

Disciplines, Rituals, Addressing, and Social Ordering: An Institutional Understanding of the Everyday Confucianism

By Suli*

Abstract: From a functionalist perspective, this article reconstructs a universal, fundamental, and unavoidable problem of every human being, the structuring and maintenance of one’s kin orderly and mind peaceful, to which Confucianism and the mores and ritual commonly presumed to be of Confucius, as micro institutions rather than knowledge and thoughts; and elaborates the importance of such institutions to common people of everyday lives especially in a close-knit community, and the potentiality for the constitution of a larger political and social order. Though such institutions are dysfunctional with the great social transformation, the ghost of the issue is still around.

Key Words: order, institution, Confucian disciplines, ritual

Father is something we need all the time
but sometimes to be avoided discreetly.

Wang Suo¹

What is the necessary order for one in a close-knit community with little mobility, such as a village in traditional China and many other rural societies, and how such an order is developed and maintained? That is what I call the Antigonian question, for in an early article analyzing various interpretations of the great tragedy *Antigone*,² I suggested, from the Chinese/Confucian perspective, the “real” problem in this tragic story is the disorder of human social relations caused by Oedipus’ incest and its polluting the city state of Thebes, an issue focused by Confucian school from its beginning. This tragedy, though of ancient Greece, I argued, demonstrates the necessity of institutions and social norms of Confucian type for such communities.

This article extends the passing comment to demonstrate the institutional and functional significance of the Confucianism for people living within close knit community, with the focus not on the teachings of Confucius or Mencius or any other Confucian scholars, but the folk rituals, rites, and addressing presumed to be of, or under heavy influence of, Confucianism; and to show, by comparison with the universal practice of incest taboo, its political and

* Professor of Law, and Dean of Peking University Law School. Email to: sulizhu@law.pku.edu.cn. I discussed the issue with Deng Feng, Hou Meng, and Jiang Shigong in the process of writing this paper, also Feng Xiang, Liu Xing, and Lin Bing read the draft of this paper, all of them gave valuable suggestion. Thanks to all of them, but the responsibilities are mine. Draft, please do not cite without permission.

¹ Wang Suo, *Wuzhi Zhe Wuwei* (An Ignorant is Afraid of Nothing), Chunfeng Literature and Art Press, 2000, p.137.

² Suli, “Ziran Fa, Jiating Lunli he Nvquan Zhuyi? *Antigone* Chongxing Jiedu Jiqi Fangfa Lun Yiyi (Natural Law, Familial Ethics, or Feminism? A Re-interpretation of *Antigone* and Its Implications for Research Approach)”, *Fazhi he Shehui Fazhan* (*Legality and Social Development*), 2005/6.

constitutional significance for a larger society.

The issue evident in a close knit community seems disappeared or disappearing with the social changes such as the increase of social mobility and the number of strangers with whom one contacts, with the advancement of communication, however, the ghost is still around us somewhere and jumps out occasionally as the great modern Chinese play *Thunderstorm* illustrates. The expansion of community, increase of social mobility, and strangeness of one's association only weaken its seriousness of the effects of, but fails to eliminate, the fundamental and eternal problem of common people.

I. The Antigonian Problem

Western legal scholars tend to go straight to the conflict between Antigone and Creon in reading the tragedy, and focus on the issue concerning natural law and positive law,³ or the confrontation between two highest ethics, the state law and the family piety,⁴ or the implied controversy between the dominant man's view of law and feminist jurisprudence.⁵ This treatment highlights the issues of politics and law of the tragedy, provides a classical text and theoretical foundation for analyzing issues concerning justice, law, and politics.

However this approach and treatment is inadequate since it gives up the inquiry of the primary cause of the tragedy, the killing his father and marrying his mother by Oedipus. It is because of the revelation of the facts that leads to the self-exile of Oedipus, his twin son's fighting for succeeding the throne, and eventually, to the tragic confrontation between Antigone and Creon. Since it is a sequence of events, leaving the family issues out of the thinking of politics and law, though necessary for any deep theoretical analysis and has good reason for separation of public affairs from private affairs, must leaves some blind spots which excludes or obscures some issues of at least as equal, if not more, important as the issues touched by analysts. The more clearly disconnecting the two socially indistinguishable spheres, the more difficult it will be in understanding the relationship public from private, state from family, law from mores, justice from morality in a different perspective, and some issues will get lost in the cutting off.

For instance, what is or should be the primary concern in politics and law. Many would consider it justice, ⁶and the natural law approach of the tragedy tends to such a conclusion.

³ Cf. Edgar Bodenheimer, *Jurisprudence: The Philosophy and Method of the Law*, Harvard University Press, 1974, pp.2-4; Aristotle, *The Art of Rhetoric*, trans. by Hugh Lawson-Tancred, Penguin Classics, 1991, p.125; Richard A. Posner, *The Problems of Jurisprudence*, Harvard University Press, 1990, p.10; Edward S. Corwin, *The Higher Law Background of American Constitutional Law*, Cornell University Press, 1955, p.2; Wayne Morrison, *Jurisprudence: From The Greeks To Post-Modernity*, Cavendish Publishing Limited, 1997, p.19ff.

⁴ Georg Wilhelm Friedrich Hegel, *Introductory Lectures on Aesthetics*, trans. by Bernard Bosanquet, with Intro. by Michael Inwood, Penguin Classics, 1993, p.103; G. W. F. Hegel, *Phenomenology of Spirit*, trans. by A. V. Miller, 2d ed., Oxford University Press, 1977, p.550; and, G.W.F. Hegel, *Elements of the Philosophy of Right*, ed. by Allen W. Wood, trans. by H.B. Nisbet, Cambridge University Press, 1991, p.189.

⁵ Bernard M. W. Knox, *The Heroic Temper: Studies in Sophoclean Tragedy*, University of California Press, 1964, pp. 77-78. However, the feminist interpretation of *Antigone* does not originate from modern feminist works, but Hegel, who argues strongly in his works that Antigone represents the family piety against the state law represented by Creon. See, G.W.F. Hegel, supra n. 4, p.206. See also, Posner, *The Problems of Jurisprudence*, supra n. 3, pp.399-400; and *Law and Literature*, enl. and rev. ed, Harvard University Press, 1998, p.121; and Morrison, *Jurisprudence*, supra n. 3, p.479ff

⁶ It is best presented in the phrase, "*Fiat justitia; ruat coelum* (Let justice be done, though heaven

But take it as a whole; *Antigone* seems to favor view of Hobbes that justice is after order.⁷ Even if one assumed the order issued by Creon is too harsh for Antigone and in a sense unjust for its in violation of the so-called natural law, but what makes Creon the king or tyrant of Thebes which empowered him the authority. All come down to the facts of and revelation of the facts of Oedipus, his abdication and self exile, the twins' -- Eteocles and Polynices -- fighting to death for succession and by "natural law" they share the equal rights to the throne left vacuum, by this accident, Creon, as the brother/uncle in law of Oedipus and then the most important politician of the polity, became the king, and then he issued the prohibition with purpose of stabilizing Thebes and punishing the traitorous Polynices who happen to be the brother of Antigone and had lead an army of state of his father in law attacked Thebes. All these events and following political changes could hardly be said in violation of natural justice, but disorder come out anyway without evil or a wicked, and the challenge of Antigone against the order of Creon is only a consequence of the a social disorder triggered by ignorant, seemingly innocent but polluting act of Oedipus.

This is not only true to outsider of the event like audience of the tragedy, but to characters of the play and agents in such historical events from their perspectives. Without basic order, no one can live a meaningful life since no arrangement of personal life can be made, nothing can be expected, of no sense of his/her life can be made. Naturally, there will be no such issues called of justice or injustice, for such issues and anything for evaluation, judgment, and improvement require minimum order that provide the convention or standard against which to be compared.

This especially is true to Antigone. The greatest suffering of her is not death penalty, the death of her parents and brothers, not even the political and social disorder and turmoil of the city state, the least of the prohibition of burial of her brother; the suffering is inside of her, a revolution and disorder of her cultural, conventional, and inner world: the destruction of her referential framework of her relation to others. For example, with her mother as the reference, her biological father, Oedipus, is also her biological brother, and that means her mother is culturally her sister-in-law; while with her father as the reference, her biological mother is also biologically her grandmother, and then her father is culturally her step grandfather. What a confusion and disorder for her!

However, that is just the beginning of the confusion, embracement, and difficulties, rather than an end of it, socially and temporally. Since the city state of Thebes, like many other city-states then in Greece, is basically a community of kinship, Antigone will be constantly uncertain and confusing about the relationship with any one she encounters in the city state, and she has to define or redefine her relationship to others, and remind herself of the unbearable memories and bitter experience in each encounter.

She has no hope of reconstruction of *her* order, and in a sense has no future of escape or improvement. She is a female and very young,⁸ she cannot even enjoy the fortune of exile,

fall)". See also, "Jurisprudence is the knowledge of things divine and human, the science of the just and the unjust." *The Institutes of Justinian*, trans. with an index by John Baron Moyle, Lawbook Exchange, 2002, Title I:1; and "Justice is the First virtue of social institutions laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust." John Rawls, *A Theory of Justice*, Harvard University Press, 1971, p.3.

⁷ See, Thomas Hobbes, *Leviathan*, ed. by Richard Tuck, Cambridge University Press, 1991, p.88ff.

⁸ Some research suggest that Antigone then is about age 12-13, no more than age 15. See, <http://www.users.globalnet.co.uk/~loxias/antigoneo2.htm>, last visit on August/31/2004.

which her father did. She is doomed to face the pollution of her father's original sin. Sophocles expresses explicitly the terrible future waiting for her in the mouth of Oedipus:

*I weep for you. Although I cannot see,
I think about your life in days to come,
the bitter life which men will force on you.
What citizens will associate with you?
What feasts will you attend and not come home
in tears, with no share in the rejoicing?
When you're mature enough for marriage,
who will be there for you, my children,
what husband ready to assume the shame
tainting my children and their children, too?
.....
Those are the insults they will hurl at you.
Who, then, will marry you? No one, my children.
You must wither, barren and unmarried.⁹*

It is doubtful that Antigone can ever get rid of it and find her order in the blood closely knitted community, though Sophocles leaves such a possibility for speculation.¹⁰ And also no one sharing Antigone's role is left to bear the suffering with her in the future. All candidates are either dead (her two brothers) or left her for a pragmatic reason (her sister, Ismene);¹¹ and for what purpose should Antigone bear the endless suffering in the future and by herself alone? She can find sharers of her social role only from her dead brothers, and that arguably makes her attached to them more closely.

To any one, an order means not only the peace of the physical world out of one and the securities of one's personality and properties. An order always has a subjective dimension, and to an extent is a creation of one's subjectivity; and it means the prospect of a relative stable, consistent, conventionalized, and therefore predictable relationship with others and the world. In this perspective, great, exciting things, and grand historical narratives may have nothing to do with the life of a common people. One's real world begins and ends with the circumstances upon which one interacts or acts everyday, it composed of banalities and trivialities, especially in traditional agricultural societies. The world is the community one lives and dies, and extends at most to the inter-communities. Persons having influence over and defining one are dozens, at most hundreds; and they construct the real world, the

⁹ Sophocles, *Oedipus the King*, 11757-11774.

¹⁰ The acceptance by Ismene, the twin sister of Antigone, of what is falling upon her without complaining suggests that in Sophocles' view there is another possibility for Antigone if she choose. However, it is not possible to get *Antigone's* mind settled, but re-conventionalize her relation with others, for the re-conventionalizing process is also a process of deconstruction of her existing relation with others, and Antigone has no control over the process, since the success of the conventionalization depends not only upon Antigone's effort, but also upon others to whom Antigone intends to. The pollution of Oedipus will remain forever to her in this sense.

¹¹ "I do them no dishonour; but to defy the State,-- I have no strength for that"(Ismene). Sophocles therefore suggests not only the natural law approach to the conflict between the decree of state and divine law with the character of Antigone, but also a pragmatic approach to the conflict with the character of Ismene who by both of them are twins presumably shares everything of Antigone except the choice of an individual.

meaning of the world for one. If everything goes well in order and stable, then one will be fine, and then be capable of raise the question about justice and doing something to improve it.

This fact does not change much if any change at all in modern time. Though dramatic increase of the number and kinds of people with whom one has contacts, as far as the important and constant ones are concerned, the number is about the same. One finding about number is about 250,¹² others suggest that the most important ones are no more than 10.¹³ Though a society is prosperous, peaceful and orderly, one may still in confusion and unrest, may commit suicide if one cannot handle these relations well. And that is just the problem of Antigone, while the violating divine law of the Creon's decree is simply an excuse for her to commit suicide to escape from the world she can no longer bear.

Not everyone will be Antigone of course, however the question Sophocles presented in *Antigone* is one everyone potentially encounters, and therefore a universal and fundamental one. With a tragedy, Sophocles demonstrates effectively the seriousness of the problem, and calls for an institutional response.

II. The Confucian Response

A response comes from remote and geographically separated far East, and at about the same time.¹⁴ Facing a kind of societies even more agricultural and less mobile than the ancient Greece, Confucius and others of his school think carefully about the issue presented in *Antigone*, and offer a Confucian institutional response systematically. Confucian scholars are fully aware of the importance of the problem, eventually summarizes it as the Gang (纲), which means keys of, and Chang (常) which means constants of the human society. Family, including the extended family and clan, therefore, is the focus of Confucianism. It not only raises issues to be addressed by Confucianism, and also provides it with the foundation and intellectual resources for its institutional design.

Phenomenally, all primary social groups are based upon the ties of blood. However, blood relationship has no necessary and stable connects with social groups, and does not naturally lead to a society. Though for the sharing and transmission of genes, spouses and their children tend to form a biological "commonwealth", the nuclear family, supported by natural affections within family; but a society is not a simple natural extension of a family, although historically scholars often use family metaphorically to justify other social organization and even state. Institutional restrains are necessary for even within a family, while "no institutions can be founded on love", as Nietzsche says.¹⁵ Blood ties may serve as a

¹² This is the "law of 250" discovered by the successful American car saler, Joe Girard, who finds that about 250 business cards will be issued at funerals he attends each time, and concludes thereby that the number of one's important relatives and friends is about 250. See, Joe Girard and Stanley H. Brown, *How to Sell Anything to Anybody*, Warner Books, 1977, ch. 5. We may also prove his finding by counting the telephone numbers we saved in our mobile phone.

¹³ Even some Chinese celebrities who have wide social connection emphasized that the most important persons that concerns our life most are a few, around 7 or 8. See, Wang Suo, *Suibiji* (A Collection of Essays), Yunnan Renming Press, 2003, p.32; Feng Xiaogang, *Wo Ba Qingchun Xiangei Ni* (I Present My Youth to You), Changjiang Literature and Arts Press, 2003, p.79; and Wang Hailing, *Daxiao de Never* (The Daughter of A Colonel), Changjiang Literature and Arts Press, 2007, ch.22.

¹⁴ Sophocles dates 496-406 BC, and Confucius dates 551-479 BC.

¹⁵ Friedrich Nietzsche, *The Will to Power*, trans. by Walter Kaufmann and R. J. Hollingdale, ed. by

foundation of a community's structure and order, but it is unstable since even within the nuclear family, conflicts are inevitable between spouses, between parents and children, and among the siblings. Also, with the expansion of group the blood ties will be diluting, and conflicts over interests will increase, and the cohesion will weaken too. Even with the political institution and ideology like Confucianism that emphasize family value, historically, killing fathers and brothers for various political and economic interests are not rare in traditional China.¹⁶ In all nations in the world there is no evidence supporting the presumed natural inclination of filial piety that asserted and consistently emphasized by Confucianism, it seems on the contrary.¹⁷ Ironically, even within *The Analects by Confucius*, there is clear legacy of discriminating against aging people.¹⁸

Also, bloods never ties people together automatically even if it does has such a function. In any society, the blood relationship is essentially socially recognized, rather than natural; it depends heavily upon the cognition and cultivation, though the structure and condition of traditional society tends to obscure this point. Once the conditions are not met, problem like Oedipus' killing his father and marrying his mother may come out, because he is ignorant of the blood ties. And kids born in hospital and mistakenly identified with their parents will still be loved by their socially mistakenly marked parents as their own and with little care from their biological parents. It proves the speculation of Judge Posner, "the genes are easily fooled when confronted with conditions to which man did not have a chance to adapt biologically".¹⁹ And early Confucian scholars note this by saying that one knows nothing about which clan one is belonging to without education;²⁰ and common Chinese folks knows this well in saying a neighbor is closer than a distant relative. Those commonly identified as blood tied communities in the sense are communities of acquaintances, which provide all the prerequisites for the constitution of blood communities. "Blood is thicker than water", is a doctrine or ideology,²¹ it serves as an institution for securitizing and intensifying the social groups.

Sex is necessary for the blood ties, therefore must be taken into count. Sex is no doubt the most constructive force for extending the social relationship and may serves as the foundation of a more extensive social order. The phrase that marriage is capable of tying two

Wlater Kaufmann, Vintage Books, 1967, n. 732, p.387.

¹⁶ "that A son murders his father is not the effect of one or two incidences, it has a long history!" Sima qian, *Shiji (Records of the Grand Historian)*, Chinese Book House, 1959.

¹⁷ The abandoning or killing the aged people as social practice, see, Nancy R. Hooyman and H. Asuman Kiyak, *Social Gerontology: A Multidisciplinary Perspective*, 7th ed., Pearson, 2005, p.46. It is a shared practice in China, too. See, Xu Xiaoguang, *Zangzu Fazhi Shi Yanjiu (A Study of Tibetan Legal History)*, Legal Press, 2001, p.381.

¹⁸ "living on to old age: -- this is to be a pest". *The Analects*, 14. One may argue, by this sentence Confucius is referring someone in particular. But this must be a general statement; otherwise, it will not be interesting to others. Also, in a society of extremely scarcity of living resources with few savings, the consumption of an aged without capacity of labor is doomed to share other's limited resource, which in a sense is taking other's property. It makes understandable another saying of Confucius that a gentleman "When he is old, and the animal powers are decayed, he guards against covetousness". *The Analects*, 16. There seems having no a general norms or tradition of respecting aged until Mencius's calling "treat[ing] my old folks as old folks should be treated and then extend that attitude to the old folks of others". (*Mencius*, 1A.7, translation modified).

¹⁹ Richard A. Posner, *The Problematics of Moral and Legal Theory*, Harvard University Press, 1999, p.34.

²⁰ "One will be ignorant of the one's clan without teaching" *Guoyu • Jinyu (Records of States: Record of Jin)*,

²¹ Cf. David M. Schneider, *A Critique of the Study of Kinship*, University of Michigan Press, 1984.

clans,²² the play of *Romeo and Juliet* by Shakespeare, and the practice of sending a princess to marry the chief of so as to pacify the neighboring militant tribes in traditional Chinese dynasties, all support this point. However, by the same token, sex is also the most destructive and subversive force. Stories of fighting for a woman are well known everywhere in the world historically, such as the Troyian War. Another relevant evidence comes from the tragic marriage between Oedipus and his mother who at least over 10 years older than Oedipus. This proves that the impulse of sex will not subject itself automatically to the various biological and cultural restrictions of blood, generation, ages, nationality, clans, religions, and races, but is always ready to break through such historically evolved social taboos, sometimes, it leads to radical social revolutions.²³ That is the creativity of sex, but it further demonstrates the unreliability of biological relationship as societal foundation.

Given the characteristics of blood ties, it is understandable that historical importance of Confucianism emphasizing three dimension of human relationship, the filial piety, the fraternal love, and the differentiating and keeping a distance of males from females.²⁴ They are indeed invariables for a societal order especially in a close knit community.²⁵ Within a society of exogamy, the former two are two basic dimension of one's relation to others, and are about the orderly arrangement of a family and a small community. As descriptive, as well as normative, Confucianism emphasizes "a father acts like a father and a son acts like a son",²⁶ and father be affectionate and son be filial between generations;²⁷ "elder and younger brothers share fraternal love but with some difference according to the order of their age",²⁸ and "keeping the order among brothers according their age".²⁹ Between men and women, Confucianism emphasizes differentiation of and keeping distance between males and females, and no marriage between any man and woman who share the same surname;³⁰ in order to prevent effectively sexual impulse from going beyond self and social control, in consideration of the smallness of community where social contacts and interacts are necessary for everyday life but may lead to mutual attraction, and flirting once man and women getting closer, Confucianism emphasizes that males' obligation to distance from females,³¹ and no touch upon each other even in passing something between man and women,³² marriage be subject to the permission of parents and through the go-between³³ which is evidently put the affection and sexual impulse of the young under the control of adults' rational calculation. With all these simple rules, a complex community theoretically can be well organized and ordered; it not only prevents potential conflicts, stabilizes the order and extends it to a larger

²² *The Books of Rites*, The Meaning of Marriage.

²³ Many authors pointed out in their works the most romantic thing for young people is the rebellion plus love, and indeed it is an theme appeared in the literatures over modern Chinese revolution.

²⁴ See, *The Analects*, 1, and *The Book of Rites*, XIV. Ta Kwan.

²⁵ See, *The Book of Rites*, XIV. Ta Kwan. Anthropologists think they are three first order relations in a family. See, A. R. Radcliff-Brown, *Structure and Function in Primitive Society*, Free Press, 1952, pp.51-52.

²⁶ *The Analects*, 12.

²⁷ *The Books of Rites*, Li Yun.

²⁸ *The Books of Rites*, Li Yun.

²⁹ *Mencius*, 3A.??.

³⁰ *Guoyu* (Records of States), Jiyu.

³¹ "If you are familiar with them, they lose their humility", *The Analects*,17.

³² "males and females should not touch one another when giving and receiving things". *The Sayings of Mencius*, trans. by James R. Ware, New American Library, 1960, 4A.18.

³³ ".....awaiting the injunctions of their parents and the discussion of the go between". *Mencius*, 3B.3.

region, but also is certainly very useful for necessary collective action.

These are strict rules rather than a thought or morality of Confucianism, they are expected to be strictly followed, rather than negotiable, ad hoc, substantive justice as many Chinese scholars thought.³⁴ The pattern of differentiation is only the result of the practice of such rules, rather than the nature of these rules.³⁵ On the contrary, within the community, the generalization of Confucian principles is universal. They are called by later Confucian scholars as invariables or constants (常), which illustrates its institutional pursuit. Confucianism does not deny the adaptability of rules,³⁶ the necessary discretion, and sees the difficulty to reach the ideal of golden mean; and for that it is doomed to subject various accusations, from one end of rigidity to the other of arbitrariness. However, taking it as whole, Confucianism is based upon universality rather than particularity.

Not only is rational, but wise Confucianism. Confucianists understand what prompts human action is not rationality or knowledge only, but interests and passion, while the later is difficult to subject the rational and knowledgeable calculation or be excluded by other means. So they emphasize that an effective institution cannot overlook but must examine carefully and make use of the irrational elements such as feeling and passion. Accordingly, though behind the doctrines of filial piety, the fraternal love, and differentiation of male from female are rationality, Confucianism prefers making them rituals to be followed to making them subject for intellectual inquiries, especially among the common folks. Between learning and practice, Confucius emphasizes the latter one;³⁷ calls for not to see, listen, talk, and act upon something in contrary to the rituals,³⁸ emphasizes review of the old to discover what is new and admiration of the ritual with honesty and sincerity.³⁹ And Confucius even publicly announces that what is sought is not that common people understand the rituals and rites but make common people subject to them⁴⁰ which are heavily criticized in modern time. However, in a pragmatic perspective, Confucius must be right on the point, that the most important thing for ordinary people is not the knowing how to act, but act itself in a way. It will be an enduring task for everyone, and Confucius himself announces he is unable to act in full accordance with these social norms without thinking about how to act until he is 70.⁴¹ All these determine the institutions Confucianism pursues heavily relies upon personality cultivated with long time social practice and self demanding, and depends upon the mild

³⁴ Max Weber, *The Religion of China*, trans. by Hans Gerth, Free Press, 1968, p.236; Talcott Parsons, *The Structure of Social Action*, Free Press, 1949, p.551. However, many Chinese scholars share this view to various extents, and think Chinese legal tradition is not rule following, but negotiable. See, Ji Weidong, 《超近代の法□□中国法秩序の深层构造》, ミネルヴァ书房, 1999, ch.1. King argues that it does exist cultural mechanism of universality in Chinese society. See, King Ambroe Yeo-chi, "Kuan-hsi and Network Building: A Sociological Interpretation," *Daedalus* 120/2, 1991, pp.75-76.

³⁵ Fei Xiaotong, *Xiangtu Zhongguo • Shengyu Zhidu* (The Earth Bounded China, and the System of Reproduction), Peking University Press, 1998, pp.24-30.

³⁶ "The superior man, in the world, does not set his mind either for anything, or against anything; what is right he will follow." *The Analects*, 4. See also Mencius' analysis of keep a distance between males and females in emergencies (Mencius, 4A. 18) and criticism of a middle-roader as "inadaptable just like the panaceist" (Mencius, p.153, 7A. 26).

³⁷ *The Analects*, 1.

³⁸ "Look not at what is contrary to propriety; listen not to what is contrary to propriety; speak not what is contrary to propriety; make no movement which is contrary to propriety." *The Analects*, 12.

³⁹ *The Books of Rites, The Doctrine of the Mean*.

⁴⁰ "The people may be made to follow a path of action, but they may not be made to understand it." *The Analects*, 8.

⁴¹ "At seventy, I could follow what my heart desired, without transgressing what was right." *The Analects*, 2.

character with honesty and sincerity. However, it should not be understood as calling for the rule of man as some modern Chinese scholars tend to think, it is only functional necessity or prerequisite of such institutions, just like individuality is said to be conducive to democracy.⁴²

Confucianism underwent important transformations historically, and was made for the traditional Chinese intellectuals as a kind of personal morality with emphasis of the inner world, and thus detached from the life of common people. However, in the context of the society where it originate, its concerning for family and community, and its understanding and practical use of knowledge and norms, I tend to think what Confucianism responds, based upon its insights of human nature and human needs, is not to the inner world of saint emperor or moral intellectuals, but the basic institutional needs of commons in agricultural community. It is a contextualized political, social, and legal practice and thinking with the focus on institution; but just because of its insights and contextualization, it gains a degree of transcendence.

III. Diffused and Penetrating Institutions, Especially on Addressing

It must be incomplete if to understand Confucianism as an “ism” or even as a thought, a theory or a cultural heritage; its contribution to institution will be greatly underestimated. The contribution is not only its seeing and understanding the problem of Antigone, and responding with points or principles mentioned in last section. The most important one is, in my view, based upon a close examination, understanding, selective absorption of and interaction with folk practices,⁴³ with the aid of social structure and context of the community of acquaintance, Confucianism make itself into a set of systematic, diffused, and self enforced micro social institutions, and seep into the everyday life of commons. Even more, I would prefer that, it is a cumulative and systematic expression of the social norms, practices, and institutions already there and functioning well in many communal societies.⁴⁴

In an institutional perspective, what is important is not an idea or a statement, but the effective function of the micro institution. Even if assuming the blood ties and sexual revulsion among close kin⁴⁵ are sufficient assurance of the order of a nuclear family, conflicts is inevitable and expected to be intensified with the more and more offspring produced, the expansion of the clan; given no written language and other formal institutions for social memories available in small community, after one or two generation, the distinction of consanguinity and the distinction between generations soon will inevitably be obscured and even forgotten; even with everyone understanding of limits, the everyday contacts necessary between males and female, either married or unmarried, in a small community will leads inevitably to various sexual attractions, which may well go beyond the boundary between generations and among siblings, subverting the established social order, and leading to tragic

⁴² See, Richard A. Posner, *Overcoming Law*, Harvard University Press, 1995, p.25ff.

⁴³ “to recover the lost rituals and rites from the common folks uneducated”, Ban Gu: *Han Shu* (*Books on Han Dynasty*), Records of Arts and Literature, Chinese Book House,

⁴⁴ A distinguished modern scholars argues that ancient rituals and rites is what wise men learnt from saints who learnt from common folks; another scholars concludes that rituals and rites of ancient time originates from mores of the society. Both are quoted in, Li Zhehou, *Zhongguo Gudai Sixiang Shilun* (*Treaties on Ancient China Thoughts*), People’s Press, 1986, p.11 and n.2

⁴⁵ This is Wstermarck’s view of incest taboo, but has long be questioned. See, Edward Alexander Wstermarck, *The History of Human Marriage*, 5th ed., MacMillan 1922, p.80.

incidences like Oedipus has, even worse; and once happened, it is not only a terrible to persons involved directly, but a disaster to the community.

Even with one or a few saint or wise-men like Confucius, the risk cannot be prevented. For a society, the question has never been someone knowing the seriousness of the problem and has an idea about or has formulated a plan to it, but how to get the idea and plan into social practices, like the God omnipresent watching and even more, disciplining everyone instantly rather than awaiting for the final judgment. With the limited means of communication and literate, it is unrealistic to teach everyone rules through a centralized teaching or propaganda; with the limited division of labor and scarcity of and difficulties in establishing public finance, it is impossible to have an effective supervision and enforcement. While without strong social enforcement, are the Confucian principles and rules worthy of being so called? The mechanism of supervision and discipline must be diffused. It cannot resort to theoretical discourse, but must penetrate or seep into the practices and becomes mores of common people, merging into in to their everyday life, and functional without one's notice, exert its influences as it is granted and make it part of one's natural life.

In traditional China, there is Confucian preaching from the so-called grand tradition, including books of Confucian doctrines, the studying Confucian classics in private school of villages, and instruction and personification of and by rural elites and/or retired government officials, and sometimes detailed documents about and memorial halls displaying the genealogy of a family and clan; all of them in this perspective are institutions for the operation of the Confucianism in a close knit community. However, they are close to but far from the omnipresence.

The most effective and disciplinary ones are those social practices not so striking, such as rituals and rites. Of them, I intend to concentrate on addressing in such communities, the features of which are still visible in many villages relatively remote from contemporary metropolitan areas, and even in communities of small city and town today.

Villagers do not have name in modern sense *among themselves* in their everyday lives; names are goods only for the consumption of outsiders and government; except distant relatives or in serious conflicts, they always address each other according to the kinship with special terms; in addressing, generation is always more important than age in social ordering, age is relevant to people of same generation in ordering,⁴⁶ so addressing comes from the young one in either generations or of the same generation; females coming into this community through marriage will share her husband's social relationships and adopt the his addressing, but after giving birth a child she will adopt the assumed tongue of her kids in addressing others.

Learning and mastering how to address others, especially anyone in the older and one's own generation, is very important. It is a primary education everyone has to be introduced from his/her birth, and more important than reading and writing. The teaching responsibility is on the family, both parents, but especially upon the mother, which explains why a female downgrades herself and address others in her kid's tongue even without any kid around, she is teaching in every social occasion for her kids with her action of addressing. One most important standard in evaluating the education and civilization of a kid, his/her

⁴⁶ This is conducive to understand the concept of "old" or respecting the olds in the Confucianism. Old is not a biological or physical concept, but a generational one.

parents, and the expanded family is whether a kid is capable of addressing properly –not only in the addressing terms but also in the sequences of addressing when there are many of them around -- to everyone he/she is supposed to address in *all* occasions when a kid encounters. And if a kid is shy to address someone he/she is supposed to address, that will be an embarrass of his/her parents and the parents will apologize for his/her “misconduct” and punish in a mild way the ignorant kid often in front of the to-be-addressee.

As anthropologists pointed that a term of kinship to be used always implies a predetermined and stable rights and duties between the addresser and addressee.⁴⁷ Accordingly a term is a norm itself; I refer not only to my father’s second younger brother when I address one with a term “third-uncle”, but also refer to the contextualized Confucian norms between an uncle and a nephew. Therefore, any term used in such social contexts is not substitutable with other terms such as one’s name even today in China. For example, the Chinese words one use to address his or her younger or elder brother is equal neither to the English word brother, nor elder or younger brother. The English word, except used in a fictional way, tend to stress the biological relationship, and/or sequence of birth. In a sense one may argue that the word refers to a conventionalized individualist social norms, so it can be, as I observed, replaced with the brother’s first name; however, it is hard to argue there is a norms between the brothers since it is a norm for all individuals. While in China, it is normally unacceptable to address or call one’s brother with his first name in a face to face setting, and some social setting. Not only is there the different terms for younger and elder brother (and sisters too), the most important one is that the addressing has always a normative implication, even in a commercial setting; the supposed younger brother is not only showing his respect by calling himself the younger brother, but also inviting and even demanding some favor from the one addressed as elder brother; and both of them have the obligation to act in the way younger and elder brother should act.

Also, the terms for description and address one’s relation to others often are distinct. The former is used only to third party, the later to addressee him/herself in a face to face situation. However, though there are descriptive terms for any kin in spoken and written language, there is only addressing terms for people to address one’s own and older generation, the terms for people to address younger generation are absent. There is not asymmetry of addressing terms between young and old generation.

I am not interesting in asymmetry itself, but the implication of it. Drawing from the pragmatism of later Wittgenstein, and the theory of Irving Goffman,⁴⁸ the focus and analysis should be on the act of addressing itself, rather than on the terms. To address someone is not a sound uttered by someone, not only a description of the relationship, but a socially designed and required social interaction according to the norms of addressing. It can be seen as a disciplinary practice or effort of a penetrating and considerate institution.

Therefore, the process of learning addressing is a process of imparting and inheriting an abstract order and a set of norms. For a mother, she is performing a socially constructed mother’s obligation to teach her son a concrete way to identify and define his community; and for the kid, he is being so disciplined. The absence of addressing term toward younger

⁴⁷ Radcliff-Brown, *Structure and Function in Primitive Society*, supra n. ??, pp.63ff..

⁴⁸ Ludwig Wittgenstein, *Philosophical Investigations*, trans. by G.E.M. Anscombe, Basil Blackwell, 1958. See, Erving Goffman, *Interaction Ritual, Essays on Face-to-face Behavior*, Doubleday and Company, 1967.

generation, and in everyday life younger one must address first to one of one's own or older generation and the awaiting for such address of the to be addressed if the young fails to notice his or her present, contributively suggest there is an allocation of responsibility of identification and maintenance of the order through addressing, and such allocation follows also the rule of efficiency. It is efficient and reasonable because with such a responsibility of allocation the number of people to be addressed for a young will never increase but decrease, and one's responsibility begins with his birth when he/she learns fast and memorizes deeply; with time passed, the number of people to be identified and addressed first by him/her is going less, and his responsibility will be reduced accordingly. If the responsibility is allocated in the other way, the number of people to be identified and memorized by an old will not only increase, but he/she has to bear heavier burden when as time goes his or her memory is deteriorating.

Since addressing is required every time one meet the other even within a day, cannot be omitted, and cannot even be replaced with other addressing terms, especially when they are not in one generation. These features in addressing show that the act of addressing is not really about addressing, which is supposed to call one's attention so as to exchange information, neither a greeting showing addresser's kindness, but it is a confirmation of the social norms between them, it is a social expression and re-construction of the relationship in accordance with the Confucian norm. In performing one's own obligation, the addressing also serves to remind the addressee of his or her obligation toward addresser. Sometimes, it is also a delimitation of acts one may do and not do upon other when their relationship is indeterminate or obscure.⁴⁹ It is a unnoticed, subconscious mutual and self disciplinary action.

From this perspective, the institutional function of the rituals and rites concerning marriages, funerals, and other social occasion, in communities is understandable. In such social events or occasion, everyone concerned has definite rank, order, sequence, and direction in walks and sits, and definite dressing, language can be or is prohibited to be said, acts and gestures to be done or prohibited to do. All of them serve as concrete micro institutional practice directed at everyone present in the occasion, have determined though unnoticed by agents functions of utilities. Beside functions such as delimitation and consolidation of the community, they serve as the institutional expression, repeat, and confirmation of the relationship of everyone to others, remind everyone present of his/her place in this community, of his relative position with other, and of basic norms and rules attached to their roles to be followed. Its functioning depends not upon one's consciousness as an enforcement of social memory; it brands the marks of social norms upon everyone's behavior and souls. The functioning of the institution is not operated by any one individual, but by the institution itself composed of everyone to be disciplined and being disciplined.⁵⁰

Every deviance or impulse will be subjected to it so does every human being, all of them are incorporated and integrated into the social orders imparted and inherited constantly, and

⁴⁹ Evidences for this are abundant. After marriage one has to share the addressing terms to the relatives of his/her spouse with and by adoption of terms of one's spouse. The most extreme evidence is addressing a man as an elder brother by a prostitute who will otherwise normally address him an uncle or a grandpa in their contact. The two addressing terms means two different norms between them. The former addressing indicates the permission of and actually is inviting a sexual contact, while the later indicates a norm prohibiting any act with sexual implication as incest.

⁵⁰ See, Paul Connerton, *How Societies Remember*, Cambridge University Press, 1989.

that gives one's life and efforts meaning and make them meaningful. It is a system of heaven/human, nature/nurture, biological/societal merged. And it is a mechanism much more efficient and strict than the pen under the pen of Foucault. It is a god/guard composed of all sensory organs of everyone of the community. No matter how horrible is it, it is to respond the Antigonian problem which is more horrible for the community.

IV. Its Political Potentials, and A Comparison with the Incest Taboo

Confucianism cannot be the only one that is aware of and responds with institutions the Antigonian problem if the problem is universal.⁵¹ Indeed, survival of every society proves the existence and effectiveness of an institution responding the problem. The exemplary and universal one is the incest taboo. The fear of pollution in ancient Greece is common, and the Oedipus pollutes the entire city state (the community).⁵² Detailed punishments are prescribed in the Bible for the incest between and within generation, most of them are death.⁵³ And anthropologists discovered taboo in variety of form.⁵⁴

Different explanations of incest taboo are offered,⁵⁵ plausible but not convincing. It is hard to explain why the scope of the taboo is so differently defined in different cultures while the core always on the sex/marriage between parents and their son or daughter. Even The Bible does prohibit for example the marriage of man with the widow of his brother.⁵⁶ And further, during Ancient Greece and Rome, marriages between close relatives is allowed by then mores and laws;⁵⁷ in the Egypt, many kings and queens are married his sisters or her brother's of full or half blood.⁵⁸

Minowsky offers an explanation more convincing in a perspective of functional structuralism: the importance of incest taboo is not its immorality, but to maintain the order within family and community, because sex between generations necessarily result in disastrous confusion and subversion of order,⁵⁹ while sex and even marriage between

⁵¹ Another story is the European comical legend of *Tristan et Yseult* in Norman era. King Marc's wife Yseult, after taking some aphrodisiac for purpose to make the king attractive to her, accidentally falls in love King's nephew Tristan; eventually, Tristan is exiled, and both died and become two trees with intertwined branches of their tombs. By the way, the resolution, besides deaths, is still exile that keeps a distance from each others.

⁵² *The Oedipus, The King*, supra. n.9.

⁵³ *The Bible, Genesis*, 17:6-23.

⁵⁴ Sigmund Freud, *Totem and Taboo*, Random House, 1918, ch.1.

⁵⁵ The major explanations are, Edward B. Tylor, "On A Method of Investigating the Development of Institutions, Applied to Laws of Marriage and Descent," *Journal of the [Royal] Anthropological Institute*, Vol. 18, pp. 245-269, in <http://www.jstor.org/view/09595295/dm995279/99p0055b/0>, last visit on 2007/6/25; Edward Alexander Westermarck, *The History of Human Marriage*, supra n. 45; Emil Durkheim, *Incest: the Nature and Origin of the Taboo*, trans. by Edward Sagarin, Lyle Stuart, 1963; Claude Lévi-Strauss, *The Elementary Structures of Kinship*, rev. ed., trans. by James Harle Bell, John Richard von Sturmer and Rodney Needham, Beacon Press, 1969.

⁵⁶ *The Bible, Leviticus*, 38:8.

⁵⁷ See, for example, *The Institutes of Justinian*, supra n. 6, Title X:4. It provides explicitly that "[t]he children of two brothers or sisters, or of a brother and sister, may lawfully intermarry."

⁵⁸ See, "Cleopatra VII", *Wikipedia, the free encyclopedia*, <http://en.wikipedia.org/wiki/Cleopatra>, last visit on 2007/6/25. Statistics shows marriages between full and half brother and sister are about 20% of total marriages registered. See, Brent D. Shaw, "Explaining Incest: Brother-Sister Marriage in Graeco-Roman Egypt", *Man*, vol. 27/2, 1992, pp. 267-299; Roger S. Bagnall and Bruce W. Frier, *The Demography of Roman Egypt*, Cambridge University Press, 1994, pp.40-50, 128-129 and 127-134.

⁵⁹ Bronislaw Malinowski, *A Scientific Theory of Culture*, University Of North Carolina Press, 1944, p.34. See also, Fei Xiaotong, *Shengyu Zhidu (The System of Reproduction)*, supra n.35, esp. pp.137-144. Fox does agree with this interpretation, but his argument focuses only on one's relationship with one's

brother/sister or marrying the widow of one's sister, though maybe offensive and even repulsive to people in certain cultures, may not lead to such consequences. From this perspective, incest taboo is not really about sex or marriage but about stabilizing the social order, including the order of a family, to prevent the disastrous consequences to an individual, family, society, and even the state; it is only indirectly that incest taboo has the effects of eugenics which the incest agents may not be aware of and or do not care about when in the passionate affection. It may be argued that incest taboo and Confucianism share and respond to common concerns, the peace and order of the close knit community.

However, the response of Confucianism is more active and creative in comparison with the incest taboo's passivity and prohibition. The latter focuses only on the order of family and close knit community, and that ends its social significance. Confucius and his students and disciples elaborated the significance and potential of Confucianism for public and political order, especially when the community expands to the extent that a state, or political community is emerged and formally established, and the significance for the family of political leader when monarchy is the only available form of governance in a large but agricultural society without effective means of communication. Actually, I would consider the *Antigone* of Sophocles the best illustration of this point. The revealing of Oedipus' past did not lead directly to the conflicts between Antigone and Creon, but first to Oedipus' abdication which leaves the vacancy of kingship for the struggle between the twin sons of Oedipus. Without the rules or convention about who will be the first legitimate successor between the twins who presumably share equal right to the throne, the war for power between states arise. With the death of legitimate heirs, Creon assumed the vacancy as the new king in name, but a tyrant, since he is deficient in legitimacy; for purpose of restoring the order of Thebes, and also of consolidating his power, Creon cannot help to resort more political expediency such as the prohibition of burial of the traitorous Polynices. So, it is because of the absence of the rule or norms of succession between twins that the war comes out, and intensify the political instability of Thebes. Not only that, it also leads to the change of the form of polity, a constitutional change in a modern term, from the monarchy to a tyranny which means in ancient Greece a king came to power without legitimate succession but by an incident, from a governance of convention to one of political forces and expediency, from a state of more communal to a state of more political constituted. In comparison to the constitutional change, the so-called debate between natural law and positive law is not only insignificant, but misses its significance in legal and political practices and theory.

With this in mind, it is understandable why Confucianism pays so much attention to the norms regulating father/son, elder brother/younger brother, and male/female in his ideal society and state, even though he borrows such norms from the communal and family life which originally is to prevent subversion and destruction of familial and communal order. Confucian scholars discovered their potentiality and significance for construction of a political order or a society of much larger than a commune. An active and aggressive political Confucianism is so developed with Confucius' effort which extends communal principles of order to the maintaining order of a state and states (*Tianxia* or the world or the interstate community). Confucianism offers a paradigm of thinking and practice of politics, laws, and

parent, but omits the interaction among acquaintances and one's position in the clan. See, Robin Fox, *Kinship and Marriage*, Penguin Books, 1967, pp.57-58.

society in the traditional China and that lasts for about 2500 years.

The stability and orderliness of each close knit community, first of all, is contributing to the peace and stability of a larger political society, and provides some prerequisites for political governance in a financially very limited polity. It responds the demands of close knit community for political authority and formal law, and greatly reduces the cost of governance of a large country like traditional China. Also, by such a metaphor, fiction, symbol or analogy, with necessary interpretation, the norms governing the tree dimensions of human relationship is extended to politics. Father/son is analogous to king/subject,⁶⁰ and to teacher/students;⁶¹ the fraternal love is extended to friends and even to remote strangers;⁶² the norms of close knit communities therefore is transformed into the most important political norms in traditional China for people who bear political, social, and cultural responsibilities, crossed over the lines between community and society, the civil society and political society, the private life and public life. The constitutive norms of close knit communities become the constitutional norms of the traditional China. Thirdly, they also serve as the dominant and official ideology of the great agricultural society. By the extension of norms of acquaintances to strangers,⁶³ the provincial Confucianism enjoys a certain transcendences and universality.

The norm of keeping the order of elder and young is a good example. In *Antigone*, one contributory factor to Antigone's tragedy is the absence of rule governing the succession of twins to the kingship. But according Confucianism, the order of brothers, including twins, is always emphasized. Twins, either of males or females, are to be specified who is the elder one and who is younger one, and discipline and disciplinary practices are imposed thereafter their birth. The ordering of twins is purely arbitrary in a sense, since both dominated by Confucianism, in China the elder one is the one who come to first, while in Japan vice versa. There are local and cultural justification, in China, of temporal sequence, while in Japan, of a more cultural one that says the elder one with fraternal love lets the younger one come to the world first, just like the courtesy "lady first" popular in western world. These justifications are fabrications indeed. But there are functional in the sense of preventing *some* potential conflicts or controversies over succession or inheritance. The contrast evidences suggests that ordering of elder/young is not about the biological essentials or temporal sequences or any other real difference, but the social and political function of the ordering. This serves an example of mutual supportive among familial practice, social norms, and political and constitutional principles. Others are "be filial to one's parents in family and then be loyal to the emperor in state affairs", and the "personality/family/state/world" approach to human affairs of Confucianism.

Though the effectiveness can be inferred by the continuity of and the wide spreading of

⁶⁰ "From them you learn the more immediate duty of serving one's father, and the remoter one of serving one's prince." *The Analects of Confucius*, ch. 17.

⁶¹ The phrase that one who teaches you just for one day shall be treated as your father for your whole life, is very popular in China for long, though it is difficult to date it. However, as early as the Spring and Autumn period, there is a record claims the principle to treat one's father, teacher, and king is the same" *Guoyu (Documentaries of States)*, Jingyu 1.

⁶² "let him be respectful to others and observant of propriety: -- then all within the four seas will be his brothers". *The Analects of Confucius*, ch. 12.

⁶³ "treat[ing] my old folks as old folks should be treated and then extend that attitude to the old folks of others; treat[ing] my juniors as they should be treated and then extend that attitude to the juniors of others". (*Mencius*, 1A.7, translation modified).

the Confucianism in far eastern world culturally, the political contribution of Confucianism to political and constitutional order cannot be exaggerated. What Confucianism offers is an approach, and provides some theoretical or ideological justification for a political order in accordance with the Confucianism. Also such ordering does not necessarily eliminate political crisis. Even in the historical moment when it originates, Confucianism fails to achieve great institutional successes, political disorders is rampant during Confucius life days; historical records again and again demonstrate its incompetent in the constitutional and institutional level.⁶⁴ It is almost a failure until when with the aid of the legalist school who provides the basic political and constitutional framework and institutional arrangement, and the development and enrichment of later Confucianism, Confucianism was made the orthodox and the dominant ideology of the society and the state.⁶⁵ Even after then, the difference of important political interests often lead to killing between father and son, and brothers in those socially and politically most successful and historically highly regarded royal families.⁶⁶

However, these political struggles and political disorders are not evidences indicating a functional failure of Confucianism in the constitutional and political levels. It not only proves the point mentioned in last section, that an insightful idea and principle is not the practice of micro institution itself. But also, perhaps more importantly, Confucianism has to balance various desirable sometimes incompatible goods, order is only one of them though the most important one.

First, out of the pragmatic consideration of good governance of the world or ideal of benevolent government, Confucianism never intends a social order, rigidly copying or borrowing the structure and norms of family and close knit community to eliminate all the political revolution, including the struggle and fighting for power even among father/son, brothers, and emperor/ministers. Actually, Confucian scholars agree and highly appraise some revolutions which ousted tyrant kings and empowered great new kings;⁶⁷ accept the changing loyalty of subjects,⁶⁸ and differentiate killing a king and killing in a social revolution a bad man who happened to enjoying the kingship.⁶⁹

⁶⁴ "During Spring and Autumn period, 36 kings were killed by their subjects, 52 states were eliminated, and there are innumerable dukes and lords who are in exiles and cannot keep their states." Sima Qian, *Shiji* (Records of the Grand Historian), supra. n. ??.

⁶⁵ "The administration of last two thousand years are following one of the Qin Dynasty, the dominant ideology of last two thousand years are teaching of Xunzi". Tan Sitong, *Ren Xue (the Teaching of Benevolence)*, annotated with commentaries by Yin Yongqing, Zhongzhou Classics Press, 1998, p.169. Qin dynasty adopted the legalist school approaches in governance, and the Xunzi is one of the schools of Confucianism, but is considered one of the founding fathers of the legalist school.

⁶⁶ The most infamous cases are the King Yang of Sui Dynasty, who is reported murdered his elder brother and took his position as the successor to the king, Li Shiming who killed the his elder brother, the determined successor to the king, and ousted his father the king in Tang Dynasty, Zhao Guangyi, who is reported of having murdered his elder brother, the king, and usurped the kingship in Song Dynasty, and Zhu Di, who ousted he king, his nephew, and took his authority.

⁶⁷ "The Revolutions launched by Tang and Wu are following the order of Heaven and responding the people's calling". *Zhouyi (The Book of Changes), revolution*.

⁶⁸ "Tsze-lu said, 'The Duke Hwan caused his brother Chiu to be killed, when Shao Hu died, with his master, but Kwan Chung did not die. May not I say that he was wanting in virtue?'"

The Master said, "The Duke Hwan assembled all the princes together, and that not with weapons of war and chariots: -- it was all through the influence of Kwan Chung. Whose beneficence was like his? Whose beneficence was like his?" *The Analects of Confucius*, ch. 14.

⁶⁹ "May a minister murder his prince?"

"Whoever simulates the high qualities of manhood-at-its-best is to be called a thief. Whoever simulates the high qualities of propriety is to be called a despoiler. The pre who despoils and steals is to be called a nobody. My teacher taught me that a nobody named Chou was put to death; he said nothing about assassination." (*Mencius*, 1B.8).

Secondly, though rule guided, is not ideologue, Confucianism does not suggest that an institution, no matter of social norms, statutory law, ideology or constitution or constitutional principle, can eliminate undesirable political disorder and revolution, but to an extent to avoid or weaken the crisis and its consequences. Accordingly, its emphasis of the importance of social norms, as what Mencius' commenting on Confucius clearly indicated, is to make those potential traitors and usurpers deterred.⁷⁰ What Confucianism seeks is a general respect to the existing political order and social consensus, a legitimacy, which will deter potential traitors and usurpers, but not the true revolutionaries. The analogy of family/state is only an analogy; after all, a family is never a state, and the social norms of father/son, brothers, though may be used to support, should never decide the allocation of political powers and responsibilities.⁷¹ Therefore, with the basic social and political norms shared by all the people from the top to bottom, what Confucianism accomplishes is a presumption of constitutionality and legitimacy of the existing political order, so that usurpers dare not to do something wild. The presumption is subject to challenges, but challengers must bear the burden of justifying their challenges, either in advance or posteriorly, have to do something to gain the acceptance of the people which means the benefits of such action to the society is to be shared by the common people. This is an enough and important contribution of Confucianism to the political and constitutional order in traditional China. Although it is impossible to measure the extent how much undesirable political disorders and social unrests are prevented or deterred with the Confucianism; but one must prove otherwise if he denies this contribution.

V. The Problem of Thunder Storm, the Modern Transformation

With metaphor, analogy, or interpretation, though the Confucian norms for close knit community are extended to strangers and to larger political community, but the problem Confucianism tries so hard to deal with essentially a problem of close knit community and among the acquaintances of it, and the institutions so evolved are functional and effective only in a community where all relationships are known to each others. The pollution of Oedipus is partly due to that he was an outsider or a stranger.⁷²

The question becomes complicated in a modern society, where more and more people move around constantly. On one hand, the Antigonian problem seems disappeared or disappearing since one is living more and more among strangers of no differences. One do not have to rely upon the three dimensions of Confucius to organize and discipline one's relationship with these strangers, the society has organized itself in another way. you can and even should treat strangers indifferently, as long as state law is followed. On the other hand, without the social structure and environment of close knit communities, like it or not, all the micro institutions of Confucianism once functional become dysfunctional, and actually

⁷⁰ "After Confucius had composed the *Annals*, rebellious ministers and feigning sons trembled". (*Mencius*, 3B.9).

⁷¹ Although Confucianism was always honored in later dynasties, however, on the issue of succession, the norms about the order of brothers is never completely followed, though it may be used as a justification by different interest groups; that suggests once significant political responsibilities is getting involved, the natural order of brothers was never being considered inviolable natural law.

⁷² All societies are suspicious of stranger, from discrimination against immigrants to against matrimonial resident son in law.

the regulatory subject is disappearing -- the fading away of Confucianism in 20th century in China is not a result of the attacks launched by modern liberal intellectuals, but a natural consequence of the social transformation which is still going on today in China.

However, the Antigonian problem is not eliminated with the social change, but transforms its appearance. 10 years after the down to the Confucianism in 1919, a university student and play writer touches this problem in his famous play *thunderstorm*.⁷³ The head of a family, Zhou Puyuan, a returned German university graduate and the chief of board director of a coal mine (all indicate the modernity of the story and actors), had an affair with maidservant Lu Siping in his young.⁷⁴ Siping left after gave birth to a son, Zhou Ping in Zhou's residence, and got married and gave birth to a daughter, Sifeng. About 20 years later, unfortunately, Sifeng enters Zhou Puyuan's family as maidservant, and falls in love with her half blood brother Zhou Ping and gets pregnant, with both ignorant of the their relationship. Zhou Ping had an affair with his step mother Fan Yi before, and regretted for that, but Fan Yi was not prepared to let him go. When Siping comes back incidentally the Zhou's family, all hidden facts is revealed. Fan Yi goes mad, Zhou Ping commits suicide with a gun, and Sifeng died when she runs across an electric line; Zhou Chong, Fan Yi's son and Zhou Ping's brother is also dead when he tries to rescue Sifeng.

Many interpretations are offered, and tend, including the author's, to emphasize the liberalism, the enlightenment of the May Fourth movement which condemns the Confucianism, the traditional family governed by "feudalism" rituals and rites.⁷⁵ However, with a different perspective, we find again the Antigonian problem but with a modern social background. The play shows again the importance of settled relationships to everyone in a modern society of anonymity and mobility, and the subversive power of sexual attraction. A moment of sexual pleasure leads to serious and destructive consequence to those ignorant.

From the traditional Chinese perspective, too important rules are violated in the story. One is the incest of son and his step-mother. However, it is a purely cultural one, and shows the incorrigible defect of all institutions and rules, rather particular to Confucianism, that is with more rules there will be more rule violations.⁷⁶ Even if the rules or institutions taking as a whole are good and necessary for the society, their existence provides the occasion for violation no matter what efforts to be made. However, once such norms are created and internalized, human being is embedded within it and hardly to escape. "I am not the mother of Zhou Chong, neither the wife of Zhou Puyuan,"⁷⁷ Fan Yi's desperate denial, in face of Zhou Ping, Zhou Chong's elder brother and Zhou Puyuan's son, itself strongly shows they are the cultural facts already in Fan Yi's mind; she is trying to reestablish her relationship with Zhou Ping, and with the world, and then she may find comfortable with her step-son. While

⁷³ Cao Yu, *Leiyu (The Thunderstorm)*, in Ju An ed., *Cao Yu*, Wenhui Press, 2002; all the citation are from this book. The play was finished in 1933, but the author professes its initial is in 1929 when he was a student of Nankai University.

⁷⁴ Actually, in societies of rigid class, such a sexual relationship is prohibited, it may be considered a culturally defined incest, it is tolerable if the female is in a lower class, it will be intolerable and punished if the male is in a lower class.

⁷⁵ The author professes that he was full of repressed resent against the traditional Chinese family and society when he was developing and writing the play. See, *Caoyu Xuanji (Selected Works of Cao Yu)*, Renmin Literature Press, 1978.

⁷⁶ "The more articulate the law and ordinances, the more robbers and thieves arise". Lao Tzu, *Tao The Ching*, trans. by John C. H. Wu, Shambhala, 1989, sec. 57.

⁷⁷ *The Thunderstorm*, id., p.50

Zhou Ping's words to Fan Yi "do not let us meet again, which remind us of what I regret most",⁷⁸ show not only his weakness and desire to escape, but also reflect his confirmation of the cultural order, because "if you do not think yourself the wife of my father, I had to acknowledge myself his son".⁷⁹ The former is cultural one, which may be re-fabricated, but the later one cannot be.

The more important incest is the between Zhou Ping and Sifeng out of ignorance, which has been a way Zhou Ping chose to redeem himself for his cultural incest with his step mother. This incest has nothing to do with Confucianism. It happens not because of absence of the Confucian norms, but the change of the social environment necessary for the effective function of Confucianism, though the norms as cultural heritage are still there and are still functional as social norms and institutions in close knit communities. But the characters of the play are no more living in a close knit community, they are mobile because of the change of the society. Those micro institutions, such as rituals and rites, or address, or/and others, no matter how effective they were once, are no more functional; they are no more capable of providing people in a larger, anonymous, and mobile society with institutional guidance and support to prevent disorders relating to incest out of ignorance. In this perspective, I would argue on the contrary to the conventional interpretation, the tragedy is calling a set of micro institutions functional and effective in disciplining and guiding people in modern commercial society, institutions comparable to the Confucianism in traditional close knit communities.

The author touches and reflects over the problem with his play, but fails to answer the problem. Not because he does not want to, but he cannot. With the mouth of Siping, the author attempted to let Zhou Ping and Sifeng go far away, and never let anyone of them to see them again for ever,⁸⁰ this is a response comparable to the exile of Oedipus, with the same purpose of escaping from the society of acquaintances. However, that is only appearance. From the perspective of audience, the Oedipus's exile serves cutting off the incest happened, the going away of Zhou Ping and Sifeng serves keeping the incest, which is unacceptable by at least the Chinese audience, even if Zhou Ping and Sifeng are kept in ignorance of their brother/sister relationship. Death of both Zhou Ping and Sifeng eventually solves the problem, with gun and electric power, two items of modern society. The author knows no other way to solve it, but death.

Therefore, without notice of himself, the author goes much more beyond the naiveties of May Fourth movement's enlightenment and liberalism ideal, which think Confucianism the source of evil for every bad thing, and if one escape from the Confucianism and adopt the liberalism, everything will be fine. The play shows on the contrary. The love affairs between three parties, Zhou Puyuan and Lu Siping, Zhou Ping and Fan Yi, and Zhou Ping and Sifeng, have to be restricted not only then in Chinese society, but also in audience who are much more liberal and modern; the one between Zhou Ping and Sifeng is totally unacceptable, though the audience has much sympathy for them. The only love which may gain full support from the society and audience is unilateral love of Zhou Chong's love for Sifeng, but he died when he first time touches his lover. Is this a metaphor embedded deeply in the author's sub consciousness?

The background of the tragedy is the beginning of 20th century in China, when

⁷⁸ *The Thunderstorm*, id., p.49

⁷⁹ *The Thunderstorm*, id., p.50

⁸⁰ *The Thunderstorm*, id., p.135

urbanization, commercialization, and social mobility are just beginning, the problem is a problem of under transformation of the society, many people may so think, once China undergoes a complete transformation, then such tragic events will be eliminated. Not at all.⁸¹ The problem cannot be prevented with the expansion of the community, the increase of the number of stranger one contact with. In a modern society, on one hand, the development of new biological technology, such as semen bank, artificial insemination, cloning, and surrogate mother by strangers or by one's kin, already increases probabilities of biological incest.⁸² On the other hand, the promiscuity among strangers, the social welfare that induces more proportion of kids born in or out of marriage ignorant of their biological father which presumably tend to be more of men of Don Juan type,⁸³ and the uncertainty of the parenthood between father and son within families,⁸⁴ plus the high social mobility and instable sexual relationship, all may increase incidences of biological incest. Once it happens, it will be again a disaster for the people getting involved, although because of the convenience and effectiveness of contraception and abortion, the incidents that pollutes one's descendants may not necessarily increase, but that is still a question of fact for empirical investigation. And also the question is not about the number, or the probability and frequency of incidents, but about the order and meaning of human life. As far as this problem is concerned, what the thunderstorm touches is not going to disappear, but it projects the problem that perplexes human beings.

If this is a problem in social life, then modern society has to evolve a set of micro institutions and by the advancement of technology to solve it, rather to expect it to disappear with greater social mobility. At present stage, it seems DNA testing for parenthood that is responding the problem as a technology and institution either in China or abroad, the number of actually tested and demanding for DNA testing are increasing annually in the world.⁸⁵

⁸¹ On January 11, 2008, David Alton, a Member of the House of Lord, revealed that recently the High Court of London, after a special hearing, annulled a marriage between twin of male and female, who were separately adopted by different families immediately after their birth, and married each other after their grown-up without realizing their biological relationship. Alton revealed the "horrible tragedy" during a debate on a proposed new law on in vitro fertilization (IVF), and insisted that kids of fertilization and embryology, or adoption be informed of the identity of their biological parenthood in order to avoid similar tragedy in the future. John F. Burns, "British Peer Cites Twins Who Married Unwittingly", *The New York Times*, Jan. 12, 2008, p.A6. The extraordinary case of the twins who married is not the first time. See, Richard Woods and Claire Newell, "Foetal attraction" *Sunday Times* (London), January 13, 2008, p.F12.

But even with legislation as Alton proposed, with a clear public records of the biological originators, it is not expected, without biological tests, to eliminate similar incestuous sex, and even marriage, between half-brother/sister or father/daughter or mother/son, among a increasingly large population who were born out of marriage or of a stable marriage, therefore with no easily identifiable biological parenthood, in a more and more mobile and anonymous society.

⁸² It is reported that since 1991 more than 27,000 babies have been born from donated sperm, eggs and embryos in England. As a result there may be thousands of people who unwittingly share one parent, and who may one day meet and fall in love. Woods and Newell, "Foetal attraction" id..

⁸³ In Sweden, it is reported over 40% of kids are born out of marriage in 1983. See, Richard A. Posner, *Sex and Reason*, Harvard University Press, 1995, p.57.

⁸⁴ Experts in England point out that in an estimated 3%-10% of ordinary births, the husband or partner of the mother is not the true father of the child. Woods and Newell, "Foetal attraction" id..It is reported the number of DNA tests is increasing 20% annually, the major cause is the uncertainty of the father about the parenthood, in provinces of most commercialized, such as Zhejiang, the rate is about 50%. <http://www.people.com.cn/GB/news/36248/36249/2813971.html>, last visit on 2007/6/23.

⁸⁵ Id. And see also, <http://news.sina.com.cn/w/2005-01-04/15574713215s.shtml>, and <http://news.sohu.com/20070313/n248689328.shtml>, last visit on 2007/8/11.

VI. Final Comments

Though with the risk of being misunderstood, this paper is not to argue for Confucianism, but to understand the Confucianism institutionally and to remind us of the serious problem with which Confucianism deals. Since the May Fourth movement in China, the social transformation has made Confucianism as institutions collapse inevitably, most of modern intellectuals, because of their lives in urban region which obscures the problem Confucianism responds, not only do not like but attack Confucianism for a prospect of China's social transformation, but also some adherent of Confucianism fail to understand the Confucianism institutionally and made effort to transform Confucianism into a "culture", a religious, ethic, philosophical, theoretical discourses in the model of western scholarship. In the view of Nietzschean genealogy, the new discourse of Confucianism is not the extension of its logic, but a product of historical forces. It seems that Confucianism is modernized and merging into the international intellectual discourse, but in a sense it becomes invisible and insignificant. I do not reject such a merge. What worries me is the obscurity of the real social function of it in context, the forgone of its unique significance, and unawareness of the problem it deals with.

It is for these purposes, this paper intends to bring back the entrenched, maybe eternal problem into our view. Therefore, that this paper approaches first to *Antigone* and then *Thunderstorm* is purposeful. By such a connection between ancient China and Greece, the modern and ancient, this paper shows Confucianism as a local and contextualized institutional response to a universal problem. And also, it challenges the effort of orientalism or self enforced unconscious orientalism,⁸⁶ which tends to emphasize the mysterious uniqueness of Chinese culture from the West, including such claims about China's long tradition of the rule of man.

⁸⁶ Edward Said, *Orientalism*, Vintage Books, 1979.