982, Article 51:

«Citizens of the People's Republic of China, in exercising their freedoms and rights, may not infringe upon the interests of the state, of society or of the collective, or upon the lawful freedoms and rights of other citizens» [7. — P. 36].

For the people not to have the right to oppose the state, for the state to have higher interest than the citizen, this is difficult for the Western contractarian to accept. It is another profound clash of values.

In the Chinese constitutional tradition, rights themselves are constructed and constituted within the sociopolitical context. Ronald Dworkin's constructivist approach to constitutional interpretations bears some resemblance to the constructivism in the Chinese constitutional tradition.

Dworkin argues that constructive interpretation adds something which is only coincidentally new, but in fact maintains the original intention, but Dworkin recognizes that history tests one's interpretation:

«He [the interpreter] also needs convictions about how far the justification he proposes at the interpretive stage must fit the standing features of the practice to count as an interpretation of it rather than the invention of something new. . . . Once again, there cannot be too great a disparity in different people's convictions about fit; but only history can teach us how much difference is too much» [8. — P. 67].

The power and beauty of Dworkin's theory is that it is a realistic theory or

one which seeks to explain the nature of ordinary, especially USA, constitutional politics.

It should be clear that the Western theory of human nature informs a very different understanding of human rights which grounds our constitution. The Chinese constitutions provide a more radical constructivism than Dworkin's approach. In part this is because during the Twentieth Century the Chinese had eleven constitutions or constitutional drafts [6. — P. 78]. Because Chinese culture and philosophy do not share the Western notion of a transcendent universal reason, the Chinese constitution has changed with the persons in political power. Traditionally political power, for the Chinese, radiates out of the ruler's person. One can read the layout of the Imperial Palace and the Forbidden City as the classical locus of Chinese political order — radial circles surrounding nested rectangles and squares [5. — PP. xxi-xxiii, 242, 246, 259]. So it is not too surprising that with the shift in political power in the twentieth century, new constitutions had to be written and promulgated from that center of authority. This provides a strong experiential and practical base for the Chinese constructivist approach. Traditional cultural values, such as the achievement of person-making, have enhanced this Chinese constructivism. Of course another reason for the relative stability of the USA constitution is due, in part, to the fact that there are some seven centuries of historical construction and development of social contracts underlying its formulation. Although there are American constructivist theories, and the actual practice of making amendments to the constitution and the dynamic interplay between the three divisions of power, nevertheless there has been little desire to rewrite the whole of the USA constitution.

Rawls and Confucius hold a "social position" or social role theory to justify both moral and political obligations. Rawls strengthens the social contract theory with his social role model. Rawls reconciles the *reasonableness* of free agents entering

the social contract with the historicity of mankind. Confucius is not only a representative of a version of the organismic theory, but also develops a social role model. Confucius' organismic stance can be employed to argue for a pluralistic society as a prerequisite for harmony (*he* 和) where harmony is a rhythmic unity in diversity.

Being naturally predisposed to live, and nurture our young in groups, there are some social positions or roles which are not earned nor entered into contractually or rationally. Some roles are defined at birth, and some of these birth-given roles — e.g. sex and family lineage, — and other biological or environmental factors seen as socially relevant — e.g. talents, natural grace and gifts, etc. — play an important part in one's future acquisition of roles. The Confucian organic perspective plants its social and political theory in the parent/child relationship which, through proper upbringing, develops the moral exemplar and political ruler. Rawls also notes the need for "moral exemplars". [3. — P. 471]. It is Rawls' and Confucius' respective social role theories, and Dworkin's and the Chinese constitutional constructivism which provide the ground for my "organic contract" theory.

Traditionally the organic and instrumentalist theories have been seen as different in kind. Advocates of the organic theory argue that humans are political by nature. Proponents of the instrumentalist position do not accept that humans are socially and politically oriented by nature, rather civil society is formed under a social contract. I develop a synthesis of the organic and instrumental theories, and argue for an "organic contract" to explicate a theory of social role ethic for citizens.

The nature/nurture or nature/culture problem can be cleared up by means of an organic contract theory which blends Western social contract theory with Chinese organismic thinking. An organic contract theory assists in clarifying some key issues, namely the ambiguous role of nature and custom in the instrumentalist

position, and the weak role of reason and human artifice in the organic theories¹.

Usually a political theory's hypothesis concerning the origin of political society predisposes the theoretical limits on the character and purpose of political order. That is a theoretical stance on the origin of society, such as divine creation (which strictly speaking is not a theory), organic development, or social contract, will place certain limitations on the character, nature, and justifications of political society and on political obligation and social ethics. For example, consider the divine creation position, because the physical and social world are created by God(s), then the purpose of that society is to serve, worship, and obey the will of God(s). Or because society is founded on a social contract, it should serve the needs of the contractors. Or because individuals develop naturally in society, they should serve the organic whole. Even if the strong implications of the theory of the origin influencing the application do not apply in non-social and political frameworks, it certainly applies in social and political philosophy. It seems that in social and

political theory, one's theoretical understanding of the nature and purpose of civil society is predetermined to some extent by the theoretician's hypothesis on the origin of society.

I develop an organic contract theory to ground social political theory in a comprehensive (social) scientific hypothesis, taking into account the historical and archaeological evidence which shows that human ancestors were living in social groups for the past four to six million years. The organic contract theory acknowledges the spectrum of archaeological, historical, and social science evidence concerning human life, especially in social political arrangements. The organic contract theory is based on both the natural organic origin of political society and the historical role of reason in fine tuning the constitutional apparatus of a political system. These two points are united in arguing for the organic natural basis of reason in culture. An organic contract position recognizes strong and weak points in conservative and liberal, and organic and instrumental theories. It attempts a synthesis by uniting the strong points and dissolving the weak ones.

An organic contract theory acknowledges the natural biological and environmental factors which make humans gregarious creatures. It holds that these biological and environmental factors coupled with the gregarious nature of humans leads to the *natural* development of culture — a repository of understanding and relating to the world and others in a sociopolitical manner — which is intimately part and parcel of language, both natural and artificial. Various combinations and interactions among culture language, and persons engender science, religion, philosophy, and art.

Confining the discussion to the social political dimensions, in the natural extended family loosely practicing exogamy, the small group or band is the first sociopolitical arrangement, and in a sense the small group is the fundamental arrangement

¹ The problem is that many Euro-American social and political theories and especially practices, for the past four hundred years, have been based on an instrumentalist or social contract theory that denies or ignores the natural organic basis of political society. This is a peculiar point in social contract theory because the contractarian is aware that no actual society was ever solely formed by a contract. Even the United States, which would be the most likely candidate, was not formed out of a pre-contractual state of nature, or some version of a Rawlsian hypothetical pre-historic or a-historic "original" position. It too had its cultural tradition, environmental factors, and predispositions that loosely conditioned the Constitution — in particular the early colonial townships and church charters established a tripartite division of powers. Although contemporary contractarians, like Rawls, have attempted to sidestep this problem of historical applicability by positing a hypothetical "original position" before the contract is made, nevertheless other problems concerning political obligation and morality arise because of their faulty starting point. See, A. John Simmons, *Moral Principles and Political Obligations*, (Princeton: Princeton University Press, 1981), pp. 101 ff, and 143 ff.

in any society regardless of its overall size — all large societies are composed of smaller social units or groups. The extended family system or band creates and maintains the context into which the individual is born and raised, and the person re-defines the group by participating in the social network. As the basic political unit grows in complexity and diversity through historical development, these participating persons find it necessary to redefine or to create new conceptions of themselves, their culture, and the world. That is to say, people deem it necessary, because of environmental, economic, social, and socio-biological conditions to restructure, construct, or create new social structures, arrangements, roles, institutions, and professions. These new structures generate renewed identities on all level, individual, social, governmental and cultural. For an organic contract position, social contracts are a natural development in restructuring or creating new forms of social interaction. The social contract grows organically as a natural human activity of reformulating and reinterpreting culture as a response to environmental, economic, social, and other factors. For example, the development of social contract theory in Europe and America can be seen as a reaction to social changes brought on by economic and scientific revolutions, and ideological and religious reformations. That is to say, without placing logical or historical priority on any one of these factors, that as people gained greater spiritual control in their lives, more scientific and technological insight into nature, and climbed the social economic classes, they also wanted more political control and freedom. In turn the contract position, as constitutionalism, creates the contemporary political order. We could, like Nietzsche and others, easily oversimplify the contract theory as a political application of the merchant's business contract—although there is truth in this irony, it is oversimplified. In addition to the business motivation, there

was a great deal of concern to eradicate any deeply rooted religious or otherwise biased ideology from politics, especially state persecution of certain religious groups, and the contract theory could guarantee that.

III. Conclusions

An organic contract theory, then, surmounts the oversight of “reason” in many traditional organic theories, and it clarifies the ambiguous role of “nature and culture” in the social contract theories. For the organic contract position, human life is basically natural, but humans have a strong tendency to manipulate their natural environment and capacities through culture. In a sense, culture itself is the organic contract, for to some extent culture is biologically and environmentally influenced, but to a large degree it can be contrived by human activity and reasoning. As far as we can tell at this time, only humans have fully developed cultures, but human cultures are unique and various. That is, one must be born human to fully participate in a culture, but simply being a genetic human does not guarantee one admittance to human culture and recognition as a person with political and civil rights¹. One's role as a person is achieved through participating in culture, and yet culture is not fixed and unchanging — by participating in culture, one alters and reshapes it. The organic contract theory attempts to account for all of the natural, cultural, and rational capacities of humans which play a role in creating new social arrangements. For the organic contract,

¹ Recall the examples of human children raised by non-human animals, and the great, if not impossible, task of reintroducing them into human society. The Tarzan myth is part of the Romantic ideal of the noble savage — that uncultured and untutored humans living alone as rugged individuals in the jungle can achieve true humanity. There is no anthropological evidence that this ideal is achievable. In fact, the evidence shows that without appropriate contact with others, a person will develop psycho-socio-pathologies, or at least anti-social behaviors.

humans qua humans have always lived in some social and political arrangement, and historically those arrangements have been renegotiated in different instrumentalist, contractual, formats.

The Chinese and American constitutional traditions could learn from each other. The PRC constitution is in need of a system of checks and balances; the people require a means to exercise rights of popular sovereignty. The Chinese constitutional tradition has in a sense inherited the exploitative and tyrannical elements of the traditional feudal monarchy. Ideally the ruler reflects the needs of the masses, but in actual practice the Chinese emperor acted upon Fajia (so-called Legalist) principles of power tyranny. The American constitutional tradition might be enriched by acknowledging that, at least, some rights and liberties are not inalienably given, but need to be achieved, and that some rights, especially rights controlling access to social goods, e.g. welfare rights, change over time.

In contrasting Chinese and Euro-American perspectives on human nature, I

developed a syncretic approach in the existential commitment, arguing that it dissolves problems associated with many traditional theories, and produces a realistic understanding of “equality”, “freedom”, and “person”. The traditional theories have influenced their respective constitutional traditions, especially the concept of human rights or the lack thereof. I contend that the cultural and philosophical understanding of human nature impacts contemporary constitutions. I examined some of the basic shortcomings of traditional organic, and social contract theory in accounting for the origin and nature of civil society to argue that a synthesis of the two positions can provide a more comprehensive and precise hypothesis. I argued on behalf of some of the advantages of an “organic contract” theory, and showed how it dispels some philosophical problems, particularly the relationship between reason and culture, in social and political theory. Hopefully, this work opens up new ways to sustain our respective projects of intercultural understanding, and reforming our political constitutions.

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