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European and some Chinese perspectives

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IN BETWEEN - GENDER, SOLIDARITY AND LEGALITY? EUROPEAN AND CHINESE PERSPECTIVES

Hanne Petersen⁷⁸ and Simona Novaretti⁷⁹

Abstract

This article builds upon an oral presentation at CIRSDe in May 2017, where Hanne Petersen presented and Simona Novaretti commented. The article has kept the structure of this presentation. Hanne Petersen discusses similarities between EU and China especially in the 21st century - a period of globalization and politics strongly influenced by neoliberal ideas in both these parts of the world, as well as a period characterized by increasing inequalities and social tensions. In the EU solidarity was invoked before the enlargement in 2004 as a means to minimize some of these tensions. Neoliberal policies imply amongst others a move from a focus on equality to inequality, which to some extent strengthens both gender and generational tensions. This is relevant in relation to the realization of the UN Sustainable Development Goals (SDGs) and can be observed in both China and the EU. At the beginning of the 20th century, China developed a neo-Confucian ideology and emphasized the concept of a «Harmonious Society». Simona Novaretti has considerably expanded her reflections on the way, in which this new emphasis on traditional Chinese values has influenced concepts of solidarity, generational and gender issues in China. She discusses if and how this process is reflected in the most recent Chinese legislation, and further examines how China is pursuing the construction of a «harmonious society», on the one hand, and the implementation of the UN 2030 sustainability goals, on the other. Reaching the goal of inter-gender equity seems to have become especially tricky in recent years, in particular due to the re-Confucianization of law and legal practice that has characterized Chinese policy in particular after Xi Jinping's seize of power. Both judicial reform and political discourse appear to be driving the official inter-gender equality efforts towards a contrary direction.

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Keywords

Solidarity, «Harmonious society», gender gaps, inter-generational equity, inter-gender equity.

IN BETWEEN - GENDER, SOLIDARITY AND LEGALITY? - EUROPEAN AND SOME CHINESE PERSPECTIVES

Hanne Petersen

1. In Between

In the spring of 2017, a cinema in Torino showed a film, the English title of which was «In Between» or in Italian «Libere, disobbedienti, innamorate». The film is Israeli-French and directed by Maysaloun Hamoud, a woman born in 1982 in Hungary by Palestinian parents. The film features three young women, Layla, Salma and Nour, who are sharing a flat in Tel Aviv. Layla is a hard-core partying young woman and a criminal defence lawyer originally from Nazareth, whose family is secular Muslim. Salma turns out to be a lesbian DJ from a Christian family. Nour, who moves in later, is a religious hijab-wearing Muslim woman studying computer science at Tel Aviv University. Each of them are in their own way non-conformist and they become friends. Away from the traditions of their families, they find themselves «in between» the expectations of their traditional backgrounds and the free lives they are aspiring to lead. The film draws attention to the female figure in Israeli society, divided between modern Westernization and the more traditional Middle East. It illustrates female friendship, support and a contemporary form of solidarity beyond religion, sexual orientation and social status. When it was released it caused confusion whether the film was a documentary or a fiction film in the Palestinian environment in Israel. This led the local mayor of the town, where the actor, playing Nour came from, to issue a fatwa against the film. The director, however, claimed that «I think I have a job to develop my society and that means changing reality. The essence of an artist is to bring change» (<https://www.bbc.co.uk/news/entertainment-arts-41112388>> accessed August 12, 2018).

Both Israel and Palestine are (sometimes) considered part of Europe, and they are clearly part of what is called Eurasia. «Eurasia» is a contested term sometimes defined as *one continent* combining the landmasses of Europe and Asia, which are at other times considered *two* continents. «Eurasia» comprises about 70 percent of the world's population (Wikipedia, «Eurasia» <https://en.wikipedia.org/wiki/Eurasia> accessed August 12, 2018). Of the world's about 7 billion people, more than 50 percent live in the Eastern and Southern parts of Asia (United Nations, DESA / Population division, 2017). While China and India are the world's biggest countries, the EU with its so far 28 (soon 27?) countries and a population of around half a billion people is the third largest entity in the world population wise. Eurasia encompasses around 90 countries.

2. Changes in China and Europe

Both China and Europe have undergone considerable changes over the last decades. In 1978 Deng Xiaoping took de facto power in China, and in 1979, the One Child Policy was declared - leading to a surplus of men in Chinese society due to the traditional son preference and the undermining of the Iron Bowl system, which secured the welfare of Chinese workers. In 1979 conservative Margaret Thatcher became the first female leader of a major European country. She introduced a political battle against the traditional labour unions. She also introduced neo-liberal economic and political policies (soon to be supported by actor and US President Ronald Reagan). The «opening up» policy in China from 1979 led to a kind of de facto «neo-liberal» policy and reality in China and to an amazing economic growth, especially after China became increasingly integrated into the global economy after the access to WTO in 2001. In 1984 Thatcher and Deng Xiaoping met in Beijing to talk about the future of Hong Kong, which returned to mainland China in 1997 under the so-called «One Country - Two Systems» model.

In 1989 the Soviet Union and especially the «East Bloc» were beginning to rapidly fall apart as the Berlin Wall fell and states abandoned state socialism. This development has been a nightmare to China in the period since then and since the traumatic events on June 4, 1989 at the Tian'Anmen Square in Beijing.

The considerable economic growth in China in the last decades of the 20th century has gone hand in hand with a colossal internal migration from the rural countryside in China to the ever more materially privileged and environmentally endangered urbanized, often coastal zones. To some extent this led to new possibilities for women (Chang L. T., 2008), but they do not seem to have lasted. The expansion of the EU with a large number of former Eastern European countries in the beginning of the 21st century facilitated a movement from the new - and often much poorer member states - to Western EU countries. For women this also gave at least some new opportunities in a turbulent era (Passerini, Lyon, Capusotti & Laliotou, 2007).

However, the expanded EU as also witnessed increasing anti-gender policies and laws in several member countries, as described in the country studies in *«Gender as symbolic glue. The position and role of conservative and far right parties in the anti-gender mobilizations in Europe»* (Kováts & Põim, 2015). In 2016 these developments were also behind the Brexit referendum and the narrow decision of the UK to leave the EU. It seems as if neoliberalism combined with both populism and Chinese variants of socialism share a certain like-mindedness in relation to especially traditional gender expectations.

3. Similar tensions - solidarity and harmony?

These similar developments have led to internal tensions both within China and within the EU. Already at an early stage, it was clear for several political observers in the EU that this wealth disparity would easily lead to challenges and difficult situations (Michalski, 2006).

In her book *«Undoing the Demos. Neoliberalism's Stealth Revolution»* Wendy Brown describes how competition replaces exchange and inequality replaces equality. Human capital replaces labour, entrepreneurship replaces production, finance capital overtakes productive capital and these developments generally eliminate the basis of a democratic citizenry concerned with its political sovereignty (Brown, 2017, esp. ch. 2).

The tensions following from these developments have in China led to a reintroduction of Confucian ideas of the role of harmony. The concept and policy of social harmony was developed in mid 2000 by President Hu Jintao. According to Wikipedia, *«The philosophy*

is recognized as a response to the increasing social injustice and inequality emerging in mainland Chinese society as a result of unchecked economic growth, which has led to social conflict. The governing philosophy was therefore shifted around economic growth to overall societal balance and harmony. Along with a moderately prosperous society, it was set to be one of the national goals for the ruling vanguard Communist Party» (https://en.wikipedia.org/wiki/Harmonious_Society> accessed August 12, 2018). Confucianism works with five key relationships or bonds. They are the relationship of ruler to subject, father to son, husband to wife, elder to younger and friend to friend. Apart from the relationship between friends, which are horizontal, all the other relations are hierarchical. They demonstrate the historically patriarchal relationship not only in families.

In the EU this political and economic turbulence led to a revitalization of a discourse on solidarity.

Solidarity has its origin in Roman law, and was reintroduced by sociologist Durkheim (1858-1917) in his book on *The Division of Labour* from 1893 to describe forces of societal cohesion (and anomie) in times of major changes. Durkheim gives great attention to the role of law as an expression of solidarity (Durkheim, 2000).

In 2014 a PhD thesis entitled *An Analysis of the Changing Nature of Law and Social Solidarity in Contemporary China: The Application of Durkheim's Theory of Solidarity in Chinese Society* was submitted by Han Peng for the degree of Doctor of Philosophy at the University of Hong Kong.

It shows that Durkheim's book was translated into Chinese already in 1935 (Wang Liaoyi (trans), 1935)⁸⁰.

The author states in Chapter 1 that

«In recent decades, Durkheim's sociological theory has been studied by an increasing number of scholars in China. Since the CPC proposed the notion of "Harmonious Society" in 2004, Durkheim's theory of social solidarity has been explored in Chinese scholarship much more than before. This is because similarities have been found between the concept of "Harmonious Society" and Durkheim's theory of social solidarity.

⁸⁰ See Émile Durkheim, *社会分工论/The Division of Labour in Society*, 王了一/WANG Liaoyi (trans) (Shanghai: 商务印书馆/The Commercial Press, 1935).

The “Harmonious Society (和谐社会)” is a strategic goal of social development, which refers to harmonious social conditions constituted by the solidarity of all social classes, proposed by the CPC. Since 2005, “Harmonious Society” has been treated as a strategic mission of governance in China. The essential political content of this concept contains “democracy and the rule of law, fairness and justice, honesty and fraternity, vitality, social stability and order, as well as the harmonious living between human and nature”».

In the EU the concept of solidarity was introduced in the Charter of Fundamental Rights of the European Union. This Charter enshrines certain political, social, and economic rights for European Union (EU) citizens and residents into EU law. It was drafted in December 2000. However, its legal status was uncertain and it did not have full legal effect until the entry into force of the Treaty of Lisbon on 1 December 2009.

The charter contains seven chapters (Dignity; Freedoms; Equality; Solidarity; Citizen’s rights; Justice; and general provisions).

(http://www.europarl.europa.eu/charter/pdf/text_en.pdf> accessed August 12, 2018).

Chapter IV on Solidarity (Articles 27-38) is basically a very traditional expression of industrial age solidarity dealing with the following topics:

Art 27 - Workers’ right to information and consultation within the undertaking

Art 28 - Right of collective bargaining and action

Art 29 - Right of access to placement services

Art 30 - Protection in the event of unjustified dismissal

Art 31 - Fair and just working conditions

Art 32 - Prohibition of child labour and protection of young people at work

Art 33 - Family and professional life

Art 34 - Social security and social assistance

Art 35 - Health care

Art 36 - Access to services of general economic interest

Art 37 - Environmental protection

Art 38 - Consumer protection

Articles 33 and 34 mention protection related to maternity and article 31 secures «Every worker... the right to working conditions with respect to *his or her* health, safety and dignity» but these are the only references to gender in this chapter.

In the Lisbon Treaty from 2009, the word solidarity is mentioned several times, primarily in Article 2, which also underlines the role in relation to women and men:

«The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

On March 24, 2017, Pope Francis spoke of peace and harmony but especially solidarity in his speech to “the European Union leaders” in Rome on the occasion of the 60 years anniversary of the signing of the “Rome Treaty” establishing the European Economic Community and the European Atomic Energy Community. He mentioned that the Treaties could have remained dead letter, and that they needed to take on spirit and life. The first element of this vitality “must be solidarity”, a spirit, which according to the pope remains “as necessary as ever today, in the face of centrifugal impulses and the temptation to reduce the founding ideals of the Union to productive, economic and financial needs. Solidarity gives rise to openness to others”».

Later he continued:

«Europe finds new hope in solidarity, which is also the most effective antidote to modern forms of populism. Solidarity entails the awareness of being part of a single body, while at the same time involving a capacity on the part of each member to «sympathize» with others and with the whole. When one suffers, all suffer... For solidarity is no mere ideal; it is expressed in concrete actions and steps that draw us closer to our neighbours, in whatever situation they find themselves. Forms of populism are instead the fruit of an egotism that hems people in and prevents them from overcoming and “looking beyond” their own narrow vision».

Pope Francis further said:

[T]oday’s prosperity seems to have clipped the continent’s wings and lowered its gaze. Europe has a patrimony of ideals and spiritual values unique in the world, one that deserves to be proposed once more with passion and renewed vigour, for it is the best antidote against the vacuum of values of our time, which provides a fertile terrain for every form of extremism. These are the ideals that shaped Europe, that «Peninsula of Asia» which stretches from the Urals to the Atlantic (Pope Francis, 2017).

«With the recent constitutional and political changes in China now stressing “socialism with Chinese characteristics” it seems as if the wings have been clipped and the gaze lowered not only in the EU, but also in China. This seems to be especially clear in relation to women’s issues».

4. After the Beijing Women's Conference 1995

The Fourth World Conference on Women: Action for Equality, Development and Peace was the name given for a conference convened by the United Nations during 4-15 September 1995 in Beijing. This was the last UN World Conference on Women, and since then nobody has urged for a new UN conference for women for fear that the results gained until then would be reversed. In April to May 2015 I happened to be in Beijing, during the 20 year anniversary of the Beijing Women's Conference. Amongst others I attended a meeting on Beijing + 20 called *Women's Rights in China: How Far Have We come Since 1995?* at Columbia Global Center, an American based center with offices in several places in the world. Earlier that year the so-called *Feminist Five* - a group of young female activists - had been detained on the eve of March 7 and had been held in detention for about a month. Not least because of this the director started underlining that discussions and comments were off the record in case there were journalists and photographers in the room.

A Chinese female activist from DAWN (Development Alternatives with Women for a New Era established 1984) mentioned that there were 30.000 registered participants for the NGO Forum in Beijing in 1995 and only 10.000 for the official UN conference. There were disagreements both among the UN countries and NGOs for instance on the abortion issue. The Beijing conference was a process, where every five years a review had been held. New topics discussed after 1995 were Aids, climate change, environment, migration etc. The most important issues according to her were equality and women's empowerment. She also mentioned that The Beijing Platform for Action has come under pressure during globalization. Another participant, Liu Bohong, law professor and member of the CEDAW committee and of ACWF (All China Women's Federation), mentioned that traditional gender stereotypes were very high. Men were (again) responsible for work, women for household. «Our culture has collective ideas and mindset. So many people do not regard indirect discrimination as discrimination. It is seen especially by men as protection, not discrimination⁸¹».

⁸¹ Personal notes from research trip to China, April - May, 2015.

In a UN report from 2014, *Gender Equality in China's Economic Transformation*, co-written by Liu Bohong, it is mentioned that «Chinese women's labor force participation rate has declined since the market-oriented economic reform. It has dropped by a large margin, especially after the privatization of state-owned enterprises in the 1990s» (Bohong Liu, Ling Li, Chunyu Yang, 2014). Not surprisingly, the report mentions both increasing gender disparities in employment and growing income inequality as well as lack of recognition of unpaid care work.

5. Gender Gaps - lack of economic and representational equality

The World Economic Forum first published the *Global Gender Gap Report* in 2006. It is thus a rather recent instrument to document the size and quality of global gender relations. It ranks countries according to a calculated gender gap between women and men in four key areas: *health, education, economy* and *politics* to measure the state of gender equality in a country. The development over the last years have been very clear and shows that women and men globally seem to have reached near equality in the fields of education and health, whereas globally there are considerable gaps in political presentation as well as very gendered economic inequality. In 2015 Iceland, Norway, Finland, Sweden and Ireland were ranked 1-5, while Denmark was ranked 14, Italy 41 and China 91. China very much resembled the global average.

Already in 1951 the International Labour Organization (ILO) signed its Convention no. 100 on Equal Remuneration between men and women (http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100> Accessed August 12, 2018). It came into force in 1953, was ratified by Italy in 1956, by Denmark in 1960 and by China in 1990. Articles 1 and 2 of the convention run as follows:

Article 1

For the purpose of this Convention:

- (a) the term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
- (b) the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.
2. This principle may be applied by means of
 - (a) national laws or regulations;
 - (b) legally established or recognised machinery for wage determination;
 - (c) collective agreements between employers and workers; or
 - (d) a combination of these various means.

No matter whether a country is capitalist or socialist, it has not anywhere in the world managed to do away with the gender pay gap, and as the Chinese experience seems to show, it may not happen easily. Law - including conventions - do no longer seem to be important instruments for change, redistribution and equality under neo-liberal conditions. Wendy Brown remarks in her book that women remain disproportionately responsible for care work of all kinds, they earn less, and they are radically underrepresented at the top of all professions. «Rather, when *homo oeconomicus* becomes the governing truth, when it organizes law, conduct, policy, and everyday arrangements, the burdens upon and the invisibility of those excluded persons and practices are intensified» (Wendy Brown, p.107).

Political representation seems to be almost as difficult to change. It may be growing slightly in a European context, but it does not seem to grow in China. Nonetheless, it sometimes seems as if crisis contributes to empowering women as mentioned in this quote from UNDP on Gender Equality especially in a crisis-context:

Despite the devastation that crises can wield, the period of rebuilding afterwards offers a great opportunity to create more inclusive governance institutions and transform societies. For these reasons, UNDP has defined the following Eight Point Agenda to empower women and enhance gender equality in crisis prevention and recovery efforts: 1. Stop violence against women; 2. Provide justice and security for women; 3. Advance women as decision-makers; 4. Involve women in all peace processes; 5. Support women and men to build back better; 6. Promote women as leaders of recovery; 7. Include women's issues in the national agenda; 8. Work together to transform society (<http://www.undp.org/content/dam/undp/library/corporate/fast-facts/english/FF-gender-equality-2009-EN.pdf>> Accessed August 12, 2018).

We know that women fought long for political rights, voting rights, rights to education and social rights and achieved (some of) them after World Wars and Revolutions in Europe and China, and more recently in a number of African countries. We also know that such rights are not given for ever, and will have to be constantly fought for everywhere in the world.

6. «Traditional» and/or gendered labour solidarity revisited?

In the spring of 2018, Danish public sector workers, most of whom are female, and many of whom are not comparatively well paid, demonstrated an unusual internal solidarity amongst public sector unions. Their unions declared a selected strike to support their claims after collapse of negotiations on collective agreements. In 2008 and 2013, nurses and primary school teachers respectively were involved in and lost long, costly and exhausting labour conflicts against public employers, who had amongst others used long lock out periods. The 2013 emergency law to end the conflict (ironically prepared by a center left government led by a female prime minister and female party leaders) was partly instigated by the European Commission's new economic governance regime, which had stated that Denmark must «without delay implement the measures announced in order to improve cost efficiency in the education system» (Bieler & Erne, 2015, p. 160) In 2018 Danish public employers - municipalities and the state - as a reaction against selected strikes in the (female-dominated) public sector again called for a very broad

lockout. With the growing number of women especially in the service sectors of the world, (transnational) solidarity could perhaps show characteristics that are more «feminine». At May 1, 2018 celebrations in Copenhagen all of the five leading speakers were female leaders - of the two main national trade unions and the three left-wing political parties. Politics in the small Nordic countries seems increasingly organized along a combination of political and gender lines.

With the change in women's lives (more divorces, more education and more lifelong paid labour, more positive views of the welfare state, more interest in equality) what has been called a «modern gender gap» in politics has emerged (Andersen, 2015). Voters are increasingly divided along gender lines, which to a certain extent overlap class lines.

The «red» leftwing parties now have female leaders *and* a majority of female voters, while the opposite is the case for centre right parties. The image and expressions of solidarity may change, as it is also clear that the (Danish) welfare state cannot survive without caring labour performed by migrants, including both Muslim men and women. It is very likely that trade unions will in the near future have to consider religious diversity when entering into collective agreements within the context of the so-called Danish Model, where law making is a result of negotiations between parties at the labour market. With a trans-national and trans-religious workforce, new needs must be met. Solidarity and harmony in the 21st century may have many faces.

7. Four global forces changing the world?

According to American geographer Laurence Smith there are four global forces shaping and changing the world (Smith, 2011). They are *demographics* (birth rates, ageing and death rates; a growing demand for *natural resources*; *climate change* (including changing chemical composition of the atmosphere) and *globalization* as interconnection and interdependence – including via technology.

China introduced the One Child Policy in 1979 and abandoned it again in the end of 2015 – at a period where labour market participation of Chinese women had become more difficult and perhaps less valued. China as Europe is an aging society where the retirement age is slowly being raised almost everywhere. If public welfare is not increased

and secured, it may mean that less well paid women in both China and EU may have to deliver more unpaid caring work for both the young and the elderly due to a continued reinforcement of gender stereotypes.

A growing demand for natural resources may increase prices of basic goods such as water, but may also lead to especially Chinese acquisitions of these resources in many parts a world consisting of a large number of small and economically weak states and communities (Petersen, 2017, pp. 65-90).

The assessment of the role and importance of climate change to some extent divides the world, but it seems that both China and the EU formally want to continue with the Paris Accord. There is probably no doubt that (female) middle class pressure also in China has had an impact on party and state policy.

I have written on this in another context (Petersen, 2017). On February 28, 2015 - on the Saturday preceding the meetings of the National People's Congress and Chinese People's Political Consultative Conference - a female Chinese journalist, Chai Jing, who had earlier worked for Chinese State Television (CCTV) for a decade released a 104 minute long video called *Under the Dome*. The film dealt especially with air pollution in China and particularly in Beijing. It was initially streamed on major internet platforms without interference from censors, and it was accessible on the Internet for about a week. According to different sources it drew around 200 - 300 million views within this period. After it was censored, it was removed to less accessible platforms. Chai Jing had traveled to the US to give birth to her daughter in October 2013, and this led to an outrage among Chinese netizens, who branded her as a «birth tourist». In the video, she tells that she learned that her daughter had a tumor, and had to undergo an operation. She feared the tumor might be due to air pollution, and following her daughter's birth and operation, she undertook a yearlong self-financed investigation following up on some of her earlier work as an investigative journalist. She explains in the video how she had never cared about air pollution before she got pregnant and had never worn a mask. After she became pregnant, she became much more concerned with these issues.

IN BETWEEN - GENDER, SOLIDARITY AND LEGALITY - A COMMENT ON CHINA'S LEGAL SYSTEM

Simona Novaretti

1. Introduction

Rather than a comment on professor Petersen's address, my part of this article will be a reflection on the way in which, over the last few years the new emphasis on traditional Chinese values by the leaders of the People's Republic of China has influenced the interpretation given to the concepts of solidarity and gender within the Country, and how this interpretation is reflected in the most recent Chinese legislation.

As professor Petersen pointed out «*solidarity and harmony in the 21st century may have many faces*». It seems to me that in China these faces are closely linked to the loss of trust in the Party and the emergence of social contradictions related to the reforms, on the one hand, and the revival of Confucian principles as a new source of social cohesion, on the other.

Indeed, the concepts of social inclusion and social exclusion have been introduced in PRC quite recently, since about the beginning of the XXI Century (Peng Du, 2013, 44), when the problems connected to the tremendous social-economic development experienced by the PRC after the inauguration of the reform and opening-up policies in 1978 became evident (Peng Du, 2013, 44-45).

The increasing gap between the rich and the poor, the rise of rural/urban and regional disparities, heavy pollution, the unemployed and migrant workers, low coverage of social protection, and - last but not least - the inter-generational gap in living standards, forced the Communist Party of China (hereinafter: CPC) to rethink the development pattern, setting up a more sustainable, coordinated, and inclusive model of growth (Peng Du, 2013, *ibid*). Thus, in 2003 the Third Plenary Session of the 16th CPC Central Committee passed the «Decision upon a Certain Number of Problems with Regard to Consummation of the Socialist Market Economy», announcing a new policy direction (Hu Angang 2007, 87) summed up in the notion of «five coordinations» (五个统 *wuge tongchou*:

coordination between urban and rural development, coordinated regional development, overall economic and social development, coordinate harmonious development of men and nature, coordinated domestic development and opening up - in the 13th Development Plan substituted by a new formula, the so-called «five major development concepts» 五大发展理念 *wu da fazhan linian*: innovation, coordination, green, openness and sharing), and in 2004 the Fourth Plenary Session of the 16th Central Committee of the CPC listed «the capability of building a socialist harmonious society» as one of the five governing capabilities that the CPC endeavors to enhance (http://cpcchina.chinadaily.com.cn/2010-09/16/content_13918117.htm).

As remarked by prof. Petersen in her speech, it was during exactly those years that Chinese scholars began to show a particular interest in Durkheim's work. Indeed, Durkheim's theory of social solidarity seemed to fit perfectly with the latest Chinese leadership's catchwords: the aforementioned «harmonious society», and «sustainable development», a notion destined to become, after the enactment of the 11th Five Year Plans (2006-2011), the model that should have inspired Chinese economic growth, and the way forward for building a moderately prosperous society (小康社会. *xiaokang shehui*).

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

As remarked by Guo Yingjie:

«The vision of a “xiaokang society” is one in which most people are moderately well off and middle class, and in which economic prosperity is sufficient to move most of the population in mainland China into comfortable means, but in which economic advancement is not the sole focus of society. Explicitly

incorporated into the concept of a Xiaokang society is the idea that economic growth needs to be balanced with sometimes conflicting goals of social equality and environmental protection» (Guo Yingjie, 2008, 52).

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

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

The «2030 Agenda» sets out the 17 Sustainable Development Goals (SDGs) that constitute the guideline and the direction of effort for UN member states to continue over the next fifteen years (2016-2030) (<https://sustainabledevelopment.un.org/post2015/transformingourworld>). Among them: «*end poverty in all its forms everywhere*» (goal 1); «*ensure healthy lives and promote well-being for all at all ages*» (goal 3), «*ensure inclusive and equitable quality education and promote lifelong learning opportunities for all*» (goal 4); «*achieve gender equality and empower all women and girls*» (goal 5); «*promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all*» (goal n. 8); «*protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss*» (goal 15) and «*promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels*» (goal 16).

Klauss Bosselmann, in his book on «The Principle of Sustainability. Transforming Law and Governance» (Klaus Bosselmann, 2016), asserts that «*the principle of equity*

represents the social dimension of sustainable development” (Klaus Bosselmann, 2016, 69). According to this author, therefore, in the Millennium Development Goals, sustainable development was understood to refer to «intra-generational equity» (i.e.: «*the right of people within the current generation of fair access to the Earth’s natural resources*», or «*the commitment of the states to eradication of poverty*») and to «inter-generational equity» (i.e.: «*the right of future generations*»). As shown above, however, the «2030 Agenda» explicitly considers a third kind of «equity», i.e. «intergender - equity», as one of the primary sustainable development goals to be globally achieved. According to the description given in the document, this «new» goal will imply many duties for UN member states including to «*adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels*».

Speaking at the 2015 United Nation Sustainable Summit, Chinese President Xi Jinping said that «*China makes a solemn commitment that it will shoulder the responsibility of implementing the post-2015 development agenda, and seek solidarity and cooperation to constantly push the cause of global development*» (Ye Jiang, 2017, 120).

In the following sections I will examine how China is pursuing the construction of a «harmonious society», on the one hand, and the implementation of the UN 2030 sustainability goals, on the other. In particular, I will give some examples of the way in which the three aforementioned type of «equity» (inter-generational, intra-generational and inter-gender equity) have been incorporated in Chinese recent legislation, being reconstrued in order to fit some of the most crucial Chinese traditional values: 孝 (*xiao*, filial piety), 仁 (*ren*, benevolence), and 同异/分 (*tongyi/fen*, identity and difference/rights and duties).

However, since the inclusion of the principle of solidarity in Chinese legislation preceded the revival of these concepts, I will first give a brief description of the process that paved the way to the use of the law as an instrument of social «moralization».

2. Solidarity/sustainability and legality in XXI Century's China: 2004 PRC Constitutional amendments and the «moralization» of law

As mentioned above, it was at the beginning of the new century that Chinese leaders became aware of the need, for PRC, to shift towards a more sustainable model of development. From a legislative point of view, 2004 proved to be a turning point. Indeed, it was in that year that the National People's Congress (NPC) amended the PRC Constitution for the fourth time since its enactment, in 1982. This amendment is well known for its definition of private property as «inviolable⁸²» and the introduction of a provision on the protection of human rights (art. 33, paragraph 3)⁸³.

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

Indeed, the new paragraph added to Article 14 of the Constitution says: «*The state establishes and improves the social security system fitting in with the level of economic development*⁸⁴».

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

One need only read the titles of these laws to recall Durkheim's theory of law as a mechanism of social integration (Corne, 1997, 4 and following pages). According to Durkheim, different forms of law express different forms of cohesion (Corne, 1997, 5).

⁸² See art. 13 of PRC's Constitution as modified according to art. 22, Amendments to the Constitution of the People's Republic of China (中华人民共和国宪法修正案 *Zhonghua renmin gongheguo xianfa xiuzheng'an*), adopted at the Second Session of the Tenth National People's Congress of the People's Republic of China on March 14, 2004.

⁸³ See art. 33, paragraph 3 of PRC's Constitution as modified according to art. 24, Amendments to the Constitution of the People's Republic of China (2004), cit.

⁸⁴ See art. 14, paragraph 4 as modified according to art. 23, Amendments to the Constitution of the People's Republic of China (2004).

Penal and repressive law as exemplified in the legal system of Imperial China, for example, expresses what he refers to as «mechanical solidarity» - a kind of cohesion based on shared beliefs and values among average members of the same society. In other areas of law or in other ages, however, law can convey what Durkheim calls «organic solidarity». More precisely, it can work as a «moral agency», becoming the expression of a pre-existing moral milieu which shapes and governs the principles under which social behaviors occur and are enforced. In my opinion, this is exactly the function attributed to certain provisions passed during the last decade, in particular after 2012 Xi Jinping's call to «*achieve the Chinese dream of the great rejuvenation of the Chinese nation*» (实现中华民族伟大复兴的中国梦, *shixian Zhonghua minxu weida fuxing de Zhongguo meng*).

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

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

3. «Sustainable development», legality and morality in the PRC: inter-generational equity

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

It is not surprising, therefore, that PCC’ leaders have begun their attempt to use traditional ethics to «re-sew» the Chinese social fabric through a re-evaluation of this virtue, thus filling the ideological vacuum that has eroded the popular consensus towards the Party (Scarpari 2015 B, 115-116).

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

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

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

Nor it is the first time, in Chinese history, in which filial piety is included in legislation. In his recent paper on the combining of morality and law in China’s past and present, Philip Huang remarked that in the Qing code, «*filial piety was expressed partly in terms*

of punishments for those who do not provide maintenance for parents in old age ». Great importance was given to this principle both in the early twentieth century - when, despite the legislators massive copying of the German Civil code, Republican Chinese law retained this essential dimension of the law, so that children were required almost unconditionally to support their parents in their old age - and in the first decade of the reforms (Huang, 2015, 10).

Indeed, according to art. 13, paragraphs 2 and 3 of the Law of Succession of the People's Republic of China (中华人民共和国继承法, *Zhonghua remin gongheguo Jicheng fa*, 1985): *«At the time of distributing the estate, successors who have made the predominant contributions in maintaining the decedent or have lived with the decedent may be given a larger share. At the time of distributing the estate, successors who had the ability and were in a position to maintain the decedent but failed to fulfil their duties shall be given no share or a smaller share of the estate»*.

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

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

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

4. «Sustainable development», legality and morality in the PRC: intragenerational equity

Maurizio Scarpari, in his book on the revival of Confucian principles in today's China, remarks how, according to Confucian thought, the foundations of filial behavior are love (爱 *ai*) and respect (敬 *jing*). Love and filial respect (孝 *xiao*) and love and respect for the older brothers (悌 *ti*) are the foundations of love for the other human beings (仁 *ren*), the ultimate Confucian virtue, and the one which comes from the love that the individual shows to his fellow men (Scarpari, 2015 B, 117).

As expressed in Confucius' *Annals*:

«*Filial piety and fraternal submission are the root of all benevolent actions (仁之本与 ren zhi ben yu)*» (孔子, “*论语 – 学而*”, 1.2, Confucius, “*Lunyu (Analects), Xue er, 1.2*);

«*Benevolence (仁 ren) is love all men (爱人 airen)*» (孔子, “*论语 – 颜渊*”, 12.22, Confucius, “*Lunyu (Analects), Yan Yuan, 12.22*).

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

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

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

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

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

«Adult children have the obligations of supporting, assistance, and protection of their parents».

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

As remarked by Mencius (IV - III century BC), the philosopher considered the «Second Sage» of Confucianism, after Confucius himself: «*Treat your elders as elders, and extend*

it to the elders of others; treat your young ones as young ones, and extend it to the young ones of others; then you can turn the whole world in the palm of your hand».

In this sense, it is possible to say that the concept of *xiao* is very close to the aforementioned Bosselmann interpretation of «inter-generational equity» as the «rights of future generations⁸⁵».

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

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

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

The concept of *ren*, the idea of being empathic, putting oneself in the place of another, and the Confucian way of extending love and favors, are closely intertwined with the relationship between human beings and nature, individuals and society, self and others (Guo Qiyong, Cui Tao, 2012, 20). Moreover, the Confucian theory and praxis of 仁诚 (*rencheng* paramount virtue and sincerity) and 仁义礼 (*renyili*, benevolence, righteousness and rites) are traditionally considered beneficial to the regulation and harmonization of individual, community, the Nature and the Supernal Dao, the latter intended, as in the Doctrine of the Mean (中庸 *Zhongyong*, one of the «Four Books» of

⁸⁵ See supra, paragraph 0.

Confucian philosophy), in the sense of «*sincerity and the born nature of the sage*» (Guo Qiyong, Cui Tao, 2012, 48, 51). Renovating them creatively, therefore, can help the reconstruction of core values in Chinese modern society, promote social stability, and benefit the construction of a harmonious world, as desired by the leaders of the PRC. It is not by chance, therefore, that the Chinese legislators incorporated some of the virtues/duties related to *ren* in 2017 GPCC, making this concept one of the principles which inspire basic civil law rules related to «intra-generational equity», and (consequently) increasing the space given to morality and solidarity in the Chinese legal system.

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

According to that article:

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

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

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

At present, however, more than a binding rule, it seems to be a message, intended as much for the rest of the world as for the citizens of the PRC. On the one hand, it shows the determination of China to fight environmental degradation and pursue sustainable development; on the other, it reminds the Chinese people, in the form of a legal provision, of the traditional Chinese duty to live in harmony with nature as imposed by the principle of benevolence. According to Confucian eco-ethics, in fact: *«A man of the virtue of ren 仁 will love everything in Nature on his own initiative rather than cause a wanton destruction to them. Chengwu (诚物, to fulfill others) not only relates to living things, but also to stocks and stones, for every single substance on earth is a part of eco-life»* (蒙培元, Meng Peiyuan, 2004, 32-33).

Indeed, two of the most authoritative books of Confucianism, «The Doctrine of the Mean» and «The Book of Mencius», have very strong insights into the theory that human nature is similar to the nature of things.

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

As pointed out by Guo Qiyong and Cui Tao:

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

All these principles are generally considered to be deeply rooted in Chinese culture and tradition, to the point that, during the Maoist era, they have even been able to resist, to some extent, the banishment of the «old ideologies» on which they were originally based.

In the last forty years, however, the economic and social changes resulting from the reforms seem to have swept away from Chinese people every remnant of empathy and solidarity towards the others, replacing them by the desire to get rich at any cost, and by increasing cynicism and individualism.

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

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

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

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

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

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

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

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

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

This very short regulation (only ten articles) liberates good Samaritans from any legal responsibility for the condition of the person they assist, except in cases of gross negligence (art. 4), and shifts the burden of proof from the helper to the person in need of assistance (arts. 3 and 4). Furthermore, it provides for significant punishment, that

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

It is interesting to read the words used by a (foreign) advisor of Tsinghua University, Harvey Dzodin, to welcome, on China Daily, the enactment of this regulation. After observing that the new «Good Person's Law» *«brings China back to some of its ancient core values»* he noticed that it has: the potential to help rejuvenate the nation and the well-being of the people by promoting traditional Chinese values. The law frees good persons from worrying about their liability when coming to the assistance of those who appear to be in difficulty [...]. I'll be rooting for the law to be a success and used as a model for a national law to help fulfill the Chinese Dream and build a more harmonious society at the same time.

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

Art. 184 of the GPCC states that: *«A person who voluntarily provides emergency assistance and causes harm to the recipient of assistance shall not assume civil liability»*.

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

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

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

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

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

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

5. «Sustainable development», legality and morality in the PRC: intergender equity

In his paper on «The Confucian Ideal of Harmony», Li Chenyang noticed that the word usually translated into English as «harmony», 和 *he*, pre-dates Confucianism (Li Chengyang, 2006, 583). Indeed, its earliest form can be found in the inscriptions on bones and tortoise shells from the Shang dynasty (sixteenth to eleventh centuries B.C.E.) and later more frequently in inscriptions on the bronze utensils of the Zhou dynasty (1066-

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

According to Shi Bo, a pre-Confucian scholar-minister who lived toward the end of the Western Zhou period (1066-771 B.C.E.): Harmony (和 *he*) is indeed productive of things. Sameness (同 *tong*), on the contrary, does not advance growth. Smoothing one thing with another is called harmony. For this reason, things come together and flourish. If one uses the same thing to complement the same thing, it is a dead end and will become wasted. (国语郑语, 1.5, Guoyu - Zhenyu, 1.5.).

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

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

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

To sum up, «harmony», according to Confucian thought, depends on differences, in nature as in social and family life. This idea is not only reflected in the Confucian «five key relationships» (五伦 *wulun*, i.e.: the relationship between sovereign and subject, father and son, husband and wife, elder and younger son, and the relationship between friends) in which - as mentioned by Prof. Petersen in her speech - each part of the relation has to follow his/her own *li* (礼, norm of proper social behavior) towards the other, according to their mutual hierarchical status. It is also the concept underlying all traditional Confucian virtues, whose essential purpose - as pointed out by Mark Elvin - is to «[to stabilize] a society that was ordered according to a hierarchy of age, and divided into kin-groups based on male dominance and male descent lines» (Elvin, 1984, 111).

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

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

In the opinion of Gao Xiongya, from this passage we should conclude that the philosopher considers women as «inferior men», unable to communicate and to understand; moreover, he seems to suggest that they are to be forgotten or at least ignored. Whether Gao is right or not, based on the above quote Confucius followers developed «ceremonial rites» (*li*)

for women, which «*encourage and teach feminine virtues desirable from the male point of view*» (Gao Xiongya,, 2003, 115).

During the Han Dynasty, these rites were codified as the Three Obedience (三从 *sancon*), according to which women had to obey to the father before the marriage, to the husband during marriage and to the first son after the husband's death, and the Four virtues (四德 *side*), namely: (sexual) morality, proper speech, modest manner, and diligent work (Gao Xiongya,, 2003, 116). The «*original Confucian indifference for women*» (Ruskola, 1994, 2544), therefore, eventually led to an attitude that has been characterized as misogynist, as exemplified by such sayings as «Starving to death is a small matter, but losing one's chastity is a grave matter» (饿死事小 失节事大 *e si shi xiao shi jie shi da*) (Vivien W. Ng, 1987, 60) or «Lack of talent is a virtue in a woman» (女子无才便是德 *nüzi wu cai bian shi de*) (Van Gulik, 1961, 374; Gao Xiongya, 2016, 116 and 120). Due to the «Confucianization of law», imperial legal rules could not but reflect this approach.

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

It is worth remembering that the first Chinese law to adopt the principle of gender equality was the Guomindang (hereinafter: GMD)'s Civil Code of 1929-1931. The code for the first time envisioned women as independent free agents. According to its provisions, for example, they inherited property as men did, enjoyed the same rights to marriage and divorce as men did, and they could exercise full control over their lives no less than men

(Philip Huang, 2001, 59-62). The GMD's law and legal institutions, however, were far from reaching the Chinese people and had no substantial impact on the society at large (Chen Jianfu, 2016, 40), since, as it is well known, for political and historical reasons, they had been in practice only applied in large cities or coastal provinces (Walstedt, 1978, 385).

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

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

It seems very probable that, despite the declarations of war on the traditional family structure, PCC leaders considered stability and social harmony to be much more important values than gender equality. Undoubtedly, however, the result of PCC's emphasis on equality between sexes and the need for women to take active part in socialist reconstruction was to increase the pressure on them. As pointed out by Joyce Walstedt, if, on the one hand, the new ideology urged women to find productive work outside the

home in order to help rebuild China, on the other little attempt was made by the government to provide jobs or relieve them of home responsibilities (Walstedt, 1978, 386).

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

From this point of view, however, even the beginning of the reform and opening period would have not substantially changed the situation (Ruskola, 1994, 2564). Certainly, family and marriage laws approved since 1978 reinforced the principle of equality between women and men, and the 1982 Constitution proclaimed it with even more emphasis than the previous three PRC Constitutions⁸⁶. However, traditional notions of gender continued to inform the interpretation and administration of law, while the priority given by Deng Xiaoping to the realization of the «four modernizations» (四个现代化 *sige xiandaihua*) meant that among the reasons of economic development and that of gender equality were always the first to prevail (Ruskola, 1994, 2564). As Teemu Ruskola pointed out in 1994 referring to the first two decades of the reforms, it was because of this situation that the aforementioned laws remained, quite frequently, a dead letter, or were applied only in form. It is, for example, the case of the guarantee of equal pay for equal work, provided for by art. 48, paragraph 2 of 1982 Constitution: although both men and women should have received the same pay for each «workpoint», women were usually awarded fewer workpoints than men for performing the same tasks (Wolf, 1985, 100-103). At the same time - and just to give another example on how economic reforms impacted over egalitarian aspirations - the «economic revolution» and the privatization of state-owned enterprises gave companies greater latitude in hiring and firing, thereby in practice allowing women to be hired last and fired first (Palmer, 1989-90, 452; Wudunn, 1993).

⁸⁶ See arts. 48-49, Constitution of the People's Republic of China (1982). It is worth noticing that the principle of equality between sex was included in all the Constitutions enacted since PRC's foundation (i.e.: 1954, 1975, 1978). All these Constitutions, however, give a much more vague definition of it, and dedicate to it only one article or paragraph instead of two. See art. 96, paragraph 1, 1954 Constitution; art. 27, paragraph 5, 1975 Constitution; and art. 53, paragraph 1, 1978 Constitution.

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

It seems to me that this statement is still valid today, and applies perfectly to a socialist market economy that wants to realize the «Chinese dream of the great rejuvenation of the Chinese nation» through the recovery of traditional values, such as PRC after Xi Jinping's seizure of power.

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

Certainly, especially in the last twenty years, thanks to China's economic reform process, personal income and living standards have improved enormously, bringing unprecedented development opportunities for women (Liu Bohong, Li Ling, Yang Chunyu, 11). Gender equality has become one of the key state policies for social development, to the point to be included, in 2012, into the Report of the Eighteen National Congress of the CCP⁸⁷. Thus, in 2015 the government incorporated the development of women and girls into the «13th Five Year Plan for Economic and Social Development» (2016-2020)⁸⁸ and, through the promulgation and implementation of regulations as «The Plan for Women's Development in China» (2011-2020) or the «National Human Rights Action Plan of China», it «*honored its commitment to the international community to lift women's status in political, economic, social, and cultural areas, as well as in citizenship, marriages and households*» (Liu Bohong, Li Ling, Yang Chunyu, 2014, 11). At the same time, the National People's Congress and its Standing Committee have enacted/reviewed several laws in order to realize equality between men and women, protect women's rights and interests and eliminate any kind of discrimination against women for example the «Law of the People's Republic of China on the Protection of Women's Rights and

⁸⁷ See Hu Jintao's Report at the 18th Party Congress, part. XII (Strengthening Social Development by Improving the People's Wellbeing and Making Innovations in Management), point 4, and part XII (Making Party Building More Scientific in All Respects), point 2 and 4. The full text (in English) of the Report is available online at:

http://www.china-embassy.org/eng/zt/18th_CPC_National_Congress_Eng/t992917.htm.

⁸⁸ See «13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016-2020)», part XV, Chapter 66. The full text (in English) of the 13th Five-Year Plan is available online, at: <http://en.ndrc.gov.cn/policyrelease/201612/P020161207645766966662.pdf>.

Interests» (中华人民共和国妇女权益保障法 *Zhongghua renmin gonghe guo funü quanyi baozhang fa*, 1992, amended in 2005 and 2018) or the «Anti-domestic Violence Law of the People's Republic of China» (中华人民共和国反家庭暴力法 *Zhonghua renmin gongheguo fan jiating baoli fa*, 2015), among others. The situation, however, is much more complicated than it seems, as both judicial reform and political discourse on the subject of these laws/regulations - as well as some provisions inside them - appear to be driving the official inter-gender equality efforts in a contrary direction.

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

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

Undoubtedly, since his seizure of power, President Xi Jinping has put the «construction of civilized families» (家庭文明建设 *jiating wenming jianshe*) at the core of the agenda of the party committees and governments at all levels (Jiang Jue, 2016).

The concept, in the last few years, has been reaffirmed by the President in various ways and in numerous speeches, in which he has always pointed out the fundamental role of traditional Chinese family values in building a harmonious society. In particular, in a speech given in December 2016 and reported by Xinhua Agency, he described the family as «the cell of society» (社会的细胞 *shehui de xibao*). In his opinion, this is the reason why: «*society will be stable if we have peaceful families; society will be harmonious if we have happy families; society will be civilized if we have family civilized*». Therefore «*the vast majority of families must raise at the same time attachment to one's family and patriotism, integrate family dreams into national dreams, think with one mind and work with one hart, using the wisdom and enthusiasm of more than 400 million families and more than 1.3 billion people to achieve the goal of "two hundred years" and realize the great rejuvenation of the Chinese nation*». (新华社, Xinhuashe, 2016).

It is worth remembering that President Xi Jinping was not the first to use the biological metaphor of family as the basic cell of society (Michelson, 2018, 18) nor it is the first time that PRC leaders' and officials' attempt to preserve the family by opposing «frivolous» divorce (轻率离婚 *qingshuai lihun*) (陈小勇, Chen Xiaoyong, 2005, 154-156). As we have seen above, difficulties and limits on divorce characterized the Maoist era as well. The reason why, at that time, divorces (usually requested by women who, very often, were victims of abuse) were not easy to obtain, however, should not only be sought in the need to avoid jeopardizing social stability in a country that was trying to free itself from old habits. It represents also an attempt to follow, even on this point, Marxist ideology, according to which the divorce could not be «arbitrary», but must reflect the «death» of a marriage, and therefore it should only be granted when the relationship is truly unrecoverable (陈小勇, Chen Xiaoyong, 2005, 154). As Wolf and Witke observed in 1975: «*the complicated interaction between the needs of women and the needs of revolution is a chapter in China's history still only half written*» (Wolf & Witke 1975, 7).

Nevertheless, the insufficient attention (to put it mildly) to the rights of the women who turned to court to get rid of a violent husband, and to whom, often, divorce was often not granted in the name of the higher goal of social harmony, until very recently remained limited to the practice of law. It was only in the last several years, due to the revival of Confucianism, that the discourse on «traditional family virtues» came into the Law as well. One of the most striking examples is, quite ironically, contained in the aforementioned «Anti-domestic Violence Law of the People's Republic of China» (2015, hereinafter AVL), which at art. 6 states that:

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

It is somehow strange to find the expression «*family virtues publicity and education*» put side by side with «*popularize knowledge of anti-domestic violence*» (Jiang Jue, 2016). Indeed, and even though art. 6 does not mention the word «traditional», it is pretty clear that the «family virtues» to which the article refers are the «traditional» ones, namely the virtues which originate from Confucianism. I just mention them briefly. First of all, since harmony depends on differences, in order to maintain harmony at the family level the husband must be superior to the wife. Then,

women are «by nature» required to take care of their husband, children, and the family as a whole: those seeking divorce would therefore be ethically stigmatized as selfish or even immoral (Bailey, 1993, 48). Finally, marriage is not a purely private matter: as «the family is the cell of the society», as stated by President Xi Jinping in the aforementioned speech, divorce evinces the relationship between the state, the law and the society.

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

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

The same concepts would soon have been incorporated in the «Opinions of the Supreme People's Court on Conducting the Pilot Program of the Reform of the Mode and Working Mechanism of Family Trial» (最高人民法院关于开展家事审判方式和工作机制改革试点工作的意见 *zuigao gemin fayuan guanyu kaizhan jiashi shenpan fangshi he gongzuo jizhi gaige shidian gongzuo de yijian*), published on 2nd April 2016 (henceforward the PRC Opinion 2016), and later reaffirmed by the «Opinions of the Supreme People's Court on Further Deepening the Reform of Modes and Working Mechanisms of Family Trials» (for Trial Implementation) (最高人民法院关于进一步深化家事审判方式和工作机制改革的意见(试行) *zuigao gemin fayuan guanyu jinyibu shenhua jiashi shenpan fangshi he gongzuo jizhi gaige shidian gongzuo de yijian*) of the 18th July 2018 (henceforward, PRC's Opinion 2018).

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

This probably did not happen by chance. After all, in Zhou's speech as in PRC's Opinions and in courts' practice, the need to preserve «*harmony and stability of marriage and family*» takes

always precedence over the «rights and interest of minors, women and the elderly»⁸⁹). In this perspective, mediation could really be the best way to achieve the leadership's (new?) goals: to maximize «diagnosing, repairing, and healing marriage relationships», advocate «civilized and progressive marital and family ethics and concepts», and - last but not least - advance «the building of family tradition and family virtues»⁹⁰.

In conclusion, I just want to remark that the «return» to Confucian principles and the reference to «traditional family values», more and more frequently mentioned by Chinese leaders and recently, as we have seen, embodied in some of the legal provisions of the PRC, does not only penalize women who are victims of «extreme» situations, such as, for example, domestic violence. On the contrary, they have an impact on the daily lives of Chinese women in general, and can jeopardize the possibility that the PRC will achieve the inter-gender equity goal provided for by the «2030 Agenda».

Indeed, traditional social division of labor and the dual burden of work and family responsibility put women - in the PRC as almost everywhere - in a disadvantaged position in the market economy. Despite increased opportunities for women's economic advancement and the undeniable existence of many successful Chinese business women - as demonstrated by the fact that fifty-six out of eighty-eight self-made female billionaires found around the world are Chinese, making China the best place in the world to be female entrepreneur (Yang, 2017) - in recent years the development gap between men and women in the PRC has expanded (Liu Bohong, Li Ling, Yang Chunyu, 2014, 11) while the female participation in the labor force has been declining (Yang, 2017). This situation undoubtedly results from a combination of different factors, in particular gender disparity in employment opportunities, gender disparity in incomes, and gender disparity in unpaid care work, as shown in the UN Women report I have frequently referred to in this paper (Liu Bohong, Li Ling, Yang Chunyu, 2014, 11). All these aspects, in my opinion, have been increased by the recent emphasis on Confucian values, on the one hand, and «solidarity», intended as a substitute for public services, on the other, especially when they are both embodied in the law as, for example, is the case with the aforementioned «Law on the Protection of the Rights and Interests of the Elderly».

Indeed, paragraph 3, art. 14 of the LPRIE (2015) states that: «The spouse (配偶 *pei'ou*) of the supporters shall assist them in fulfilling their obligations to provide for the elderly».

Even if «*pei'ou*» in itself has no gender connotation, it is clear that - at least in the current context - women are much more likely to support their husbands' elderly parents rather than the contrary. Many studies have shown that - while women taking care of their own parents have no impact on

⁸⁹ See PRC's Opinion 2018, part I (General Requirement), point 1.

⁹⁰ See PRC's Opinion 2018, part I (General Requirement), point 2.

their participation in the labor force or their working hours - taking care of their parents-in-law reduce both of this two indicator (Liu Bohong, Li Ling, Yang Chunyu, 2014, 11). It is not surprising, therefore, that the implementation of such a policy makes the gender gap wider, and intensifies conflict between work and family, reproducing in substance the gender inequality that seemed to have been overcome in form.

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

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