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SIMULARIZING VIJNANA AND DESIRE, REPEATING YI AND JUSTICE: TRANSPLANTING DELEUZEAN BECOMING INTO THE MACHINE OF HONG KONG ANTI-DOMESTIC VIOLENCE LAW

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The law controlling domestic violence in Hong Kong was amended in 2008 and 2009. The revised law introduces a new injunction order which can mandate that abusers attend counseling programmes, and extends legal protection to same-sex couples. As the author have argued elsewhere, the changes in the law can create (gender/sexual) justice as both issues engage with traditional Han-Chinese culture. Nonetheless, with the implementation of the new machine, the following two questions still need to be addressed. Can the changes produce justice? What is justice? This paper investigates, in Deleuzean terms, how the machine of anti-domestic violence law in Hong Kong creates the becoming of justice. Hopefully, the examination of this issue can also shed light on the future development in mainland China of the law controlling domestic violence.

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INTRODUCTION

Between 2007 and 2009, the Hong Kong SAR Government introduced a series of amendments in relation to the law controlling domestic violence. The two most controversial proposals were (1) the introduction of court-mandated counseling; and (2)

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the extension of protection to *tongzh*[1] couples. In "Politicizing *Han*-Chinese Masculinities: A Plea for Court Mandated Counseling for Wife Abusers in Hong Kong,"[2] and "Contextualizing the Same-sex Erotic Relationship: Post-colonial Tongzhi and Transgender Political Discourse on Hong Kong and PRC Law of Marriage,"[3] the author has already argued that both court-mandated counseling and legal recognition of Same sex/tongzhi couples do not have any conflict with traditional *Han*-Chinese culture and thus can work effectively in Hong Kong, a predominately *Han* Chinese society.[4] In "Simularizing Tradition and Foreign: Osmotic Production of Justice in the Milieu of Hong Kong Anti-Domestic Violence Law,"[5] the author has also argued, using the philosophical perspectives of Deleuze and Buddhism on Time/History/Memory, why *Han*-Chinese traditions are still relevant today in Hong Kong; and why, when formulating legal amendments, we cannot ignore heritage and cultural factors.[6] The author also

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[1] In Chinese, "tongzhi" includes two words — "*tong*" (同) means the "same" and "*zhi*" (志) connotes "beliefs (of anti-heterosexism)"; "*tongzhi*" therefore signifies all people who share and stand up for the destabilization of heterosexism. See, CHIU Man-chung, *Contextualizing the Same-Sex Erotic Relationship: Post-Colonial Tongzhi and Transgender Political Discourse on Hong Kong and PRC Law of Marriage*, in Robert Wintemute, *Legal Recognition of Same Sex Partnership: National Law, European Law and International Law*, Hart Publishing (London), (2001).

[2] CHIU Man-chung, *Politicizing Han-Chinese Masculinities: A Plea for Court Mandated Counselling for Wife Abusers in Hong Kong*, 9 Feminist Legal Studies 3 (2001).

[3] See Wintemute, fn. 1.

[4] As I wrote: "since (Orthodox) Confucianism puts so much effort on maintaining and reproducing interpersonal harmony in the context of social hierarchy — as Confucius said: "For judging law suits I share the same position with others. What I insist upon is to make it impossible for all law suits to arise" (tran., 听听讼，吾犹人也。必也使无讼乎！) — court-mandated counseling can certainly help re-constructing the familial harmony as it avoids directly sentencing the abuser to jail, and thus can be well accepted and engaged with Hong Kong *Han*-Chinese traditional culture. As (1) sexual orientation does not play any role in Confucian philosophy of harmony, (2) when Daoism advocates action-less and therefore would object excessive and non-essential regulation of sexuality and sexual orientation, and (3) as one of the most important Buddhist principles is equality, Buddhism certainly rejects any proposition of not embracing Tongzhi in the orbit of protection; the revision of Hong Kong anti domestic violence law by which Tongzhi couples are now protected from domestic violence, like the introduction of court-mandated counseling, will not be strongly challenged by *Han*-Chinese traditional cultural perspective." [CHIU Man-chung, *Simularizing Tradition and Foreign*, in Piotr Pachura, *New Knowledge in a New Era of Globalization*, InTech (Vienna), at 161 (2011).]

[5] See CHIU, fn. 4.

[6] The Deleuzean school argues that time is a "becoming" and "repetition" and is made up of "durations," which are constituted by mental activities (perception and memory). Deleuze also proposes that time/'duration' progresses, not in a linear direction, but by continuously splitting into past and present, where the living presence is the contraction of repetition. Deleuze's first synthesis of time further explains this: the past is not the retention of what happened, but a reflexive past of reproduced particularity. The Deleuzean second synthesis of time then states: only if past presents, can the present (past present) pass into and fold with the past — only when that happens, can the new present replace the past present; simply put: Past and present are becoming at the same dot. [Henry Somers-Hall, *Deleuze's Difference and Repetition*, Edinburgh University Press (Edinburgh), at 63 (2013).] When present passes into past, past also engages (not mixes) with present at the same duration — the past actualizes and becomes part of the present. [Gilles Deleuze, *Differences and Repetition*, Columbia University Press (New York), at 80 (1994).] When (part of) the past actualizes, it is becoming the line of social force in a "duration" and "conditions all the experience that we have, since actual experience is a composite of the virtual natural natures of perception and memory." [Reidar Due, *Deleuze Cambridge*, Polity (UK), at 31 (2007).] Using this paradigm, then traditional *Han*-Chinese culture (past) has never left the Hong Kong contemporaneity. Though tradition is part of the social control in current society, it does not and cannot stop the current society from changing.

alleges that Rawlsian justice can be transplanted into Hong Kong and can offer a very good starting point when analyzing whether an amendment can construct justice. However, Rawlsian justice assumes that there is a standard formula of justice or procedure for achieving justice, and that it is possible to identify and locate "the least advantaged" in a society. In this article, the author again adopts a Deleuzean perspective in attempting to construct a more sophisticated paradigm of justice, in the milieu of the Hong Kong Anti-Domestic Violence Law.

Let us have a very brief review of the recently-introduced reform.

I. HONG KONG ANTI-DOMESTIC VIOLENCE LAW REFORM IN 2008 AND 2009

According to the original Domestic Violence Ordinance, before 2008 the courts could, on the application of an abused party to the marriage, grant an injunction, which could (1) restrain the other party from molesting the applicant and/or any child living with the applicant; and/or (2) exclude the other party from the matrimonial home, or from a specified part of the matrimonial home,[7] or from a specified area whether or not the matrimonial home is included in that area (such as the applicant's place of work and her/his parent's apartment). After 2008, a series of amendments were introduced and one

[7] Matrimonial home means "a home in which the parties to a marriage ordinarily reside together whether or not it is occupied at the same time by other persons." [Section 2(1)] The order has no relation with property rights. In other words, a cohabitant who has no proprietary right can also apply to exclude her/his partner who is the owner of the place. Before the amendment introduced in 2008 and 2009, the orders which an abused party can apply for included: "(a) a provision restraining that other party from molesting the applicant; (b) a provision restraining that other party from molesting any child living with the applicant; (c) a provision excluding that other party from the matrimonial home, or from a specified part of the matrimonial home, or from a specified area whether or not the matrimonial home is included in that area; and (d) a provision requiring that other party to permit the applicant to enter and remain in the matrimonial home or in a specified part of the matrimonial home, whether or not any other relief is being sought in the proceedings. After the amendments, the orders available include (a) a provision restraining the respondent from molesting the applicant; (b) a provision restraining the respondent from molesting any specified minor; (c) a provision prohibiting the respondent (i) (where the applicant has been molested by the respondent) from entering or remaining in — (A) the residence of the applicant; (B) a specified part of the residence of the applicant; or (C) a specified area whether or not the residence of the applicant is in that area, whether or not the residence is the common residence or matrimonial home of the applicant and the respondent; (ii) (where the specified minor has been molested by the respondent) from entering or remaining in — (A) the residence of the specified minor; (B) a specified part of the residence of the minor; or (C) a specified area whether or not the residence of the minor is in that area, whether or not the residence is the common residence of the minor and the respondent; (d) a provision requiring the respondent to permit — (i) (where the applicant resides with the respondent) the applicant to enter and remain in the common residence or matrimonial home of the applicant and the respondent or in a specified part of such common residence or matrimonial home; or (ii) (where the specified minor resides with the respondent) the minor to enter and remain in the common residence of the minor and the respondent or in a specified part of such common residence, whether or not any other relief is being sought in the proceedings. (1A) A court may in an injunction containing a provision mentioned in subsection (1)(a) or (b) include a provision requiring the respondent to participate in any programme, approved by the Director of Social Welfare, that is aimed at changing the attitude and behavior that lead to the granting of such injunction."

of them was the introduction of court-mandated counseling, *i.e.* the court could order the abuser to attend a counseling programme (for example, anger management). Then, in 2009, another significant amendment was enacted, by which same-sex/tongzhi couples could also apply for injunctions.[8] Since *tongzhi* couples cannot get married in Hong Kong, and the Ordinance no longer only protects people within familial relationship, the Ordinance was retitled the "Domestic and Cohabitation Relationship Violence Ordinance."[9]

II. POWERLESS IS BECOMING: DELEUZEAN MACHINE OF JUSTICE

While Rawslians aim at regulating desire by procedure,[10] the Deleuzean notion of justice aims to release desire; because only through desire would all "attempts to ground any reasoning, rationale, or logic on some object measure" be destroyed and torn up.[11]

Like Nietzsche, Deleuze holds that desire, being instinctive and original, is the

[8] Before the amendment introduced in 2008 and 2009, only parties to marriage and their children could apply for an injunction order under the Ordinance. (Section 3) Under the amended Ordinance, the following persons can apply for an injunction: "(a) the applicant's father, mother, grandfather or grandmother (whether natural or adoptive); (b) the applicant's step-father, step-mother, step-grandfather or step-grandmother; (c) the applicant's father-in-law or mother-in-law who is the natural parent, adoptive parent or step-parent of the applicant's spouse; (d) the applicant's grandfather-in-law or grandmother-in-law who is the natural grandparent, adoptive grandparent or step-grandparent of the applicant's spouse; (e) the applicant's son, daughter, grandson or granddaughter (whether natural or adoptive); (f) the applicant's step-son, step-daughter, step-grandson or step-granddaughter; (g) the applicant's son-in-law or daughter-in-law who is the spouse of the applicant's natural child, adoptive child or step-child; (h) the applicant's grandson-in-law or granddaughter-in-law who is the spouse of the applicant's natural grandchild, adoptive grandchild or step-grandchild; (i) the applicant's brother or sister (whether of full or half blood or by virtue of adoption); (j) the brother or sister (whether of full or half blood or by virtue of adoption) of the applicant's spouse; (k) the applicant's step-brother or step-sister; (l) the step-brother or step-sister of the applicant's spouse; (m) the applicant's uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption); (n) the uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption) of the applicant's spouse; or (o) the spouse of any person mentioned in paragraph (i), (j), (k), (l), (m) or (n). Whether a couple who have not married are qualified to apply injunction are determined with regard to the following criteria: (a) whether the parties are living together in the same household; (b) whether the parties share the tasks and duties of their daily lives; (c) whether there is stability and permanence in the relationship; (d) the arrangement of sharing of expenses or financial support, and the degree of financial dependence or interdependence, between the parties; (e) whether there is a sexual relationship between the parties; (f) whether the parties share the care and support of a specified minor; (g) the parties' reasons for living together, and the degree of mutual commitment to a shared life; (h) whether the parties conduct themselves towards friends, relatives or other persons as parties to a cohabitation relationship, and whether the parties are so treated by their friends and relatives or other persons." (Section 3B)

[9] *Domestic And Cohabitation Relationships Violence Ordinance* (Cap 189), LHK.

[10] ZHOU Baosong, 自由人的平等政治 (*Politics of Liberal Equality*), SDX Joint Publishing Company (Beijing), (2010).

[11] Loretta Capeheart & Dragon Milovanovic, *Social Justice: Theories, Issues and Movements*, Rutgers University Press (United States of America), at 129 (2007).

greatest power in life.[12] He argues that the object of desire is in fact a "social formation" — only when desire injects into social formation is Lacanian lack produced.[13] In other words, Deleuze, going further than Lacan, argues that desire is not essentially about lack or negativity, but rather more about "productivity" and "positivity" of desire:[14] Deleuzean desire, with such power and energy, is always instrumental in concept creation. In the Deleuzean machine, a concept (for example, justice, law and identity) is always a product of connections, disconnections and reconnections,[15] formatted by different machine assemblages, which are formulated and driven by two lines of forces — desire and social force (for example, law courts, legislature and NGOs).[16] According to Deleuze, the social force always wants to capture and control desire, so as to fix concepts by repetition and codification. As a natural consequence, certain procedures and qualities are read as universal marks[17] — this process is called territorialization; domestic violence perpetrators, for example, are essentially male and cannot be converted, and tongzhi are generally unable to form stable familial relationships.[18]

Territorialization, however, cannot be the end of concept creation — Deleuzean desires cannot be forever regulated by molar lines of social force: lines of desire are always multiple and contested. Deleuze also argues that the molar lines of social forces are rhizomatic, and molecular lines of desire cannot be predicted; and so, concepts can only be multiple, and most importantly becoming.[19]

Deterritorialization hence is always initiated by desire; and the lines of flight, which are also fueled by desire, always take off at the weaker edge of the rhizomatic matrix where challenges coming from that desire can easily arise. That explains why, non-marital cohabitation and *tongzhi* couples, which do not yet have any full legal status under current Hong Kong family law, and overseas civil unionship or registered partnership, which are not formally recognized, can always problematize the Christian opposite-sex

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[12] Leen De Bolle, *Deleuze and Psychoanalysis Leuven*, Leuven University Press (Belgium), at 8 (2010).

[13] Adrian Parr, *Deterritorialising the Holocaust,* in Ian Buchanan & Adrian Parr, *Deleuze and the Contemporary World*, Edinburgh University Press (Edinburgh), (2006); Daniel Smith, *Essays on Deleuze*, Edinburgh University Press (Edinburgh), at 188 (2012).

[14] Dan Goodley, *Becoming Rhizomatic Parents: Deleuze, Guattari and Disabled Babies*, 22(2) Disability and Society 145, 147 (2007). Desire, to Deleuze, means a state of impulses and drives. (See Smith, fn. 13 at 182.).

[15] As Claire Colebrook suggests: a machine is "nothing more than its connections." [Claire Colebrook, *Understanding Deleuze*, Allen and Unwin (Australia), at 56 (2002).]

[16] According to Deleuze, desire motivates the machine: "It is axiomatic for Deleuze and Guattari that no technical machine can exist without the prior investment of desire." [Ian Buchanan, *Deleuze and Guattari's Anti-Oedipus*, Continuum (London and New York), at 17 (2008).]

[17] See Colebrook, fn. 15 at 45.

[18] Nikolas Rose, *Government and Control*, 40 Brit J. Criminology 321 (2000).

[19] Stephen Linstead & Alison Pullen, *Gender as Multiplicity: Desire, Displacement, Difference and Dispersion*, 59(9) Human Relations 1287 (2006).

marriage, which is the only legal marital format in Hong Kong.[20] Lines of flight always emerge right after deterritorialization, with the emergence and influx of different desires, challenging the hegemony of the powerful.[21] Further, repetition does not reproduce the identical sameness, but creates different, multiple and new desires and social forces (new laws and new institutions).[22] A good example is the repeal of marital rape exemption: the repetitive revisit of the principle made the court create new exceptions and redefine the concepts of "rape," "divorce" and "marriage"; finally the (new) desire to cancel sexist principles was fulfilled.[23] In this way, (new) machines, driven by different desires, can connect, disconnect and reconnect with other machines, and machines can never be reduced to any singular connection, *i.e.* they are always fluid and dynamic.[24]

Every concept (including identity), for instance, the powerless (victims of domestic violence and *tongzhi*), are thus always becoming and nomadic. Becoming, as Bryant elaborated, always contains contradictions and oppositions;[25] and, as illustrated by Buchanan, Deleuzean desire always encourages resistance and revolution as it always tries to challenge the codification imposed by lines of social force.[26] In other words, according to Deleuze, justice can only be created when becoming and deterritorialization also occur, where all layers and connections are broken by lines of flight, initiated by the liberation of desire. Simply put, the effort to naturalize and essentialize a concept (such as, "males are naturally violent," "*tongzhi* are promiscuous") is doomed to be a failure — deterritorialization always produces differences and resistance, which can respect equality and challenge all universal formulae, although such resistance may not always be strong enough to subvert these formulae and related hegemonies.[27] This poses a very powerful challenge against a Rawlsian procedure of justice — as it always assumes we can locate the least advantaged group.[28]

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[20] Damian Sutton & David Martin-Jones, *Deleuze Reframed*, I B Tauris (London), at 6 (2008).

[21] Gillles Deleuze, *Essays Critical and Clinical Minneapolis*: University of Minneapolis Press (Minn), at xlv (1997); Laurence Silberstein, *Becoming Israeli/Israeli Becomings*, in Buchanan & Parr, fn. 13 at 150.

[22] John Winslade, *Tracing Lines of flight: Implications of the Work of Gilles Deleuze for Narrative Practice*, 48(3) Family Process 332, 336–37 (2009).

[23] CHIU Man-chung, *Contextualizing the Rhetoric of Sexual Violence in Hong Kong*, 2(1) China: An International Journal 83, 83–107 (2004).

[24] Nathan Jun, *Deleuze and Normativity*, 53(4) Philosophy Today 347, 351 (2009).

[25] Levi Bryant, *Difference and Givenness: Deleuze's Transcendental Empiricism and the Ontology of Immanence*, Northwestern University Press (United States of America), at 58 (2008).

[26] See Buchanan, fn. 16 at 45.

[27] Jeff Bell, *Nomad Thought: Deleuze, Whitehead, and the Adventure of Thinking* in Roland Faber & Andrea Stephenson, *Secrets of Becoming*, Ford University Press (New York), at 71 (2011).

[28] The Rawls states: (1) "[E]ach person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others"; and (2) Social and economic inequalities are acceptable if they are arranged (a) to the greatest benefit to the least advantaged, and (b) attached to the "offices and positions open to all under the conditions of equality of opportunity." [John Rawls, *A Theory of Justice*, Harvard University Press (Cambridge MA), at 60, 83 (1971).]

Deterritorialization, initiated and driven by desire, can be channeled towards the machine of social force, so as to criticize and subvert the existing hegemony. This is where the emergent law arrives on the scene: as Murray argued, emergent law, which is engineered by molecular line of desire, can on the one hand always overpower the force of codification and fixation, while on the other hand, it can be accommodated and incorporated with social dominance, thus creating and producing new laws and regulations. Murray further advocates that the manufacture of new principles and related law (court cases) is made possible by lawyers who are sensitized towards the relevant social conflicts and problems, which are not dealt with by the existing legal machine (again, the abandonment of marital rape exemption is a good and effective illustration). Emergent law, in short, is a translation machine, which can effectively conduct the desires to challenge the dominant social forces:

> *In emergent law, desire, justice and schizo law replace molar law, and emergent law develops as a practice of desire, justice and the creation of concepts of legality. Emergent law is a machine of desire and justice.*[29]

But Capeheart and Milovanovic warn us: Not having any monolithic formula may mean the possibility of having unintentionally "negative" consequences.[30] Also, as Sutton and Martin-Jones point out, reterritorialization always happens, especially when deterritorialization and the desire that drives it are not strong or powerful enough.

In other words, Deleuzean justice, unlike Rawlsian theory, does not aim at controlling desire and building a set of procedures. Deleuzean justice is also a kind of becoming, created by repetitive and multiple lines of desire and social institutions (social control and law). So, to activate and liberate desires is to repetitively produce different lines of flight, that can then activate deterritorizations, which then destabilize and challenge the existing layers and differences (and related discrimination). In the words of Lefebvre, Deleuzean desire manufactures non-stop the creativity and innovativity of law, and explains why and how new rights are invented.[31] In the case of domestic violence law reform in Hong Kong, a Deleuzean will argue that the existing desires (for example, the introduction of court-mandated counseling and recognition of same-sex couples) have successfully initiated the desire to revise and improve the existing social cooperation (between institutions), for example, the better possible allocation of social service resources. In short, the conflict, generated by a clash of different desires, is not negative in itself but productive. Nonetheless, what Deleuzean theory does not do is to provide a possible step-by-step formula to create positive and productive changes in the process of destabilization and constructing a

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[29] Jamie Murray, *Deleuze & Guattari: Emergent Law*, Routledge (New York), at 149 (2013).

[30] See Capeheart & Milovanovic, fn. 11 at 135.

[31] Alexandre Lefebvre, *The Image of Law: Deleuze, Bergson, Spinoza*, Stanford University Press (Stanford), (2008).

positive strategy, and there may be negative consequences. Of course, as Deleuzeans also argue, it is impossible to devise a one-for-all solution, because justice is only a becoming, and any wrong will can be corrected as desires will keep on arising and changes/revisions will appear.

III. TRANSPLANTING FOREIGN CONCEPTS INTO HONG KONG CULTURE: WHERE ARE THE SIMULARITIES?

In order to transplant into Hong Kong a Deleuzean perspective on justice — philosophical products reproduced in a Euro-American socio-political-cultural matrix-, a machine by which the importation can be carried out effectively and smoothly must be first produced.[32] The machine of transcultural simularity, developed by Hsiao-hung Chang, can offer us an efficient and functional paradigm to conduct an effective transplantation.

Chang, in *Fake Globalization*, challenges the dichotomy of real/original and fake/replica, and points out that an authentic original culture is merely a myth, and in order to facilitate transplantation, similarities should be located between cultures, *i.e.* simulacra. The dialogue and exchange between cultures can be termed the similarity — *i.e.* similarities and simulations.

Chang, in this context, produces the machine of transcultural similarity,[33] by which osmosis between cultures can be proactively conducted. How does the infiltration occur? The key word, the author has consistently argued, is "matching point" — we need to locate and construct the points where a transcultural sim*u*larity machine can function to initiate infiltration.[34] Thus, in the context of anti-domestic violence law, it is necessary need to find out the matching points between the Deleuzean concept of justice and *Han*-Chinese traditional culture. In order to locate and construct these matching points, it is necessary to understand how traditional *Han*-Chinese culture engineers its perspectives on time/history and justice. The traditional *Han-Chinese* concept is a hybridity of different schools of thought, and the author will now place the focus on (Orthodox) Confucianism, (Orthodox) Daoism and Buddhism — which are considered mainstream systems in *Han*-Chinese traditional culture.[35]

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[32] Any transplantation of law without being sensitive towards the possible conflict of cultures can lead to failure and/or postcolonial violence. That is why I argue that a very in-depth investigation of relevant cultural contexts needs to be carried out before any transplantation of law. See CHIU, fn. 4.

[33] CHANG Hsiao-hung, 假全球化 (*Fake Globalization*), Unitas Pubishing Co. (Taipei), at 20, 68, 73 (2007).

[34] See CHIU, fn. 4.

[35] CHIU Man-chung, 边缘的和谐反抗混杂—香港性/别公义法律论述 (*A Hybrid of Harmony and Resistance at the Margin: Legal Discourse of Gender/Sexual Justice in Hong Kong, PR China*), 35 Journal of Social Sciences 179 (2008).

IV. *YI* AND EQUALITY = JUSTICE IN HAN-CHINESE CULTURE?

In contemporary *Han*-Chinese language, justice is translated as *yi* (义). However, *yi*, starts not with equality but with harmony.[36] This is why Duan Lin says: in ancient China, there was no justice (which starts with equality), but *yi* (that emphasizes harmony and appropriateness).[37] In this section, the author will investigate if Lin's view is valid.

This discussion starts with (Orthodox) Daoism. According to Lao Zi, the philosopher who is believed to be the founder of (Orthodox) Daoism, *Dao*, which is the source and reference of everything,[38] is the universal metaphysics.[39] *Dao* is "nothing" (无), as if the universe is "something" (有) — What he meant was, *Dao* is fluid and multiple. Put simply, *Dao* does not have any essentiality. As Zhuang Zi said, Dao is able to accommodate diversified discourses where an individual is posited.[40] He makes his points explicitly:

> *Heaven, Earth, and I were produced together, and all things and I are one.*[41] (*天地与我并生，而万物与我为一*)

Since *Dao* determines and decides, action-less, *i.e.* "letting things work to their perfection naturally," is the thematic principle of Lao Zi's ideology.[42] (Orthodox) Daoists generally believed that *yi,* as a human product, violates the principle of action-less and thus *Dao*.[43] Daoism also believes that the lesser the desire we have, the better the universe will be:

> *In a little state with a small population, I would so order it, that, though there were machinenary ten times and a hundred times effective, there should be no employment of them. I would make the people, cherish lives and not migrate elsewhere. Though they had boats and carriages, they should have no occasion to ride in them; though they had buff*

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[36] HU Shuijun, 法律的政治分析 (*Political Analysis of Law*), Peking University Press (Beijing), at 12 (2005); JIANG Shan, 人际同构的法哲学 (*Jurisprudence of InterpersonalIsomorphistic-structuralism*), China University of Political Science and Law (Bejing), at 38 (2002).

[37] LIN Duan, 中国传统法律文化："卡迪审判"或"第三领域"? (*The Chinese Traditional Legal Culture: Kadi Justice or the Third Realm?*), 6 中西法律传统 (Sino-Western Legal Tradition) 425, 437 (2007).

[38] WANG Zeying, 自然与道德 (*Nature and Morality*), Hunan University Press (Changsha), at 98 (2003); WANG Qingjie, 解释学、海德格尔与儒道今释 (*Heidegger and a Hermeneutical Interpretation of Confucianism and Daoism*), Renmin University Press (Beijing), at 149 (2004).

[39] NG Yu-kwan, 老庄哲学的现代析论 (*Contemporary Analysis of Lao-Chuang Philosophy*), Winchin (Taipei), at 2 (1998).

[40] Chad Hansen, *A Tao of Tao in Chuang-tzu*, in Victor Mair, *Experimental Essays on Chuang-tzu*, University of Hawaii Press (Honolulu), (1983).

[41] ZHUANG Zi, *Zhuang Zi* 《庄子・齐物论》, Chapter 2, at http://nothingistic.org/library/chuangtzu/chuang03.html (last visited May 14, 2006).

[42] John Koller, *Asian Philosophies* (4th edition), Prentice Hall (New Jersey), at 288 (2002).

[43] See WANG Zeying, fn. 38 at 23, 43. According to Lao Zi, Dao is the origin and reference of everything, including human, society and culture. For details, please see WANG Zeying, fn. 38 at 98 & WANG Qingjie, fn. 38 at 149. However, Guu-ying Chen has another interpretation; he suggests that *Lao Zi* does not object to *Yi*, provided that it is derived from *Dao*. Please see CHEN Guu-ying, *The Renewal of the Taoist Tradition in Contemporary World*, 37 Philosophical Forum 136 (2001).

coats and sharp weapons, they should have no occasion to don or use them. I would make the people return to the use of knotted cords (*instead of the written characters*)*. They should think their* (*coarse*) *food sweet, their* (*plain*) *clothes beautiful, their* (*poor*) *dwellings comfortable, and their habitude satisfying. There should be a neighbouring state within sight. The sounds of crowing cocks and barking dogs should be heard around. But the people of the neighbouring states would not visit each other all their lives.* (*trans., 小国寡民，使有什佰之器而不用，使民重死而不远徙，虽有舟与，无所乘之。虽有甲兵，无所陈之。使民复结绳而用之。甘其食，美其服，安其居，乐其俗，邻国相望，鸡，狗之声相闻，民至老死不相往来。*)[44]

In fact, Daoists advocate that morality should aim at diminishing all kinds of desire:

He who devotes himself to learning (*seeks*) *from day to day to increase* (*his knowledge*)*; he who devotes himself to the Tao* [*i.e. Dao*] (*seeks*) *from day to day to diminish* (*his doing*)*. He diminishes it and again diminishes it, till he arrives at doing nothing* (*on purpose*)*. Having arrived at this point of non-action, there is nothing which he does not do.* (*trans., 为学日益，为道日损，损之又损，以至于无为，无为而无不为。*)[45]

(Orthodox) Confucianism, produced by Confucius and Mencius during *Zhou* (周) Dynasty (BC 1066–BC 221), advocates the vitality of *ren*, *i.e.* good being and benevolence.[46] It is thus not surprising that Confucians advocate the importance of "personality perfection" and "morality enhancement,"[47] and are eager to formulate and engineer rules, regulations and guidelines to control human behavior.

In (Orthodox) Confucianism, desire does not have any negative meaning or connotation: "Riches and power are every man's desire. If attaining them is not by legitimate means, then do not accept them."[48] (trans., 富与贵，是人之所欲也；不以其道得之，不处也。) Therefore, it is the governmental liability and responsibility to fulfill the desire of population: "it is simply to collect for them what they like, and not to lay on them what they dislike."[49] (trans., 所欲与之聚之，所恶勿施尔也。) However, it has to be conducted appropriately, *i.e.* in the way of *yi*:[50] "*Yi* is people's correct road."[51] (trans.,

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[44] LAO Tsu, translated by. J. Legge, *Tao De Ching* (1891), at http://www.sacred-texts.com/tao/taote.htm (last visited Apr. 8, 2013).

[45] Id. at Chapter 48.

[46] Please note that *Ren* was not invented by Confucians; it is said to have existed before Confucius' time. However, it was Confucius who transformed it into a virtue achievable by man (*i.e.* human beings), broadened it to become a comprehensive virtue covering all individual Confucian virtues, and finally elevated it to become the centre of his philosophy. [D W Ling, *Confucianism and English Common Law*, 1(1) Journal of Chinese and Comparative Law 72, 73 (1995).]

[47] See JIANG, fn. 36 at 55.

[48] *The Analects of Confucius*, Chapter 4, at http://www.chinese-wiki.com/Verse_5-Analects_of_Confucius_Chapter_4 (last visited Apr. 8, 2013).

[49] *Mencius*, at Chapter 6, at http://ctext.org/mengzi/li-lou-i (last visited Apr. 8, 2013).

[50] XU Keqian, 先秦儒家关于"欲"的理论 (*Pre-Qin Confucian Theory of Desire*), 5 中州学刊 (Academic Journal of Zhongzhou) 166, 168 (2006).

[51] *Mencius*, Chapter 4A, at http://www.tianyabook.com/gudian/mengzi.htm (last visited Mar. 22, 2011).

义，人之正路也。) *Yi* always assumes a vital role: "The superior man considers *yi* as the most important."[52] (trans., 君子义以为上。) Both Confucius and Mencius advocate that *yi*, together with *ren*, produce and maintain a harmonious hierarchical interpersonal network.[53] The two most important elements of *yi*, in the machine of *ren*, are *zhong* (忠) and *shu* (恕): *Zhong* is "a matter of going on to establish other people because one seeks to establish oneself, and of bringing other people to perfection because one desires perfection for oneself."[54] (trans., 己欲立而立人，己欲达而达人), *i.e.* faithfulness; while *shu* is "[w]hat you do not wish for yourself, do not do to others."[55] (trans., 己所不欲，勿施于人), *i.e.* forbearance. *Yi*, hence, in short, goes beyond self/others binarism and means an extension of oneself to others,[56] — there are others in oneself, and oneself in others:[57]

> *People all have things that they will not bear. To extend this reaction to that which they will bear is benevolence. People all have things that they will not do. To extend this reaction to that which they will do is righteousness* [*i.e. Yi*].[58] (*trans., 人皆有所不忍，达之于其所忍，仁也；人皆有所不为，达之于其所为，义也。*)

Xun Zi, another Confucian, also alleged that desire could not be suppressed or neglected. However, he pointed out that *li* and law were the best machines to control the conflict originating from desire.[59]

(Mahayana) Buddhism constructs a more detailed analysis of desire. According to Chaohwei Shih, there are five basic desires: sight, sound, smell, taste and touch. These desires correspond with the five *vijnana*/consciousnesses: visual perception, auditory perception, olfactory perception, gustatory perception and tactile perception (*i.e.* the five senses). According to *vijnanamatra*, there are three other consciousnesses: *mano-vijnana* (mind-consciousness), *mana-vijnana* (ego-consciousness) and *alaya-vijnana*. *Mano-vijnana* is responsible for "mental function of perception, emotion, deliberation and volition."[60]

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[52] *The Analects of Confucius,* Chapter 17, at http://www.ccnt.com.cn/wisdom/rujia/lunyu/lunyu3.htm (last visited Mar. 22, 2011).

[53] *Tso Commentary to Spring and Autumn Annals,* Book 2, at http://www.guoxue.com/jinbu/13jing/cqzz/cqzz_ml.htm (latst visited Mar. 22, 2011); see also ZHU Yiting, 与孔子对话 (Confucius' Dialogue), Academia Press (Shanghai), at 24 (2005). For the definition and discussion of *ren* and *li*, please see CHIU Man-chung, 色/法后殖民汉/华人性欲政治与法律论述 (*Eros of Law — Postcolonial Han-Chinese Erotic Politics and Legal Discourse*), Xin Hua (Hong Kong), (2006).

[54] *The Analects of Confucius*, Chapter 6, at http://www.wfu.edu/~moran/zhexuejialu/Analects_PEM.html (last visited Mar. 22, 2011).

[55] *The Analects of Confucius*, Chapter 12, at http://plato.stanford.edu/entries/confucius/ (last visited March 22, 2011).

[56] ZHU Zi, 中庸章句集注 (*Zhu Zi's Explanation to Zhong* Yong), at http://www.millionbook.net/gd/z/zhuxi/000/001.htm (last visited Mar. 22, 2011).

[57] See WANG, fn. 38 at 246.

[58] *Mencius*, Chapter 14, at http://faculty.vassar.edu/brvannor/mengzi.html (last visited Mar. 22, 2011).

[59] *Xunzi*, Chapter 19, at http://ctext.org/xunzi/li-lun (last visited Apr. 28, 2013).

[60] Charles Muller (Takawa Shun'ei), *Living Yogacara: An Introduction to Consciousness-only Buddhism*, Wisdom (Boston), at 13 (2009).

Mana-vijnana is responsible for the genesis of the idea of personhood, hence assuming the existence of an actual self. *Alaya-vijnana*, being the storehouse of *bija* (the *karmic* seeds), reproduces and sustains the activities of the other seven consciousnesses,[61] as *alaya-vijnana* is a subliminal reservoir of memories, habits, tendencies and future possibilities."[62]

The interaction and the performances of the eight *vijnana* form a loop of re-production and constitute the (virtual) subjectivity of humans. The interactive production of the body and the world — the *karma* machine, the universal law of cause and effect — continuously produces/depletes *bija*, the carrier of desire, and maintains alaya-vijnana. Please note: *karma* cannot and does not totally predetermine or predecide what is going to happen in forthcoming durations, as *karma* always creates new *bija*, thus an unpredictable interaction between humans; and unforeseeable interactions between humans and the universe are possible. According to *vijnanamatra*, manifest activity (*i.e. dharma*, for example, enactment of a new law), would "perfume" (熏习) or affect the nature of an existing and forthcoming set of *bija*.[63] If law can perfume *bija*, the perfumed bija can create new *bija* of a similar kind, and new *bija* will then create new law (new *dharma*), which is similar (perhaps not identical though) to the nature of the law of the preceding moment. In short, the making of a new law can turn negative/good desire into positive/bad desire: "[d]epending on the seeds of good or evil that been already been planted, various real and concrete good and evil activities occur."[64]

The *karma* machine hence creates one of the most important Buddhist ideologies, "Dependant-arising of *Alaya-vijnana*" (赖耶缘起). It advocates that a fixed and universal essentiality is merely a virtuality, re-created and renewed by the non-stop *karma* machine and *bija* exercise (for example, consequences of perfume) within a forever-changing set of connections between desire and social force, which itself can be a (new) product of *bija* activity.

This line of argument devises and produces two other important Buddhist principles: (1) "non-Insistence" (诸法无我) or "self-less-ness (*Anātman*)," "self" in this context meaning not only "I," but metaphysicality;[65] and (2) "non-permanence" (诸行无常): since human body and subjectivity cannot be predetermined/predecided and can be changed, due to the *karma* machine, *bija* exercise and perfume, there is no transcendental

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[61] YANG Wai-zhong (杨维中), 中国佛教心性论研究 (*A Research of the Nature of Mind of Chinese Buddhism*), Religious Culture Press (Beijing), at 288 (2007).

[62] JIANG Tao, *Contexts and Dialogue: Yogacara Buddhism and Modern Psychology on the Subliminal Mind,* University of Hawaii Press (Honolulu), at 8 (2006).

[63] Id. at 70.

[64] Id. at 37.

[65] CHAN Stephen, *Buddhism and Human Rights,* in Rhona Smith & Christien Van Den Anker, *Human Rights*, Hodder Arnold (Spain), at 25 (2005). According to Jiang, selflessness does not mean solely no self, but not self also. Buddhism, in short, opposes all kinds of metaphysicality. (See JIANG, fn. 62.)

metaphysicality, eternality and essentiality in the universe. In other words, since the composition of *bija* goes on changing, it is impossible to have any monolithic subjectivity/identity; and if the universe and the activities are only and partly psychological products, initiated by a set of *bija* and ending up with the production of another cluster of *bija*, any metanarrative is only a virtuality.

The three principles, "dependant-arising of *Alaya-vijnana*," "non-Insistence" and "non-permanence," produce, develop and advocate the Buddhist theory of *justice, i.e. equality, since everything is not fixed, every identity/subjectivity is not* monolithic, thus any kind of hierarchy cannot exist forever and becomes meaningless:

> *Within my Dhamma, the 4 clans — (1) priestly, (2) military and ruling, (3) farmers and traders, and (4) serfs…would all drop their original titles and are called "Shih" students of Buddha.*[66]

Juxtaposing the Deleuzean theory of justice and traditional *Han*-Chinese cultural concept of *yi*, the transcultural similarities can be located: besides Daoism, Confucianism and Buddhism can both be effective platforms for transplantation. It seems (Orthodox) Confucianism, Buddhist philosophy and Deleuzean theory are not compatible with each other: Confucianism, though recognizing that desire is not negative in nature, argues that desire must be regulated, while Buddhism assumes that desires could bring about negative effects and thus also have to be brought under control; however, Deleuze believes that it is good to have new and emerging desires. In fact, all three theorems share a number of commonalities, *i.e.* matching points: (1) desires exist, and we have to accept each other's desire — that is why (Orthodox) Confucianism developed the principles of *zhong* and *shu,* Buddhists advocate equality and Deleuzeans emphasize the importance of desire release; and (2) law is vital — Xun Zi of course agrees with this, Buddhism believes that law, a product of *bija*/desire, can help control (or even eliminate) negative desire, while Deleuzean theory believes that law is a product of reterritorialization; aiming to fix desire. Of course, this attempt is doomed to failure as new desire will foster deterritorialization and reterritorialization, which means existing laws can be repealed, and new laws can arise via an emergent law machine. The respective perspectives of Confucianism, Buddhism and Deleuzeanism on law and desire therefore form an efficient channel whereby transcultural sim*u*larity can take place.

CONCLUSION: IMPLICATIONS FOR MAINLAND CHINESE LEGAL DEVELOPMENT

This article does not propose that "Hong Kong Culture = traditional *Han*-Chinese culture = Confucianism + Daoism + Buddhism." If a traditional cultural concept is

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[66] Taisho Tripitaka Editorial Committee, 大正新修大藏经 (*Vijnaptimatratasiddhi-sastra, Taisho Tripitaka*), 22 新文丰 (XinWenFeng) (Taipei), (1985).

virtuality and becoming, as argued by Deleuze, then an authentic original notion of culture simply does not exist. Even if transcultural sim*u*larity is proactively created and/or located, and transplantation can be carried out smoothly, whether the new concept/law can reach its intended effect cannot be predicted or guaranteed, transcultural similarity only promises the possibility of successful transplantation; it cannot guarantee the effect and outcome.[67] People may also misunderstand that what Deleuzean philosophy is producing is hegemony where solely his perspective becomes the metanarrative. This accusation is not possible and illogical as deterritorialization will render any construction of hegemony (*i.e.* including Deleuzean reterritorialization) impossible.

However, there is one remaining question: if (Orthodox) Confucianism and Buddhism can be used as a philosophical paradigm for transplanting and producing justice, why do we still need to import foreign support instead of simply utilizing the materials already at out disposal? Why don't we simply utilize the materials we already have? The answer is: (Orthodox) Confucianism Buddhism rarely used the *karma* machine to investigate how culture and tradition work contemporaneously. A Deleuzean perspective is therefore needed to sensitize Confucianism and Buddhist theory so they can be used in critically deterritorializing the connections between desire, justice and law. And, as Guu-ying Chen sharply observes, there is a lack of critical perspective within traditional *Han*-Chinese culture.[68] In other words, there is no philosophical perspective of developing a strategy that challenges injustice and challenges the definition of justice. Since (Orthodox) Confucianism has been developed in the discourse of harmony, where conflicts are devalued, how can they develop an effective strategy for challenging injustice? While Confucianism naturalizes harmonious hierarchical social structures and Buddhism emphasizes equality, have they ever destabilized inequality and produced justice? Transplanting a Deleuzean theory of justice, especially the concept of emergent law, can certainly help connect Confucian theory of *yi* Buddhist equality and facilitate the machine of perfume with the possible development and creation of justice in Hong Kong.

Putting the focus on future possible legal devices to control domestic violence in mainland China — like Hong Kong, mainland China is dominated by the *Han*[69] — it can be found that besides two provisions in the Criminal Law of China which prohibit people from abusing their marital partners, and one similar article under the Marriage

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[67] See CHIU, fn. 4.

[68] CHEN Guu-ying, 尼采新论 (*Nietzsche: A New Perspective*), Commercial Press (Hong Kong), at 1 (1988).

[69] According to the Consensus conducted in 2007, the population of *Han people* in Chinese mainland is 1,182,950,000, 90.56% of the total population.

Law,[70] there is an absence of law which specially deals with domestic violence. In 2010, the Anti-Domestic Violence Network drafted the "Law of the People's Republic of China on the Prevention and Punishment of Domestic Violence — A Draft Proposal" (hereafter "Draft"). The Draft, similar to the 2008 amendment introduced in Hong Kong, suggests the introduction of court orders in relation to non-molestation (Art. 36), exclusion (Art. 54), and court-mandated counseling (Art. 22). But the Draft is more ambitious and aggressive. It not only concerns the legal status of victim shelters (Art. 20) but also proposes setting up a compulsory reporting system and making educational institutions and medical service providers responsible (Art. 31 and 32). Besides, the Draft also suggests more severe penalties for domestic violence-related criminal offences (Part3). However, can implementation of the law, without the evaluation of a sophisticated perspective on justice, help to solve the problem of domestic violence and reveal the suppression of the powerless? What is justice? Can we use the Deleuzean concept of justice? What is the role of tradition in law? It seems that the issue of whether law can be an effective means to control domestic violence in mainland China still needs to be explored and discussed.

[70] Art. 260 of PRC Criminal Law states that where *vicious* abuse of family members amounts to a criminal offence, the offender may be subjected to two to seven years imprisonment. This is the so-called "offence of (domestic) maltreatment". Art. 182 of the PRC Marriage Law also includes the same stipulation. "Vicious" in this context means that the maltreatment (1) has an immoral intention; or (2) is conducted in a grave manner; or (3) continues for a long period of time; or (4) is imposed on a minor, an elderly person, or a pregnant woman. "Maltreatment" refers to physical and/or psychological abuse. It therefore seems that spousal abuse would not be considered as vicious maltreatment. For details, please see CHIU, fn. 53.