

China's Sustainability Challenges: Confucianization of Chinese Law from Intra- Generational, Inter-Generational and Gender Equity Perspectives

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Abstract: The paper investigates how the leaders of the People's Republic of China (PRC) have re-interpreted the three kinds of "equity" generally considered implicit in the 2030 Sustainable Development Goals (SDGs), namely inter-generational, intra-generational, and inter-gender equity, to fit the country's context. To what extent is China's recent "return to Confucius" paving the way to the use of the law as an instrument of "social moralization"? What impact is this trend having on the achievement of sustainable development within Chinese society? The following sections will answer these questions, showing if, how, and with what consequences, Chinese traditional values have recently undergone a "creative renovation", in order to support, on the one hand, PRC government's commitment to reach SDGs and to back, on the other, its attempt to reweave Chinese social fabric, worn out by the dramatic economic development experienced by the country in the last decades.

Introduction

The concepts of social inclusion and social exclusion have been introduced in the PRC quite recently, spanning the end of the 20th into the 21st Century (Peng Du, 2013, 44), when the problems connected with the tremendous social-economic development experienced by the PRC after the inauguration of the reform and opening-up policies in 1978 became evident (Peng Du, 2013, 44-45).

The increasing gap between the rich and the poor, the rise of rural/urban and regional disparities, heavy pollution, the unemployed and migrant workers, low coverage of social protection, and - last but not least - the inter-generational gap in living standards, forced the Communist Party of China (hereinafter: CPC) to rethink the development

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pattern, setting up a more sustainable, coordinated, and inclusive model of growth (Peng Du, 2013, *ibid*).

Thus, in 2003 the Third Plenary Session of the 16th CPC Central Committee passed the “Decision upon a Certain Number of Problems with Regard to Consummation of the Socialist Market Economy”, announcing a new policy direction (Hu Angang, 2007, 87) summed up in the notion of “five coordinations” (五个统筹: coordination between urban and rural development, coordinated regional development, overall economic and social development, coordinated harmonious development of men and nature, coordinated domestic development and opening up).²

In 2004 the Fourth Plenary Session of the 16th Central Committee of the CPC listed “the capability of building a socialist harmonious society” as one of the five governing capabilities that the CPC endeavors to enhance (http://cpcchina.chinadaily.com.cn/2010-09/16/content_13918117.htm).

Unsurprisingly, it was exactly during those years that Chinese scholars began to show a particular interest in Durkheim’s work.

Indeed, Durkheim’s theory of social solidarity seemed to fit perfectly with the latest Chinese leadership’s catchphrases: the aforementioned “harmonious society”, and “sustainable development”, a notion destined to become, after the enactment of the 11th Five-Year Plan (2006-2011), the model that should have inspired Chinese economic growth, and the way forward for building a moderately prosperous society (小康社会).

According to Chinese scholars, the first use of the latter expression is very ancient, dating back to the Classic of Poetry (诗经 *Shijing*, 11th - 7th century BC). It is also considered the first classical Chinese concept used by the CCP to legitimize its vision for the future of China. Deng Xiaoping mentioned it in December 1979 during a meeting with the Japanese Prime Minister, Masayoshi Ōhira, in which he stated was to “transform China in a well-off society” (中国共产党新闻 *Zhongguo Gongchangdang xinwen*, 1979).

2 In the “13th Five-Year Plan for Economic and Social Development” (2016-2020), the concept of “five coordinations” was substituted by a new formula, the so-called “five major development concepts” (五大发展理念): innovation, coordination, green, openness and sharing. The full text (in English) of the 13th Five-Year Plan is available online, at: <http://en.ndrc.gov.cn/policyrelease/201612/P020161207645766966662.pdf>.

As remarked by Guo Yingjie:

“The vision of a ‘xiaokang [moderately prosperous, A/N] society’ is one in which most people are moderately well off and middle class, and in which economic prosperity is sufficient to move most of the population in mainland China into comfortable means, but in which economic advancement is not the sole focus of society. Explicitly incorporated into the concept of a ‘xiaokang society’ is the idea that economic growth needs to be balanced with sometimes conflicting goals of social equality and environmental protection” (Guo Yingjie, 2008, 52).

Eventually, in December 2014 to “*comprehensively build a moderately prosperous society*” was included by Xi Jinping in the “*four comprehensiveness*” (四个全面战略布局), the new slogan indicating the four main goals that PRC has to reach by 2020 (i.e.: comprehensively build a moderately prosperous society, comprehensively deepen reform, comprehensively govern the nation according to law, and comprehensively strictly govern the Party).

It is worth mentioning, however, that almost in the same period, China had committed itself internationally to reaching other, even more ambitious goals related to sustainable development. I am referring to the “2030 Agenda for Sustainable Development” (hereinafter: 2030 Agenda), adopted by the United Nation Sustainable Summit in September 2015, as the 15-year cycle of anti-poverty Millennium Development Goals (MDGs), signed in 2000, was coming to a conclusion (<http://www.un.org/millenniumgoals/>).

The “2030 Agenda” sets out the 17 Sustainable Development Goals (SDGs) that constitute the guideline and the direction of effort for UN member states to continue over the next fifteen years (2016-2030) (<https://sustainabledevelopment.un.org/post2015/transformingourworld>).

Klauss Bosselmann, in his book on “The Principle of Sustainability. Transforming Law and Governance”, affirms that the principle of equity represents the social dimension of sustainable development (Bosselmann, 2016, 69). According to him, therefore, MDGs’ sustainable development has to be understood as referring to “intra-generational equity” (i.e.: “*the right of people within the current generation of fair access to the Earth’s natural resources*”, or “*the commitment of the states to eradication of poverty*”) and to “inter-generational equity” (i.e.: “*the right of future generations*”).

It is worth noticing, however, that, at least from this point of view, Bosselmann's position is not particularly original. Indeed, in 1987, the World Commission on Environment and Development released the report "On our future" (also known as the Brundtland Report), in which, for the first time, sustainable development was defined as the *"development that meets the needs of the present without compromising the ability of future generations to meet their own needs"* (World Commission on Environment and Development 1987, 41).

Since then, the scholars who dealt with the topic have generally taken for granted the link between the notions of sustainable development and that of equity, not only in the economic and environmental fields, but also in the social one. (Beddler, 2000; Bob, Giddings, Hopwood, O'Brien 2002; Klinsky, Keiner, 2005; Kates, Parris, Leiserowitz 2005; Winkler, 2014; Borowy, 2014).

It is, above all, with regard to the latter that, alongside the intra and intergenerational equity mentioned by Bosselmann, a third type of equity emerges (Bawa, Seidler, 2009, 25). This is inter-gender equity, considered by the "2030 Agenda" as one of the primary sustainable development goals to be globally achieved, to the point to ask UN members to *"adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels"*.

The Chinese leadership fully shares these objectives. Indeed, speaking at the 2015 United Nation Sustainable Summit, Xi Jinping said that *"China makes a solemn commitment that it will shoulder the responsibility of implementing the post-2015 development agenda, and seek solidarity and cooperation to constantly push the cause of global development"* (Ye Jiang, 2017, 120).

The present paper examines the process through which China is pursuing the construction of a "harmonious society", on the one hand, and the implementation of the UN 2030 sustainability goals, on the other.

To this end, it investigates how, in the PRC, the three kinds of "equity" mentioned above have been re-interpreted to fit the local context, with particular reference to the values generally considered at the core of Chinese traditional culture. These are the Confucian principles of 孝 *xiao*, filial piety; 仁 *ren*, benevolence; and 同异/分 *tongyi/fen*, identity and difference/rights and duties.

Indeed, Chinese and Western legal scholars has dedicated many works to the influence exerted by Confucianism on Chinese law and legal practice, from the imperial era to present days (Chen Jianfu 2016, 5-24; Huang 2015; Kang Xiaoguang, Huiqing Liu, 2006). Equally studied is the impact that the diffusion of Confucian ideology in China and in other East-Asian Countries had (and still have) on the role of women within family and society (Martin, 1990; Li Chenyang, 2000; Bell, 2003). Still little known, however, is the effect that the “rediscovery” of Chinese traditional values by the current CPC leadership and the incorporation of them in the most recent PRC legislation have had, and could have, on the implementation of SDGs, especially when it comes to inter-generational equity, intra-generational equity, and – last but not least – inter-gender equity.

The present paper aims to fill this gap, showing if, how, and with what consequences, the above mentioned concepts of 孝 *xiao*, 仁 *ren*, and 同异/分 *tongyi/fen* have recently undergoing a “creative renovation”, in order to support, on the one hand, PRC government’s commitment to reach SDGs and to back, on the other, its attempt to reweave Chinese social fabric, worn out by the dramatic economic development experienced by the country in the last decades. Indeed, without social cohesion, not only the “great rejuvenation of the Chinese nation”, desired by Xi Jinping would remain an impossible dream, but also PRC political stability could be put at risk.

To what extent can China’s “return to Confucius” pave the way to the use of the law as an instrument of “social moralization”? What impact can this trend have on the realization of the mentioned three types of equity within Chinese society?

I will attempt to answer these questions in the following sections. Nevertheless, since the inclusion of the principle of solidarity in Chinese legislation preceded the revival of Confucian values, the analysis of the developments that brought to its incorporation will come first.

Solidarity and the Law in 21st-Century China: 2004 PRC Constitutional Amendments

As mentioned above, it was at the beginning of the new century that Chinese leaders became aware of the need, for PRC, to shift towards a more sustainable model of development. From a legislative point of view, 2004 proved to be a turning point. Indeed, it was in that year that the National People’s Congress (NPC) amended the PRC Constitution for the fourth time since its enactment, in 1982. This amendment is

well known for its definition of private property as “inviolable”³ and the introduction of a provision on the protection of human rights (art. 33, paragraph 3).⁴

It is worth noticing, however, that at least one of the 13 changes made to the text also constitutes an answer to the need for social solidarity that had recently emerged from within the people, and a proof of the government’s desire to recast itself as a defender of the poor and the powerless, as repeatedly affirmed by Premier Wen Jiabao and other Chinese top officials during the same annual session of the NPC (Buckley, 2004).

Indeed, the paragraph added to Article 14 of the Constitution says:

*“The state establishes and improves the social security system fitting in with the level of economic development”.*⁵

Following the introduction of this provision many laws and regulations were amended, such as the “Basic Medical and Health Care Law” (2009), the “Social Insurance Law” (2010), the “Law on the Protection of Mental Health” (2012), the “Civil Procedure Law” (2012, 2017), the “Interim Measures for Social Assistance” (2014), the “Environmental Protection Law” (2014), and the “Charity Law” (2016).

One needs only to read the titles of these laws to recall Durkheim’s theory of law as a mechanism of social integration (Corne, 1997, 4 and following pages). According to Durkheim, different forms of law express different forms of cohesion (Corne, 1997, 5). Penal and repressive law as exemplified in the legal system of Imperial China, for example, expresses what he refers to as “mechanical solidarity” - a kind of cohesion based on shared beliefs and values among average members of the same society. In other areas of law or in other ages, however, law can convey what Durkheim calls “organic solidarity”. More precisely, it can work as a “moral agency”, becoming the expression of a pre-existing moral *milieu*, which shapes and governs the principles under which social behaviors occur and are enforced. This seems exactly to be the function attributed to certain provisions passed during the last decade, in particular after 2012 Xi Jinping’s call

3 See art. 13 of PRC’s Constitution as modified according to art. 22, Amendments to the Constitution of the People’s Republic of China(中华人民共和国宪法修正案 *Zhonghua renmin gongheguo xianfa xiuzheng’an*), adopted at the Second Session of the Tenth National People’s Congress of the People’s Republic of China on March 14, 2004.

4 See art. 33, paragraph 3 of PRC’s Constitution as modified according to art. 24, Amendments to the Constitution of the People’s Republic of China (2004), cit..

5 See art. 14, paragraph 4 as modified according to art. 23, Amendments to the Constitution of the People’s Republic of China (2004).

to “*achieve the Chinese dream of the great rejuvenation of the Chinese nation*” (实现中华民族伟大复兴的中国梦).

This slogan emphasized the link between Chinese tradition and the national interest as interpreted by current Chinese leaders. Undeniably, since Xi Jinping’s accession to power, not only have the official references to China’s glorious past become more frequent, but the knowledge of Confucian classics has also come back into fashion among Chinese bureaucrats, being critical to understanding the messages - explicit or hidden - contained in the speeches of the new leader (Scarpari, 2015, 163-178).

It is worth noticing that, at the present stage, Chinese leaders tend to identify “Chinese traditional culture and values” with those proper of Confucian orthodoxy, with little, if any, attention to the concepts contained in other ancient Chinese philosophers’ books, such as the Han Feizi (Master Han Fei) or the Shangjunshu (The Book of Lord Shang). Indeed, allusions to the latter works (and, more in general, to the concepts elaborated by the so-called legalist thinkers) are rarely mentioned in reference to the “moral basis” of Chinese society. They are, instead, frequently used when it comes to the fight against corruption, being very suitable in remembering to Party officials the centrality of the State and the rigidity of the law, to which everyone - and they possibly more than anybody else - is subject (Scarpari, 2015, 39).

From this point of view, the new emphasis on the ancient Chinese-Confucian tradition seems clearly not only a reflection of PRC leaders’ will to reaffirm Chinese “soft-power” and improve the international image of China. It is also a way of re-introducing traditional moral concepts in order to “rebuild” the social cohesion apparently lost with the reforms. To this end, the law plays a key role, as evidenced by the new “Confucianization of law” (T’ung tsu Ch’ü, 1961, 267-279) which has been witnessed in recent years, in particular with reference to the areas linked to sustainable development. As “filial piety” (孝 *xiao*) is considered one of the main Confucian virtues, the analysis of this trend will start with a quick look at the provisions regarding “inter-generational equity” and their relationship with the principle of *xiao* in the present Chinese legal system.

3. "Sustainable Development" and Equity in 21st-Century China: Towards a "Moralization" of Chinese Law?

Inter-generational Equity

The Xiao Jing (孝经, "Classic of Filial Piety", V-III century BC) defines "filial piety" as: *"the root of (all) virtue, and (the stem) out of which grows (all moral) teaching"* and the *"perfect virtue and all-embracing rule of conduct, through which [the ancient kings] were in accord with all under heaven. By the practice of it the people were brought to live in peace and harmony, and there was no ill-will between superiors and inferiors"* ((孝經, - 開宗明義, Xiao Jing - Kaizong mingyi (Xiao Jing, Scope and meaning of the treatise) paragraph 1).

Therefore, it is not surprising, that CPC's leaders have begun their attempt to use traditional ethics to "re-sew" the Chinese social fabric through a re-evaluation of this virtue, thus filling the ideological vacuum that has eroded the popular consensus towards the Party (Scarpari, 2015 B, 115 – 116).

Indeed, the core of filial piety inherited from traditional Chinese culture refers to the duty of the offspring to provide care, respect, and financial support for their parents, and to please them by showing obedience and regards. Nevertheless, filial piety must not only demonstrate a benevolent heart to take care of the parents' interests: it also requires support for a hierarchically higher status position of the parent versus the child, and the ruler versus his subjects and ministers (Cheung, Kwan, Ng, 2006, 618).

Thus, introducing this principle into the legislation, could help the Chinese government to alleviate the pressure on the welfare system, resolving the problem of senior citizens forced to live in conditions of insecurity and loneliness without adequate forms of assistance, which is becoming particularly serious in the country with the largest amount of older people in the world (Peng Du, 2013, 59). Moreover - and even more importantly - it could be useful to strengthen CPC's authority, preventing it from being overwhelmed by waves of people's protests (Scarpari ,2015 B, 116).

This, of course, does not mean that China is the only country in the world using the law as a tool to bolster filial and family responsibility. On the contrary, over the last few years many governments around the globe have enacted legal and administrative provisions to enforce filial and family responsibility, and sustain solidarity within the family, in order to relieve their responsibility for old people's care (Cheung, Kwan, Ng, 2006, 617).

Nor it is the first time, in Chinese history, in which filial piety is included in legislation. In his recent paper on the combining of morality and law in China's past and present, Philip Huang remarked that in the Qing code, "*filial piety was expressed partly in terms of punishments for those who do not provide maintenance for parents in old age*". Great importance was given to this principle both in the early twentieth century - when, despite the legislators massive copying from the German Civil code, Republican Chinese law retained this essential dimension of the law, so that children were required almost unconditionally to support their parents in their old age - and in the first decade of the "reform and opening up period" (Huang, 2015, 10).

Indeed, according to art. 13, paragraphs 2 and 3 of the Law of Succession of the People's Republic of China (中华人民共和国继承法, 1985):

"At the time of distributing the estate, successors who have made the predominant contributions in maintaining the decedent or have lived with the decedent may be given a larger share. At the time of distributing the estate, successors who had the ability and were in a position to maintain the decedent but failed to fulfil their duties shall be given no share or a smaller share of the estate".

The most recent development of Chinese legislation, however, seems to demonstrate a new, original and typically Chinese attitude towards "inter-generational solidarity", interpreted according to the principle of "filial piety".

Consider, for example, the last revisions (2012, 2015, and 2018) of the "Law on the Protection of the Rights and Interest of the Elderly" (中华人民共和国老年人权益保障法, hereafter: *LPRIE*). It is worth noticing that the legislators, since the 2012 revision, have deemed it necessary to almost double the number of its articles (now 85, compared to 50 in the 1996 and 2009 versions), demonstrating the increased importance attributed to the topic by the Chinese leadership. Moreover, the same revision - perhaps not coincidentally passed by the Standing Committee of the NPC after Xi Jinping's rose to power and his aforementioned call to the recovery of traditional values - added to the *LPRIE* provisions, which do not just reaffirm the obligation of children to take care of aged parents from an economic point of view. They also embody other duties (namely: respect, obedience, greeting, and pleasing), traditionally connected to the concept of filial piety (Cheung, Kwan, Ng, 2006, 618), but apparently more relevant to the sphere of private life and morality than to the realm of public regulations and codified norms (Scarpari, 2015 B, 122).

To take a few examples, paragraph 1, art. 18 of LPRIE (2018) states that: “*Family members shall care for the mental needs of the elderly, and shall not ignore or cold-shoulder the elderly*”, while paragraph 2 of the same article establishes the duty, for family members living apart from the elderly to “*frequently visit or greet the elderly*”. It seems rather difficult to check whether Chinese people follow these, quite vague, rules. Besides, to date the law does not provide any sanction in case of failure to follow them. Nevertheless, the pressure exerted by Chinese media on citizens to respect these norms, and consequently the principle of filial piety, is strong (Scarpari, 2015 B, 123). It is evident, however, that the goal is not just the return of respect for one’s family. What is at stake, today as in the imperial era, are the obligations towards the elderly, the superiors and, ultimately, the government and the Party (Scarpari, 2015 B, 123). Regarding inter-generational solidarity, therefore, one can truly say that the law functions as a “moral agency”; but of a morality, and a “solidarity”, once again at the service of power.

Intra-generational equity

Maurizio Scarpari, in his book on the revival of Confucian principles in today’s China, remarks how, according to Confucian thought, the foundations of filial behavior are love (爱 *ai*) and respect (敬 *jing*). Love and filial respect (孝 *xiao*) and love and respect for the older brothers (悌 *ti*) are the foundations of love for the other human beings (仁 *ren*), which is the ultimate Confucian virtue, born out of the love that individuals show to their fellow humans (Scarpari 2015 B, 67).

As expressed in Confucius’ Analects:

“*Filial piety and fraternal submission are the root of all benevolent actions* (仁之本与 *ren zhi ben yu*)” (孔子, “论语 – 学而”, 1.2, Confucius, “Lunyu (Analects), Xue er, 1.2);
 “*Benevolence* (仁 *ren*) *is love all men* (爱人 *airen*)” (孔子, “论语 – 颜渊”, 12.22, Confucius, “Lunyu” (Analects), Yan Yuan, 12.22).

Benevolence (or humaneness, as *ren* is sometimes translated into English) stems from filial piety. The prevalence of one principle over the other has been differently interpreted throughout Chinese history; nevertheless, the interdependency of benevolence and filial piety has always been considered as the key of harmony (和 *he*) and social order (治 *zhi*) (Scarpari, 2015 B, 117).

The goal of moralizing Chinese society, making it more harmonious and “moderately prosperous” through a sustainable development which would not threaten the social stability of the PRC, cannot, therefore, be pursued without taking into account these two concepts.

In the preceding section we have seen that, since 2012 LPRIE’s revision, all the components of filial piety, including the most “private” ones, have become legal obligations, in order to bring about through law what can be considered as “inter-generational equity with Chinese characteristics”.

The relevance of filial piety among Chinese fundamental legal principles was, then, definitely affirmed in 2017, with the approval of the General Part of the Civil Code (民法总则, hereinafter: GPCC).

The GPCC, considered as “*the first and foremost step in the ongoing Chinese civil law codification*” (Zhai Tiantian, Chang Yen-chiang, 2019, 2), will become the first book of the forthcoming PRC’s Civil Code, expected to be approved in 2020. Accordingly, the GPCC plays a guiding role for subsequent sections of the Civil Code, including property, contracts, personality rights, torts, marriage, family, and inheritance, and establishes the basic principles of China’s civil law. Among them, we find the principle of *xiao* as expressed in the LPRIE, as GPCC’s art. 26, paragraph 2, states that:

“Adult children have the obligations of supporting, assistance, and protection of their parents”.

It is worth noticing, however, that, according to orthodox Confucianism, filial piety does not impose duties only on one part of the relationship: the older generation also has obligations towards the younger.

As remarked by Mencius (IV - III century BC), the philosopher considered the “Second Sage” of Confucianism, after Confucius himself: “*Treat your elders as elders, and extend it to the elders of others; treat your young ones as young ones, and extend it to the young ones of others; then you can turn the whole world in the palm of your hand*”.

In this sense, it is possible to say that the concept of *xiao* is very close to the aforementioned Bosselmann interpretation of “inter-generational equity” as the “rights of future generations⁶”.

The latter expression is generally understood as the “*constraint on a natural inclination to take advantage of our temporary control over the earth’s resources and to use them only for our own benefit without careful regard for what we leave to our children and their descendant*” (Brown Weiss, 1990, 200). In other words, sustainability compels us to look at the earth and its resources not only as a good to be exploited, but as a sort of “trust”, passed to us by our ancestors for our benefit, and to be passed on to our descendants for their use. To employ an effective expression of Edith Brown Weiss, we all are “*both trustees for the planet with obligations to care for it and beneficiaries with rights to use it*” (Brown Weiss, 1992, 19-20).

From this perspective, it is not only easy to understand why sustainable development is generally considered by Western scholars to be “*inherently an inter-generational question as well as an intra-generational question*” (Brown Weiss, 1992, 19).

Looking at the Chinese context, and taking a step forward, it is also possible to see to what extent the traditional concepts of filial piety, benevolence and harmony are bound together, and - most relevant for present purpose - how useful they can be to boost the PRC government’s current policies and goals, especially, but not exclusively, in the environmental field (Pan Yue, 2006).

The concept of *ren*, the idea of being empathic, putting oneself in the place of another, and the Confucian way of extending love and favors, are closely intertwined with the relationship between human beings and nature, individuals and society, self and others (Guo Qiyong, Cui Tao, 2012, 20). Moreover, the Confucian theory and praxis of 仁诚 (*rencheng*, paramount virtue and sincerity) and 仁义礼 (*renyili*, benevolence, righteousness and rites) are traditionally considered beneficial to the regulation and harmonization of individual, community, the Nature and the Supernal Dao, the latter intended, as in the Doctrine of the Mean (中庸 *Zhongyong*, one of the “Four Books” of Confucian philosophy), in the sense of “*sincerity and the born nature of the sage*” (Guo Qiyong, Cui Tao, 2012, 48, 51). Renovating them creatively, therefore, can help the reconstruction of core values in Chinese modern society, promote social stability, and benefit the construction of a harmonious world, as desired by the leaders of the

6 See *supra*, paragraph 1. Introduction.

PRC. It is not by chance, therefore, that the Chinese legislators incorporated some of the virtues/duties related to *ren* in 2017 GPCC, making this concept one of the principles which inspire basic civil law rules related to “intra-generational equity”, and (consequently) increasing the space given to morality and solidarity in the Chinese legal system.

Let us take some examples, starting from art. 9 of the GPCC.

According to that article:

“The parties to civil legal relations shall conduct civil activities contributing to the conservation of resources and protection of environment”.

This provision is certainly part of the effort to build an “ecological civilization” in order to respond to the PRC’s environmental problems, as recommended by the Party since the beginning of the second decade of the XXI century. Through it, for the first time in China, a private law - and not, as usual, an environmental law, or other public laws - adopts the “green principle”, imposing a mandatory requirement for the protection of environmental and natural resources on individuals in their private legal relations/activities (Zhai Tiantian, Chang Yen-chiang, 2019). Art. 9, however, does not look very easy to implement. The experience of the last few years concerning environmental damage lawsuits has shown how, in cases of pollution or disruptions of the ecosystem, it is often very difficult for the judges to quantify the loss, to calculate the compensation and (sometimes) even to decide who should be compensated. From this point of view, one can reasonably expect that the evaluation of whether, and how much, a civil relationship “contributes” to the conservation/protection of the environment will be even more complex, and sometimes probably impossible.

Furthermore - as we have noticed above, with reference to art. 18 of the LPRIE - the GPCC does not provide for any penalty where a civil activity does not bring any benefit to the ecosystem. Of course, the GPCC is only the first book of the forthcoming Chinese Civil Code; therefore, there is still the possibility that the subsequent sections of the Code will contain provisions regarding how art. 9 should be implemented in judicial practice.

At present, however, rather than a binding rule, it appears to be no more than a message, it seems to be a message, intended for the rest of the world as much as for the citizens of the PRC. On the one hand, it shows the determination of China to

fight environmental degradation and pursue sustainable development; on the other, it reminds the Chinese people, in the form of a legal provision, of the traditional Chinese duty to live in harmony with nature as imposed by the principle of benevolence (Anh Tuan Nuhuen, 2011, 555; Yao Xinzhong 2014). According to Confucian eco-ethics, in fact:

“A man of the virtue of ren 仁 will love everything in Nature on his own initiative rather than cause a wanton destruction to them. Chengwu (诚物, to fulfill others) not only relates to living things, but also to stocks and stones, for every single substance on earth is a part of eco-life” (蒙培元 Meng Peiyuan, 2004, 32-33).

Indeed, two of the most authoritative books of Confucianism, “The Doctrine of the Mean” and “The Book of Mencius”, have very strong insights into the theory that human nature is similar to the nature of things (Li Tianchen, 2003).

“Similar”, however, does not mean “equal”, at least according to traditional Chinese thought. In Mencius’ words: *“It is the nature of things to be of unequal qualities”*. The Confucian *ren’ai* varies from sphere to sphere in nature: it proceeds from one’s close connections to people generally, and then to every being on earth, with an incremental distance. The principle of human relations, therefore, is more important in comparison to the principle of the relationship among beings. For Confucius, benevolence consists, first of all, in *“loving others”* i.e.: to show compassion and concern for the disadvantaged.

As pointed out by Guo Qiyong and Cui Tao:

“Confucian benevolence is a moral sense beginning with those who are dear - loved. Above all, one must be filial to his parents and adore his brothers. Then he must branch out from this feeling, considering others and empathizing with the heavens, the earth, with people and things, and with his own heart. Only thus can benevolence become a universal sense compassion and righteousness. As to the import of benevolence, Confucius specified three aspects: “loving others”, “having kindly feelings towards everyone” and “cultivating in oneself the capacity to ease the lot of the whole populace”.

All these principles are generally considered to be deeply rooted in Chinese culture and tradition, to the point that, during the Maoist era, they have even been able to resist, to some extent, the banishment of the “old ideologies” on which they were originally based. In the last forty years, however, the economic and social changes resulting from the reforms seem to have swept away from Chinese people every remnant of empathy

and solidarity towards the others, replacing them by the desire to get rich at any cost, and by increasing cynicism and individualism (Yan Yunxiang, 2009; Liu Changyuan, Song Wang, 2009).

As noticed by Maurizio Scarpari, Xi Jinping's "Chinese dream" also aims to solve this question, which can potentially threaten harmony and social stability, and - last but not least - the international image of China. The idea is "*to promote the values that have made Chinese civilization great to build a new socialist morality, which can conjugate socialist principles with the humanistic spirit of Confucianism; which can speak the language of man and not only of economy; which can talk of solidarity and not only of individualism [...]*" (Scarpari, 2015 B, 9).

Indeed, the dramatic loss of "compassion" of the people of the PRC has become quite evident in the last decade, mainly due to a series of accidents reported by Chinese and Western media. The most impressive of them is certainly the case of Wang Yue, which took place in Foshan (Guangdong), in October 2011. Wang Yue, a two-year-old girl who wandered around an alley after escaping her mother's surveillance, was run over twice, by two different trucks, while eighteen passers-by, including a woman with her own child, ignored her as she writhed in pain for more than seven minutes. Only a female rubbish scavenger eventually helped and sent her to a hospital for treatment; Wan Yue, however, succumbed to her injuries and died eight days later. The footage of the event, recorded by a closed circuit television installed in the street where the incident occurred, was released on the web, causing a widespread reaction in China and overseas, and becoming a symbol of contemporary Chinese society's growing apathy (Demick, 2011; Chin, 2011; Jiao Haiyang, 2011; Chen Weihua, 2011).

The impression that China was becoming a "nation of 1.4bn cold hearts" (Zhang Lijia, 2011) was further confirmed by several other deaths that occurred around the same time. Among them, the death of a 5-year-old boy, injured by a minivan who eventually died on the way to the hospital, after other drivers and passers-by had refused to help his mother to rescue him (The Sidney Morning Herald, 2012; Zhang Lijia, 2011), and that of an 88-year-old man. The latter - who had fallen over face down at the entrance of a vegetable market near his home and who was ignored by people for almost 90 minutes, before his daughter found him - died because of a respiratory tract clogged by a nosebleed; if anyone had turned him over, he might have survived (Fallows, 2011; Zhang Lijia, 2011).

I am talking about these cases because, according to some legal Chinese scholars, this behavior is not only due to the Chinese people's loss of moral sense, but also to loopholes in Chinese legislation. The "breakdowns in solidarity" that China has experienced in recent years would therefore not be anything other than "anomie" in the Durkheimian sense: the lack of normative regulation necessary to ensure social integration.

This opinion is undoubtedly grounded in legal practice: in several cases, people who had received help had sometimes gone on to sue their rescuer, often in the hopes of winning damages, fuelling the perception that offering assistance was too risky.

One of the most famous cases in this regard occurred in 2006, when Peng Yu, a 26 year-old student in Nanjing (Jiangsu), was sued by a 65-year-old woman for pushing her to the ground at a bus stop.

Peng was ordered by the court to pay 45,877 yuan (HK\$57,600), a large share of the woman's medical bill, in an original ruling in September 2007, despite he insisted he had simply helped the woman after she fell over. The judge decided in favor of the woman based on the assumption that "*Peng must be at fault. Otherwise why would he want to help?*" adding that, if Peng had not felt guilty, his action would have been contrary to common sense (Zhang Lijia, 2011). A similar case, but with an even more tragic epilogue, occurred in 2014, when a man from south China's Guangdong Province aided a senior citizen, and was lately accused of knocking him down. The man committed suicide when faced with demands for compensation (Xiang Bo, 2017).

In order to change public attitudes towards helping others, in the last few years many local governments have started legal experiments, in the hope that the law could accomplish what ethics seemed unable to do (Xinhua, 2017).

The first Chinese provision which tried to promote "solidarity among the people" was probably the "Shenzhen Special Economic Zone good Samaritans' Right Protection Regulation" (深圳经济特区救助人权益保护规定 *Shenzhen jingji tequ jinju ren quanyi baohu guiding*) - more commonly referred to as the "Good Person's Law" - which came into force on August 1, 2013 (Dzodin, 2013; Tang Menyun, 2014).

This very short regulation (only ten articles) liberates good Samaritans from any legal responsibility for the condition of the person they assist, except in cases of gross negligence (art. 4) and shifts the burden of proof from the helper to the person in need

of assistance (arts. 3 and 4). Furthermore, it provides for significant punishment, that includes both fines and imprisonment, for those who falsely accuse those who come to their aid (art. 6). Finally, it provides rewards and other protections for the aiders, to be established by the relevant provisions of other laws and regulations (art. 9).

It is interesting to read the words used on China Daily by a (foreign) advisor of Tsinghua University, Harvey Dzodin, to welcome the enactment of this regulation. After observing that the new “Good Person’s Law” “*brings China back to some of its ancient core values*”, he noticed that it has:

“the potential to help rejuvenate the nation and the well-being of the people by promoting traditional Chinese values. The law frees good persons from worrying about their liability when coming to the assistance of those who appear to be in difficulty [...]. I’ll be rooting for the law to be a success and used as a model for a national law to help fulfill the Chinese Dream and build a more harmonious society at the same time”.

The author’s wishes would become reality a few years later, once again through the enactment of the 2017 General Part of the Civil Code.

Art. 184 of the GPCC states that:

“A person who voluntarily provides emergency assistance and causes harm to the recipient of assistance shall not assume civil liability”.

It is clear that art. 184 - depicted by Chinese media as a provision that will “*protect people who are ready to help others*” - does not cover all the cases envisaged by the Shenzhen regulation. On the contrary, it applies only to a single, rather infrequent, situation: the one in which well-intentioned people are made liable for injuries they cause in the course of attempting to help a person in danger. Moreover - and, again, differently from what is provided for by the Shenzhen Good Person’s Law - art. 184 provides that the aiders shall never be liable under any circumstances (Donald Clarke, 2017).

As noticed by Donald Clarke, this did not happen by chance: the legislative history makes it clear that this was in fact the desired outcome. Art. 184 CPCC, which in its original version provided that the good Samaritan could be liable for gross negligence, was amended twice in order to remove any reference to liability for aiders. According to some delegates, in fact, even the most remote possibility of being held accountable

for any damage to the person in danger could have discouraged potential saviors from helping.

The result is definitely an original provision, which, for its extreme imbalance in favor of rescuers, seems to have no equal in any other legal system in the world.

The risk, as pointed out by both by Western and Chinese observers, is that, due to the formulation of art. 184 GPCC, good Samaritans who know little about medical treatment could bring serious harm to people in critical condition.

This hazard, though, is probably considered acceptable by Chinese leaders, with respect to the possibility that the Chinese citizens - once freed from the fear of any retaliation thanks to the wording of the article, - can return to acting according to the feeling of “benevolence” in the sense of “loving others”. Once again, the revival (and the incorporation into the law) of a traditional value may help the PRC to achieve two important policy goals: the realization of “intra-generational equity” provided for by the “2030 Agenda”, on the one hand, and the increase in social stability and harmony among the people, on the other.

However, not all the basic principles of traditional Chinese thought may be equally useful to achieve the commitments of sustainable development assumed by PRC at international level. On the contrary, they can sometimes constitute the greatest obstacle to their accomplishment. This is, in my opinion, the case of what we have above considered as the “third pillar” of sustainable development, namely: inter-gender equity. Reaching this goal seems to have become especially problematic for the Country in recent years, in particular due to the re-Confucianization of law and legal practice that, as we have seen above, have characterized Chinese policy in particular since Xi Jinping’s accession to power. It is, therefore, to the analysis of the multifaceted relationship between legality, morality and “inter-gender equity” in PRC of the 21st Century that the next (and last) section will be dedicated. In order to make the context clearer, however, some mention of the connections between traditional values and gender issues will precede the discussion.

Intergender equity

In his paper on “The Confucian Ideal of Harmony”, Li Chenyang noticed that the word usually translated into English as “harmony”, 和 *he*, pre-dates Confucianism (Li Chengyang, 2006, 583). Indeed, its earliest form can be found in the inscriptions

on bones and tortoise shells from the Shang dynasty (sixteenth to eleventh centuries B.C.E.) and later more frequently in inscriptions on the bronze utensils of the Zhou dynasty (1066-256 B.C.E.) (郭齐, Guo Qi, 2000, 451- 466). In these texts, its meaning generally has to do with sounds, and to how sounds interact with one another. Only later did its significance evolve, passing from “mutual responsiveness” among sounds to “harmony” in the sense of sounds combined in a “appropriate” way. Indeed, the earliest uses of *he* in this sense can be found in the “Guoyu” 国语, a classic text written during the Spring and Autumn period (770-476 B.C.E.), which employed the term to indicate a dynamic state of music rather than simply one sound responding to another. From the rhythmic interplay of various sounds, either in nature or between human, the meaning of *he* was then expanded, by analogous thinking, to mean harmony in other contexts, and hence harmony in general. This is probably the reason why, in pre-Confucian and Confucian scripts, harmony presupposes the existence of different things, and implies a certain favorable relationship among them.

According to Shi Bo, a pre-Confucian scholar-minister who lived toward the end of the Western Zhou period (1066-771 B.C.E.):

“Harmony (和 he) is indeed productive of things. Sameness (同 tong), on the contrary, does not advance growth. Smoothing one thing with another is called harmony. For this reason, things come together and flourish. If one uses the same thing to complement the same thing, it is a dead end and will become wasted. (国语郑语, 1.5, Guoyu - Zhenyu, 1.5)”

As noticed by another pre-Confucian scholar-minister, Yan Zi, and reported in the “Commentary of Zuo” (左傳 Zuo zhuan, IV century B.C.E), a harmonious world must be a diverse world. As a symphony requires a variety of sounds, and a good soup needs a variety of ingredients, a harmonious relationship presupposes that the parts have different perspectives and different views on various issues. Sameness without adequate differences precludes harmony: in cooking and making music, *he* (harmony) should not be confused with *tong* (sameness), and the same applies to the relationship between the ruler and the minister (春秋左傳 昭公, 2.7, Chunqiu zouzhan - Shaogong, 2.7).

As is well known, *he* in the sense of harmony would later have become a central concept for Confucianism. Indeed, in the “Analects” Confucius adopts the ideal of harmony, making it a criterion for the “gentleman” (君子 *junzi*). He says that:

“The gentleman (junzi) acts in harmony with others (he) but does not seek to be like them (tong); the small man seeks to be like others and does not act in harmony” (孔子, “论语 - 子路”, 13. 23, Confucius, “Lunyu (Analects), Zilu, 13.23).

To sum up, “harmony”, according to Confucian thought, depends on differences, in nature as in social and family life. This idea is reflected in the Confucian “five key relationships” (五伦, i.e.: the relationship between sovereign and subject, father and son, husband and wife, elder and younger son, and the relationship between friends) in which each part of the relation has to follow his/her own *li* (礼, norm of proper social behavior) towards the other, according to their mutual hierarchical status. Moreover, it is the concept underlying all traditional Confucian virtues, whose essential purpose - as pointed out by Mark Elvin - is to “*[to stabilize] a society that was ordered according to a hierarchy of age, and divided into kin-groups based on male dominance and male descent lines*” (Elvin, 1984, 111).

It is not surprising, therefore, that - since the Han era (206 B.C.E. - 219 C. E.), when Confucian thought became the state ideology - the penal sanctions of the law have been adduced to enforce the Confucian morality embodied in the *li*. Since the *li* made fine distinctions based on sex, seniority, and degree of kinship, these distinctions were enshrined in the law as well. As pointed out by Teemu Ruskola: traditional Chinese law was “*essentially a moral code calling for social hierarchy and inequality*” (Ruskola, 1994, 2533).

This had an impact also on gender issues. It is interesting to note that in the “Analects” Confucius mentioned women only once, in chapter XVII, saying that: “*Women and small men are difficult to nurture. If you get too close to them, they become uncompliant, and if you stay too distant, they become resentful*” (孔子, “论语 - 陽貨” 17.25, Confucius, “Lunyu (Analects)”, Yang Huo, 17.25).

In the opinion of Gao Xiongya, from this passage we should conclude that the philosopher considers women as “inferior men”, unable to communicate and to understand. Moreover, he seems to suggest that they are to be forgotten or at least ignored. Whether Gao is right or not, Confucius followers developed “ceremonial rites” (*li*) for women based on the above quote, in order to “*encourage and teach feminine virtues desirable from the male point of view*” (Gao Xiongya, 2003, 115).

During the Han Dynasty, these rites were codified as the Three Obedience (三从 *sancon*), according to which women had to obey to the father before the marriage, to

the husband during marriage and to the first son after the husband's death, and the Four virtues (四德 *side*), namely: (sexual) morality, proper speech, modest manner, and diligent work (Gao Xiongya, 2003, 116). The “*original Confucian indifference for women*” (Ruskola, 1994, 2544), therefore, eventually led to an attitude that has been characterized as misogynist, as exemplified by such sayings as “Starving to death is a small matter, but losing one's chastity is a grave matter” (饿死事小 失节事大 *e si shi xiao shi jie shi da*) (Vivien W. Ng 1987, 60) or “Lack of talent is a virtue in a woman” (女子无才便是德 *nüzi wu cai bian shi de*) (Van Gulik, 1961, 374; Gao Xiongya, 2016, 116 and 120). Due to the “Confucianization of law”, imperial legal rules could not but reflect this approach.

Indeed, marriage and family stood at the very center of traditional society and culture; furthermore, in imperial China there was an overall acknowledgement of the general importance of family to the welfare of the polity. Notwithstanding this (or maybe exactly for this reason) the autonomy of family was well respected (Ruskola, 1994, 2543), in the belief that “*respectable people will be able to settle such matters outside of court*” (Schwartz 1968, 68). Thus, for example in the Qing era (1644 - 1912), marriage was essentially a customary institution, to the point that no bureaucratic registration was required. Besides, even in the cases in which laws regulating marriage and family existed, their enforcement was frequently left to the family, the clan, or other extrajudicial bodies (Teemu Ruskola, 1994, 2543). Both the Qing laws and the clan rules, however, were founded on the assumption of gender inequality; they both reinforced and reflected women's subordination in customary morality, allowing for systematic discrimination against the female members of the family (Teemu Ruskola, 1994, 2546).

It is worth remembering that the first Chinese law to adopt the principle of gender equality was the Guomindang (hereinafter: GMD)'s Civil Code of 1929-1931. The Code for the first time envisioned women as independent free agents. According to its provisions, for example, they inherited property as men did, enjoyed the same rights to marriage and divorce as men did, and they could exercise full control over their lives no less than men (Philip Huang 2001, 59-62). The GMD's law and legal institutions, however, were far from reaching the Chinese people and had no substantial impact on the society at large (Chen Jianfu 2016, 40), since, as it is well known, for political and historical reasons, they had been in practice only applied in large cities or coastal provinces (Walstedt, 1978, 385).

It was, therefore, only after the foundation of the People's Republic of China in 1949 that the principle of inter-gender equality really found its expression in the legal system (Ruskola, 1994, 2538). The Marriage Law of 1950, for example, provided for a complete equality between sexes in marriage and family life, affirmed the right of women as well as men to divorce and to remarry, and allowed women to own property (Walstedt, 1978, 386-7, Yuan Yuan, 2017). All propaganda methods were used, at that time, to spread these (almost) new ideas within Chinese society; the greater part of this material, however, was not directed at making the people aware of their rights, but at their political and moral education (Ruskola, 1994, 2538; Meijer, 1978, 475-476).

In this regard, it is interesting to notice that the government retreated from this campaign and - more generally - from its activist approach to marriage reforms when it became clear that the attempts at implementation of the new Marriage Law were bringing violence and chaos to the Country. In fact - as reported by Sheila Leader in 1973 - in the years immediately following the enactment of the Marriage Law, many women were horribly beaten or tortured by family members, often in complicity with the local cadre, only because they had attempted to obtain divorce. Furthermore, an estimated 70,000 to 80,000 women annually had been murdered or had committed suicide (up to 1,000,000 in 1953), probably as a result of harassment (Leader, 1973, 55-79). Consequently, although the 1950 Marriage Law was never amended before being repealed by the 1980 Marriage Law, divorce became increasingly difficult to obtain and only permitted under the most serious circumstances (Walstedt, 1978, 387).

It seems very probable that, despite the declarations of war on the traditional family structure, CPC leaders considered stability and social harmony to be much more important values than gender equality. Undoubtedly, the result of CPC's emphasis on equality between sexes and the need for women to take active part in socialist reconstruction was to increase the pressure on them. As pointed out by Joyce Walstedt, if, on the one hand, the new ideology urged women to find productive work outside the home in order to help rebuild China, on the other little attempt was made by the government to provide jobs or relieve them of home responsibilities (Walstedt, 1978, 386).

To sum up, due to the aforementioned marked ambivalence shown by both Mao Zedong and the Party towards family reform and equality between gender, the Maoist era represented, for Chinese women, a succession of *“several confusing decades in which they have sometimes gained rights only to lose them”* (Walstedt, 1978, 386-7). .

From this point of view, however, even the beginning of the reform and opening up period would have not substantially changed the situation (Ruskola, 1994, 2564). Certainly, family and marriage laws approved since 1978 reinforced the principle of equality between women and men, and the 1982 Constitution proclaimed it with even more emphasis than the previous three PRC Constitutions.⁷ However, traditional notions of gender continued to inform the interpretation and administration of law, while the priority given by Deng Xiaoping to the realization of the “four modernizations” (四个现代化 *sige xiandaihua*) meant that between the reasons of economic development and that of gender equality, the ones of economic development were always the first to prevail (Ruskola, 1994, 2564). As Teemu Ruskola pointed out in 1994 referring to the first two decades of the reforms, it was because of this situation that the aforementioned laws remained, quite frequently, a dead letter, or were applied only in form. It is, for example, the case of the guarantee of equal pay for equal work, provided for by art. 48, paragraph 2 of 1982 Constitution. Although both men and women should have received the same pay for each “workpoint”, women were usually awarded fewer workpoints than men for performing the same tasks (Wolf, 1985, 100-103). At the same time - and just to give another example on how economic reforms impacted over egalitarian aspirations - the “economic revolution” and the privatization of state-owned enterprises gave companies greater latitude in hiring and firing, thereby in practice allowing women to be hired last and fired first (Palmer, 1989-90, 452; Wudunn, 1993).

It is probably for the aforementioned reasons that, in 1985, Margery Wolf said that “*contemporary China proves beyond a doubt that socialism and patriarchy can exist in stable harmony*” (Wolf, 1985, 261)

This statement seems still valid today, and applies perfectly to a socialist market economy that wants to realize the “Chinese dream of the great rejuvenation of the Chinese nation” through the recovery of traditional values, such as PRC after Xi Jinping’s seizure of power.

7 See arts. 48-49, Constitution of the People’s Republic of China (1982). It is worth noticing that the principle of equality between sex was included in all the Constitutions enacted since PRC’s foundation (i.e.: 1954, 1975, 1978). All these Constitutions, however, give a much more vague definition of it, and dedicate to it only one article or paragraph instead of two. See art. 96, paragraph 1, 1954 Constitution; art. 27, paragraph 5, 1975 Constitution; and art. 53, paragraph 1, 1978 Constitution.

Indeed, as shown in the 2014 United Nations report on “Gender Equality in China’s Economic Transformation” (Liu Bohong, Li Ling, Yang Chunyu, 2014) not all the improvements brought about by the reforms have benefited women.

Certainly, especially in the last twenty years, thanks to China’s economic reform process, personal income and living standards have improved enormously, bringing unprecedented development opportunities for women (Liu Bohong, Li Ling, Yang Chunyu, 2014, 11). Gender equality has become one of the key state policies for social development, to the point to be included, in 2012, into the Report of the Eighteen National Congress of the CCP.⁸ Thus, in 2015 the government incorporated the development of women and girls into the “13th Five-Year Plan for Economic and Social Development” (2016-2020)⁹ and, through the promulgation and implementation of regulations as “The Plan for Women’s Development in China” (2011-2020) or the “National Human Rights Action Plan of China”, it “*honored its commitment to the international community to lift women’s status in political, economic, social, and cultural areas, as well as in citizenship, marriages and households*” (Liu Bohong, Li Ling, Yang Chunyu, 2014, 11). At the same time, the National People’s Congress and its Standing Committee have enacted/reviewed several laws in order to realize equality between men and women, protect women’s rights and interests and eliminate any kind of discrimination against women for example the “Law of the People’s Republic of China on the Protection of Women’s Rights and Interests” (中华人民共和国妇女权益保障法, 1992, amended in 2005 and 2018) or the “Anti-domestic Violence Law of the People’s Republic of China” (中华人民共和国反家庭暴力法, 2015, hereinafter: AVL), among others.

The situation, however, is much more complicated than it seems.

The data provided for by the World Economic Forum’s (WEF) Gender Gap Index, which measures gender parity based on four criteria: economic achievement, education, health and political empowerment, show how China’s ranking fell sharply from 63rd

8 See Hu Jintao’s Report at the 18th Party Congress, part. XII (Strengthening Social Development by Improving the People’s Wellbeing and Making Innovations in Management), point 4, and part XII (Making Party Building More Scientific in All Respects), point 2 and 4. The full text (in English) of the Report is available online, at: http://www.china-embassy.org/eng/zt/18th_CPC_National_Congress_Eng/t992917.htm

9 See “13th Five-Year Plan for Economic and Social Development of the People’s Republic of China (2016-2020)”, part XV, Chapter 66. The full text (in English) of the 13th Five-Year Plan is available online, at: <http://en.ndrc.gov.cn/policyrelease/201612/P020161207645766966662.pdf>

out of 115 countries in 2006 to 103rd out of 149 countries in 2018 (<http://reports.weforum.org/global-gender-gap-report-2018/data-explorer/#economy=CHN>).

This is not surprising, since both judicial reform and political discourse - as well as some provisions inside the laws/regulations mentioned above - appear to be driving the official inter-gender equality efforts in a contrary direction.

As recently noticed by Ethan Michelson in his paper on “Decoupling: Marital Violence and the Struggle to Divorce in China”: *“Although China officially embraces global values of gender equality and women’s rights, and despite an abundance of formal legal mechanisms designed to prevent [abuse and violence against the women] claims of marital violence are by and large irrelevant in Chinese divorce trials. Courts at best ignore and at worst use abuse claims to justify denying women’s divorce petitions”* (Michelson, 2018, 2).

The fact that contested divorce petitions (more often than not initiated by women, and more often than not involving violence or other forms of abuse) usually result in court rulings to preserve rather than to dissolve marriages is not surprising, as courts, like other parts of the state bureaucracy, cannot help but follow the line indicated by the leadership (Michelson, 2018, 1).

Undoubtedly, since his accession to power, Xi Jinping has put the “construction of family civilization” (家庭文明建设) at the core of the agenda of the party committees and governments at all levels (Jiang Jue, 2016).

The concept, in the last few years, has been reaffirmed by the Chinese leader in various ways and in numerous speeches, in which he has always pointed out the fundamental role of traditional Chinese family values in building a harmonious society. In particular, in a speech given in December 2016 and reported by Xinhua Agency, he described the family as “the cell of society” (社会的细胞), so that: *“family harmony is social stability, family happiness is social peace, and family civilization is social civilization”*. Therefore *“the vast majority of families must raise at the same time attachment to one’s family and patriotism, integrate family dreams into national dreams, think with one mind and work with one heart, using the wisdom and enthusiasm of more than 400 million families and more than 1.3 billion people to achieve the goal of “two hundred years” and realize the great rejuvenation of the Chinese nation”*. (新华社, Xinhuashe, 2016)

It is worth remembering that Xi Jinping was not the first to use the biological metaphor of family as the basic cell of society (Michelson, 2018, 18), nor it is the first time that

PRC's leaders and officials attempt to preserve the family by opposing "frivolous" divorce (轻率离婚) (陈小勇 Chen Xiaoyong, 2005, 154-156). As we have seen above, difficulties and limits on divorce characterized the Maoist era as well. The reason why, at that time, divorces (usually requested by women who, very often, were victims of abuse) were not easy to obtain, however, should not only be sought in the need to avoid jeopardizing social stability in a country that was trying to free itself from old habits. It represents also an attempt to follow, even on this point, Marxist ideology, according to which the divorce could not be "arbitrary", but must reflect the "death" of a marriage, and therefore it should only be granted when the relationship is truly unrecoverable (陈小勇 Chen Xiaoyong, 2005, 154). As Wolf and Witke observed in 1975: *"the complicated interaction between the needs of women and the needs of revolution is a chapter in China's history still only half written"* (Wolf & Witke, 1975, 7).

Nevertheless, the insufficient attention (to put it mildly) to the rights of the women who turned to court to get rid of a violent husband, and to whom, often, divorce was often not granted in the name of the higher goal of social harmony, until very recently remained limited to the practice of law. It was only in the last several years, due to the revival of Confucianism, that the discourse on "traditional family virtues" came into the Law as well. One of the most striking examples is, quite ironically, contained in the aforementioned AVL, which at art. 6 states that:

"The state will carry out family virtues publicity and education, and popularize knowledge of anti-domestic violence to enhance the citizens' anti-domestic violence awareness. Trade unions, communist youth leagues, women's federations, disabled persons' federations shall, within the scope of their work, organize publicity and education on family virtues and anti-domestic violence. Radios, televisions, newspapers, and the Internet, among others, shall conduct publicity on family virtues and anti-domestic violence. Schools and kindergartens shall conduct education on family virtues and anti-domestic violence".

It is somehow strange to find the expression *"family virtues publicity and education"* put side by side with *"popularize knowledge of anti-domestic violence"* (Jiang Jue 2016). Indeed, and even though art. 6 does not mention the word "traditional", it is pretty clear that the "family virtues" to which the article refers are the "traditional" ones, namely the virtues which originate from Confucianism. I just mention them briefly. First of all, since harmony depends on differences, in order to maintain harmony at the family level the husband must be superior to the wife. Then, women are "by nature" required to take care of their husband, children, and the family as a whole: those seeking divorce would therefore be ethically stigmatized as selfish or even immoral (Bailey,

1993, 48). Finally, marriage is not a purely private matter. As “the family is the cell of the society”, as stated by Xi Jinping in the aforementioned speech, divorce evinces the relationship among the state, the law and the society.

That the AVL takes for granted the idea that the parties’ rights and needs in family cases are in line with the state’s political objectives of “harmony” and “stability” was made clear by the President of the Supreme People’s Court (henceforward: SPC), Zhou Qiang, during a special meeting dedicated to the reform on the study of family trial methods and work mechanisms held a few months after the enactment of the law.

In it, he pointed out the need to “*vigorously promote the core values of socialism, actively promote the reform of family trials and working mechanisms, give full play to the role of family trials, safeguard family harmony, protect the legitimate rights and interests of minors, women and the elderly, promote social fairness and justice, and maintain overall social stability*” (宁杰 Ning Jie, 2016).

The same concepts would soon have been incorporated in the “Opinions of the Supreme People’s Court on Conducting the Pilot Program of the Reform of the Mode and Working Mechanism of Family Trial” (最高人民法院关于开展家事审判方式和工作机制改革试点工作的意见), published on 2nd April 2016 (henceforward the PRC Opinion 2016), and later reaffirmed by the “Opinions of the Supreme People’s Court on Further Deepening the Reform of Modes and Working Mechanisms of Family Trials” (for Trial Implementation) (最高人民法院关于进一步深化家事审判方式和工作机制改革的意见(试行)) of the 18th July 2018 (henceforward, PRC’s Opinion 2018).

The Program - which mainly entails introducing a new comprehensive coordination resolution mechanism, involving the “*input of family committees, neighborhood committees as well as Women’s Federation in conducting judicial mediation*” - clearly does not take into account the results of vast research on judicial mediation in marriage cases, which have shown, unmistakably, that mediation seriously harm the victims of domestic violence as well as women rights (Jiang Jue, 2016).

This probably did not happen by chance. After all, in Zhou’s speech as in PRC’s Opinions and in courts’ practice, the need to preserve “*harmony and stability of marriage and family*” takes always precedence over the “*rights and interest of minors, women and*

*the elderly*¹⁰. In this perspective, mediation could really be the best way to achieve the leadership's (new?) goals: to maximize “*diagnosing, repairing, and healing marriage relationships*”, advocate “*civilized and progressive marital and family ethics and concepts*”, and - last but not least - advance “*the building of family tradition and family virtues*¹¹”.

Conclusions

The paper analyzed the ways in which PRC is facing the social challenges arisen in the new millennium, fulfilling, at the same time, the commitment to implement the “2030 Agenda” made by President Xi Jinping during the 2015 United Nation Sustainable Summit.

In particular, it examined how the three kind of equity which are deemed to represent the social dimension of “sustainable development” (namely, inter-generational, intra-generational and inter-gender equity) have recently become part of PRC's legislation. Moreover, it investigated to what extent the PRC's current trend towards a “rediscovery” of traditional (Confucian) values, and the incorporation of such principles in many Chinese legal provisions, have influenced the achievement of the SDGs within the Country.

The analysis started from the introduction of the concept of solidarity in the Chinese legislation. This, as it was shown, occurred in the early 21st century, when the emergence of what Mao could have called (new) “contradictions among the people” forced the PRC to review its development model. Indeed, the growing social disparities and the consequences of serious environmental problems caused by the terrific economic development experienced by PRC after the beginning of the reforms led, in 2004, Chinese lawmakers to amend the Constitution, providing for a social security system to be established and improved by the State. Since then, the concept of social integration has inspired the revision and/or the enactment of many legal provisions, while the law has been used more and more as a “moral agency” in Dunkheim's sense, i.e.: as a tool to shape and govern social behavior.

This trend has become evident especially after 2012 Xi Jinping's accession to power. Indeed, his call to “achieve the Chinese Dream of the great rejuvenation of the Chinese nation” has led to a “re-discovery” of Chinese/Confucian traditional values, in particular

10 See PRC's Opinion 2018, part I (General Requirement), point 1.

11 See PRC's Opinion 2018, part I (General Requirement), point 2.

of those that have always been considered the basis of social and family relationships, namely the principles of “filial piety” (孝 *xiao*), “benevolence” (仁 *ren*) and “identity and difference/rights and duties” (同异/分 *tongyifēn*). Consequently, in the last few years, these concepts have been absorbed by Chinese legal system, being evoked especially in the laws linked to the achievement, respectively, of inter-generational equity, intra-generational equity, and inter-gender equity.

The last section of the paper investigated the above-mentioned three kind of equity separately, in order to understand what impact this new “Confucianization of Law” had on the implementation of each of them. To make the picture clearer, a brief description of the meaning traditionally attributed to the Confucian value taken as a reference preceded the examination of the legal provisions inspired to it.

The analysis begun from the scrutiny of the relationship between inter-generational equity and filial piety. Indeed, the latter – defined, in the “Classical of Filial Piety” as the “root of virtue” - was the first traditional value “re-discovered” by Chinese legislators in order to bring the behavior of PRC’s citizens back to morality, as perceived and interpreted by the Party-State.

The examination of the quantity and quality of the amendments made to the LPIE – which, it is worth reminding, since 2012 has almost doubled the number of its articles - showed how crucial the issue is considered by the Chinese leadership. Undoubtedly, starting from the beginning of the reforms, the duty to love, assist and support the elderly, and to express respect and submission to them, has been overshadowed by the motto “getting rich is glorious”, following which many young people have left their hometown, abandoning their ageing parents apart.

The calls, now enshrined in law, to practice this virtue, therefore, certainly aims to attribute, at least in part, to individuals the responsibility for the care of the elderly, the weight of which the welfare system is no longer able to bear. However, and as it has been demonstrated by the analysis of the relevant provisions, it could be functional to achieve another goal, even more important from a political point of view: the one to instill, through the respect for the elderly, the obedience to superiors and, ultimately, to the government and to the CPC.

With regard to inter-generational equity it seems, thus, that the demands of sustainable development and the “morality” introduced into the law through the reference to Confucian principles not only do not conflict, but even favor the “strengthening of the

role of the Party” and (consequently) social stability and harmony, at least as they are actually understood by Chinese leaders.

The same can be said about the second kind of equity examined, namely intra-generational equity, and its relationship with the Confucian principle of “benevolence” (仁 *ren*).

This concept, which is traditionally strictly intertwined with that of “filial piety”, requires extending the love towards one’s relatives to his/her community, the society as a whole, and eventually to every single substance on earth. It proved, therefore, to be crucial both for the construction of the “ecological civilization” invoked by Chinese leaders as a solution/tool to remedy, at least in part, the environmental disasters caused by the wild development of the last decades, and for the recovery of the moral feeling of “love for others”. Indeed, as remarked by President Xi Jinping, it was this attitude that made Chinese civilization great; nowadays, however, it is about to be lost, in favor of cynicism and individualism brought by the unbridled race for profit.

In order to overcome the above-mentioned antinomies, the Chinese legislator has inspired some 2017 CPCC’s provisions to the principle of benevolence, thus openly including intra-generational solidarity in PRC’s basic civil law rules. The analysis of art. 9 and 184 GPCC – which are better known, respectively, as the “green principle” and the “Good Samaritan” law – demonstrated how hardly they could find application in legal practice. Their enactment, however, clearly shows Chinese leaders’ intention to use the law as a moralizing agent, capable of directing PRC’s society towards the ethical objectives currently considered by them as priority.

The reference to traditional values and the Confucian moralization of the law, though, do not always facilitate the implementation of SDGs. In particular, this does not happen in reference to inter-gender equity, the achievement of which seems, in recent years, to have become more difficult precisely because of the last traditional principle we have mentioned: the one of “identity and difference/rights and duties” (同昇/分 *tongyi/fen*).

Indeed, the “return” to Confucian principles with its insistence on “traditional family values”, more and more frequently mentioned by Chinese leaders and recently, as we have seen, embodied in some of the legal provisions of the PRC, not only does penalize women who are victims of “extreme” situations, such as, for example, domestic violence. On the contrary, they have an impact on the daily lives of Chinese women in general,

and can jeopardize the possibility that the PRC will achieve the inter-gender equity goal provided for by the “2030 Agenda”.

Undoubtedly, traditional social division of labor and the dual burden of work and family responsibility put women - in the PRC as almost everywhere - in a disadvantaged position in the market economy. Despite the increased opportunities for women’s economic advancement, and the undeniable existence of many successful Chinese business women - as demonstrated by the fact that fifty-six out of eighty-eight self-made female billionaires found around the world are Chinese, making China the best place in the world to be female entrepreneur (Yang, 2017), the situation has not changed much. In recent years the development gap between men and women in the PRC has expanded (Liu Bohong, Li Ling, Yang Chunyu, 2014, 11) while the female participation in the labor force has been declining (Yang, 2017). This condition undoubtedly results from a combination of different factors, in particular gender disparity in employment opportunities, gender disparity in incomes, and gender disparity in unpaid care work, as shown in the UN Women report this paper frequently referred to (Liu Bohong, Li Ling, Yang Chunyu, 2014, 11). All these aspects have been increased by the recent emphasis on Confucian values, on the one hand, and “solidarity”, intended as a substitute for public services, on the other, especially when they are both embodied in the law as, for example, is the case with the aforementioned “Law on the Protection of the Rights and Interests of the Elderly”.

Indeed, paragraph 3, art. 14 of the LPRIE (2015) states that:

*“The spouse (配偶 *pei’ou*) of the supporters shall assist them in fulfilling their obligations to provide for the elderly”.*

Even if “*pei’ou*” in itself has no gender connotation, it is clear that, at least in the current context, women are much more likely to support their husbands’ elderly parents rather than the contrary. Many studies have shown that while women taking care of their own parents have no impact on their participation in the labor force or their working hours, taking care of their parents-in-law reduces both of these two indicators (Liu Bohong, Li Ling, Yang Chunyu, 2014, 11). It is not surprising, therefore, that the implementation of such a policy makes the gender gap wider, and intensifies the conflict between work and family, reproducing in substance the gender inequality that seemed to have been overcome in form.

In short, if, under Mao Zedong, women were deemed to hold up half of the sky (*Funü ding banbiantian* 妇女顶半边天), in Xi Jinping's China they seem to have to carry it all. If and how much this will favor the sustainable development of the country, and the realization of the "Chinese dream of the great rejuvenation of the Chinese nation" can be evaluated only in the future. For now, the only certainty is that is up to women to bear most of the burden of the sustainable development and social harmony with the (new?) "Chinese Characteristics" described above.

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