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# Confucian Family Ideal and Same-Sex Marriage: A Feminist Confucian Perspective

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## Abstract

This article engages the views of PRC Confucian scholars who responded to the United States Supreme Court Justice Anthony Kennedy's citing of Confucius in his majority opinion on same-sex marriage in 2015. It questions their separation of tolerance for homosexuality from legalization of same-sex marriage and argue that tolerance is not enough. The arguments in the mainland Confucian discourse about same-sex marriage highlights the historical and persistent entanglement of Confucianism with patriarchy. Instead of reviving traditional patriarchal society, further entrenching and increasing gender inequality, contemporary Confucianism could shape its own unique modern society that aspires to (and hopefully one day achieving) gender equality together with sexual inclusivity by deconstructing the patriarchal Confucian family and reconstructing a different Confucian family ideal. Accepting same-sex marriage would lend weight to the latter, and there are Confucian reasons for legalizing same-sex marriage and recognizing its ethical value.

## Introduction

Despite significant breakthroughs in Taiwan's legalizing of same-sex marriage in 2019 and Vietnam removing the ban on same-sex marriage in its Marriage and Family Law in 2014, there remains a significant gap between East Asia and Europe and North America in the acceptance of homosexuality (UNDP 2016, Xie and Peng 2018, 1758, Wang et al. 2020). Analyzing the fifth wave (2005–07) World Values Survey data on attitudes to homosexuality, Amy Adamczyk and Alice Cheng conclude that, “the cultural distinction is between Confucian and non-Confucian societies” (Adamczyk and Cheng 2015, 287; see also Lin et al. 2016, 161; Jackson et al. 2018, 490).

Several PRC Confucians were outraged by Justice Anthony Kennedy's 2015 citing of Confucius in his majority opinion affirming that the Fourteenth Amendment of the United States Constitution requires every state to allow marriage between same-sex couples. A popular online newspaper reports “Confucian leader Jiang Qing discusses same-sex marriage: human civilization's unprecedented destructive challenge” (Jiang 2015a).

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Another response on the Confucian Network, an influential online platform, carries the title “Homosexuality is a deadly tumour that results from the modern view of marriage” (Zeng 2015)—its author also accuses Kennedy of distorting Confucius’s views (Zeng 2015). As Tongdong Bai has pointed out, many Chinese misunderstood Kennedy as claiming that Confucius approved of same-sex marriage, but the intention of the citation was to show that marriage has been an important human institution linking personal happiness to good government in different civilizations for a long time, and Kennedy explicitly acknowledged that marriage was taken for granted to be heterosexual in Confucius’s context (Bai 2021, 134–36).

Some Confucians support legalization of same-sex marriage; their reasons differ, ranging from liberal defense of equal rights (Fang 2018) to Confucian values shared by others who reject same-sex marriage (Bai 2021). I agree with many of Bai’s arguments endorsing same-sex marriage in response to the views of Zhang Xianglong, who advocates tolerance for homosexuality but rejects same-sex marriage.<sup>1</sup> Bai challenges not only “the perceived perception of Confucianism as deeply conservative” but also liberal accounts that he believes could not adequately answer the argument that same-sex marriage opens the way to polygamy (Bai 2021, 133). I would like to propose a different Confucian endorsement of same-sex marriage from a feminist perspective that locates many of the Confucian objections to same-sex marriage, even its historical tolerance of homosexuality, within the continued entanglement of the Confucian family ideal with patriarchy, an ideology that justifies the domination of men over women in society. I focus on the arguments of Confucians in mainland China because of the threat of its Confucian revival further entrenching patriarchy.

Those who reject same-sex marriage often invoke patriarchal ideals of “traditional” family that have systematically disadvantaged women (Calhoun 2005; Harding 2007). Same-sex marriage threatens the patriarchal family ideal because it de-naturalizes the place of gender differences and roles, so its legalization has the potential to transform marriage in ways that also benefit heterosexual women. Historically, the patriarchal family in China and the other East Asian societies influenced by Confucianism has been the target of many critiques. Despite transformations brought about by market reforms, industrialization, urbanization, and globalization, contemporary Chinese families continue to be shaped by deep-seated gender hierarchy (Santos and Harrell 2017). Confucianism has often been blamed for the patriarchal nature of Chinese society. In recent decades, a growing literature challenges the association of Confucianism with sexism and oppression of women.<sup>2</sup> Nevertheless, the battle is far from won, and many arguments from Confucians on same-sex marriage perpetuate patriarchal assumptions.

Sam Crane and Sarah Mattice have both discussed briefly how contemporary Confucianism could respond to same-sex marriage (Crane 2013, 112–15; Mattice 2016, 213–18), but do not engage mainland Confucians’ specific arguments. I also provide more historical depth for a nuanced understanding of Confucianism’s entanglement with Chinese patriarchy, which has implications for contemporary attempts to realize a Confucian feminism. While I am sympathetic to the Confucian role ethics on which Mattice based her arguments, the discussions that follow aim to also convince readers who might reject the ontology and cosmology associated with Confucian role ethics.

### Confucian tolerance of homosexuality

In contrast to the debates in the United States, hostility to homosexuality is not the main reason for Confucian rejection of same-sex marriage. Confucians have historically

been tolerant towards homosexual relationships.<sup>3</sup> Although homosexuality is not a topic of explicit discussion in the Confucian classics, one could infer implicit tolerance of and opposition to discriminating against those in homosexual relationships from the narrative of Wang Qi in the *Zuo Commentaries on the Spring and Autumn Annals*. When the state of Qi attacked Lu in 484 BCE, Gong Wei, a son of the former Lord of Lu, fought in the battle together with his adolescent “male favorite” (*bi* 嬖), Wang Qi. When both died defending Lu, Confucius agreed that, although an adolescent, Wang Qi deserved the full honor of an adult burial, “As he could hold spear and shield in defence of our altars, he may be buried without abatement of ceremonies because of his youth.” (Legge 1970, 825, Duke Ai 11th year). The text’s use of *bi* 嬖, the term for a male servant who had homosexual relations with his lord, assumes that Confucius was fully aware of the homosexual relationship between Gong Wei and Wang Qi but that clearly did not in any way diminish the virtues they displayed in defence of their native state. Confucian ethics therefore judges a person’s worth based on his or her character, the virtues that person has cultivated, and whether his or her actions are virtuous or vicious. What kind of sexual relations a person engages in is ethically irrelevant, unless they undermine virtue, and according to Confucian understanding, both heterosexual and homosexual relations have that potential if carried to excess.

While homosexual intercourse in ancient China was not condemned or punished as unnatural or morally depraved (Samshasha 1984; Ruan and Tsai 1987; Hinsch 1992; Wu 2004; Vitello 2011), it would be too hasty to assume that this supports acceptance of same-sex marriage today, as Mattice does (2016, 216–17). Same-sex relations among men was referred to as an “obsession” (*pi* 癖), which is pejorative. This could refer to unusual habits that are harmless, even though some people might find them distasteful, or it could refer to something unhealthy or potentially harmful if left unchecked. Compared to the doctrinal condemnation and persecution of those who engage in homosexual intercourse in some religious traditions, Chinese traditional society was more tolerant; but it did not accept homosexual relations as a normal alternative to heterosexual relations. They were condemned by some as “licentious disorder” (*yinluan* 淫乱) and were never part of the family-centered social order endorsed by imperial Confucian state ideology (van Gulik 1961; Chou 1971, 90–93; Ruan 1997, 57–59).

While not part of the normative social order, homosexual relations were very much part of the Chinese patriarchal system in which marriage was for the purpose of fulfilling one’s responsibility to continue the lineage, while men could and often did find sexual pleasures and romantic love elsewhere. The elite men who engaged in homosexual relations were expected to marry and produce sons. Regardless of the romanticization of homosexual relations, the elite men’s objects of desire were usually someone of a much lower status, from servants to boy actors, and this inequality—and its accompanying injustice and suffering—worsened with the rise of male prostitution in the Qing dynasty (Wu 2004, 49–51, chapter 5). Some literati questioned the status distinction in homosexual relations, which had become the primary arena of romantic love and sentiment not considered part of family life; but “while they may have been open-minded men, the pleasures they enjoyed remained part of a rigid system of status and privilege” (Wu 2004, 81).

Matthew Sommer argues that, outside the elite, homosexual relations were sometimes part of a survival strategy for marginalised males of Qing dynasty, accompanied by “different forms of resource pooling, co-residence and fictive kinship (sworn brotherhood, master-novice ties, and the like)” (Sommer 2000, 155–156)—even then, the

different sexual roles (penetrator versus penetrated) impose a hierarchy. Late imperial Chinese culture of sexuality is determined by the logic of gender relations of that time. What Sommer calls “the stigma of the penetrated male” is an extension of the inferior status of women in that society (Sommer 2000, 144).

Mattice argues that, since “same-sex practices did not preclude one from fitting into traditional family structures or participating in elite Confucian culture,” Confucian role ethics “can appropriate these role and relationship resources to make sense of same-sex relationships and marriages in the contemporary world” (Mattice 2016, 217). However, such appropriation is problematic if the structured inequality of the homosexual relations prevalent in traditional Chinese society is concomitant with the gender inequality of heterosexual relations. Inclusiveness of marriage is undesirable if the institution remains mired in a patriarchal family ideal, which is still very much in evidence in mainland Confucians’ discussions of same-sex marriage.

### Modern citizenship rights versus Confucian way of life

Several Confucian scholars who reject legalizing same-sex marriage support other means, such as legalized cohabitation or civil unions, of granting same-sex couples various citizenship rights of married couples—for example, those pertaining to taxation, inheritance, pension, veterans’ benefits, visitation rights in hospitals, and the right not to testify against one’s partner (Jiang 2015a; Fan 2018, 117; Zhang 2018, 66). Confucian scholars disagree about whether “rights” have a place in contemporary Confucianism, and there is tension between Confucianism and liberal understandings of rights. Against rights-based arguments for same-sex marriage, Jiang Qing claims that, instead of fictional abstract universal rights that erroneously reduce human beings to non-differentiated existents, human beings have only particular rights, relative to their age, gender, economic and social status, occupation and ethical character. From this perspective, the right to marry belongs only to heterosexuals but not homosexuals, so there is no inequality involved in not allowing the latter to marry (Jiang 2015a).

Fang Xudong accuses Jiang of self-contradiction and circular reasoning. If there is no abstract human being, only particular persons, then how could one make claims about homosexuals, heterosexuals, men, women, Chinese, and others? These categories also involve abstraction—to deny the abstract and universal is to deny concepts and make even basic thought and speech impossible (Fang 2018, 107–08). From the perspective of a Confucian government, legal recognition should be granted based on the relationship having similarly significant material and social impact on the well-being and interests of the partners whether they are of same or different sex. Marriage does not only “belong” to heterosexuals, as same-sex partners have the same needs and desires to have their relations recognized.

Fang supports the legalization of same-sex marriage based on equality of rights but declares it incompatible with Confucianism: “If you wish to be a Confucian, then you should not choose same-sex marriage.” (Fang 2015). He later clarifies that choosing same-sex marriage would not prevent one from being a Confucian, but as a Confucian, one would have regrets, and feel that one is an unfilial descendant ashamed to face one’s ancestors (Fang 2018, 113). Fang raises “an insurmountable boundary between right and good,” where legalization of same-sex marriage belongs to the domain of the right, whereas the Confucian ideal of heterosexual marriage is a matter of the good (Fang 2018, 100).

Fan Ruiqing accuses Fang of incoherence, besides offering a liberal rather than an “authentically” Confucian reason for legalizing same-sex marriage. Fan himself does

not reject rights equality totally but criticizes the expansion of rights beyond the limited list in classical liberalism to encompass all gratification of individual desires, demanding even “a moral right to do wrong” (Fan 2018, 116). His strong perfectionist stance that Confucians, if granted political power, should implement or support policies that accord with Confucian norms—including not legalizing same-sex marriage—is difficult to defend given the fact of moral pluralism, especially when there is no consensus on the issue even among Confucians.

Fang justifies his adoption of the Rawlsian priority of the right over the good in the political sphere and treating Confucianism as a comprehensive doctrine by referring to the PRC’s constitution also treating Chinese citizens as free and equal. However, given the strong resistance to the ideology of liberal democracy in the country, it is doubtful that mentions of freedom and equality in its constitution would be interpreted to support same-sex marriage, especially if recent social media shutdown of LGBT student groups is any indication (Xue 2021). The use of Rawls’s theoretical framework is also controversial as both the priority of the right over the good and liberal neutrality have received strong criticism in contemporary Chinese and comparative political philosophy discourse as incompatible with Confucianism.<sup>4</sup>

Tang Jian reads Fang’s position as a moderate one of public (legal) acceptance favoring personal choice that considers same-sex marriage to be not unethical but “incomplete,” and allows LGBT people who wish to follow the Confucian way to avoid ethical tension and identity anxiety (Tang 2018, 126). This attempt at charity misses what is of key importance in Fang’s interpretation of the Confucian view of marriage: it is an *ethical ideal* that same-sex marriage cannot possibly attain. To be unfilial is to be unethical in Confucian eyes. Fang’s position is no different from those who oppose the legalizing of marriage but support various forms of legally protected civil partnership when it comes to denying same-sex relations the ethical value attributed to heterosexual marriage. This is the crux of the issue for those LGBT people who refuse to be satisfied with being granted the same civil rights of heterosexual marriage under some other name. It is not just about a label or legal status, but about having their union recognized with the respect and dignity accorded to marriage. Not opposing legalization in the Confucian context yields very little when it is not accompanied by ethical acceptance, given how Confucians see the law as instrumental and necessary only in a non-ideal world wherein governing solely through ritual is not viable. For many Chinese LGBT people, especially those with lesser means outside the big cities, social acceptance (including ethical acceptance) matters much more than legal rights (Hildebrandt 2011, 1316; see also Li et al. 2014, 13; Yip 2016, 39).

### **Yinyang theory and heterosexuality as norm**

Both Jiang Qing (2015a) and Zeng Yi (2015) invoke the *yinyang* theory associated with the Chinese *Classic of Change* (*Yijing* 易经) as a kind of metaphysical “natural law” to establish heterosexuality as the norm by equating *yin* with woman and *yang* with man respectively.

Jiang Qing believes that Confucians have implicitly tolerated homosexuality because it is “generally due to natural causes,” “a private problem on a small scale, and does not affect public morality or legal order.” However, he also claims that it is an “‘eternal iron law’ of nature that marriage is between a man and woman” and legalizing same-sex marriage would destroy human civilization, which is based on human nature (Jiang 2015a). Marriage as a human institution is artificial, so what Jiang judges as natural

or unnatural is the kind of sexual intercourse the partners engage in. Hence, despite his concession that homosexuality has natural causes, Jiang's rejection of same-sex marriage is tantamount to claiming that homosexual sex is unnatural—this undermines his claim of “tolerance” for homosexuality.

The *yinyang* theory underpinning Jiang's “way of heaven” is criticized by many scholars as justifying subordination of women. According to Robin Wang (2005), that *yinyang* theory is a conceptual innovation by Han dynasty scholar, Dong Zhongshu, and it differs from earlier understandings of *yinyang*, which are more conducive to gender equality.<sup>5</sup> Furthermore, various scholars reject the dualistic equating of *yin* with woman and *yang* with man (Xu 1961, 5–6; Graham 1986, 71; Raphals 1998, 147; Chan 2016, 183). Sin-ye Chan points out that “requiring male and female interaction in every domain is not a Confucian idea” as Confucians did not criticize the exclusion of women from the public sphere for creating a cosmic imbalance (Chan 2016, 182). Other scholars have demonstrated that traditional Chinese understandings of sex and gender are much more fluid than supposed by *yinyang* dichotomy (Barlow 1994, 258–59; Furth 1998; Wu 2010; Mann 2011). Every human being has both *yin* and *yang* energies, so to characterize homosexual relations, not to mention marriage which involves much more than sexual intercourse, as *yinyin* or *yangyang* is grossly oversimplifying.

According to Bai, Zhang Xianglong's interpretation of *yinyang* theory eschews the extremes of both essentialism and constructivism (Bai 2021, 140). Seeing homosexuality as a “possible result of the *yinyang* process” when “inadequate *yinyang* interactions cause deviations” to occur in a few cases, Zhang does not consider it “unnatural” or “evil” (Zhang 2018, 54, 57). He is therefore tolerant of homosexuality and accepts civil union. However, because “a union between homosexuals does not belong to a true *yinyang* means of combination and production” (Zhang 2018, 54), legalizing same-sex marriage would increase the number of same-sex unions to the extent of threatening the survival of human species, harm children and other family members, and open the way to polygamy, which Zhang equates with promiscuity (Zhang 2018, 62–69).

Bai relates Zhang's discussion of same-sex marriage to the latter's earlier work on gender and discussion of the relationship between husband and wife (Bai 2021, 136–38). While admitting to a hierarchy of *yang* over *yin*, Zhang maintains that the “basic tone is the complementary relation between the two” (Zhang 2007, 238; Bai 2021, 138). A feminist Confucian would agree that absolute equality in gender relations is neither practical nor always desirable, but complementarity within hierarchy is not enough if inequality always puts women at a disadvantage, as this fosters domination which harms women's capacity for realizing their full potential and obstructs their personal cultivation.<sup>6</sup> From a feminist Confucian perspective, which gender is promoted over the other, whether and how a particular man or woman is raised above his or her partner, should be governed by the differences in ethical excellence in specific situations, within the family, in economic production, or in public life, provided everyone has real equal opportunity of personal cultivation.

### Reproduction, filial piety, and species survival

While sympathetic to Zhang's flexible, non-essentializing, and non-dualistic *yinyang* theory, Bai notes that not every Confucian would accept *yinyang* metaphysics. I agree with Bai that the centrality of the family is a key value in Confucian tradition and a more appropriate basis for a Confucian response to the legalization of same-sex

marriage (Bai 2021, 142). Almost every Confucian will agree that family relations lie at the center of the Confucian worldview, and Confucian personal cultivation begins within those relations. From this perspective, legalizing same-sex marriage is justifiable if and only if it could be part of a Confucian family continuing over generations and nurturing the personal cultivation of all its members.

Citing the same chapter in the *Book of Rites* from which Justice Kennedy took his Confucius quote, Zhang argues that, for Confucius, the purpose of marriage is the production of descendants and bringing about healthy parent–child and government–subject relations (Zhang 2018, 64). This is a view shared by many Confucians opposed to same-sex marriage, often supported with Mencius’s (4A26) reference to a common saying, “of the three unfilial acts, not having descendants is the most serious.” Even Fang Xudong, who supported legalization of same-sex marriage on the basis of rights equality, considers it ethically incompatible with Confucianism because it is biologically impossible for a same-sex couple to become father and mother of a child (Fang 2015). The Mencius quote occurs in the context of defending the sage king Shun not abiding by the marriage ceremony requirement of “following parents’ command” when he married without informing his father. The point of the argument is that continuing the family lineage is more important than slavishly following all the forms of ritual in every instance. In response to this passage, Sam Crane points out that patrilineage is not essential to “Confucianism’s most basic moral formulation” but having offspring is important because “there can be no greater honor than to be associated with the reproduction of humanity” (Crane 2013, 114). Given world population trends, it is more important that we strive to give better lives to children who are already born than to add to their number. The honor Crane is endorsing is not the mere numerical addition to the human population; instead it lies in the extension of humaneness in raising a next generation, which does not preclude same-sex marriage.

Reproduction is not the only reason for marriage. Even in ancient China, marriages among elite families were as much if not more about increasing power and wealth, and maintaining or elevating social status; and among the poor, they were often a matter of survival through pooling of meager resources. While marriage confers legitimacy on children resulting from a sexual union and ensures them a place in a family and lineage, there is no guarantee of children in any marriage. Biological reproduction is not necessary for continuing the family lineage. While the biological gift of life is taken seriously and provides the basis for filial piety in the *Classic of Filial Piety*, Chan (2016, 193) argues that “biological connection is not considered the only or even the determining factor for the proper functioning of a family or a parent–child relationship in Confucianism,” given Confucius’s justification for three years mourning for deceased parents by appealing to the three years’ nurturing one receives in the first three years of life (*Analects* 17.21).

Rather than either biological ties or nurtured feelings exclusively, Confucian rituals take both into account in justifying differences in mourning requirements. The importance of nurture over biological tie is supported by adopted and biological sons observing the same mourning period, and stepmothers are mourned like one’s biological mothers. Although the ritual texts do not prescribe mourning for those employed to care for the children of elite families—even though their devotion was often lauded in literature—Xunzi prescribes a period of three months mourning for the wet-nurse who “gives one food and drink” and nine months mourning for a nanny “who clothes and covers one” (Hutton 2014, 215). Although the biological ties to both parents are the same, and the *Liji* acknowledges that “the love is the same for both” (Legge 1885, 429), heavier mourning is required for fathers (signifying the greater importance of the

relationship) as one would expect of patrilineage. Insofar as ritual is an important part of continuing the family lineage, adopted sons having the same ritual obligation as biological sons supports the argument that same-sex couples could fulfill their filial responsibility of continuing the family lineage through adoption.

Same-sex marriage could also be considered unfilial if it harms parents and grandparents, as Zhang believes marriage is not just between two people, and one which could produce no offspring will sadden other relatives as well. Insofar as enjoying the interaction with grandchildren is concerned, the experience need not and should not depend on those children being the biological children of one's own offspring (similarly for parent-child relations). Moreover, parents' expectations of grandparenthood also could be dashed by the infertility of heterosexual children. Insofar as Confucians consider a marriage without children incomplete, there is no reason why solutions that are acceptable for infertile heterosexual couples should be denied to same-sex couples (Cai 2018, 91). Although the high costs of technology-assisted reproduction could raise issues of social justice, the problem also applies to childless heterosexual couples. If reproduction is necessary to justify marriage, then marriage would also be prohibited to heterosexual couples who for whatever reason could not or choose not to have children (Bai 2021, 145–46).

Besides being unnecessary, biological reproduction is also insufficient to meet filial obligation; children must be raised to be a credit to the family and lineage. Zhang claims that if same-sex couples acquire children through technology-assisted reproduction or adoption, they would raise them in “what Confucians consider an unreal family” (Zhang 2018, 67).

While in most cases it may be true that children benefit from being raised by their birth parents, Bai observes that “there are many examples in which adoptive parents are very caring to their adopted children, and there are also many examples in which biological parents abuse their children,” so Confucian concern that caring relations between parents and children provide the starting point for moral cultivation is not enough to reject same-sex marriage (Bai 2021, 144). One might add that, if the ability to bring up children well is needed to justify marriage, then many heterosexual marriages should have been prohibited.

Zhang's remark about families with same-sex parents being “unreal” resembles Fang's charge that same-sex parents attempting to fulfill the roles of both husband and wife, father and mother, reduce same-sex marriage to nothing more than “playing the game of heterosexual marriage,” so that it is merely a “fake” (Fang 2018, 112). According to Fang, such attempts cause “cognitive confusion” about those roles and undermine the “ethical integrity” of those relations, since “the real substance of husband and wife (who, after having children, become father and mother) is *yin* and *yang* or man and woman” (Fang 2018, 111).<sup>7</sup> Instead of *yinyang* metaphysics, comparison of same-sex parenting and heterosexual parenting is better grounded on empirical studies, as pointed out by Chan, who argues that Confucian parents, male or female, could exemplify the “universal, androgynous moral values” of Confucian personhood, same-sex parents could embody different gender traits, and different gender models are available within the extended family, so children's development would not be hampered (Chan 2016, 193–94; see also Bai 2021, 145). The American Psychological Association and other health professional and scientific organizations have concluded, based on “a remarkably consistent body of research on lesbian and gay parents and their children ... that there is no scientific evidence that parenting effectiveness is related to parental sexual orientation.”<sup>8</sup>



Zhang argues that same-sex marriage harms children because same-sex parents' influence on their children's sexual tendencies and other characteristics will make it difficult for the latter to become part of mainstream society (Zhang 2018, 68). However, much of these difficulties are due to the current prejudiced and unjust treatment of LGBT people, which needs changing, *inter alia* by allowing them to form legitimate families. Zhang is also concerned that same-sex parents' influence on children and legalization influencing the choices of those still undecided regarding their sexual orientation would result in an increase in same-sex marriages to threaten the very survival of the human species. Although many social scientists find little or no intergenerational transfer of sexual orientation, the issue remains controversial (Schumm 2010). Zhang dismisses empirical research as merely "a small fact" that cannot override the "greater facts of reason and sentiments" (Zhang 2018, 68). This seems an odd way to justify his consequentialist arguments relying on factual claims. Although Bai agrees that the number of same-sex marriage must be kept low for species survival, he argues that Zhang's worry is unwarranted, since homosexuality as a natural trait is an exception given that "our general tendencies are the result of evolution" (Bai 2021, 146). If same-sex marriage could be a matter of choice, Bai proposes using government policies and public opinion to promote heterosexual marriages.

### Challenging the patriarchal family ideal

Among the objections to same-sex marriage is the argument that removing the stipulation that marriage is between one man and one woman would open the gates to plural marriages between one man and many woman (polygyny), one woman and many men (polyandry) and other forms of polygamy. In the United States, plural marriage activists have borrowed the language of the LGBT movement and leveraged on the legal victories of same-sex couples to argue that the anti-polygamy law in Utah is unconstitutional (Itturiaga and Saguy 2017, 334).

Many feminists in Western liberal democracies fiercely condemn polygyny as denying gender equality and a relic of patriarchal traditions that oppress women. Various studies document polygyny's harm to women and children (Al-Krenawi et al. 2001; Amey 2002; Gould et al. 2008; Gyimah 2009; McDermott and Cowden 2016).

However, those more sensitive to cultural differences and the danger of cultural imperialism and racism have cautioned against denying the agency of women who choose polygynous marriages for religious and other reasons. Lori Beaman "urges a more careful examination of the myriad ways in which patriarchy circulates to perpetuate women's inequality. That inequality does not rest in a family form but in broader patterns that implicate race, class, and economic injustices that impact both women and men" (Beaman 2016, 56). While distancing same-sex marriage from plural marriages, Jaime Gher cautions against "maligning polygamy and playing into the cultural narrative that plural marriage is resoundingly barbaric and misogynistic" (Gher 2008, 559). Some feminists who consider gender inequality contingent to polygamy advocate a qualified acceptance provided "husbands and wives would have reciprocal rights and responsibilities, and both polygyny and polyandry would be permitted" (Calhoun 2005, 1039–40; see also Song 2007, 160; Nussbaum 2008; Brake 2012). This qualified acceptance does not extend to polygyny in a patriarchal society.

According to Bai, having to legalize polygamy as a result of legalizing same-sex marriage causes more problems for liberals than it does for Confucians, as limiting marriage to consenting adults would remove the primary barrier liberals try to raise between

same-sex marriage and polygamy (Bai 2021, 148). Bai agrees with Andrew March (2011) that, neither gender equality, female autonomy, welfare of children, nor social justice considerations in terms of fairness of spousal or marital market or unfair privileging of the wealthy provides reasons to deny equal treatment of same-sex marriage and polygamy. On this issue, Bai believes that Confucians could be more liberal than liberals in accepting polygamy, since historically “Confucians have never insisted on monogamy” (Bai 2021, 150), although they did not favor the practice of taking concubines for any reason other than to continue the family lineage when the wives were barren. Confucians would be more concerned about the stability and quality of care within the family. Bai does not share the worry of those who believe that, if unchecked, polygyny could become the dominant form of marriage and thereby causes a shortage of women in the marital market (Bai 2021, 152). According to Sommer (2015, 52), well under 4 percent of married women during the Qing dynasty were concubines, whereas the rest were main wives, despite the impression created by literature on Chinese traditional society and May Fourth attacks on Confucianism. The experience of South Africa, which has legalized polygamy, indicates that various aspects of modern life erode the appeal of polygyny (Stacey 2011, chapter 4).

Although he does not consider gender equality a “core concern” for Confucians, Bai concedes that “it is hard to imagine Confucianism can stay relevant while ignoring fairness (not any kind of radical equality) to a half of humanity” (Bai 2021, 151). He therefore acknowledges that, in the contemporary context, “if polygyny is allowed, so should polyandry” (Bai 2021, 153). However, this apparent promise of equality cannot be realized in a patriarchal society, as the prevalent gender hierarchy precludes women gaining any advantage from being the central partner in polyandry; instead “far from being in a position to exploit them, she would instead be a servant to two masters” (May 2012, 152). Many feminists consider the prospect of having multiple husbands punitive instead of liberating (Stacey 2011, 150). Polyandry, though illegal, was practiced in Qing dynasty China as a survival strategy among the poor. Although the wives were not mere victims and their cooperation was needed for the success of the survival strategy (Sommer 2015, 12, 33), their roles remained circumscribed by the patriarchal structure of society.

While there may be benefits for women in polygyny even in societies rife with gender inequalities, a Confucian feminist assessment of polygyny would not consider it only from the individualistic perspective of individual choice and benefits. As a form of marriage, polygyny is a normative cultural practice with social meanings, which include assumptions about women’s and men’s stereotypical roles in a marriage that perpetuate gender inequality (May 2012, 156). While gender equality may not be a “core concern” of Confucianism historically, it is now almost a universal ideal. Feminist Confucians need not adopt the equality ideal of liberal or other feminists, but at the very least, they would advocate a Confucian society in which women have equal opportunity to cultivate themselves and to contribute to any domain of society they choose according to their abilities.

Unlike Bai, who appreciates the need for traditions to adapt to new knowledge of the human condition and aspirations of both genders, Confucian opponents to same-sex marriage often assume a traditional ideal of heterosexual family and champion, or at least take for granted the traditional gender roles of Chinese patriarchal society (Jiang 2015b). This comes as no surprise as the binary gender logic assuming that there are distinct and proper masculine and feminine gender roles underlies heterosexism and homophobia (Hopkins 2000, 145). Jiang and other contemporary Confucians

who believe that the revival of Confucianism requires a revival of the traditional Chinese patriarchal system mistake the historical constraints on Confucian philosophy for its ideal.

The Zhou dynasty established patrilineal descent and inheritance, exogamy and patrilineal residence, gender segregation of the inner-outer domains among the elite (Du 1998, 27–43). Confucius's admiration for the Zhou was not an unequivocal endorsement or idealization of the patriarchal system. What he appreciated was the function of ritual and kinship ties in securing social harmony and providing the conducive environment for people to cultivate themselves. By emphasizing virtue rather than social status or force as the basis of authority, he mitigated the authoritarian character of the Zhou system, and his emphasis on reciprocity—"Let a father be a father, and a son be a son" (*Analects* 12.11)—even in the parent-child relation provides new ethical insight into the key relationships that sustain social order. Instead of seeing Confucius as an apologist or ideologue of the Zhou patriarchal system, we should learn from his nuanced response in striking a practical balance in taking as given some of the conditions and practices of his time and constructing an ideal of personal cultivation and relational harmony that seeks to transform what he found unsatisfactory, often by reinterpreting existing concepts. In *Analects* 2.7, he dismissed the common belief that being filial means providing material support for parents. He modified the customary understanding of *buwei* 不违 as "not going against," that is "obeying," one's parents to "not acting contrary" in the sense of "serving them according to the rites while they are alive, and mourning and sacrificing to them according to the rites after their death" (*Analects* 2.5).<sup>9</sup> Such passages provide support for the recent shift from the traditional authoritarian focus to a reciprocal focus in contemporary Chinese understanding of filial piety (Zhang 2016; Santos and Harrell 2017, 21–22).

The patriarchal aspects of traditional Chinese society are not essential to Confucius's normative philosophy, which remains relevant. Feminist engagements with Confucian philosophy over the past decades have argued that the virtues constituting the Confucian ethical ideal are applicable for both men and women. The inequalities of patriarchy are detrimental to the personal cultivation of women, and therefore should be resisted and eliminated on Confucian grounds (Rosenlee 2006; Tan 2006; Herr 2014). This argument should be extended to include anyone who does not fit the traditional gender stereotype. Just as excluding women from the public sphere has limited their capacity for cultivating Confucian virtues, excluding LGBT people from important institutions such as marriage limits their personal cultivation. Furthermore, having to live up to the traditional conception of masculinity, and traditional roles of husbands and fathers, has obstructed Chinese men's personal cultivation.

The inner-outer gender division in practice neglected men's roles as husbands and fathers; this is evident when we compare, for example, Ming dynasty instructional texts for children. Lü Desheng's *Words for Little Girls* explicitly steers girls toward domestic life as good wives and mothers, but instructions for boys to become good husbands and fathers are glaringly absent from the *Words for Little Children* by the same author.<sup>10</sup> Even the *Analects* has nothing to say about how to be a good husband—and one could speculate about Confucius's notorious remark about how difficult it is to "nurture" women, which has been interpreted as condemning or diminishing women but could just as well cast doubt on his adequacy as a husband and his ability to relate to women. As a father, the *Analects* (16.13) tells us that Confucius treated his son like his students and showed him no special favor, and there is no evidence of a warm and loving relation with his children, even though he showed appropriate

concern for their welfare both in his teaching his son and finding someone he considered virtuous as husband for his daughter (*Analects* 5.1).

This oversight and the imbalance in Confucian education have had profoundly negative impacts on family life in traditional Chinese society, resulting *inter alia* in the relative lack of emotional attachment between fathers and their children. Rather than women being born to be more caring and nurturing, gendered expectations and bias in education and practical experience must bear a large part of the blame for most men's difficulties in nurturing and caring for others, which extend beyond the domestic sphere and affect the nature of human interactions outside the family.<sup>11</sup> One could argue that this is at least partly responsible for the failure to realize a government who acted like "parents of the people," despite the political triumphs of Confucianism in imperial China and the philosophical affinity between Confucian ethics and care ethics.

Although the traditional relationship between husband and wife was hierarchical, and the gendered inner-outer division of labour has confined women to the domestic sphere and undervalued their economic contributions, the Confucian ethical norm of "differences between husband and wife" is better understood today as advocating differentiation of functions and responsibilities within the family and distributing them in ways that enable both spouses to participate in other activities outside the home. This has been difficult to achieve partly because traditional gender roles based on heterosexual marriage continue to dominate the social imagination. One way to counter this is to promote other models of marriage and family relations. Instead of same-sex couples "faking" the gender roles of heterosexual marriage and traditional parenting as Fang assumed would happen, ethical acceptance and legalization of same-sex marriage will challenge dichotomous thinking of masculinity versus femininity, and traditional gender roles. Same-sex marriage could better exemplify more flexible and equitable sharing of family responsibilities based on individual capacities and inclinations, while balancing the needs of everyone in the family. Not only do same-sex marriages have ethical value from the perspective of the spouses' personal cultivation and integration of varied forms of intimate relationships into the extended family and other relational networks, they have the potential to offer models for emulation by heterosexual spouses and liberate them from patriarchal hegemony.

### Feminist Confucian reasons for ethical acceptance of same-sex marriage

The marriage ritual that Confucius considered the "foundation of government" is not a legal institution, although it could and had served to apportion responsibilities and corresponding entitlements (closely resembling rights in function) to the parties involved. As social institutions, rituals differ from laws in that they are not instruments for coercing compliance with threats of punishment, although in practice the two could merge when laws were introduced to enforce ritual requirements. Rituals embody ethical value and social recognition, as Mencius made very clear in his condemnation of those who ignore the marriage ritual in seeking to satisfy their sexual desires and therefore "do not follow the way":

When a man is born his parents wish that he may one day find a wife, and when a woman is born they wish that she may one day find a husband. Every parent feels like this. But those who bore holes in the wall to peep at one another, and climb over it to meet illicitly, waiting for neither *the command of parents nor the good offices of the go-between*, are despised by parents and fellow countrymen alike. (*Mencius* 3B3)<sup>12</sup>

For Confucians, rituals as human institutions raise human beings above the facts of their biological existence, not by denying or suppressing biological needs and desires, but by modifying, channelling, and harnessing them to enact ideal human interaction and forge social bonds. Without rituals, social order could only be imposed by force and threat of punishments (i.e., laws) and therefore is neither ideal nor enduring. More than enforcing desired behaviour, rituals nurture emotions and cultivate attitudes necessary to Confucian virtues among the participants, to promote harmony and prevent differences from degenerating into conflicts. The number and strength of harmonious social bonds constituting community ensure stability, while the cultivation of virtues promotes and is promoted by the flourishing of community—both stability and flourishing are dimensions of Confucian social order.

The marriage ritual transforms sexual intercourse arising from natural needs and desires into part of an enduring relationship with ethical significance and value, not only for the partners but also in the eyes of other members of the community, to whom each partner is related in different ways. Confucians should evaluate same-sex marriage and other forms of social inclusion of LGBT people based on whether same-sex relations enable the partners to cultivate Confucian virtues and whether such relations strengthen rather than weaken family and larger community bonds. As a social institution, marriage embeds a relationship within each partner's existing networks of relationships, creating new bonds in the community, as each partner becomes related to the other partner's relatives, interacts with the latter's friends, colleagues, and so on. The bonds between generations that continue a family lineage are important to the Confucian conception of flourishing community constituted by families; but the bonds between spouses (as well as other same generation relations such as between siblings and friends) are just as important and not merely instrumental to the continuation of family lineages.

An ideal marriage from a feminist Confucian perspective is one in which each partner supports the other in his or her personal cultivation. Their shared life would provide the conditions and opportunities for cultivation of the Confucian virtues which would not be available were each to live apart from the other. These conditions and opportunities for virtuous living are not self-contained and limited to their interactions to the exclusion of others, but are also found in their interactions with others, together as a couple, and indirectly through each partner's individual interactions with others that have an impact on the other partner who is not part of the immediate interactions. The potential and difficulties of attaining such an ideal are not affected by the partners' sexual orientation; there is therefore no ethical incompatibility between Confucianism and same-sex marriage.

On the contrary, there are good Confucian reasons to accept same-sex marriage. Unlike most contemporary views of marriage, Confucians do not treat marriage as purely the choice of two individuals. Instead, a married couple is part of a larger network of relations. When same-sex couples love each other to the point of wanting to spend the rest of their lives together, marriage integrates their relationship into their respective relational networks, which provide the contexts of their personal cultivation. Not being able to do so obstructs their personal cultivation, introduces tensions into their relationships with each other and with others, and in some cases does irreparable harm to some of these relationships, as well as emotional and material harms to the individuals involved. The growing literature on the experience of Asian LGBT people struggling to maintain their existing family relations, especially with parents, and their intimate relations with significant others, bears witness to the importance of relational

integration, even more than individual autonomy, when considering the inclusion of LGBT people into Confucian communities (Kong 2011; Tan 2011; Yip 2016, 49–50). The emerging distinctive familial model of LGBT activism in China featuring close collaboration between parents and gay children (Wei and Yan 2021) also testifies to continued centrality of the family and an alternative Confucian path to inclusion compared with confrontational identity politics.

Confucianism is a relational ethics, in which personal cultivation to become a virtuous person and live a virtuous life requires interactions with diverse others of different generations, only some of whom are genetically related to oneself. The concern with family lineage, though an important part of Chinese tradition, is not a necessary part of Confucian relational ethics. What is necessary is the experience of nurturing the young, both caring for them physically and educating them. Even if the parent–child relation is unique and not substitutable by other intergenerational relationships, its ethical value or contribution to one’s flourishing does not depend on biological ties, but lies in the day-to-day experience, interdependence, and commitment of the relationship (Brighouse and Swift 2014; Witt 2014).

While filial piety is an important virtue, it extends to and draws on experience of caring and respect for members of the older generation with whom one comes into contact, regardless of whether they are related to us. Continuing the family lineage *biologically* is not a necessary part of a contemporary Confucian relational ethics for those who no longer believe that departed ancestors suffer real harm from the lack of ritual sacrifices from biological descendants. What is important in observing the ritual of paying reverence to ancestors today has more to do with remembering and being grateful for the previous generations’ efforts and accomplishments which benefit us directly or indirectly, and our corresponding responsibility to contribute to the welfare of future generations. Such sentiments and commitments, rather than being narrowly confined to the immediate family, should be broadened to the larger community. Instead of merely adding physically to the human population, there are better ways to fulfill that responsibility. Whether or not same-sex couples have children, they could exemplify human excellence in their own ways. Acknowledging such new forms of human excellence, new ways of living virtuous lives, which are humane, appropriate, embodied in rituals, and wise could offer inspiration for enhancing the Confucian ideal of human relationality by challenging the patriarchal constraints on past efforts to realize the Confucian ethical ideal.

The debates among mainland Confucians on the legalization of same-sex marriage reveal the persistence of patriarchal assumptions. Unless these assumptions are exposed and challenged, they threaten to corrupt the revival of Confucianism. Bringing a feminist perspective to these debates present an opportunity to reconsider and reshape the Confucian ideal of marriage as an important part of the relational network that sustains everyone’s personal cultivation, regardless of gender or sexual orientation.

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## Notes

**1** Bai discusses Zhang’s views on homosexuality and same-sex marriage in an article published in 2016 in the *Renmin University Journal*, which was published with minor revisions two years later in a special issue of the *International Journal of Chinese and Comparative Philosophy of Medicine*, adopting the English title, “How Should Confucianism View the Legalization of Same-Sex Marriage.” Translations of citations of

Chinese publications are my own unless otherwise stated. The names of authors of Chinese publications follow the Chinese convention of the family name before personal name without a comma.

2 Kelleher 1987 and Guisso 1981 provide contrasting assessments of the perception of women in early China as depicted by the Confucian Classics. The debate over the clash or compatibility between Confucianism and Feminism continues (Li 2000; Foust and Tan 2016).

3 I agree with others who have pointed out that using “homosexuals” and “homosexuality” with the implication of identifying people by their sexual orientation is anachronistic. As Foucault pointed out, earlier thinking about same-sex unions differs fundamentally from the modern concept of sexual orientation (Foucault 1978; see also Kong 2011, 151). I use “homosexual” and “heterosexual” as adjectives meaning “same-sex” and “mixed-sex” in the pre-modern context.

4 This does not mean that Confucians must be strongly perfectionist. Joseph Chan (2014) argues for a moderate perfectionism, and others supported Fang’s understanding of Confucianism as a “non-political” personal philosophy (most notably Tu 1989).

5 An example of feminist critiques of *yinyang* concept in Confucianism can be found in Woo 1999, 122–24. For arguments that pre-Han views of *yinyang* did not equate *yin* with woman or designate it as inferior, see Rosemont 1997; Rosenlee 2006, chapter 4.

6 Chan argues for the removal of hierarchy from marriage (Chan 2016, 190); see also Bai’s discussion of how Confucianism could support gender equality (Bai 2020, 171–74).

7 The English abstract accompanying Fang’s article uses the translation of “ethical integrity,” but “ethical completeness” is probably a better translation as “integrity” is a term with more cultural and philosophical baggage.

8 <http://www.apa.org/pi/lgbt/resources/parenting.aspx>.

9 Translation modified from Ames and Rosemont 1998.

10 Most instructional texts addressing “children” were in fact intended for boys.

11 This problem is not unique to Chinese culture, but also explored in the literature on fatherhood in Western societies (Pleck 1981; Levant 1992; Brooks and Silverstein 1995).

12 Translation from Lau 1970, italics added. The “*command of parents nor the good offices of the go-between*” are among the six parts of the marriage ritual described in the *Liji*.

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