

Justice Kennedy, Confucius, and Gay Marriage: Comparison of Philosophy and Law

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In writing the majority opinion of *Obergefell v. Hodges* (576 U.S. ____ (2015), hereafter *Obergefell*), Justice Kennedy quotes Confucius as saying "marriage lies at the foundation of government". Many Chinese are surprisingly to know Confucius has anything to do with gay marriage or marriage equality. In his dissenting opinion, Chief Justice Roberts weighs in the Han Chinese among others institutions of marriage.² And the Han Chinese marriage institution based on the Confucianism. Actually, Justice Kennedy is not the first American turn to Confucius for inspiration for answering the question of gay marriage. Sam Crane of Williams College writes in 2005: "This year in my Chinese philosophy class, the question came up: would Confucius approve of gay marriage?"³

Confucianist point of view and institution of Han Chinese marriage both are just passing references and play no significant role at all in the opinions of Chief Justice Roberts and Justice Kennedy. But the relevance of Chinese and American philosophy and law can be recognized when the American lawyers and philosophers keep an open eye on Confucianist China in thinking through the definition of marriage in terms of gay marriage.

So, what will be Confucius response to gay marriage? What Confucianist has to say about family and law? What is the relation between marriage and family? How can we benefit from a comparative study of Chinese and American law and philosophy with respect to marriage? This paper try to answer these questions. I hope this article can be a Confucianist

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² "As a result, the Court invalidates the marriage laws of more than half the States and orders the transformation of a social institution that has formed the basis of human society for millennia, for the Kalahari Bushmen and the Han Chinese, the Carthaginians and the Aztecs. "

³ Sam Crane, *Modern Love: What Would Confucius Say About Gay Families?*

http://uselesstree.typepad.com/useless_tree/2005/09/modern_love_wha.html#more

response to Justice Kennedy and a constructive dialogue between Chinese and American law and philosophy.

1. Is Justice Kennedy Correct in His Quotation of Confucius?

In his *Obergefell* majority opinion, Justice Kennedy quotes both Confucius and Cicero as illustrations to show "the centrality of marriage to the human condition makes it unsurprising that the institution has existed for millennia and across civilizations. " The particular phrase Justice Kennedy refers to is from a long dialogue between Confucius and Duke Ai of Lu (probably at BC484) on the rites in general and the marriage ceremony in particular:

For of the extreme manifestation of reverence we find the greatest illustration in the great (rite of) marriage. Yes, in the great (rite of) marriage there is the extreme manifestation of respect; and when one took place, the bridegroom in his square-topped cap went in person to meet the bride;—thus showing his affection for her.⁴

The talk about the marriage ceremony began with the Duke's doubt on the necessity for the bridegroom (such as the Duke himself) in his square-topped cap to go in person to meet his bride. The Duke has a question for Confucius: is it not making too much (of the ceremony)? It seems to the Duke that marriage is marriage, a solemn ceremony is too much for a ruler like him. The response of the Master is "looked startled, changed countenance. " For Confucius, marriage is about a man and women love each other and live together as a family, but it is much more than that. The astonished Master then begins his answer with the explanation of the tremendous meaning of the marriage:

(Such a marriage) is the union of (the representatives of) two different surnames in friendship and love, in order to continue the posterity of the former sages, and to furnish those who shall preside at the sacrifices to heaven and earth, at those in the ancestral temple, and at those at the altars to the spirits of the land and grain...⁵

⁴ <http://www.sacred-texts.com/cfu/liki2/liki224.htm>

⁵ <http://www.sacred-texts.com/cfu/liki2/liki224.htm>

For Confucius, the meaning of marriage lies in the union of different surname clans by married their daughters and sons, in the producing of posterity and in the married couples worshipping ancestors, heaven and earth, and the spirits of the land and grain. It is not good for a man alone to live and to worship. It takes a couple of male and female to live and worship at family, ancestral temple and altars of the heaven and earth, of the land and grain. Marriage, therefore, is nothing less than the opportunity to make formal connections and cooperations among clans, to communicate with the ancestry and the natural world. To get marry does not mean to find a partner satisfying desire and love with each other. It is at the same time a duty to make children to passing the sacrificial incense on to the next generation. A couple is thus the nexus of the sacred world of nature and human beings, living and dead. And the marriage ceremony is consequently the defining moment for the union of the Heaven, the Earth and Human Being. This is what Confucius have said when he gave the Duke further explanation of the meaning of marriage with lining up the growth of nature and the reproduction of men: "If there were not the united action of heaven and earth, the world of things would not grow. By means of the grand rite of marriage, the generations of men are continued through myriads of ages." It is the meaning of the marriage in such a magnitude that deserves it one of the most solemn ceremony.

Before concluding his interpretation of marriage, Confucius make it crystal clear to the Duke: "Ceremonies are the first thing to be attended to in the practice of government. " Not marriage ceremony alone, but all the rites(禮, *li*, ceremonies, proprieties) ,⁶ are the priorities of a ruler. Politics is about traditional ceremonies. It is with this emphasis on the importance of ceremonies in general, that Confucius determined that the ceremony of marriage(especially those of the rulers) should not be compromised: "Yes, (this) ceremony (of marriage) lies at the foundation of government!" You got to wear your square-topped cap went in person to meet your bride: a marriage without sufficient performance of ceremony is a skim milk one(quote from Justice Ginsburg from the oral argument of the *Obergefell*), and is therefore not acceptable.

⁶ 禮 (Li) is the key word of Confucian philosophy. It has been translated as rites, proprieties, ceremonies by the translators of the Confucianist works. The translation vary from translator to translator and are context sensitive. I use these words interchangeably with each other depending on different context.

Putting Justice Kennedy's quotation into perspective, we can see the point Confucius made is about rites instead of marriage itself. Rites is the magic word of Confucius. "To subdue one's self and return to propriety, is perfect virtue." (*Analects*, Book XII. CHAP. I. 1.)⁷ The restoration of rites and proprieties is the theme running through Confucian teaching. By interpreting perfect virtue as practicing and restoring the proprieties, Confucius found a perfect match between developing personal morality and the restoration and improvement of social order. Respect and love between the couple are among the major virtues the Master is expecting the good people especially a ruler to nourishing.

Justice Kennedy's reference to "Confucius taught that marriage lies at the foundation of government" is therefore a misquotation of a correct translation of James Legge: "(this) ceremony (of marriage) lies at the foundation of government!" It is the ceremony of marriage as part of traditional proprieties, not the marriage itself, that is the foundation of government.

II. The Response of Chinese Confucianists and American Scholars to Justice Kennedy

A single line misquotation of Confucius by does not hurt the reasoning of Justice Kennedy for legalizing gay marriage. And yet its constitutionalization and the quotation of the Master sparked a hot debate among the Chinese social media in general and the Confucianist philosophers in particular. "A post discussing the legalization of same-sex marriage on Weibo had attracted over 7 million page views as of Sunday (May 28, 2015) and 64,000 online users have participated in the discussion. "⁸ This should not be a surprise when we consider homosexuality has a long tradition in China and it is a large size community now even though no one knows for sure the exact number. The estimate is from 5 million to 40 million.⁹

The most engaged group is the much smaller community of Confucianist scholars. Their ambition is to the renaissance of Confucianism as the soul

⁷ <http://ctext.org/analects/yan-yuan?filter=492861>

⁸ Catherine Wong Tsoi-lai, US gay marriage ruling sparks debate in China, Global Times, 2015-6-29, <http://www.globaltimes.cn/content/929367.shtml>

⁹ "不再恐同日", 同性戀權利在抗爭. 德國之聲. 2013-05-17. <http://dw.com/p/18a0m>

of the Chinese people. The official website of the Confucianist community and other social media, academic journals published a series of discourses on the quotation of Confucius by Justice Kennedy and the appropriate response of Confucianism to the gay marriage.¹⁰ The enthusiastic response is not so much for advance of the gay interests as a concern for the correct understanding, interpretation and transmission of Confucianism. The general idea of these responses is that Confucianism is tolerant of the homosexual people but opposing the gay marriage. The leading neo-confucianist Jiang Qing takes the Confucianist tolerance of homosexuals as an example of the advantages of Confucianism over (the Christian) West because the West condemnation of homosexuality in the Middle Ages.¹¹ The reason why Confucianist tolerance of homosexuals is that the innate nature of those people and the private nature of their behavior with no much influence on the public order and morality.¹² One further reason of Confucianist tolerance is given by another prominent Chinese philosopher Zhang Xianglong. He argues that the Confucianism tends to judge a person by his virtue instead of his sexual orientation.¹³

Tolerant of homosexuals and homosexuality as the Confucianism is, the opposition of the gay marriage can still be found in almost all the contemporary Confucianism champions. The first reason of the opposition is a metaphysical one: the philosophy of Yin and Yang. According to the first Chinese philosophy book and the basic Confucianist Classic Yi Jing (the Book of Changes): Alternation of the yin and yang (yi-yin-yi-yang-zhi-wei-

¹⁰ Those articles can be found at <http://www.ruijiazq.com/category/page/1/type/9/small/52/>

¹¹ "在传统中国，儒家在整体上一一直都默认宽容同性恋，从未如西方中世纪发生过大规模迫害同性恋的事件。... ..以孔子为代表的儒家不像现在的西方，从一个极端走向另一个极端，即从残酷迫害同性恋走向同性婚姻完全合法化，而是在宽容同性恋的同时又牢牢固守婚姻是男女两性结合的永远不能动摇的底线。"蒋庆：从儒家立场看美国同性婚姻合法化(Jiang Qing, A Confucianist Analysis of the Legalization of the Gay marriage in America) , <http://history.sina.com.cn/his/zl/2015-07-22/1613123156.shtml>

¹² "真正的同性恋一般具有某种天生的因素，且是小范围内的私人问题，不影响公共道德秩序与法律秩序... .." 蒋庆：从儒家立场看美国同性婚姻合法化 (Jiang Qing, A Confucianist Analysis of the Legalization of the Gay marriage in America)<http://history.sina.com.cn/his/zl/2015-07-22/1613123156.shtml>

¹³ "儒家既没有像基督教那样谴责同性恋及其结合，也不会赞同古希腊文化中对同性恋、特别是男同性恋的某种鼓励倾向，而是对同性恋现象采取有根本性保留的宽容态度，更愿意以道德人品而非性取向来评判其个人。" ZHANG Xiang-long, How should Confucianism View the Legalization of Homosexual Marriage?[J] Journal of Renmin University of China, 2016,V30(1): 62-70.

dao 一陰一陽之謂道) is called the dao (道, the Way).¹⁴ Here is an explanation of the Yin and Yang:

The idea(of Yin and Yang) is that the world is composed of activities of yin and yang forces which systematically form world-situations in which we find ourselves. This understanding has the potentiality for explaining all things in their formation and transformation...One observes that changes in the world always take the form of one yin and one yang in a relation of reciprocity and resonance...many other qualities of things could be intuitively and generally identified as yin and yang as extended qualities of the one or the other...Gang-rou (hardness(剛) and softness(柔))and dong-jing(motion(動) and rest(靜)), whereas the three pairs could further lead to more complex notions of yin-yang in concrete things and concrete situations such as Heaven and Earth, male and female, the individual and society, power and virtue, creativity and receptivity, being and non-being.¹⁵

As the representation of the Yin and Yang in human beings, the sex difference of male and female is simply natural and their bodily union is also as natural as the interaction between the heaven and earth: "There is an intermingling of the genial influences of heaven and earth, and transformation in its various forms abundantly proceeds. There is an intercommunication of seed between male and female, and transformation in its living types proceeds."¹⁶ It is with this metaphysical philosophy and natural law in view that the contemporary Chinese Confucianist strongly oppose the legalization of the gay marriage. For example, Jiang Qing argue that " marriage simply is not marriage of human beings if it is not based on the sex difference, i.e., the natural attributes, of male and female, because human marriage must abide by the marriage of natural law, i.e., the sex difference of man and woman. Natural marriage, therefore, has to be the

¹⁴ I Ching, Xi-Ci , Shang 5.

¹⁵ Cheng Chung-ying, "The Yi-Jing and Yin-Yang Way of Thinking", in Bo Mou, History of Chinese philosophy, Routledge, London 2009, pp.71-74, 79.

¹⁶ The I Ching, Legge tr.: Appendix III: The Great Appendix: Section II, p.373.

abiding natural law of human marriage forever." ¹⁷It is therefore against the nature to have them other way round. Does not it sounds familiar when the Confucianists hear Professor Robert George argue for the conjugal marriage in terms of the natural law:

"Marriage unites a husband and wife holistically, not merely in an emotional bond but also on the bodily plane in acts of conjugal love and in the children such love brings forth—for the whole of life. Marriage is a form of relationship—indeed, the form of relationship—in which a man and a woman unite in a bond that is naturally ordered to, and would be fulfilled by, their conceiving and rearing children together."¹⁸

The philosophy of Yin and Yang and the natural law arguments against gay marriage do not exhaust the Confucianist rationale for defending the traditional marriage definition as the union of a man and a woman. Confucius highlights one of the major functions of marriage is to make sure "the generations of men are continued through myriads of ages." As an echo of this posterity vision of marriage, the other leading Confucianist saint Mencius (372-289 B.C.) condemn the men who do not care about making lineal descendants for the ancestry: Mencius said, "There are three things which are unfilial, and to have no posterity is the greatest of them."¹⁹ Based both on this view of filial piety and Chief Justice Roberts' emphasis on the millennial marriage tradition for procreation and survival of humankind, Professor Zhang Xianglong argues against gay marriage as follows:

If this is the case, then reinforcing homosexuality by legalizing gay marriage will let parents and grandparents down by hoping in vain for having descendants and thereby being deeply hurt. Even the siblings and aunts could have the sad feeling.

¹⁷ "如果婚姻不建立在人的性别差异上，即不建立在男与女的自然属性上，婚姻就不再是人的婚姻，因为人的婚姻必须是符合自然法则的婚姻，必须是建立在人的性别差异上的婚姻。因此，自然的婚姻，就是人类婚姻必须永远遵守的天则。" 蒋庆：从儒家立场看美国同性婚姻合法化(Jiang Qing, A Confucianist Analysis of the Legalization of the Gay marriage in America) , <http://history.sina.com.cn/his/zl/2015-07-22/1613123156.shtml>

¹⁸ Robert P. George, What Marriage Is . . . and What It Isn't, in *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism*, 2013, <https://books.google.com/books?id=7k46AAQBAJ>

¹⁹ The Mencius, James Legge (translator), Book 3, Part 2.

Although the homosexual couples can adopt children, that does not satisfy the parents desire for natural posterity. It is therefore apparent that to enter into what kind of marriage or make what kind of family could not be regarded as concerning no other people than the two married persons.²⁰

For the Confucianists, marriage is to extend and sustain the patrilineal line of family including both living and dead. It is in the dissenting opinion of Chief Justice Roberts where the Confucianists found what they hold in common:

The premises supporting the concept of [natural] marriage are so fundamental that they rarely require articulation. The human race must procreate to survive. Procreation occurs through sexual relations between a man and a woman. When sexual relations result in the conception of a child, that child's prospects are generally better if the mother and father stay together rather than going their separate ways. Therefore, for the good of children and society, sexual relations that can lead to procreation should occur only between a man and a woman committed to a lasting bond.²¹

The universalist definition provided by Chief Justice Roberts is supported by Ryan Anderson with basic facts of humankind: "Marriage is based on the anthropological truth that men and women are complementary, the biological fact that reproduction depends on a man and a woman, and the social reality that children deserve a mother and a father." It is natural, so it is universal for the conjugal marriage defended by Professor Robert George find its resonance in another passage written by Ryan Anderson: "Marriage is a natural institution that predates government. Society as a whole, not merely any given set of spouses, benefits from marriage. This is because marriage helps to channel procreative love into a stable institution that provides for the orderly bearing and rearing of the next generation."²²

From sifting through arguments against gay marriage, we can identify two main reasons provided by the Confucianists then and now: The

²⁰ ZHANG Xiang-long, How should Confucianism View the Legalization of Homosexual Marriage?[J] Journal of Renmin University of China, 2016,V30(1): 62-70.

²¹ http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf

²² Ryan T. Anderson, Truth Overruled: The Future of Marriage and Religious Freedom (Washington, DC: Regnery, 2015).

metaphysical philosophy and natural law argument of Yin and Yang, together with the moral argument for procreation and filial piety. These arguments can help us conclude once more that Confucius and Confucianism are at the opposite side of Justice Kennedy.

Besides the misquotation of Justice Kennedy, we can recognize the close affinity between Jiang Qing and Ryan Anderson, Professor Robert George; Professor Zhang Xianglong and Chief Justice John Roberts. It is regrettable that the contemporary Chinese Confucianists are so determined to distinguish their history and way of thinking from that of the secular yet still Christian America. Yet they actually could have found much more both hold in common. The philosophy and tradition of China and the U.S.A. can reinforce each other in terms of marriage.

III. The Law, Justice and Human Nature

In contrast to the strong opposition to the gay marriage of the Confucianist scholars, sexologist Li Yinhe has been its staunchest supporter over the past years. With herself living with a transgender man, she started advocating the legalization of gay marriage since 2000.²³ According to CNN, "In the last two decades, China's LGBT community has made huge gains in social acceptance." Homosexuality was decriminalized in 1997.²⁴ The Ministry of Health officially removed homosexuality from its list of mental illnesses in 2001.²⁵ From 1 July, 2013 on, same-sex partners (including married couples) of current residents became eligible for residency status in Beijing.²⁶ Britain's consul-general in Shanghai Brian Davidson (left) married his American boyfriend Scott Chang (right) at the British ambassador's residence in Beijing at September 6, 2014.²⁷

²³ "In 2001, Li asked an National People's Congress deputy from Shanghai to take her pro-gay marriage proposal to the two sessions. In the end the deputy wasn't able to submit the proposal because a proposal needs signatures from 30 other deputies to be accepted and he couldn't find that many people who would put their names to the document." Zhang Yiqian, Gay marriage advocates ask legislators to present their proposals at the two sessions, <http://www.globaltimes.cn/content/912260.shtml>

²⁴ <http://www.cnn.com/2014/11/26/world/asia/china-rainbow-flag/>

²⁵ <http://www.theguardian.com/global-development-professionals-network/2016/feb/11/china-lgbt-media-xiaogang-wei-rainbow-media-awards>

²⁶ <https://www.balglobal.com/News/NewsDetail/tabid/266/id/2717/language/en-US/CHINA--New-Regulations-for-Foreigners-in-Beijing-Starting-July-1-2013.aspx>

²⁷ <http://www.dailymail.co.uk/news/article-2749736/Outcry-British-diplomat-marries-gay-American-boyfriend-UK-ambassador-s-residence-Beijing-sex-marriage-illegal-China.html>

No much progress has yet been made in terms of marriage law. Article 2 of The Marriage Law of the People's Republic of China explicitly defines marriage as the union between one man and one woman. And the gay community has come out to keep the momentum of rights talk and even take test case to the court. Lesbians Ma Youyou and Elsie apply for marriage registration but are refused by the relevant department of civil affairs in Dongcheng District in Beijing on February 25, 2013.²⁸ The Chinese gay community do not want wait for change. On June 9, 2015, seven gay Chinese couples married in Los Angeles, officiated by West Hollywood's mayor Lindsey Horvath. They were all from China - the winners of a contest meant to promote the rights of gay people to marry in China. More than 2,000 couples applied to the "We Do" contest hosted by Chinese ecommerce giant Alibaba.²⁹ China is taking heat of the legalization of gay marriage in the USA.

On January 5, 2016, the Changsha Furong District People's Court of Hunan Province accepted a lawsuit filed by Mr. Sun Wenlin and his boyfriend Hu Mingliang after they were rejected to be registered to marry at a local civil affairs bureau. "An employee refused, saying Chinese law did not permit same-sex marriage." Mr. Sun told the New York Times: "Whether I want to marry or not, it should be my right to decide,...I increasingly wanted to bring this lawsuit because they wouldn't give me the right." Chinese law does not enacts a right to marry a same sex person. Mr. Sun owes his rights talk to the foreign influence. "If I hadn't seen the outside world, then I wouldn't care. But I have seen the outside world, and I feel terrible. China needs to take bigger steps."³⁰

And yet there is a wider gap for the steps to stride over. When Justice Kennedy looks into "the eye of law " and saw the "equal dignity" of gay couple, the response in China is not just acclaim but also suspicious of "American style of freedom": "Homosexuality is a kind of impulsive act," A Shanghai-based scholar told the influential Chinese media, the Global Times, "The legalization of it means that the government is encouraging such impulsive acts which will bring a harmful influence to society, in particular to innocent teenagers, the support for this American style of

²⁸ <http://m.womenofchina.cn/womenofchina/xhtml1/special/14/9944-1.htm>

²⁹ <http://www.bbc.com/news/world-us-canada-33074682>

³⁰ Edward Wong, Vanessa Piao, Couple's Lawsuit Is First Test for Same-Sex Marriage in China, <http://www.nytimes.com/2016/01/28/world/asia/couples-lawsuit-is-first-test-for-same-sex-marriage-in-china.html>

freedom has crossed the line [here in China]." ³¹ So, the justice done by Justice Kennedy for American gay community is seen by many people here in China as doing harm to society.

In terms of marriage, the Chinese society is to large degree a traditional one. For example, A Qiang (pseudonym), director of Parents and Friends of Lesbians and Gays (PFLAG) China, told the Global Times that "The greatest opposition [to same-sex marriage] actually comes from parents who have high expectations of having grandchildren to continue the family line."³² Sex, marriage, family line is a package deal made by a time honored tradition of Rites, customs and law with deep roots in the teachings of Confucianism:

The seventh-century classicist Jia Gongyan explains that: "To engage in intercourse with morality (yi yi jiao) means intercourse between a man and woman who are married according to the six rites of matrimony (liu li) " (Jia Gongyan 1966, 36/1a). The "six rites of matrimony" were the basis of a gentleman's marriage-that that is, marriage that was legitimate and proper. The basic elements of the six rites (outlined in The Rites of Zhou) were negotiating the marriage contract through an intermediary; presenting gifts to the bride's family; comparing the name and birth date of the bride with those of the groom for purposes of divination; choosing an auspicious date for the wedding; notifying the bride's family of that date to secure their approval; and finally transporting the bride to the groom's home to consummate the marriage. With some variation, these remained basic features of the customary procedure for acquiring a wife right down to the twentieth century.³³

The marriage contract should be negotiated by parents or other elders of the family, never by those who are supposed to be getting married. In Confucian tradition, marriage procedure and ceremony highlight the parents

³¹ Catherine Wong Tsoi-lai, US gay marriage ruling sparks debate in China, Global Times, 2015-6-29, <http://www.globaltimes.cn/content/929367.shtml>

³² Catherine Wong Tsoi-lai, US gay marriage ruling sparks debate in China, Global Times, 2015-6-29, <http://www.globaltimes.cn/content/929367.shtml>

³³ Mathew Sommer, Sex, Law, and Society in Late Imperial China. Stanford: Stanford University Press, 2000, p.34.

role to make horizontal relationship with other family and to transcend the vertical relationship of the ancestry to posterity. The marriage ceremony only finished when the bride formally worshiped the parents in law at the ancestral temple if they were died before the wedding day.³⁴ Instead of the marrying couple, ancestry and parents are the active actors at the wedding. Family is therefore not so much to be a couple enjoying companionship of each other as a spiritual community connecting ancestry and posterity.

China embarked on her legal modernization drive since 1902 in the late Qing dynasty. No stone of traditional law left unturned ever since. Yet the rituals and function of marriage retain staying power over most Chinese people. Even the transformation of marriage law with emphasis on gender equality has not changed the most important purposes and functions of marriage: to multiply, to rear children in a family with father and mother living together, and to carry on the family line. This can be found from a sad fact from the recently abolished one child policy. It has "led to a skewed sex ratio of males to females, because traditional rural families favor boys over girls, sometimes even resorting to infanticide to ensure they have a son."³⁵

The Chinese version of marriage and family is no much difference from what Chief Justice Roberts has to say about marriage: "This universal definition of marriage as the union of a man and a woman is no historical coincidence... It arose in the nature of things to meet a vital need: ensuring that children are conceived by a mother and father committed to raising them in the stable conditions of a lifelong relationship."³⁶

Now, what seems to Chief Justice Roberts as "the nature of things" did not prevent the U.S. Supreme Court from substitute conjugal for consent-based marriage in the name of liberty and equality. China has not traveled so far away from "the universal definition of marriage". But the change is in the air. The wind is blowing. The page of Chinese law could be turning. Maybe it is the right time for more Chinese than a few Confucianists to know what is meant to change the definition of marriage and then take the right side in an either/or choice of law as Ryan Anderson puts forward to us:

The law cannot be neutral between the consent-based and conjugal views of marriage. It will enshrine one view or the

³⁴ Smith, Richard J. Mapping China and Managing the World: Culture, cartography and cosmology in Late Imperial Times (Milton Park, Oxfordshire, England: Routledge Press, 2012), p.102.

³⁵ Chris Buckley, China Ends One-Child Policy, Allowing Families Two Children, <http://www.nytimes.com/2015/10/30/world/asia/china-end-one-child-policy.html>

³⁶ http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf

other. It will either teach that marriage is about consenting adult love of whatever size or shape the adults choose, or it will teach that marriage is a comprehensive union of sexually complementary spouses who live by the norms of monogamy, exclusivity, and permanency, so that children can be raised by their mom and dad. There is no third option. There is no neutral position. The law will embrace one or the other.³⁷

On the other hand, I believe the Confucianist perspective of the gay marriage deserve to be seen by those who support the marriage equality:

No abstract universal human rights existed in the marital life of the real world . There is only individual and particular human rights, i.e., the rights that is appropriate for a person's status. Only when one acts upon his respective rights and duties can he fulfills his life meaning and realize his value, and then get substantial justice due to him. This is the spirit of propriety(*li*), not Western spirit of law...

For example, a gay person has his specific rights and personal status. He is not supposed to be seeking the respective rights and status that is appropriate only for the heterosexuals. The particular rights and status applicable to the heterosexuals are to get married between man and woman in order to build a family in the sense of law. In contrast, the right and status that is agreeable to the gay is to live together with his partner as a civil union. It will be crossing the line if the gay want to obtain the rights that is good only for those who marry an opposite sex person. Justice means gay and heterosexuals gets what is due to each other according to the nature of things. This is the principle of differentiation of *li*. It will be the realization of the principle of harmony of *li* when the gay and heterosexuals live side by side, respect each other, never trespass. Only by this reconciliation between the two principles of differentiation and harmony can a world of *li* come out. It is a better world than the

³⁷ Ryan T. Anderson, *Truth Overruled: The Future of Marriage and Religious Freedom* (Washington, DC: Regnery, 2015).

world of law where is full of uniformity and nothing short of conflict.³⁸

From the point of view of both the nature of things and human nature, we see a universally recognized definition of marriage. That is not the case in terms of human rights. Go back to human nature and the nature of things could be the right place from there we rethink marriage, even after the law has been changed--we can change the law again.

³⁸ This is a summary translation of the following passage in Chinese: 在现实的婚姻生活中不存在抽象普遍之人的人权，只存在具体特殊之人的人权，这一具体特殊之人的人权实际上就是现实生活中不同之人的“名分”，即不同之人相对于自己的具体特殊存在而具有的不同的权利与义务。具体特殊之人各自尽到了自己不同的权利与义务，实现了自己不同的“名分”，而不是共同遵循“人”的抽象定义，不是尽到“人”的普遍同一的权利与义务，才能获得具体特殊之人各自属于自己的生命意义与存在价值，才能实现具体特殊之人的实质性正义。这就是中国的“礼的精神”，而非西方的“法的精神”，……具体就同性恋问题而言，同性恋者有自己具体特殊的权利与名分，而不能去追求与异性恋者相同的权利与名分，即不能获得与异性恋者平等的权利保护。比如，异性恋者具体特殊的权利与名分是由男女组成法律上的家庭，而同性恋者具体特殊的权利与名分则是在社会的默认与宽容下自行相恋与私下同居，获得某种特殊的民事待遇，而不能僭越异性恋者的权利与名分，追求与异性恋者组成法律家庭的所谓平等权利。这样，相对于同性恋者具体特殊的权利与名分，是公正的，而相对于异性恋者具体特殊的权利与名分，也是公正的。同性恋者与异性恋者物各付物，各循其义，各安其理，各守其分，各得其公正，各获其价值，正是体现了礼的“别异精神”，而同性恋者与异性恋者按照自己具体特殊的权利与名分各安权界，互相尊重，互不侵越，和睦相处，也正是体现了礼的“和同精神”。只有这样，才能实现一个既充满差别性又和谐共存的自然形成的“礼世界”，而不是一个既充满齐一性又相互冲突的人为强制的“法世界”。

Jiang Qing, A Confucianist Analysis of the Legalization of the Gay marriage in America , <http://history.sina.com.cn/his/zl/2015-07-22/1613123156.shtml>