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ON RITUAL AND LEGISLATION

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Abstract. Confucian thinkers have traditionally stressed the importance of *li* 禮, or "ritual" as it is commonly translated, and believed that ancient sages established an ideal set of rituals for people to follow. Now, most scholars of Confucianism understand *li* as distinct from law, and hence do not typically discuss Confucian sages as great lawgivers. Nevertheless, I suggest that we can learn something valuable from considering the similarities and dissimilarities between great lawgivers and the sages. In particular, this essay reviews some challenges for, and virtues of, great legislators, and compares and contrasts these with the challenges for, and virtues of, master inventors of ritual, with the aim of deepening our understanding of the conception of sages in the Confucian tradition, while perhaps also bringing out certain insights about good lawgivers. I end by using these reflections to highlight some challenges for developing rituals to fit our modern context.

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At the University of Utah, the building that houses the office of the president contains a large mural completed in 1940 by the local artist Lee Greene Richards (1878–1950), titled "Great Men of Knowledge." Among the figures included in the painting is Confucius, and while I think it appropriate for Confucius to appear in a work with such a title, one interesting feature of the painting is its placement of Confucius. The mural is divided into five panels, and the central panel where Confucius appears is labeled "Jurisprudence." He has as his company in that panel Sir William Blackstone, Papinian, Moses, and a figure that was originally identified as Muhammad.[1]

It is unclear on what basis Richards decided to feature Confucius in this grouping, but from a contemporary, scholarly perspective, it is rather odd and challenging to understand. For unlike Blackstone and Papinian, Confucius did not leave behind a body of writings on law, and unlike Moses and Muhammad, he was neither a prophet nor a lawgiver. According to a plaque near the mural, the paintings "represent the culmination of years of research" by Richards. If so, perhaps during his research he was influenced by reading reports about the period when Confucius supposedly served as the "Minister of Justice" (*sikou* 司寇) in his home state of Lu — I can easily imagine how those reports might make Confucius sound like a wise judge. However, since those stories are not what Confucius is most famous for in the Chinese tradition, another explanation is perhaps more likely, which is that one notion with which Confucius *is* most closely associated in the Chinese tradition and which Richards would surely have come across in his research, namely *li* 禮 or "ritual," was understood by Richards as tantamount to law, and hence he came to think of Confucius as a giant of jurisprudence.[2]

1 In 2000, due to objections from Muslim students, the label identifying Muhammad was removed from the mural, but the painted figure was left intact.

2 I focus on Richards's painting for the simple reason that I have visited the building where it is located and looked upon it many times, and its composition has long captivated me — it was the first image I had seen that associated Confucius with jurisprudence. It is worth noting, though, that Richards is not the only artist to make such an association: there is in fact a long tradition before and after him of North American artists incorporating Confucius — either as an image, name, or quotation — in decorations of buildings associated with law, especially government buildings. Perhaps the best-known instances are the images of Confucius that appear on the east pediment of the US Supreme Court Building (completed 1935, artist: Herman MacNeil) and in a frieze in its courtroom (completed 1935, artist: Adolph A. Weinman). However, many other examples exist. Here, in chronological order, are all the others I have discovered: a statue of Confucius on the New York Appellate Division Courthouse

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Now, equating *li* and law is problematic for several reasons, and readers familiar with Confucianism can likely articulate many of those reasons without my help.[3] So, rather than dwell on that issue, here I want to focus on a different point that may be suggested by the comparison between *li* and law, and by the comparison between Confucius and lawgiver figures like Moses and Muhammad.[4] As we know from *Analects* 7.1, Confucius famously denied creating anything new, and instead saw himself as merely transmitting the rituals of the sages. Hence, Confucius does not regard himself as a lawgiver, but in his view there *are* people who play a role analogous to lawgivers, namely the sages, since they were the ones who first instituted the rituals. In this essay, I want to follow out this parallel by thinking about some challenges for, and virtues of, great lawgivers and legislators, comparing and contrasting these with the challenges for, and virtues of, master inventors of ritual, and considering how this might deepen our understanding of the conception of sages in the Confucian tradition, while perhaps also bringing out certain insights about good lawgivers. I end by using these reflections to highlight some challenges for developing rituals to fit our modern context.

Before proceeding further, though, let me note two points about my methodology here. First, there are many Confucian texts that one might discuss as part of the study I will undertake, but in order to keep my examination relatively focused, here I will draw solely from the *Xunzi*, since that text offers some of the most extensive discussions of rituals and sages among early Confucian works. Second, it must be acknowledged that the political and institutional setting in which lawmakers work can substantially affect what virtues are needed to do their jobs well. For instance, since legislation in the US is done by elected officials who (at least in principle) represent their constituents in a process requiring a majority of votes after a period of collective deliberation, what makes one a good legislator in that context will include factors such as responsiveness to the needs and wishes of constituents, ability to work with and persuade fellow legislators so as to garner necessary votes, consideration for the impact of one's actions on future elections, and so on. However, since these different political and institutional settings introduce complications that clearly do not apply to all lawgivers, here for the sake of simplicity I will focus on the virtues of legislators solely in relation to the framing of laws — in other words, I will be speaking of legislators *qua* legislators, and not *qua* elected officials, members of a deliberative body, etc. Even with that stipulation, though, constraints on length prevent me from exploring all the potentially relevant issues, so my treatment here will be confined to a few select matters that I regard as especially salient.

To start with what is hopefully a rather uncontroversial point, while many different considerations may go into the framing of laws, the achievement of certain desirable social consequences is typically a primary goal of lawmakers. Moreover, these consequences are typically aimed at in a long-term and ongoing manner, rather than simply being a one-time or short-term goal, a point reflected in the way that laws are usually enacted for the indefinite future and without any specified time limit on their validity. For this reason, laws that turn out to have clearly detrimental or even disastrous effects on society and so need to be amended or revoked shortly after being adopted are generally not good laws, especially

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(completed 1899, artist: Philip Martiny); a painting of Confucius in the Supreme Court room of the Minnesota State Capitol (completed 1904–5, artist: John LaFarge); a painting of Confucius in the Clarence M. Mitchell Jr. Courthouse in Baltimore (completed 1906–7, artist: John LaFarge); the name of Confucius in a panel in the legislative chamber of the Manitoba Legislative Building (completed 1920, artist: Augustus Vincent Tack); a painting of Confucius on a glass window at the Derald H. Ruttenberg Dining Hall in the Sterling Law Building at Yale Univ. (completed 1931, artist: G. Owen Bonawit); a figure of Confucius on a relief in the Queens General Courthouse (completed 1939; architects: Alfred H. Eccles and William W. Knowles); a bas-relief image of Confucius at the New Jersey State House (completed 1991, artist: John Goodyear); a quotation of 己所不欲，勿施於人 from *Analects* 12.2/15.24 on the sculpture "Beacon" at the New Castle County Courthouse in Wilmington, DE (completed 2006, artist: Brower Hatcher). Due to a lack of documentation, I have been unable to determine whether Richards was aware of and influenced by any of the artistic precedents for his composition.

3 For those not already familiar with the relevant issues, a useful introduction is: Sor-hoon Tan, "The *Dao* of Politics: *Li* (Rituals/Rites) and Laws as Pragmatic Tools of Government", *Philosophy East and West* 61, no. 3 (2011). I disagree with some of Tan's claims, but pursuing those disagreements is not necessary here.

4 Although "jurisprudence" may be understood as concerned with interpretation and implementation of standing law rather than creation of it, given that the "jurisprudence" panel has as its center the image of Moses presenting the Ten Commandments, I take it that lawgiving was foremost in Richards's mind when painting the panel.

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since one important function of law is to ensure stability in society over time. For a lawgiver, then, one significant challenge is how to formulate the laws such that they can produce the desired effects over long periods of time. Correspondingly, it thus seems that one virtue required in a good legislator is a kind of far-sightedness, that is, an ability to think clearly about the ongoing and long-term impacts of candidate laws, in order to discern which have staying power.

Turning now to the Confucian tradition, we can find instances where the sages are conceived as having precisely this sort of far-sightedness, such as this passage in the *Xunzi*:

> Now for their livelihood, people know how to raise chickens, dogs, and pigs, and moreover they raise cows and sheep, but for their food they do not dare to have wine and meat. They save up money and have stockpiles and storehouses, but for their clothes they do not dare to have silk fabrics. Those who are thrifty have caches in cabinets and chests, but for their travels they do not dare to have chariots and horses. Why is this? It is not because they do not want them. Can it be for any other reason than that considering the long run and reflecting on the consequences they fear they would have no way to continue in these things? Therefore, they live frugally and constrain their desires, and they store up and stockpile things in order to continue in them. Is not consideration of the long run and reflecting on consequences thus best for oneself? Those who live basely and those of shallow knowledge do not understand even this. Their consumption of food is extravagant, and they do not reflect on the consequences, so that they suddenly find themselves reduced to poverty. This is why they cannot avoid freezing and starving. Clutching a beggar's satchel and ladle, they wind up as emaciated corpses in ditches beside the roads.
>
> How much more important are the way of the former kings, the ordering influence of *ren* 仁 and *yi* 義, and the proper social divisions as contained in the *Odes* and *Documents* and in the rituals and music! These are originally the greatest considerations under Heaven. For the sake of all the populace under Heaven, they consider the long run and reflect on consequences in order to protect them for ten thousand ages. Their effects stretch over a long time. Their power to comfort is abundant. Their accomplishments fill up even remote and distant places.[5]

This passage focuses on the traditions established by the sages as a whole, and not merely the rituals, but the clear implication is that, in deliberately and reflectively developing these traditions that successfully protect people for "ten thousand ages," the sages possessed an exceptional ability to think carefully about the long-term impacts of the standards and practices they were establishing. Indeed, given how the passage frames the accomplishments of the sages as parallel to how ordinary people seek to "continue" (*ji* 繼) enjoying various goods, one might even say that it casts the sages as early exemplars of sustainable planning, an expertise for which many people have gained — or regained — great appreciation in recent decades.[6]

In addition to attributing to the sages such excellence in long-term planning, the passage also touches on another important point, so I will dwell on it a while longer. For one thing, notice that the discussion starts by describing how the common people prudently conserve resources for their own long-term benefit, but then shifts to describing how the sages developed traditions that in a sense accomplish the same thing, but on an even grander scale. In making this shift, though, the two cases are not entirely parallel, because whereas the common people are motivated by *self-interest*, the sages are motivated by concern *for the common people*: as the passage says, the sages act "for the sake of all the populace under Heaven." That point should hardly surprise anyone familiar with Confucianism, since Xunzi and other Confucians conceive the sages as possessing the virtue of *ren* 仁 in the highest degree, and since they explain *ren* in terms of "caring for others" (*ai ren* 愛人, *Xunzi,* HKCS 15/71/22; see also *Analects* 12.22, *Mengzi* 7A46). However, what may be less obvious but nonetheless worth stressing is the *scope* of that concern as depicted by the passage. For in aiming to protect the common people "for ten-thousand ages," the sages'

5 References to the original Chinese text of the *Xunzi* in this essay will be given according to the numbering system in Xunzi, *A Concordance to the Xunzi* 荀子逐字索引, ed. D. C. Lau and F. C. Chen (The Commercial Press, 1996), labeled here as "HKCS." All translations of Xunzi are mine, as taken from *Xunzi: The Complete Text*, ed. Eric L. Hutton (Princeton Univ. Press, 2014), listed subsequently here as simply "Hutton." The passage quoted here is HKCS 4/16/6–13; Hutton, 29–30.

6 For more discussion of how Xunzi's conception of the sages and their rituals presents them as incorporating a concern for sustainability, see P. J. Ivanhoe, "A Happy Symmetry: Xunzi's Ecological Ethic", in *Ritual and Religion in the Xunzi*, ed. T. C. Kline and Justin Tiwald (SUNY Press, 2014).

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concern extends to people who will live long, long after they themselves are dead. While such a broad range of concern can fit quite comfortably with the Confucian notion of *ren*, this intergenerational scope is a feature of *ren* that one does not often see emphasized in modern scholarly treatments.[7]

The reason I am led to emphasize this point here is, again, through reflection on the parallels between legislators and the Confucian sages. For if, per my earlier observation, laws are going to be framed so as to benefit people far into the future — including periods well beyond a legislator's own lifetime — then not only is there an *intellectual* challenge about how to succeed in that task, a challenge that calls for imagination and vision and far-sighted planning not typical of more near-term deliberations, but there is also a challenge in regards to *motivation*. Namely, what would prompt a legislator to undertake such planning in the first place and take care to see that it is done properly? While I suppose that there could be a variety of motivations that might serve this purpose, such as simple dedication to one's role as a legislator, a straightforward answer to the challenge is provided if a legislator can feel deep concern not only for those living now, but also for future generations who do not yet even exist. We might thus consider such a disposition as a kind of virtue in a legislator, and even if not absolutely required for one to be a good legislator, it is a virtue whose value is nonetheless highlighted by its rarity among people, as the world's current environmental problems have revealed.[8] The passage from the *Xunzi* that we have been examining shows that the sages are conceived as having this virtue, most likely as an aspect of the virtue of *ren* that they possess.

In relation to this conception of a good legislator as someone who aims at the ongoing and long-term benefit of generations of people, there is a third point to note. Specifically, insofar as the legislator's success in this endeavor depends on current and future generations abiding by the laws (at least in large measure) and shaping their behavior and thinking around the circumstances created by widespread obedience to those laws, it would seem that good legislators must also have a keen grasp of human psychology generally, or else they will not likely succeed in formulating laws that will win broad acceptance.

A similar point clearly applies to those who are aiming to design rituals that will be adopted widely and enduringly. The *Xunzi* passage we considered earlier hints at this, but the point is made more explicitly elsewhere in that text, such as the following:

> Thus, fine ornaments and coarse materials, music and weeping, happiness and sorrow — these things are opposites, but ritual makes use of all of them, employing them and alternating them at the appropriate times. . . . Singing and laughing, weeping and sobbing — these are the ways in which the dispositions in good fortune and ill fortune, happiness and sorrow are expressed in one's voice. . . . Ceremonial caps and embroidered insignias and woven patterns, coarse cloth and a mourning headband and thin garments and hempen sandals — these are the ways in which the dispositions in good fortune and ill fortune, happiness and sorrow are expressed in one's dress. Homes and palaces and cushions and beds and tables and mats, a thatched roof and mourning lean-to and rough mat and earthen pillow — these are the ways in which the dispositions in good fortune and ill fortune, happiness and sorrow are expressed in one's dwelling.
>
> When people are born, the beginnings of these two dispositions (情 *qing*) are originally present in them. If you cut these dispositions short and extend them, broaden them and narrow them, add to them and

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7 My attention to this matter has been inspired in part by stimulating work by Marion Hourdequin and David M. Wong, "Confucianism and Intergenerational Ethics", in *The Oxford Handbook of Intergenerational Ethics*, ed. Stephen M. Gardiner (Oxford Univ. Press, 2021). It is worth noting as well that the kind of multi-generational perspective discussed by Xunzi has deep roots in the Chinese tradition: many inscriptions on bronze vessels from the Western Zhou period, centuries before Xunzi's era, end with some variation of the formula *zi zi sun sun yong bao yong* 子子孫孫永寶用 "May sons upon sons and grandsons upon grandsons [of the person who had the vessel cast] forever treasure and use [this vessel]!" In addition, P.J. Ivanhoe has reminded me that within the Confucian tradition, one way of framing the idea of concern for far-removed future generations, apart from reference to the notion of *ren*, is the idea — seen especially in neo-Confucian discussions — that the sage adopts a perspective that is *gong* 公, which connotes a kind of inclusiveness and fairness to others, as opposed to a perspective that is *si* 私 ("self-centered" or "selfish").

8 For now, I pass over the issue of whether future possible generations deserve equal consideration as those presently living. If one builds that demand into one's conception of the concern proper to a good legislator, it will make that virtue all the more demanding and rare. Given the typical Confucian emphasis on a kind of graded concern for others, it seems to me an interesting and complicated question as to whether they would endorse such a demand or not. Lest the main thread of discussion that I wish to present here become side-tracked by that question, however, I have chosen not to discuss it on this occasion.

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> subtract from them, make them conform to their proper classes and fully express them, make them abundant and beautify them, cause root and branch, beginning and end all to go smoothly and fit together, then they can serve as the model for ten thousand ages — and just such is what ritual does![9]

According to this passage, an important function of ritual is precisely the management of human dispositions to have feelings such as happiness and sorrow, which it does through manipulating various objects and behaviors so as to evoke and/or express these feelings in appropriate ways. Moreover, it does so in a manner that "can serve as the model for ten thousand ages," but — other than for the most improbable coincidence — this obviously requires that those who design the rituals have a good grasp of these various dispositions both in themselves and others, and indeed the *Xunzi* at various points describes sages as having just such a grasp of human psychology.[10]

At the same time, the passage just quoted also provides a useful starting point for thinking about some differences between good legislators and good designers of rituals, to which I now turn. In particular, legislators typically aim to avoid making laws difficult to follow, since the greater the difficulty in following them (or at least, the legal prohibitions), the more likely people are to violate them, knowingly or unknowingly. In turn, such increased violations may have several undesirable consequences, such as increased demands on those responsible for enforcing the laws, and if they cannot keep up with those increased demands, the situation may lower people's estimate of the state's power and authority, which may create further problems. Alternatively, if — as in certain corrupt governments — the laws are purposely framed so as to make it difficult to avoid violating them, such that the state has a ready supply of violators from whom it can extract money, goods, or services as punishments, then that situation will likely engender animosity toward the government, which also generates a variety of problems. Furthermore, even apart from these issues pertaining to enforcement, laws that are difficult to follow may generate scorn toward the government if, for example, they are perceived (rightly or not) as unnecessarily complicating what should be a fairly straightforward process, such as the US tax code.[11] Thus, good legislators succeed in avoiding such problems by carefully balancing the difficulty of complying with the laws against the consequences of criminalizing various behaviors, while still adequately addressing whatever challenge they are trying to solve through legislation.

In contrast, for inventors of rituals, ease of practice need not be a significant constraint. While many rituals *may* be simple and easy to perform, demandingness and difficulty can *also* be an important part of some rituals. Such demandingness and difficulty can be delineated along at least two different dimensions, namely the complexity of the ritual prescriptions themselves, and the way in which those prescriptions are challenging to follow, given typical human motivations. Both aspects are illustrated in the discussions of proper mourning and funeral practices in the *Xunzi*, but I will start with the latter aspect. Among Confucian rituals, mourning for one's parents was supposed to involve depriving oneself of various comforts for long periods of time, such as wearing coarse clothes and living and sleeping in uncomfortable circumstances, as mentioned in the *Xunzi* passage I quoted earlier. At least when considered individually, these particular actions are not complicated to do, but the *Xunzi* explicitly claims that people's natural disposition is to desire the "utmost" comfort,[12] and so in that respect most people will find it challenging — in terms of motivation — to follow the requirements of the mourning ritual.[13] Moreover, even if they might forgo certain enjoyments due to sadness at losing a parent, the particular

9 HKCS 19/94/9–21; Hutton, 209–210.

10 See, e.g., HKCS 5/19/2–3 and 23/113/10–12.

11 I thank P.J. Ivanhoe for this example.

12 See HKCS 11/51/24 — 11/52/1 and 18/89/11–15. Compare also 11/53/17–20.

13 As another striking example in this vein, at HKCS 23/114/5, the *Xunzi* explicitly says that the requirements of some rituals "go against one's nature" (*fan yu xing* 反於性) and "are at odds with one's inborn dispositions" (*bei yu qing* 悖於情). This view may be relatively distinctive of the *Xunzi* within the Confucian tradition, since Mengzi, for instance, wants to insist on seeing the Confucian rituals as natural outgrowths of one's innate inclinations. I suspect that despite such apparent differences, Mengzi's view may in fact also allow for some rituals to be deliberately challenging for people to follow, but there is not space here to pursue the issue further.

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length of the prescribed mourning period, twenty-five months, is explained by the *Xunzi* in such a way as to make clear that it does not come naturally or easily to people, and hence it will likewise be challenging for them.[14] The imposition of such demands, though, is hardly driven by a cruel desire to make people undergo prolonged suffering, nor is it intended to discourage them from practicing the ritual, but is rather (at least according to the *Xunzi*) a function of marking the gravity of losing one's parent and the tremendous sorrow that one feels — or at any rate, should feel — toward such a loss.[15]

For similar reasons, demandingness arising from complexity is also not necessarily a strong constraint on the design of rituals. Consider, for instance, the following set of ritual prescriptions in the *Xunzi* for burying a person (presumably of relatively high status):

> For the burial offerings, among the hats there is to be a helmet, but no straps for binding the hair. There are to be various vessels and containers, but they are to be empty and unfilled. There are to be mats, but no bedding materials. The wooden utensils are not to be completely carved, the pottery utensils are not to be finished products, and the utensils woven from reeds are not to be capable of holding things. A set of music pipes is to be prepared, but they are not to be harmonized. A lute and zither are to be laid out, but they are not to be tuned. A chariot is to be included in the burial, but the horse returns home. This is to indicate that these things will not be used.
>
> One prepares the utensils used in life and takes them to the tomb, and this resembles the way one acts when moving house. The burial goods are to be simple and not perfect. They are to have the appearance of the regular items but are not to be functional. One drives a chariot out to the tomb and buries it, but the bit ornaments, bridle, and harness are not to be included. This makes clear that these things will not be used. One uses the semblance of moving house, but also makes clear that the things will not be used, and these are all means by which to heighten sorrow.[16]

Such detailed requirements for what is to be included, how the items are to be prepared, and what is to be omitted make the ritual quite complex and, to that extent, more difficult to perform completely and properly. However, as before, such demands are not intended to impose hardship or discourage people from practicing the ritual. Rather, as reflected in the passage quoted, the complexity here is driven by the fact that the process of moving house that the ritual aims to mirror is itself one that involves attention to numerous small details, to which is added consideration of the fact that the move being undertaken is not merely from the house to a tomb, but also from life to death, and the ritual reflects the all-encompassing character of that transition.

This last observation helps to bring out another important contrast between the designers of rituals and legislators. In the passage just quoted, although the ritual mirrors the process of moving house,

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14 At HKCS 19/96/15 — 19/97/1, the text says that "foolish, ignorant, and perverse" people will forget by the evening those who have died that morning, but such people represent — or at any rate are closer to representing — what the *Xunzi* depicts as the way that people naturally tend to behave (compare HKCS 4/15/14–17), and thus it will be challenging for them to engage in the extended mourning prescribed by the ritual. On the other hand, the text says that "cultivated gentlemen" will be so sad as to want to mourn without end, and thus even for them, the twenty-five month mourning period will be psychologically challenging to observe, though as a *limitation* on their behavior, rather than as a standard that they must strive to come up to. At the end of the section referenced here, the *Xunzi* says that the sages determined the length of proper mourning for parents by taking the period of a single year, after which the seasons and various other natural phenomena have completed a full cycle and begun anew, and then they deliberately *added* another year's time to the length, in order to heighten the loftiness of the practice. In that respect as well, the length of the mourning is portrayed as something that does not come to people naturally.

15 See HKCS 19/96/4–7. Lest there be any confusion about how the point I make in this paragraph fits with my earlier claim that excellent designers of ritual must have a good grasp of psychology in order to produce rituals that can win broad acceptance and endure, that earlier claim should *not* be understood as meaning simply that such ritual designers grasp what people naturally like and dislike and base their productions around those predilections. Rather, the "good grasp of psychology" of which I speak is meant to include things like an appreciation for how people's thoughts and feelings can themselves be molded by rituals, as well as an understanding of how, for example, through time, practice, and reflection people can come to find satisfaction in forms of behavior that would not otherwise immediately appeal to them. So there is no tension between the idea that some rituals may intentionally be designed so as to be motivationally challenging and the idea that well-designed rituals are rooted in a good grasp of human psychology that helps them be widely accepted and endure: e.g., the fact that some practices *test* one's resolve is something that itself can be (and often is) seen as a valuable feature of those practices, and hence helps to explain why they are maintained. I thank an anonymous referee for pressing me to elucidate these points.

16 HKCS 19/95/9–13; Hutton 211–212.

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the preparation and inclusion of non-functional grave goods is *symbolic*: placing the goods in the tomb symbolizes one's care for the departed by providing the things ordinarily used in life, but making them non-functional symbolizes awareness that the person is no longer alive, and all of this is, as the passage remarks, in the service of heightening sorrow. More generally, at least on the view propounded in the *Xunzi*, the design of rituals is especially concerned with the symbolism of various objects and acts and their adequacy to express or evoke certain kinds of feelings, and hence the good ritual designer is someone who is a master of symbolism.[17] Of course, laws can certainly govern symbols (for example, current German laws banning the Nazi swastika and salute), and the laws themselves can have symbolic value in addition to whatever practical effects they may have (such as how US laws against discrimination symbolize a commitment to equality of citizens), but clearly many laws do not have either of these features, such as the laws dictating that one must drive on the right or left side of the road, laws against counterfeiting currency, laws governing the formation of corporate entities, and various laws about taxation. To the extent that these latter sorts of laws constitute a significant output of legislative activity done well, then it is apparent that the establishment and manipulation of symbols is not central to lawmaking, and mastery of symbolism is not a particularly crucial virtue for legislators.

On the other hand, what does seem central in legislation, and which is strikingly absent from the *Xunzi*'s discussion of ritual (as well as from many other early Confucian accounts) is consideration of the application of *force*. Insofar as laws articulate what the government is committed to opposing or having happen, they also outline those areas over which the government is authorized and willing to exercise its power, and while physical compulsion need not be the only form such an exercise of power must take, the possible threat of such compulsion — even if only as a last resort — is arguably at minimum implicit in nearly every act of lawgiving, though in actual cases the government's ability to exercise such compulsion may in fact be meager or nonexistent. Legislating well, then, involves considering when, how, and to what extent force should be applied to people, and a good legislator will avoid those uses of force that are unproductive or counter-productive, both for the society that is subject to the laws as well as the government that will enforce or attempt to enforce them.

At this point, let me pause and take stock of what I have been saying. First — and to reiterate my earlier remark — the preceding claims are *not* intended to constitute a comprehensive and detailed survey of the similarities and differences between the activities of legislating and designing rituals, since that would require a far longer treatment than is feasible here. Instead, I have aimed to highlight merely a few of the more salient virtues that contribute to excellence in designing laws and rituals. As I see them (and as I think many others, both past and present, Confucian and non-Confucian, would agree), these virtues rest on basic capacities that are widely shared among human beings, but which must be developed to a high degree in order for one to do the relevant activities well, and such development typically requires a long and demanding process of cultivation, a point to which I shall return later. Second, my purpose in presenting these observations has been to re-examine the Confucian conception of sages and our views about legislators in light of these comparisons and contrasts, so to that task I now turn.

To begin with, Confucians regard the sages with awe.[18] Much of this awe is based on their view of the sages as moral paragons: for many Confucians early and late, becoming a good person is no easy task,

17 For more discussion of ritual symbolism in the *Xunzi*, Mark Berkson, "Xunzi as a Theorist and Defender of Ritual", in *Dao Companion to the Philosophy of Xunzi*, ed. Eric L. Hutton (Springer, 2016). I am much indebted to Berkson's work here.

18 In response to an anonymous reviewer's suggestion, let me clarify that as I understand "awe" here, it is a feeling that includes reverence or respect, but is distinct from more mundane varieties of reverence or respect, in that awe is elicited by and responds to features of things that are perceived as somehow far surpassing what is ordinary. Compare the definition of "awe" given in the *Oxford English Dictionary*: "a feeling of reverential respect, mixed with wonder or fear, typically as inspired by a person of *great* authority, accomplishments, etc." (*OED Online*, s.v. "Awe", accessed 10th April 2021, www.oed.com/view/Entry/13911, emphasis added). Other contemporary accounts of awe likewise include elements that distinguish it from more ordinary forms of admiration or respect. For example, in a much-cited paper, Dacher Keltner and Jonathan Haidt propose that a perception of what they call "vastness" is an essential ingredient of awe (Dacher Keltner and Jonathan Haidt, "Approaching Awe, a Moral, Spiritual, and Aesthetic Emotion", *Cognition and Emotion* 17, no. 2 (2003)). While as a general emotional phenomenon, awe need not be a response to extraordinary virtue in particular, the Confucians' attitudes toward the sages are — as I go on to

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and so the moral refinement attained by the sages constitutes a superlative achievement worthy of utmost admiration and respect. Another basis for the Confucians' awe toward the sages, and particularly toward the sage *kings*, is the sages' accomplishments and decisions as leaders. For example, the *Xunzi* praises King Wen's choosing Lü Shang to be Grand Duke as an instance of employing someone truly meritorious, in preference to any relatives, friends, or those with good looks.[19] Similarly, King Wu is praised for overthrowing the tyrant Zhou and for the manner in which he did so,[20] and the Duke of Zhou is praised for taking the extraordinary action of stepping in to rule while King Cheng was too young for the task and then later returning the reins of power to him after King Cheng had been properly educated and prepared to be a good ruler.[21] Yet a third basis for the Confucians' awe toward the sages is that, especially among early Confucians, the sages were credited with developing the fundamentals of civilization and culture, e.g., by discovering or inventing agriculture, writing, and so forth.[22] The sages' establishment of the rituals is of a piece with these other contributions to human life, and while that feat may at least in some cases also be grouped under the sages' deeds as leaders, I think we should nonetheless recognize it as a distinct aspect of what the sages accomplished, in the same way that various executive and legislative powers can be distinguished in principle and — depending on circumstances — in practice as well. For, as the cases mentioned earlier show, there are many decisions and actions for which the sage kings were admired that are quite different from their activities in setting up the rituals.

In light of the comparisons presented earlier, we can now give a more detailed account of what is involved in Confucians' awe toward the sages in their role as designers of ritual. Namely, to admire the sages for designing the rituals is to admire them for (among other things) their concern for generations far beyond their own, their ability to enact this concern successfully through far-sighted thinking, and their keen grasp of human psychology that helps to underwrite this ability. This much is shared in common with the admiration that we may feel toward great legislators. However, the Confucian admiration for the sages as ritual designers also includes admiration for their masterful use of symbolism to evoke and express various feelings, which is arguably more akin to the admiration we may feel toward great artists.

So conceived, the sages present a rather distinctive model to look up to, one that parallels the ways in which ritual itself is distinct from both law and art while still sharing in elements of both. Insofar as the sages combine various excellences found in those two different areas (and perhaps others as well), then it is not hard to appreciate why they would emerge in Confucian thought as figures treated with special reverence, greater than that shown to either mere legislators or mere artists. (Lest such reverence still seem alien or archaic, one may observe that even today many Americans regard the Founding Fathers of the United States with a similar special reverence, based at least in some cases on a sense that in establishing the nation with its Constitution, the Founding Fathers were, moreover, akin to prophets in revealing God's plan for a new society.)[23] It is this sort of special reverence on which I wish to focus, and in particular I want to reflect critically on the idea of holding the great designers of ritual in higher esteem than great legislators. To frame this issue in terms of the painting from which we started, if Lee Greene Richards had been a Confucian, or more precisely, a Confucian of one type prominent within that tradition,[24] "jurisprudence" would likely not have been the central panel of his mural depicting

note in the main text — based in large part on an assessment of the sages as supremely virtuous, along with their other great accomplishments. Thus, to describe the Confucians as simply "respecting" the sages seems to fail to do justice to their attitude, and hence I label it as "awe" instead.

19 See HKCS 12/62/2–7.

20 See HKCS 18/85/12–3 and 15/71/13–17.

21 See HKCS 8/27/14–24.

22 A particular example is the high regard Confucians had for Hou Ji 后稷 ("Lord Millet"). See, e.g., *Mengzi* 3A4; *Xunzi* HKCS 25/121/11–12.

23 I thank P.J. Ivanhoe for reminding me of this similarity.

24 I add this qualification because Confucian views vary, of course. As noted earlier in the main text, early Confucians tend to celebrate the sages as the inventors of human civilization, or (after Confucius himself) as preservers and transmitters of that culture. Among later Confucians, especially under the influence of Buddhism, sagehood tends to be conceived more akin to a

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"Great Men of Knowledge," and perhaps it would not have been on the mural at all. Let us briefly consider what is at stake in such a hypothetical, altered painting.

As noted earlier, one salient difference between designing rituals and drafting laws is that in the latter case, enforcement mechanisms and the use of force play an important role that is not — at least on the account in the *Xunzi* and many other Confucian texts — a significant consideration when establishing rituals. To esteem the great designer of rituals more highly than the great legislator is thus, by implication, to assign to the great legislator's wise design of enforcement mechanisms and judicious applications of force a place that ranks second in value at best. As scholars of the Confucian tradition will readily observe, such a ranking fits well with and reflects a stance maintained by many Confucians, namely that relying on force is not the best way to govern or run a society.[25]

Even if that point be granted, though, there might still be good reason to worry about the implications of prizing the great ritual designer over the great legislator. Specifically, in establishing laws, the legislator is concerned with the systematic exercise of the government's power. A good legislator recognizes both the potential promise and problems with such exercises of power and legislates accordingly. In doing so, the legislator is in part establishing the parameters of the government, and in modern times, legislation can even serve to limit substantially how the government can use its power. These matters are — I hope most would agree — extremely important. Indeed, misguided exercises of government power instituted through poorly designed laws can undermine one important goal that the Confucians have in emphasizing ritual, namely fostering people's moral development. Take, for instance, civil asset forfeiture laws in the US, which have been accused of *encouraging* police corruption. The website of the American Civil Liberties Union explains the problem succinctly:

> Civil forfeiture allows police to seize — and then keep or sell — any property they allege is involved in a crime. Owners need not ever be arrested or convicted of a crime for their cash, cars, or even real estate to be taken away permanently by the government.
>
> Forfeiture was originally presented as a way to cripple large-scale criminal enterprises by diverting their resources. But today, aided by deeply flawed federal and state laws, many police departments use forfeiture to benefit their bottom lines, making seizures motivated by profit rather than crime-fighting. For people whose property has been seized through civil asset forfeiture, legally regaining such property is notoriously difficult and expensive, with costs sometimes exceeding the value of the property.[26]

Even if one were to deny (as some have) that these particular laws foster corruption, it takes little imagination to see how various other laws might create perverse incentives that would tend to make people *less* moral, even if the laws were, as in this case, apparently well-intentioned to begin with. Thus, to rank good legislators as inferior to good ritual designers threatens to overlook how good legislation may play an equally crucial role in achieving the sorts of goods at which the sages' rituals aim. In a related vein, it should be acknowledged that there are limitations to what rituals, even well-designed ones, can accomplish — for instance, protecting a citizen's basic rights (if one endorses such rights) against infringement both from other citizens and from the government is arguably not a task to which ritual is well suited. To the extent that good legislation does serve to guard things that we take to be of fundamental value, then treating good legislators as less meritorious than good ritual designers risks obscuring or even sacrificing

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form of enlightenment, and little emphasis is put on the idea of the sages as inventors. Richards's choice of figures for his mural shows that his conception of "Great Men of Knowledge" resembles the earlier Confucian view of sages more than the later one. Nevertheless, note that in *Analects* 12.13 Confucius is depicted as saying, "When it comes to hearing civil litigation, I am as good as anyone else. What is necessary, though, is to bring it about that there is no civil litigation at all" (Confucius, *Analects*, ed. Edward Slingerland (Hackett, 2003)). It is especially this sort of attitude, which would be disinclined to celebrate a major area of jurisprudence and maybe even the whole of it, that I have in mind when saying that a hypothetical, Confucianized version of Richards would probably not make jurisprudence the central panel in his mural. The extent to which later Confucians emphasized this attitude also varied, but it makes Richards's decision to include Confucius in his panel on jurisprudence rather ironic, in a way.

25 See, e.g., *Analects* 2.3 and *Xunzi*, HKCS 16/77/16.

26 American Civil Liberties Union, "Asset Forfeiture Abuse", last modified September 9, 2019, https://www.aclu.org/issues/criminal-law-reform/reforming-police-practices/asset-forfeiture-abuse.

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European Journal for Philosophy of Religion Vol 13, No 2 (2021)

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that fundamental value. So, it would perhaps be unwise for an imaginary, Confucianized version of Lee Greene Richards to seek to displace the "giants of jurisprudence" from the central position they occupy in the actual mural in favor of "giants of ritual design."

On the other hand, the idea of putting these two groups on a par itself points to a number of further issues to ponder. Let me close by mentioning one such issue that pertains to the place of ritual in modern life. Richards's mural is intended to celebrate great minds of the past, which is fitting for a university artwork to do, but I gather that, among other things, the mural is also intended to present a set of models of high achievement to which students might aspire in various areas, and law and jurisprudence and the other fields of learning currently represented on the mural are all subjects taught at the university. The absence of "giants of ritual design" from the mural thus corresponds to the absence of such a subject from the university curriculum.

Now for those sympathetic to the Confucians' high regard for ritual, such an absence ought to pose a challenging set of questions, because I think most such sympathizers would agree that, to whatever extent we might want to follow the Confucians' advice, we cannot simply return to the rituals of ancient Chinese times, and while we might adapt or update some rituals for present circumstances, in at least some other cases we would also need new rituals for the current world we inhabit.[27] At the same time, we lack any readily-recognized experts on how to design rituals, and (at least to my knowledge) almost no institutions teach such a skill.[28] Of course, one can study rituals in courses on religion, history, anthropology, and so forth, but mostly those courses are about understanding rituals, rather than *devising* them, akin to the way that classes in art history differ from studio art, and the skills cultivated in the one area may not suffice for excellence in the other.[29] The contrast between the training available for those who would be legislators and those who would be designers of rituals thus raises questions such as who would have the authority to provide such training, how one might go about it, in what sort of setting it could or should take place, what its aims should be, how it might be effective, and even how necessary it is (since perhaps not all rituals we might need would have to be so complex or significant as to require a highly

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27 In making this remark, I do not mean to attribute to those sympathetic to Confucianism any commitment to producing new rituals that would provide a proper standard *for the whole world*, as if the only acceptable rituals had to be universally applicable. Even if, historically, many Confucians did believe that more or less only one set of rituals was acceptable, such a view is nigh impossible to justify now, as Owen Flanagan has pointed out (see Owen Flanagan, "Modern Times and Modern Rites," *Journal of Confucian Philosophy and Culture* 32 (2019)). Nevertheless, one can support the production of new rituals while simultaneously allowing that a certain pluralism of rituals is acceptable. Flanagan's essay also touches on an interesting point that I do not have space to consider here, which is that the development of new rituals might best be left to a natural process of evolution, rather than arising from a process of deliberate design and implementation. For now, I merely note that, just as the random mutations involved in biological evolution sometimes result in the generation of animals who suffer in various ways, the happenstance changes in rituals as part of social evolution may well produce rituals that are harmful in ways that one has good reason to want to avoid, and so there are grounds for aiming to actively steer the emergence of new rituals.

28 I say "almost" here, because the one exception of which I know is the Ritual Design Lab at Stanford Univ. (https://www.ritualdesignlab.org/), which I thank Colin J. Lewis for bringing to my attention. However, the relative uniqueness of that program simply highlights the dearth of such educational opportunities elsewhere. Moreover, that program's work seems focused primarily on designing rituals for fairly limited contexts (e.g., companies and organizations), and so is more narrow in scope than the kinds of rituals on which the Confucians are focused, which are meant to apply to and structure society more broadly. Beyond that one case, perhaps the next closest thing to an institution teaching people how to design rituals would be the various training programs that exist for wedding and event planners. Yet, as far as I am aware, such planners generally focus on providing personalized experiences or generating entertainments for one-time events; they are not planning for "ten thousand generations" as the Confucian sages supposedly did, and so that sort of training would likewise seem to fall short of what is required for designing the sort of rituals in which the Confucians are most interested. Lastly, it should be noted that there are various entities that are engaged in the design of rituals for a contemporary context, such as the Sacred Design Lab (https://sacred.design/) or the company Ritualist (https://www.ritualist.life/), but as far as I am able to determine, these groups focus more on doing the design work themselves, rather than teaching others how to do it.

29 Interestingly, a similar concern can be raised about traditional Confucian education itself: while such education clearly involves studying the rituals, it is less clear how well it would prepare a sage-in-training for being able to design new rituals if needed.

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trained designer in the first place). Answering those questions is beyond the scope of this paper, but I do think they are worth pondering further as we contemplate how rituals can be designed for modern life.[30]

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