

# Article

## Justice and Law in the *Republic* and *Mencius*

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### ABSTRACT

*This article presents a sketch and a comparison of two perspectives of justice. I discuss Plato's idea of justice in the Republic (section 2), and Mencius' thinking on the same topic in Mencius (section 3). For Plato, justice leads to harmony and reason is the key element, especially for getting hold of the good, and for unifying the different parts of the soul successfully; likewise, the philosopher should rule the polis for the unification of the three classes of people in the polis.*

*Mencius treats yi, the concept which is comparable to justice, similarly to Plato, namely as one's proper relationship with others, except one's parents who are not considered as others. For Mencius, Yi is shown in one's lifelong commitment to act appropriately in all the situations one encounters in the world. Ren is shown in one's love of others and guides one in a more important way than reason for one's cultivation of yi.*

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*The ideas of law of the two philosophers are discussed next (section 4). The rule of law is instrumental for improving the virtue for the common people and is central to Plato's account of the best constitution. However, for Mencius, law is not the most important norm. This difference is important not just for the two philosophers, but also for the two traditions, the Greek and the Chinese. I conclude the paper by summarizing key differences and how the two thoughts may be complementary to each other (section 5).*

**Keywords:** *Plato, Republic, Mencius, Virtue, Justice, Yi, Ren, Rule of Law*

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## I. INTRODUCTION

Both Plato (429-347 B.C.) and Mencius (371-289 B.C.)<sup>1</sup> contributed greatly to preserving two ancient schools of thought that are still influential today. Plato provides us with our best evidence of the thought of Socrates. In *Mencius*, we are told that in Mencius' days the thought of Confucius was not dominant;<sup>2</sup> however, Mencius devoted his efforts to making Confucius' thought more widely known.<sup>3</sup>

Plato and Mencius do not just make known to us the innovative ideas they inherited from Socrates and Confucius, respectively, but also develop the two schools of thought further and contribute their own original thinking. Alfred North Whitehead said that all philosophers are writing footnotes on Plato. Mencius is considered the second sage of the Confucian school. In the following two sections, I will show how the two great thinkers contribute their original efforts to elaborate the idea of justice.

## II. JUSTICE IN THE REPUBLIC

This essay is mainly a comparative work, and my discussion of the idea of justice in the *Republic* is shaped by this goal. I want to bring out how reason is still central to the Platonic idea of justice although the treatment of this idea differs from that of Socrates, and also how Plato develops his dialectic in the *Republic* in a way that differs from that of Socrates. After discussing the idea of justice of *Mencius*, I wish to show how Platonic dialectic marks a significant difference between the two great schools of thought.

First, I outline my general interpretation of the *Republic*. I believe the *Republic* is essentially a work of theory,<sup>4</sup> designed to analyze the nature of

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1. There is no agreement on the date of Mencius' birth or death; Please see Wing-Cheuk Chan, *Philosophical Thought of Mencius*, in *DAO COMPANION TO CLASSICAL CONFUCIAN PHILOSOPHY* 153, 153 (Vincent Shen ed., 2014).

2. "... No sage kings have appeared since then. Feudal lords do as they please; people lacking in official position are uninhibited in the expression of their views, and the words of Yang Chu (楊朱) and Mo Ti (墨翟) fill the Empire. The teachings current in the Empire are those of the school of Yang or of the school of Mo. Yang advocates 'everyone for himself', which amounts to a denial of one's prince; Mo advocates love without discrimination, which amounts to a denial of one's father. To ignore one's father on the one hand and one's prince on the other is to be no different from the beasts", see DIN CHEUK LAU, *MENCIUS* 3B9 (i.e. Book 3, Part B, Chapter 9) (2003).

3. Responding to the criticism that Mencius liked to argue, he explained "[i]ndeed, I am not fond of disputing, but I am compelled to do it", see LAU, *id.* at 3B9.

4. Socrates clarifies the nature of his task before he brings up the idea of the philosopher king: "Then it was in order to have a model that we were trying to discover what justice itself is like and what the completely just man would be like, if he came into being, and what kind of man he'd be if he did, and likewise with regard to injustice and the most unjust man. We thought that, by looking at how their relationship to happiness and its opposite seemed to us, we'd also be compelled to agree about ourselves as well, that the one who was most like them would have a portion of happiness most like

justice and to show how it constitutes happiness. Plato does not set out to offer a detailed account of the best type of government. He describes the general character of a just society, in a way that is intended to parallel that of a just soul and also to show on a larger scale the true character of a just soul.

I also believe that Plato did not change his mind when he wrote the *Laws* later on. Rather, the *Laws* is a work that offers detailed guidance on the best political institutions, though one whose main ideas are based on those of the *Republic*.<sup>5</sup>

#### A. *The Nature of Reason in the Republic*

In book IV of the *Republic*, Plato presents his famous tripartite soul by demonstrating the existence of conflict between the rational, spirited and appetitive parts of the soul. Burnyeat interprets the account of the tripartite soul as expressing the idea that we are all embodiment of three kinds of self: the animal self, the social self and the rational self.<sup>6</sup> What Burnyeat does not tell us is what led Plato to this view; while it is hard or impossible to get a full answer, it deserves exploration.

Moss argues for the existence of another means of influencing the soul besides rational persuasion, namely by separating the linkage between pleasure and good because of shame.<sup>7</sup> I agree with her, but here I want to use her analysis rather as the basis for shedding light on the transition from Socrates to Plato.

In the early dialogues and in *Apology*, we are shown how Socrates

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theirs. But we weren't trying to discover these things in order to prove that it's possible for them to come into being.

That's true.

Do you think that someone is a worse painter if, having painted a model of what the finest and most beautiful human being would be like and having rendered every detail of his picture adequately, he could not prove that such a man could come into being?

No, by god, I don't.

Then what about our own case? Didn't we say that we were making a theoretical model of a good city?

Certainly.

So do you think that our discussion will be any less reasonable if we can't prove that it's possible to found a city that's the same as the one in our theory?

Not at all." (472c3-e6)

5. André Laks, *Legislation and Demiurgy: On the Relationship between Plato's "Republic" and "Laws"*, 9 CLASSICAL ANTIQUITY 209, 209-29 (1990); Luc Brisson, *Soul and State in Plato's Laws*, in PLATO AND THE DIVIDED SELF 281, 281-307 (Rachel Barney, Tad Brennan & Charles Brittain eds., 2012).

6. Myles F. Burnyeat, *The Truth of Tripartition*, 106 PROC. ARISTOTELIAN SOC'Y 1, 1-22 (2006). Burnyeat starts his analysis with this passage in the *Republic*: "Do we learn with one part of ourselves, feel anger with another, and with yet a third desire the pleasures of nutrition and generation and their kin, or is it with the entire soul that we do each of these things?" (436ab).

7. Jessica Moss, *Shame, Pleasure, and the Divided Soul*, 29 OXFORD STUD. IN ANCIENT PHIL. 137, 137-70 (2005).

practices his elenchus with just about everyone. In the *Gorgias*, more than in any other dialogue, the elenchus is shown as encountering severe difficulties in the attempt to influence the interlocutors of Socrates, especially Callicles.<sup>8</sup> In the *Republic*, Plato clearly saves education by means of dialectic till the last stage; it is reserved for the few philosophers who survive all examinations and competitions.

Certainly, youngsters are kept away from dialectic too. In their case, Plato takes special care to avoid any improper influence by music or poetry to bring about the correct composition of the souls of the youngsters, in order to prepare them for later education to start their journey of rational ascent.<sup>9</sup>

However, Plato's plan for early education in the *Republic* is not aimed solely at preparing the youngsters, based on their natural endowments, for the later development of their reasoning capacity and to use that ability in the right way, that is virtuously and wisely. Plato also wants to prevent the youngsters from being distracted from the proper management of their spirit and desire. In other words, if the youngsters adopt the wrong ideas about what is to be feared or ashamed, or let their appetites grow out of proportion, one cannot expect these youngsters to obtain wisdom, their improved reason will only bring them and the polis more harm if the worse is to be happened.

Polus and Callicles in the *Gorgias*, as Moss shows; and Thrasymachus in the *Republic* have in common the fact that they cannot join Socrates in pursuing wisdom due to their failure to manage correctly spirit and appetite in their souls. As Book I of the *Republic* shows, Plato believes Thrasymachus is so corrupt that shame cannot help him to associate justice with virtue.

“I’m not unaware of what you want to say. But I wonder about this:  
Do you really include injustice with virtue and wisdom, and justice  
with their opposites?

I certainly do.

That’s harder, and it isn’t easy now to know what to say. If you had declared that injustice is more profitable, but agreed that it is a vice or shameful, as some others do, we could have discussed the matter on the basis of conventional beliefs. But now, obviously, you’ll say that injustice is fine and strong and apply to it all the attributes we used to apply to justice, since you dare to include it with virtue and

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8. Moss uses *Gorgias* extensively to support her points. See Dominic Scott, *Platonic Pessimism and Moral Education*, 17 OXFORD STUD. IN ANCIENT PHIL. 15, 15-36 (1999).

9. See the discussion of the two-stage education program in Christopher Gill, *What is the Point of the Tripartite Psyche in Plato's Republic?*, in *DIALOGUES ON PLATO'S POLITEIA (REPUBLIC)* 161, 161-67 (N. Notomi & L. Brisson eds., 2013).

wisdom.” (348e1-349a1)

Both Socrates and Plato recognize the importance of reason in cultivating one’s virtue. But it seems that Plato treats the irrational elements in one’s personality more seriously based on his reflection on the Socratic practice of elenchus. In addition to the rational ascent to the good, Plato introduces the idea of ‘ruling’ in the *Republic* which is equally important in cultivating one’s virtue. As Moss points out, spirit can help prevent one from associating incorrectly the ideas of benefit and good, due to a sense of shame at making such a link. But if one is dominated by the appetitive part of oneself, the rule of law seems to be the last resort. I will examine the idea of the rule of law further in section 3; my focus here is on Plato’s analytical development of his idea of reason in the *Republic*.

Unlike wisdom, moderation and courage, justice is peculiar in terms of its external nature, because justice deals specifically with one’s proper relationship with others. This is the same for both Socrates and Plato. In the *Gorgias*, Socrates held that if one does “what’s appropriate with respect to human beings, he would be doing what’s just” (507b2-3). Since Plato recognizes that the way reason, spirit and desire that constitutes a person varies, and such variation matters. For Plato, what justice essentially deals with is the appropriateness of the relationships between people characterized with strong rational, spiritual or appetitive natural endowments. Justice requires all three elements inside oneself to be integrated into one harmonious entity under reason’s rule, aided by the spirit. The same structure is required too in the framework of the polis. Justice in the polis means that the philosopher king rules the polis (473c10-e4), with the guardians serving as the auxiliaries, and the producers consenting to be ruled.

Reason plays a central role in the Platonic idea of justice, but what is it exactly? Since the philosopher kings in the *Republic* are both legislators and judges for the city, I use the metaphor of the divided line which Plato uses in Book VI of the *Republic* to illustrate how reason actually works in the context of law-making; my aim is to understand better how reason works in the *Republic*.

It is clear that the philosopher kings are also judges for the city. In Book IV of the *Republic*, Socrates asks:

“Look at it this way if you want to be convinced. Won’t you order your rulers to act as judges in the city’s courts?

Of course.

And won’t their sole aim in delivering judgments be that no citizen should have what belongs to another or be deprived of what is his own?

They'll have no aim but that.  
Because that is just?  
Yes." (433e6-10)

It is certainly clear that it is the high achievements of reason on the part of the philosopher rulers that enable them to assume such tasks.

I limit my inquiry to the discussion of the divided line in the *Republic*. I specifically use the divided line as a model for analyzing the stages involved in the reasoning process, where the philosopher rulers apply their law-making to show Plato's original contribution in formulating the concept of reason in the *Republic*.

If one uses reason correctly, one gains knowledge. Toward the end of Book VI of the *Republic*, Plato wants us to see what an important role the form of the 'good' has in the process of forming knowledge, even if we do not recognize this role. By offering his view on the offspring of the good, Plato contrasts the good in the intelligent realm with the sun in the visible realm. Though we may not be aware of either of these, the sun provides the light to connect our sense of sight and the power to be seen; likewise, the form of the good "gives truth to the things known and the power to know to the knower" (508d9-e1).

Plato then presents the idea of the divided line in order to "examine its image in more detail" (509a7). Plato does not specify what the examined original image is; maybe the offspring of the 'good' is what Plato has in mind. I think Plato is trying to bring out the essential nature of reasoning, and he believes that reasoning is really an effort employed to ascend to the good.

In short, I argue that the divided line shows that reason first involves identifying the true image and its true original in the visible realm. Crossing from the visible realm to the intelligent realm, reason is also involved in the correct representation of what one sees and what is stamped in the soul. This reasoning effort in the stage of thought is not discussed explicitly in the *Republic*, but it can be derived from the discussion of cognitive error by Plato later in the *Theaetetus*.<sup>10</sup>

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10. For a discussion of *Theaetetus* using the divided line metaphor in the *Republic*, see Kenneth Dorter, *Levels of Knowledge in the Theaetetus*, 44 REV. METAPHYSICS 343, 343-73 (1990); Reason is again involved in the third and fourth stages of the divided line, but I need to do much more to explain how reason works in the intellectual realm. It's worthy to note that Patterson provides good discussion on how Plato meant to use diagrams to illustrate his ideas of dialectics, see Patterson Richard, *Diagram, Dialectic, and Mathematical Foundations in Plato*, 40 APEIRON 1, 1-34 (2007); but Benson calls the reasoning shown in the third stage in the discussion of the divided line a wrong kind of dialectic, see Hugh H. Benson, *The Problem Is Not Mathematics, but Mathematicians: Plato and the Mathematicians Again*, 20 PHILOSOPHIA MATHEMATICA 170, 170-99 (2012).

### B. *Dialectic in the Republic*

By contrast with the view of the good as based on engaged practical judgments such as the legal decisions just discussed, there are other approaches used in the *Republic*, leading to a very different understanding of the good. I believe this is another important original contribution of Plato based on his reflection on the Socratic elenchus, the subject of this subsection.

Starting with the middle dialogues, the *Republic* may be the first example of this approach. Plato here makes Socrates more persuasive, unlike the Socrates of the early dialogues that confines his enquiries to examining the beliefs of his interlocutors and leading the discussion towards an aporetic conclusion. I believe Plato does leave textual clues indicating that such a change is taking place.

In the latter part of Book VI of the *Republic*, Plato's Socrates discusses "the most important things worthy of the greatest exactness" (504d10-e1). He uses the analogies of sun and line to explain the idea of the offspring of the good. Before that, Socrates devotes great efforts to show Adeimantus that only when the rulers of a city are constituted by philosophers who were appropriately raised in a well-constituted city can the city become good. The reason why Socrates makes such effort and the way in which he does so responds to a criticism made by Adeimantus. When Plato first poses the question to Adeimantus whether philosophers should rule, Adeimantus replies:

"No one would be able to contradict the things you've said, Socrates, but on each occasion that you say them, your hearers are affected in some such way as this. They think that, because they're inexperienced in asking and answering questions, they're led astray a little bit by the argument at every question and that, when these little bits are added together at the end of the discussion, great is their fall, as the opposite of what they said at the outset comes to light. . . ." (487a9-b5)

Socrates says that "[B]y means of an image or simile" (487e3-4) he will show Adeimantus why philosophers, whom many people agree to be useless, should rule.

The use of images is one of Plato's original contributions to dialectic in the *Republic*. But in this subsection, I want to contrast Socratic elenchus with Plato's new approach in general, in order to illustrate Plato's contribution. I believe that the concept of the soul is important in the early dialogues where Socratic elenchus is practiced. The soul is under

examination, and an ordered soul is the goal. Saying what one believes is therefore central to the elenchus since otherwise the examination will not reach the soul.<sup>11</sup> However, what is examined in the *Republic* is generally not the souls of the interlocutors of Socrates, but rather the ideas generated within the argument.

Images are what one starts examining in the analogy of the line discussed in the last subsection. The examination is presented as going through stages and ends with the final examination of the form of the good. The divided line thus seems to suggest a way to ascend to the 'good' through examining one's thoughts in each one of the four stages. Using Socrates as his spokesman, Plato analyses the underlying theoretical basis of dialectic without refuting his interlocutors, at least after Book I of the *Republic*.

Plato's dialectic is certainly influenced by Parmenides, though it is difficult to know how and to what extent. If it is true that the change in Platonic dialectic is a shift of focus from the souls of agents to the object of knowledge, the nature of the object of knowledge is indeed what Parmenides articulates most fully. Like Socrates, Parmenides also points to the question of what is, but first he discusses the difference between what is and what is not; and secondly the difference between what is and what is becoming.

Palmer helps us recognize the influence of Parmenides on Plato in the *Republic* on the first point.<sup>12</sup> Palmer points to Book V of the *Republic* (476e4-477b11) to show Plato's reception of Parmenides. The passage shows that, like Parmenides, Plato emphasizes that "what [both] is and is not" is unknowable.<sup>13</sup> In Book VII, Plato uses the ideas of Parmenides again and develops them further. In several places, Plato talks about turning the soul around and rising to the realm of being (521d3-4, 525b3-6, 525b10-c4). Plato develops the idea of summoning later (523a9-524d5). Plato points out that "some things summon thought, while others don't. Those that strike the relevant sense at the same time as their opposites I call summoners, those that don't do this do not awaken understanding" (524d2-5). In other words, any conflicting images or thoughts is what triggers one's journey to ascend to the good since only by resolving this conflict can one leave the realm of becoming and enter that of what is.

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11. See Michael Ferejohn, *Socratic Virtue as the Parts of Itself*, 44 *PHIL. & PHENOMENOLOGICAL RES.* 377, 377-88 (1984); and Michael Ferejohn, *The Diagnostic Function of Socratic Definitions*, in *PHILOSOPHICAL STUDIES: SOCRATIC, PLATONIC AND ARISTOTELIAN STUDIES: ESSAYS IN HONOR OF GERASIMOS SANTAS* 1-18 (Georgios Anagnostopoulos ed., 2011). The similarity of the approaches used by Socrates and Confucius triggered my interest in conducting further research. See Chi-Shing Chen, *Sincerity Based Proper Relationships: Socrates and Confucius* (2013) (unpublished manuscript) (on file with the author), presented at the 18th international Conference on Chinese Philosophy. Here, I want to point out that Plato's original contribution to dialectic is what primarily sets apart the two schools of thought, ancient Greek and Chinese.

12. See JOHN A. PALMER, *PLATO'S RECEPTION OF PARMENIDES* (1999).

13. *Id.* at 31.

III. RIGHTNESS, YI, IN *MENCIUS*

In this section, I first point out the similarity between the Platonic idea of justice and Mencius' idea of rightness, yi.<sup>14</sup> I then discuss Mencius' view of rightness, which he inherits from Confucius, and consider how he develops the idea of rightness further in *Mencius*. In conclusion, I describe the dialectical method that Mencius adopts and show how his method differs from Plato's, especially regarding the role played by reason.

In Book IV of the *Republic* (427d1-434d1), Plato's Socrates first shows what justice is in an ideally constituted city. Since such a city must be completely good, it must be simultaneously wise, courageous, moderate and just. After defining what makes the city wise, courageous and good, the remaining power must be justice. Socrates establishes that possessing the knowledge of guardianship makes the city wise; fighting for the city while preserving what is to be feared under any circumstance according to the law laid down by the complete guardians makes the city courageous; and always exhibiting self-control by all citizens so that the better rules over the worse makes the city moderate. What remains, Socrates points out, is therefore that everyone does only the one job, for which he is best suited and never meddles with the jobs of others; this makes the city just.

Since the isomorphism between a city and the soul of an individual has been established in an earlier part of the *Republic*, Socrates suggests, "let's apply what has come to light in the city to an individual, and if it is accepted there, all will be well" (434e1-3). Through the principle of opposition, Socrates establishes that distinct parts that exist in the soul; he identifies them as the rational, spiritual and appetitive parts. When each part of the soul functions best, the soul as a whole becomes wise, courageous and moderate.

If justice in the city is reflected in each citizen doing only the one job that is best for him, justice in one's soul must have to do "with what is inside him, with what is truly himself and his own" (443c9-d1). In other words,

"One who is just does not allow any part of himself to do the work of another part or allow the various classes within him to meddle with each other. He regulates well what is really his own and rules himself. He puts himself in order, is his own friend, and harmonizes the three parts of himself like three limiting notes in a musical scale--high, low, and middle. He binds together those parts and any others there may be in between, and from having been many things

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14. Yi, in Chinese, (義). I follow Lau in translating yi as rightness in this article, see LAU, *supra* note 2.

he becomes entirely one, moderate and harmonious. Only then does he act.” (443d1-e2)

For Plato, justice is doing only the one job best suited for oneself. In the best kind of city or polis, making each citizen in the polis work on only one job that he can perform best constitutes justice. Again at the level of the soul, justice makes each part of the soul perform only the one job that is best according to its nature, thus producing the soul’s excellence. Then in what sense is Mencius’ idea of rightness comparable to Platonic justice?

The term rightness occurs many times in *Mencius*. I first point to the one I believe is most representative and comparable to the Platonic idea of justice. Mencius says: “. . . Benevolence is man’s peaceful abode and rightness his proper path. It is indeed lamentable for anyone not to live in his peaceful abode and not to follow his proper path” (4A10).<sup>15</sup>

Rightness as a proper path for one to follow is central to the thought of Mencius. First of all, rightness provides, above all, the overriding principle which enables one to resolve any conflicts one may face. Secondly, rightness guides one throughout the pathway of one’s life. I believe the first point shows Mencius’ concept of rightness to be comparable to Platonic justice, while the second point shows the fundamental difference between the two. Justice, for Plato, resolves conflicts among classes of a polis or parts of the soul of an individual. Likewise, rightness, for Mencius, resolves any conflicts one may face in one’s engagement in the world. However, justice harmonizes different classes into one polis or unites different parts of a soul into a virtuous entity. Rightness, on the other hand, shapes one’s heart or mind throughout one’s lifetime in a way that makes one virtuous. Plato seems to emphasize the part-whole relationship, while Mencius emphasizes the idea of the path or way of life.

I consider Mencius’ idea of rightness further by starting with his inheritance from the master who inspired him, as Plato did with Socrates. The difference is, however, that Plato produces more original contributions based on his reflections on Socratic practice. Mencius, on the other hand, simply develops the ideas of Confucius further.

Compared with Mencius, Confucius focuses more on the ideas of benevolence, ren,<sup>16</sup> and rites, li,<sup>17</sup> and points out that rites are not simply ceremonial, but should be based on one’s understanding of benevolence. Through continuously re-examining one’s understanding of benevolence and one’s ritual practice, one’s virtue is cultivated in the process. Nevertheless,

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15. LAU, *supra* note 2; I follow the numbering of *Mencius* by Lau, too.

16. In Chinese, (仁).

17. In Chinese, (禮).

Confucius does contribute significantly to the idea of rightness, which is followed and further developed by Mencius, who emphasizes that there is a relationship of mutual reinforcement, not between benevolence and rites, but between benevolence and rightness.

In *Analects* 4.10, Confucius said, “In his dealing with the world the gentleman is not invariably for or against anything. He is on the side of the right way.”<sup>18</sup> Here, he shows that *yi*, rightness, denotes how one should conduct oneself throughout one’s life; it is also the overriding idea for guiding one’s dealings with all things. Rightness is supreme for Confucius, which is also clear in *Analects* 17.23, when a student of Confucius, Tzu-lu, asked, “Does the gentleman consider courage to be supreme?” Confucius said, “For the gentleman it is rightness that is considered supreme. Possessed of courage but devoid of rightness, a gentleman will make trouble while a small man will be a brigand.”<sup>19</sup> A similar saying can be found in Mencius, when Mencius said, “A great man need not keep his word nor does he necessarily see his action through to the end. He aims only at what is right” (4B11).

Reason is central to Plato and his idea of justice. Plato divides people in a city into classes based on their capacity to develop fully their natural potential based on reason. How to achieve knowledge of the good is also central to Plato’s view of how to cultivate virtue. However, this is not the case for Mencius. Mencius does place emphasis on thought, when he says,

“The organs of hearing and sight are unable to think and can be misled by external things. When one thing acts on another, all it does is to attract it. The organ of the heart can think. But it will find the answer only if it does think; otherwise, it will not find the answer. This is what Heaven has given me.” (6A15)

If one treats it as more important to use one’s heart to think than to use one’s hearing and sight, then one is not easily led by external attractions.

Mencius believes that if one knows what one says, one should be able to be thorough and to the point.<sup>20</sup> However, Mencius does not explain how one

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18. I use the translation of DIN CHEUK LAU, *THE ANALECTS (LUN YU)/CONFUCIUS* (1992). I change Lau’s translation “what is moral” to “on the right way” since I believe *yi*, rightness, as a right way is maintained consistently by both Confucius and Mencius. See footnote 2 of Chi-Shing Chen, *Wisdom: Heraclitus and Laozi*, in FA WENHUA YANJIU (ER): LISHI YU CHUANGXIN (法文化研究(二): 歷史與創新) [LEGAL CULTURE IN TAIWAN (II): HISTORY AND INNOVATION] 130, 132 (Guoli Zhengzhi Daxue Faxueyuan Jichu Faxue Zhongxin (國立政治大學法學院基礎法學中心) [Research Center of Fundamental Jurisprudence, National Chengchi University] ed., 2016).

19. *Id.* Again, I use “rightness”, instead “morality”, for *yi*. Lau uses “rightness” for *yi* too in his translation of *Mencius*, which is later than his translation of the *Analects*; this seems to suggest he also changes his translation.

20. Mencius said, “Learn widely and go into what you have learned in detail so that in the end

should think; instead, he emphasizes only reflective effort in general. Mencius said, “. . . Benevolence is like archery: an archer makes sure his stance is correct before letting fly the arrow, and if he fails to hit the mark, he does not hold it against this victor. He simply seeks the cause within himself” (2A7). In general, one should look into oneself whenever one fails to achieve one’s purpose (4A4).<sup>21</sup> Positively speaking, one should also learn from others whenever someone does good deeds.

The reason I believe Mencius has in mind a mutually reinforcing relationship between benevolence and rightness is because of all the reflective effort one makes when one re-examines whether one is right in response to what occurs to oneself. Such a re-examination will extend back to one’s understanding of benevolence, one’s peaceful abode (in Mencius’ terms). I believe this is characteristic of Mencius’ dialectic, which is also part of the Confucian tradition. This is also the reason I believe that Confucius and Mencius are similar to Socrates in the sense that they all emphasize re-examination of oneself throughout one’s lifetime,<sup>22</sup> although their specific methods differ. That is why Socrates believes that an unexamined life is not worth living. However, the original contribution by Plato, who equally emphasizes the examination of the object one thinks about, with its roots in ancient Greek philosophy, separates the two great schools.

The idea of roots is another idea inherited from the Confucian school by Mencius. In the *Analecets* 1.2, it is not Confucius, but one of his students, Youzi, who said, “. . . The gentleman devotes his efforts to the roots, for once the roots are established, the Way will grow therefrom. Being good as a son and obedient as a young man is, perhaps, the root of a man’s character.” For Mencius, rightness consists in lifelong commitment rooted in benevolence, where filial piety is the core value. As quoted above, Mencius said, “. . . Benevolence is man’s peaceful abode and rightness his proper

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you can return to the essential”, see LAU, *supra* note 2, at 4B15. On the other hand, how one is in a wrong state of mind can also be deciphered by what one says; see LAU, *supra* note 2, at 2A2, “. . . From biased words I can see wherein the speaker is blind; from immoderate words, wherein he is ensnared; from heretical words, wherein he has strayed from the right path; from evasive words, wherein he is at his wits’ end. . . .”

21. See LAU, *supra* note 2, at 4B28, Mencius said, “. . . The benevolent man loves others and the courteous man respects others. He who loves others is always loved by them; he who respects others is always respected by them. Suppose a man treats one in an outrageous manner. Faced with this, a gentleman will say to himself, ‘I must be lacking in benevolence and courtesy, how else could such a thing happen to me?’ When, looking into himself, he finds that he has been benevolent and courteous, and yet this outrageous treatment continues, then the gentleman will say to himself, ‘I must have failed to do my best for him.’ When, on looking into himself, he finds that he has done his best and yet this outrageous treatment continues, then the gentleman will say, ‘This man does not know what he is doing. Such a person is no different from an animal. One cannot expect an animal to know any better.’”

22. I believe one can call such an approach Confucian Daoism.

path . . .” (4A10).<sup>23</sup>

Mencius also believes that human beings are rooted in benevolence and rightness. This may be his most famous idea: human beings are naturally good. The example he refers to as evidence is this: when one sees a child about to fall in a well, one’s natural instinct is to save the child from falling. For Mencius, that shows “whoever is devoid of the heart of compassion is not human, whoever is devoid of the heart of shame is not human . . .” and “[t]he heart of compassion is the germ of benevolence; the heart of shame, of dutifulness . . .” (2A6).

What is original in Mencius’ thought, I believe, has to do with his idea that benevolence is the basis of the cultivation of virtue. The metaphor of ‘home’ is central for Mencius in teaching people that whatever one learns is through reflecting on rightness as one responds to the world throughout one’s lifetime; such reflection should be brought together and integrated into one’s understanding of benevolence.

Benevolence as one’s peaceful ‘home’ also reflects what Mencius feels strongly about: one’s love of one’s parents is the highest good in one’s virtue. Love should be the only relationship one has inside the home. Hence, Mencius claims that “. . . [f]ather and son should not demand goodness from each other. To do so will estrange them, and there is nothing more inauspicious than estrangement between father and son” (4A18). “The content of benevolence is the serving one’s parents . . .” (4A27).

King Shun presents a prime example for us to understand how strongly Mencius feels that benevolence consists in loving one’s parents; the example also shows the coherence of Mencius’ thought and practice. According to *Mencius*, Shun had the worst parents and brothers one could ever have. They abused Shun, including trying to kill him. What Shun shows throughout his lifetime, is simply true love for his parents and brother. Mencius believes that is why the king before Shun, King Yao, selected Shun to inherit the kingship.<sup>24</sup>

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23. Here, like Laozi (老子), both Confucius (孔子) and Mencius (孟子) give a special role to the metaphor of water. See LAU, *supra* note 2, at 4B18: Hseu Tzu (徐子) said, “More than once Confucius expressed his admiration for water by saying, ‘Water! Oh, water!’ What was it he saw in water?” “Water from an ample source,” said Mencius, “comes tumbling down, day and night without ceasing, going forward only after all the hollows are filled, and then draining into the sea. Anything that has an ample source is like that. What Confucius saw in water is just this and nothing more. If a thing has no source, it is like the rain water that collects after a downpour in the seventh and eighth months. It may fill all the gutters, but we can stand and wait for it to dry up. Thus a gentleman is ashamed of an exaggerated reputation.”

24. There are many chapters dealing with the details of King Shun that I cannot cover; please see LAU, *supra* note 2, at 4A26, 4A28, 5A1-6, 7A16, and 7A35. For a criticism of Mencius, who uses his brother as a deputy officer of a county though his brother is not fit at all, see Qingping Liu, *Confucianism and Corruption: An Analysis of Shun’s Two Actions Described by Mencius*, 6 DAO: A.J. COMP. PHIL. 1, 1-19 (2007).

VI. LAW IN THE *REPUBLIC* AND *MENCIUS*

The idea of law is also what separates the traditional thought of the ancient Greeks and the Chinese. Evidence for this can be found in the *Republic* and *Mencius*. This is what I discuss in this section.

In the *Republic*, the philosopher rulers are also the legislators of the city. In the *Republic*, the term ‘legislators’ or ‘legislate’ is used frequently in the context of founding the ideal city, the Kallipolis, through legislation discussed by Socrates and his interlocutors (409e3, 425b5, c6, d4, 427b1, 456c1, 462a4, 502c5, 525b10, 534d8). The philosopher rulers are also subordinate to the law in general though this leaves them some freedom of discretion. “In some cases, the rulers will themselves be obeying our laws, and in others, namely, the ones we leave to their discretion, they’ll give directions that are in the spirit of our laws” (458c1-4).

But what is more important, I think, is that laws are instrumental in transmitting the teaching of the philosopher rulers to the other two classes. This is very important, especially for the baser class, the producers. Since virtue is knowledge and the appetitive part possesses the least amount of reason, it is questionable on the amount of virtue they can possess. Kamtekar is unwilling to grant the honor-lovers in the Kallipolis even imperfect virtue.<sup>25</sup> I believe this is because she only recognizes the idea of the rule of reason and not the rule of law as well in the *Republic*. If one takes the Platonic idea of rule of law seriously, one should be willing to extend imperfect virtue to the third class too.

In Book IV of the *Republic*, when Plato discusses courage, law is specifically presented as the medium by which courage is cultivated. The soldiers “would absorb the laws in the finest possible way, just like a dye . . . because they had the proper nature and upbringing” (430a2-3). Courage is thus the power “to preserve through everything the correct and law-inculcated belief about what is to be feared and what isn’t” (430b1-3). Unlike the philosopher legislators who understand the reasons behind the law, soldiers can only possess “law-inculcated” (430b2, b6), or “law-inspired belief” (433c7) about what is and what is not to be feared.

Plato does not use the law-inculcated belief to describe the virtue the producers may have, perhaps because the producers lack the proper nature and upbringing, like the soldiers. But I believe that the producers, or at least some of them, may follow the law through persuasion. In that case, these producers ruled by law through persuasion will be self-controlled, on the basis of belief inculcated by law; these producers are not compelled to be ruled by law; rather they understand and accept the law’s ruling.

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25. Rachana Kamtekar, *Imperfect Virtue*, 18 *ANCIENT PHIL.* 315, 315-39 (1998).

In Book IV of the *Republic*, after finding courage in the soul, Socrates and his interlocutors try to define the virtue of moderation. Moderation is said to be a kind of order, “the mastery of certain kinds of pleasures and desires”, and is usually described as “self-control” (430e6-8). But, Socrates points out, “self-control” sounds strange since it involves the same person playing the role both of controlling and being controlled. What is involved must therefore be the better part of oneself controlling the worse part, both in the context of the city and the soul. In other words, the philosopher rulers are the rulers and the producers are the ones who ruled in the city. Since the philosopher rulers rule through law, as just discussed, the ruled are in actuality ruled by law.

In Book VII of the *Republic*, responding to the question whether asking the philosopher to rule will force him into a worse life, Socrates says it is not “the law’s concern to make anyone class in the city outstandingly happy but to contrive to spread happiness throughout the city by bringing the citizens into harmony with each other through persuasion or compulsion . . .” (519e1-4). In cases where the persuasion is successful, I believe, the producers can be said to be moderate based on beliefs inculcated by law too. Certainly, this is true only on the pre-condition that the law is laid down by philosophers.

The Platonic idea of the rule of law is particularly important since Plato points out the mutually reinforcing relationship between law and virtue. The philosopher rulers are not only the wisest, but also the most virtuous. According to Plato, laws can work along with virtue to develop the virtues of the citizens only when the laws are made by the wisest and most virtuous philosopher rulers, and the laws themselves must also be most persuasive too. Confucius emphasizes the mutually reinforcing relationship between two virtues, namely benevolence and rites; and Mencius stresses that the same relationship holds good between benevolence and rightness, that is, between two virtues, as discussed above. Neither Confucius nor Mencius sees the importance of the idea that the same relationship exists between virtue and law; this is another significant difference.

Confucius recognizes the importance of the rule of virtue; in the *Analects* 2.3, the Master said,

“Guide them by edicts, keep them in line with punishment, and the common people will stay out of trouble but will have no sense of shame. Guide them by virtue, keep them in line with the rites, and they will, besides having a sense of shame, reform themselves.”

The critical difference consists in how ordinary people should be guided. Confucius believes in the exemplary person’s influence on ordinary

people, when he says, “By nature the gentleman is like wind and the small man like grass. Let the wind sweep over the grass and it is sure to bend” (12.19). Unlike Plato, whose philosopher rulers should also serve as judges to resolve conflicts among citizens, Confucius states, “In hearing litigation, I am no different from any other man. But if you insist on a difference, it is, perhaps, that I try to get the parties not to resort to litigation in the first place” (12.13).

Mencius also believes the best form of rule is that by the most virtuous king, such as King Shun: “. . . [g]oodness alone is not sufficient for government; [t]he law unaided cannot make itself effective . . .” (4A1).

“ . . . If one wishes to be a ruler, one must fulfill the duties proper to a ruler; if one wishes to be a subject, one must fulfill the duties proper to a subject. In both cases all one has to do is to model oneself on Yao and Shun. Not to serve one’s prince in the way Shun served Yao is not to respect one’s prince; not to govern the people in the way Yao governed his is to harm one’s people . . .” (4A2).<sup>26</sup>

In terms of the rule of law, Mencius is often criticized for using King Shun as his model of a good king, even though King Shun broke the law when he ran away with his father since his father was sentenced as guilty of killing a person.<sup>27</sup> Mencius does not differentiate the private from the public and abandons his public duty as a king for private reasons. I do not think the historical facts can be correctly established one way or another. According to what is stated in *Mencius*, Mencius does choose a good candidate, who is not his son, and trains him properly. Later the people choose the candidate prepared by Shun instead of Shun’s son to succeed him in the kingship.

What is more important, I believe that any criticism of Shun for breaking the law should take into account Shun’s historical context. A comparative approach may help here, I think. In 621BC, according to the Draco’s homicide law of ancient Athens,<sup>28</sup> if one kills a person, intentionally or not, one has to go into exile and the case will not be pursued further. This means Shun’s father should go into exile; that is sufficient for what Draco’s homicide law requires. Shun lived at a time centuries before Draco, so one

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26. It is the third master of the Confucian, Xunzi (荀子), who develops the idea on virtue and law in great detail.

27. See Liu, *supra* note 24. Liu believes Mencius ought to be criticized: he “not only broke the law from a proper source,” but also forsook his sacred duty as a “father–mother officer” (fu mu guan 父母官) for all of his subjects, for he eventually abandoned the empire like a worn-out shoe merely in order to save his guilty father. Hence, the only possible reason that Mencius approves of such an act would be: it places filial piety absolutely above everything else, including the legal system of the empire and the Confucian ideal of humane government.

28. See MICHAEL GAGARIN, *WRITING GREEK LAW* (2008).

should not adopt modern ideas of public and private to judge behavior in such a primitive society.

#### V. CONCLUSION

The idea of reason is the key difference separating the two lines of thought originating from ancient Greece and China. For Socrates, ‘reason’ means dialectic conducted through elenchus, whose main purpose is reflective examination of one’s inner soul. It is also important to note that the Socratic elenchus really cannot be separated from his demand that one should always say what one believes when one engages in the lifelong pursuit of self-knowledge. I think there are still important ‘family resemblances’ between the ideas of Socrates and the very early Confucians – Confucius and Mencius.

Plato makes an original contribution to the Socratic elenchus by focusing further on what one thinks and especially on how it becomes knowledge. Gail Fine addresses the holistic aspects of the Platonic conception of knowledge: “Plato is a holist about knowledge. Full knowledge of anything requires knowing its place in the system of which it is a part, or which it instantiates; we do not know things in the best way if we know them only in isolation from one another.”<sup>29</sup> I believe the Platonic contribution in the *Republic* introduces greater differences between the two traditions, but that it is still possible to see a relationship between them.

To recognize this point, we need to consider Plato’s final thoughts as revealed in his last dialogue, the *Laws*. Plato suggests that the laws he lays down in the *Laws* constitute one of the best attempts to imitate what the divine reason dictates, to develop the virtues of the citizens. Plato includes preambles extensively in his legislation to persuade the citizens more effectively. Also, Plato believes that “habitual self-control of a soul that uses reason” is only the second-best divine benefit one can get, while “good judgement itself is the leading divine benefit” (631c). Good judgment is thus not for mortals, but rather for god-like persons aided by divine reason.

I think it is a worthwhile to consider whether King Shun, in Mencius’ eyes, is such a gifted person. There are detailed accounts of Shun as a person in *Mencius*.<sup>30</sup> Shun worked in woods and farms in his early years and should be classified as a producer according to the *Republic*. Because of his strong love for his parents and brother as shown in all his unreasonable reactions to all the wrong doings held by Shun’s parents and brother against him, Shun

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29. See Gail Fine, *Knowledge and Belief in Republic V-VII*, in COMPANIONS TO ANCIENT THOUGHT 1: EPISTEMOLOGY 85, 85-116 (Stephen Everson ed., 2003). Fine also proposes that “Plato is a holist in the *Republic* no less than in later dialogues.” Kamtekar, *supra* note 25.

30. See LAU, *supra* note 2, at 4A26, 4A28, 5A1-6, 7A16, and 7A35.

was chosen and trained as the successor to King Yao.

Among the early Confucians, Mencius indeed shows his strong character, possibly due to the time when he faced tough challenges from other schools of thought and his eagerness to set the criteria for a good king. In response to King Xuan of Ch'i<sup>31</sup> who once asked Mencius, "Is regicide permissible?" Mencius said,

"He who mutilates benevolence is a mutilator; he who cripples rightness is a crippler; and a man who is both a mutilator and a crippler is an 'outcast'. I have indeed heard of the punishment of the 'outcast Tchou', but I have not heard of any regicide." (1B8)<sup>32</sup>

This is not the only occasion Mencius surprised the kings and outraged his contemporary, King Xuan, and many kings of later dynasties in China. On another occasion, Mencius tells King Xuan that there are two kinds of ministers for the king depending on whether the ministers share royal blood with the king. If the ministers share the king's royal blood, they should first remonstrate when the king makes serious mistakes, "but if repeated remonstrations fell on deaf ears, they should depose him" (5B9). Mencius is also well remembered for asserting: "The people are of supreme importance; the altars to the gods of earth and grain come next; last comes the rulers . . ." (7B14). People will always come back to Mencius since he at least provides hope for people of all generations.

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31. King Xuan of Ch'i (齊宣王).

32. King Tchou (紂王), was an ancient tyrant in China.

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# 《理想國篇》與《孟子》 正義及法律思想研究

陳 起 行

## 摘 要

本文試圖整理柏拉圖《理想國篇》以及《孟子》文本中的正義及法律思想。柏拉圖將靈魂三分與城邦三種基本族群相對應，指出心靈及城邦各部分形成和諧整體，需要能實踐正義此一德行。理性調和情慾，如同哲學家協調武士及生產者般，具關鍵性。法治則是哲君提升人民德行的重要途徑。在儒家思想中，孟子進一步闡明「義」此一德行，主張仁義等均為人與生俱來，需要持續培養的德行。義、德在於人處社會應對之合宜，仁則是人探求合宜課題之歸所。以舜為例，孟子更重視人的家庭關係，尤其人們對於父母兄弟的孝與愛。柏拉圖思想較之蘇格拉底更重視數理，不但在古希臘思想發展上，開啓重要的脈絡，也使古中國儒家與古希臘思想的分歧，更為明顯。

關鍵詞：柏拉圖、理想國、孟子、德行、正義、義、仁、法治