

## **Confucianism and the Problem of Human Rights**

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### **Opposing Sides of the Human Rights Debate**

The human rights debate has typically been framed as an argument between opposing sides: Asia vs. the West, “Asian values” vs. “Western values,” and specifically Eastern (Confucian) Communitarianism vs. Western Individualism. In Asia, according to this view, the “rights of the community” are emphasized over individual, “political and civil” rights. In addition, defenders of “Asian values” accuse Western liberal democracies of pursuing an oppressive, colonialist agenda, threatening the viability of communities-in-transformation by the one-sided and single-minded assertion of selfish individual needs.

This debate has assumed a series of associations: Asian, Confucian, communitarian, authoritarian, and statist, on the one hand; Western, Christian, individualist, and liberal-democratic, on the other. I would like to argue in this paper that these are false associations, focusing on the Asian side of the equation, and that Asian, and specifically Confucian, values are a powerful, universal resource for a profound affirmation of human freedom expressed in both individual and communitarian terms. Far from asserting the hegemony of the state, community, or family over and against individuals, Confucianism supports human liberation for individuals-in-community. Western liberal democracy is not the only model for universal human rights: I will argue that Confucianism can and should be a universal ethic of human liberation. The goal of personal freedom is not uniquely Western, and it is not anti-Confucian. Self-determination is as much a Confucian value as it is a Western value, and the West has a great deal to learn from the East about self-cultivation in the context of family and community life. Embedded in the Confucian classics, as well as historically in specific Confucian institutions, is a profound idea of individual possibility, creativity, and achievement, in some ways more dynamic and

integrative than Western values, which see individuals and communities in conflict and opposition.

Part of the problem in the debate over human rights is attributable to the definition of “rights,” which individuals are believed to “have,” “assert,” or “share,” or to “be granted” or “be denied.” There are often disagreements as to what rights should be included in the enumeration of rights, as well as disagreements about the role of social institutions (family, community, and state) which may either guarantee or infringe those rights. Later, I will return to the question of how the various rights are typically grouped and organized, but “human rights” can be seen to include any or all of the following: the rights of conviction (freedom of religion or of opinion), the rights of speech (freedom of expression and dissent), political rights including the freedom of assembly and the right to vote, familial rights including the right to marry and bear children (or freedom from constraint or forced marriage), juridical rights including the right to due process (freedom from arbitrary arrest, torture, and imprisonment without trial), social rights (including the right to an education, the right to work and fair wages, the right to a home, and the right to adequate sanitation and health care), and communal rights (such as the right to self-determination of minority ethnic groups in maintaining their artistic, linguistic, religious, and cultural traditions). For the moment, let us think of “human rights” in all of these senses, from “personal” to “communal,” as I will argue that Confucianism supports all human rights, including individual human rights, and not just those rights associated with the family, community, and state.

The idea that Confucianism supports human rights is not widely shared, and there are many who would argue – and have argued – that Confucianism does just the opposite, supporting the power of the state or of the family over against individual freedom, and sustaining the power of males over females in its economic and cultural forms. Chinese intellectuals of the New Culture and May 4<sup>th</sup> movements (in the late Qing and early Republican period) criticized Confucianism as the product of a feudal age. Chen Duxiu, a founder of the Communist Party, contrasted Confucian mores with independence and personal choice, and saw Confucianism as China’s great oppressive force. He sympathized in particular with “sons,” “younger brothers,” “daughters,” and “wives,” who have suffered under the tyrannical institutions of the Confucian family and state (de Bary, 1960, pp. 153-156). A leading feminist of the same period, He Zhen, stated that Confucianism “promotes male selfishness” and “deprives women of their natural rights;” Confucianism justifies “polygamy [for men] and chastity [for women] ... driving women to their deaths with empty talk of virtue ... [and] condemning women to the hells” (He, pp. 7-13). Lu Xiulian, now the Vice President of the Republic of China on Taiwan, has stated this same view more recently in a whole-scale condemnation of Confucianism for centuries of oppressive conditions for women (Lu, 1990).

In contemporary China, Confucianism is employed as an ideology that supports the rights of the community (including the rights of the state) against individual self-interest. In contrast to the anti-Confucian stance of the Chinese Communist Party through most of its history, the new regime, shaped by Deng Xiaoping and carried forth by his protégé Jiang Zemin, has embraced Confucianism as an indigenous defense against the hegemonic influence of the West, and in particular against the accusations of human rights abuses voiced by Western governments (Lam, 1995). This is not simply a communist argument: The current leadership of the People's Republic of China is following the footsteps of Taiwan's Jiang Jieshi and Singapore's Lee Kwan-yu in defining Confucianism as benevolent authoritarianism. The use of Confucianism as an apology for states' rights over individual freedom is the ironic byproduct of the drive to modernization, which affirms Western techniques but rejects Western "spiritual pollution."

It is not surprising, then, that Confucianism should be seen in opposition to individual human rights, as this was the view of the early reformers, who rejected Confucianism because of its oppressive nature, as well as modern authoritarian states, which embrace Confucianism to justify limits upon individual freedom for the sake of social progress and economic efficiency.

In my view, this reading of Confucianism is itself historically conditioned by China's emergence as a world power, and its self-conscious efforts to define itself in opposition to the economically and technologically advanced powers of the West. The definition of Confucianism as authoritarian – whether that authoritarianism is "oppressive" or "benevolent" – is a product of modern history, and though it is true that a tendency to authoritarian abuses can be found in the Confucian tradition, it is not definitive of that tradition. In fact, Confucianism, both in its essence and in its historical manifestations, is a force of human liberation, whether communal or individual, and has been a prophetic voice on behalf of personal freedom and human rights throughout its long history.

Again, I am not alone in interpreting Confucianism in this light. It is a view shared by some of China's greatest modern intellectuals: Kang Youwei, Liang Qichao (1873-1929), Hu Shi (1891-1962), Mou Zongsan, up to Tu Weiming in the present day (Zarrow, 1998, pp. 209-233; Tu, 1960, pp. 297-307). All of these intellectuals deny that Confucianism is authoritarian at its core, but rather see Confucianism as a profound resource for the attainment of individual freedom in the context of the positive construction of a wider community identity. Historically, this prophetic voice has rarely been empowered by state recognition, and thus the Confucian tradition shares with the prophets of Biblical religions a role as social critic speaking from the cultural core, though often at the political margins. It is false to associate Confucianism with the interests of the state, as Confucianism has for most of its history been a source of gentle

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remonstration and principled argument against the worst abuses of state's rights or political authoritarianism.

### Human Rights and Their Underlying Principles

Where is the conflict between “East” and “West” in the human rights arena? Clearly, it is not in the definition of rights themselves, where there is broad universal agreement. Most states are signatories to the 1948 Universal Declaration of Human Rights, the 1979 Convention on the Protection of Women's Human Rights, and other protocols. Where disagreements arise is in the principles underlying these standards: the meaning of “rights” as a philosophical idea, the cultural understanding of human identity, and the relationship between individuals and communities. These disagreements are profound and important, as they affect the implementation of human rights protocols when conflicts arise between human rights and national interests.

Some argue that as long as there is agreement about the enumeration of rights, the underlying principles can differ, preserving the cultural autonomy and local understandings of Western and Asian states.<sup>1</sup> But I believe that some mutual agreement on underlying principles is crucial if human rights are to be recognized on an international basis. Both Western and Eastern states can contribute principles from their respective cultural traditions to the on-going dialogue on human rights. I believe that Confucianism can contribute greatly to this mutual understanding, not by emphasizing the community over and against the individual, but by providing a positive model for their interaction, which includes, at times, the defense of individual freedoms against the oppressive tendencies of the family or state.

For example, one area where there is profound disagreement between the United States and the PRC is in the different emphases given to “first generation” and “second generation” human rights. The U.S. favors “first generation” human rights, which are translated into Chinese as “*renquan*”: freedom of thought, freedom of speech, freedom of expression, freedom of assembly, freedom of choice. China consistently argues in human rights debates for the “second generation” human rights, sometimes described as “*minquan*”<sup>2</sup>: the right to work and receive fair wages, the protection of the family, adequate standards of living, rights to education and health care, rights to political, social, economic, and cultural development, and rights to the expression of ethnic and religious identities. Again, it is not the case that states disagree on these rights, but they disagree (at least rhetorically) on their prioritization, and this arises from the different principles underlying cultural understandings of the self and the self's relationship to other selves in their families and communities.

Looking at the Western values underlying human rights, we can see why “first generation” rights are given so much emphasis. These include the radical autonomy of the individual, the soul in a transcendent relationship vis-à-vis the

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world, the prioritizing of the individual over the family, and the prioritizing of the individual over the state. The West defines human rights as “freedom from” oppressive tendencies of the family and state, and grounds human rights in the fundamental equality of all persons. Thus, human rights are equated with human liberation – liberation of the autonomous individual from the restrictive community.

Are these values necessary for human rights? If so, then it will be difficult to imagine that Asian nation-states will be able to subscribe to the “first generation” rights given so much importance in the West. A number of scholars have argued that the language of human rights depends upon Western individualism, which is conceptually absent from the Confucian tradition<sup>3</sup>. Indeed, we find no equivalents in Classical Chinese to any of the following concepts so basic to Western human rights discourse: “freedom,” “liberty,” “individual,” “autonomy,” “rights,” “choice,” “equality,” and “dignity.” The Chinese translations of these terms all have modern origins, most dating to the last hundred years, and all have a distinctly Western ring. Often, Chinese evaluate these terms in a negative light.

The absence of individualism as a philosophical concept leads some scholars to conclude that the very language of “rights” should be abandoned in inter-cultural moral discourse (Rosemont, 1960, pp. 54-56). As long as the language of “rights” persists, they argue, there will be no possibility of resolving moral conflicts, either within or between nation-states. In Henry Rosemont’s words, “The conceptual framework of rights, within which human beings are seen as free, rationally choosing autonomous individuals, is at the heart of the problem... Neither the Confucian tradition nor contemporary American society is best served by scholars examining the Confucian corpus for precursors of the concept of human rights. ~~Much more will be gained ... by seeing the Confucian vision as an *alternative* to ours, and one that may, with emendations, be viable for the ‘global village’ our planet is becoming” (Ibid, pp. 57, 60).~~

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I do not believe, with Rosemont, that it is necessary for us to abandon the language of “rights” for productive dialogue to go forward, but I agree strongly with his suggestion that we look to Confucianism for new perspectives on the debate (Rosemont, 1988, pp. 167-182). Specifically, we on the Western side may have to rethink *individualism* as the conceptual separation between persons and the communities in which they live. Talking about rights in terms of a fundamental opposition between the individual and the community is counter-productive to intercultural dialogue. The concept of rights does not depend upon Western individualism, and it is especially counterproductive to the development of “second-generation” rights protocols to insist upon a Western-individualist foundation for global human rights.

Turning to the Confucian values underlying human rights discourse, we see a very different understanding of the individual in relation to his or her family

and community. The Confucian self is a “center of relationships,” living within the world.<sup>4</sup> Individual identity is defined in relation to the family, the community, and the state. For the Confucian tradition, human rights are best defined not as “freedom from” the restraints of community life, but “freedom for” participation in the totality of human relationships. Thus, human rights are associated with human duties. Individuals are placed in a relationship of integration with others on the basis of the rights and responsibilities of persons within their communities.

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Does this mean that the individual “disappears” in the cultural collectivity, sacrificed to the interests of the group? This is a common Western misconception of the Confucian understanding of the self. But classical Confucianism does not in any way diminish the importance of the self in the cultivation of moral ideals – in fact, the self is central, and is the starting point for any possibility of human moral improvement. This is stated simply but profoundly in the *Great Learning (Daxue)*<sup>5</sup>, moving from the cultivation of reason and knowledge to the rectification of the self and the state. In the Confucian tradition, everything of value and importance begins with the self. But clearly this is not the Western self, abstracted from the community in which it grows and develops. Rather, it is a self defined by those relationships, developing in reciprocal interaction with others. Self and community are mutually produced, not mutually opposed.

### Classical Confucian Principles for Human Rights

The integration of self and community is expressed in the basic teachings of classical Confucianism. First, we can find the seeds of human rights in the Mencian idea of *ren* or “human goodness.” For Mencius, *ren* is the defining mark of humanity, to the extent that someone lacking in *ren* is literally “not a person.”<sup>6</sup> *Ren* is the inner capacity for moral development, and is often translated into English as “benevolence,” “kindness,” “love,” and so on. Western interpreters often think of *ren* as “internal” and therefore “private,” but it is a thoroughly communitarian idea. The character “*ren*” means “co-humanity,” that is, the common feeling shared among all humans as moral agents, and Mencius’ insistence that *ren* is the identifying quality of a human being means that the essence of personal identity is the self’s full participation in a range of human relationships. *Ren* is important, essential to being human; therefore, it is humans’ right to develop and express *ren* to their fullest capacity.

*Ren* is a very important idea for the development of the Confucian basis for human rights. Mencius insisted that moral sensitivity, the sensitivity that distinguishes humans from all other species, is found within persons, not imposed from outside. This is a profound statement of individual human dignity. My humanity originates from myself; it is not a “gift” bestowed upon me by my

parents or by the state. So, the Communist idea that rights are bestowed by the state is fundamentally anti-Confucian.

A similar argument can be made about the other key concept of the classical Confucian tradition: *li*. *Li* is translated as “rites” but includes all of the civilizing patterns of speech and behavior that define individual existence in relation to other persons. *Li* goes much further than the Western idea of law; *li* is not an “external restraint,” but the outward expression of the moral sensitivity of *ren*, and involves every aspect of the self in its moral development. Classical Confucianism sees *li* as a positive virtue encouraging the individual’s full participation in his or her wider community. *Li* requires that persons have a place, an arena of moral expression, and again it is a violation of their human rights to deprive them of that place. In this sense, we can define *li* as the situated meaning of *ren*. It could be said that *li* gives structure to the more inchoate, more volatile feelings of *ren*. The natural feelings and desires that make me a human being are interactive, and the *li* give me the words and behaviors that allow that human interaction to take place in a way that is productive and fulfilling for all persons.

It is a mistake to interpret *li* as coercive. This is very un-Confucian, and in fact the Confucian tradition has always been careful to distinguish the moral guidelines of *li* from the coercive and punitive measures of *fa* (law) or *xing* (punishment). Ultimately, the *li* are internalized. They are as much a part of myself as are the feelings of benevolence and humanity defined by *ren*. So, the expression of *li* is found in the participation of individuals in community, not the imposition of community needs over against individual desires. To put it another way, it is a natural human desire to want to participate in family and community; the *li* are simply the means to do so.

The continuum between *ren* and *li*, then, is not the Western continuum of private and public. *Ren* is as much public as it is private, because it defines humanity in terms of the interpersonal orientation of the self. The *li* are as much private as they are public, as they are the means of expression of our inner feelings and desires. The private/public dichotomy simply does not exist in classical Confucian thought – the terms *gong* and *si* are complementary and interactive (Judge, 1998, p.221; Zarrow, 1998).

How then can we define human rights in Confucian terms? I would put it simply as follows:

*It is inhuman to deprive persons of their humanity, that is, it is a violation of a person’s human rights to deprive that person of the relationships that he or she has cultivated as a moral agent. Engaging in moral self-cultivation vis-à-vis their families and communities, as children of parents, citizens of the state, as brothers, sisters, and friends, all persons should enjoy the right to develop as individuals-in-community, not by*

*coercion or restraint, but by the full development of self-generated moral growth and fulfillment.*

In one of the first drafts of the Universal Declaration on Human Rights, we find this sentiment expressed in Confucian terms: “All men are brothers. As human beings with the gift of reason and members of a single family, they are free and equal in dignity and rights.”<sup>7</sup>

Clearly, the Confucian ideas of *ren* and *li* are fully compatible with *both* “first generation” and “second generation” human rights. As moral agents with a shared inner capacity for growth, persons should have the freedom to cultivate moral virtue to its full individual potential. As individuals-in-community, they should cultivate this virtue in an arena where basic needs are met and all persons are provided the means for full participation in the communities in which they live and grow.

To state this point in another way, the conflict between first generation and second generation human rights assumes the separability between individual and community: This is a conflict that arises only when one accepts Western individualism as the basis for human rights. But from a Confucian point of view, just as self and community are conceptually inseparable, so too are first generation and second generation human rights inseparable in practice. Insofar as self and community are mutually generative (that is, self and community produce one another), first-generation and second-generation human rights are mutually productive.<sup>8</sup>

### **Human Rights and the Confucian Self**

While I am convinced that the Confucian tradition, as evidenced in the doctrines of *ren* and *li*, is fully consistent with human rights, Confucianism may suggest a conception of the self that is significantly different from the traditional Western view – with implications – with implications for human rights in practice.

The first significant area of difference is in the idea of equality. *Ren* is fundamentally egalitarian, in that all persons are seen to possess the means by which to develop as moral beings, but the practice of *ren* is never egalitarian. That is to say, it is a basic characteristic of human relationships that they are hierarchical and therefore non-egalitarian. Confucius said, *Junzi he er bu tong, xiaoren tong er bu he (Lunyu 13:23)*. The fully developed moral person, the *junzi*, seeks harmony without equality, or harmony-in-difference; the morally undeveloped person, or “petty person,” seeks equality without regard for harmony. Harmony depends, in other words, upon social differentiation.

This idea is developed more fully by Mencius when he describes the Five Cardinal Relationships as the active manifestations of *ren*.

- ⇒ parent/child
- ⇒ ruler/minister
- ⇒ husband/wife

⇒elder/younger

⇒friend/friend

These Five Relationships are basic expressions of *ren*, and so, again, participation in these relationships is the fullest expression of humanity. No one, especially the state, should deprive any human being of full participation in each. But these relationships are unequal to the core: They are hierarchical, first reading from top to bottom (suggesting that some relationships are more important than others), and second reading from left to right. Of course, Mencius was careful to limit the powers of the stronger parties in these pairs, and his stance against tyranny is well known, but the inequality of persons at the level of duties and obligations is basic to Confucianism.

As a Westerner who bases human dignity upon human equality, I am uncomfortable with hierarchy, especially when it is based simply upon the conditions of birth (being born last rather than first, female rather than male, and so on). But I do think that human rights must be made compatible with hierarchy if they are to be acceptable to Confucian cultures.

Without going into detail here, I think that one solution to this conflict between East and West is to suggest that the Confucian tradition retain a hierarchy of merit while abandoning a hierarchy of birth. That is to say, deference is owed to those who have cultivated and earned their status rather than attaining their status by birth. A parent is not superior to a child simply by the act of procreation; a man is not superior to a woman simply by the fact of biological differentiation; one friend or sibling is not better than another simply by virtue of their order of birth. Here is an area where Western thought may contribute to a new understanding of hierarchy in the Confucian tradition.

There is Confucian precedence for the compatibility of hierarchy and equality, and that can be found in Wang Yangming's tenure as a magistrate among so-called "barbarian tribes" in Guizhou during his banishment from the capital. While Wang Yangming found the people of Guizhou to be uncultured, uncivilized, and in a basic sense, not fully human, his interaction with these people ultimately led to his belief in the basic moral potential of all human beings (Wang, 1970; Ch'ien, 1970). That is to say, human potential is fundamental to all persons, and so all persons are equal in terms of the seeds of moral growth. To put it in modern terms, all persons are equally deserving of basic human rights.

A second Confucian challenge to the Western conception of human rights is in the fundamentally communitarian basis of *li*. As we have seen, the traditional Western view of human rights conceptually separates the individual from the community, which is potentially oppressive. So, human rights are frequently expressed in Western terms as a kind of freedom, independence, or liberation. Feminism, for example, is equated with "women's liberation" from the oppressive nature of fixed gender roles.

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Indeed, there is an oppressive quality of the Confucian *li* which is well known to both Asian and Western critics of the Confucian tradition. And I would like once again to propose a new understanding, partly informed by my Western upbringing, for a more fluid understanding of *li*. This more fluid understanding permits full participation in the hierarchical roles required by the *li*, without seeing those roles as fixed and immutable. As I have expressed the point earlier in this paper, human rights can be defined not as “freedom from *li*” (or, liberation from the potentially restrictive tendencies of the *li*), but rather as freedom to participate fully in the *li*, in a way that is expressive of self-determination and self-motivation.

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### Conclusion

In conclusion, I have attempted in this paper to make these four statements:

1. The Confucian tradition supports human rights for individuals-in-community, including both “first generation” and “second generation” rights.
2. *Ren* and *li* are positive models for self-cultivation, emphasizing human creativity and development.
3. *Ren* and *li* are definitive of humanity, and it is a violation of a person’s human rights to deny his or her full participation in family, community, and state as a self-actualizing moral agent.
4. Confucian relationships are non-egalitarian but affirm the fundamental worth, dignity, and freedom of all persons.

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## Notes

- <sup>1</sup> One example is Charles Taylor (Taylor, 1999).
- <sup>2</sup> The term *minquan* can be dated to 1878, as employed by the Qing reformer Guo Songtao (Judge, 1998, p.197).
- <sup>3</sup> See, for example, the contributions by Sumner Twiss and Randall Peerenboom (in de Bary & Tu, 1998).
- <sup>4</sup> The phrase is Tu Weiming's. See for example, "A Confucian Perspective on Learning to be Human" in Tu (1985).
- <sup>5</sup> "Investigating things, knowledge becomes complete. Knowledge complete, thoughts are made sincere. Thought sincere, the mind is rectified. The mind rectified, the person is cultivated. The person cultivated, the family is regulated. The family regulated, the state is rightly governed. The state rightly governed, the whole kingdom is made tranquil and happy." (Author's translation)
- <sup>6</sup> Mencius 2A: 6.
- <sup>7</sup> From the first draft of the Universal Declaration, framed by Chinese delegate P. Chang (de Bary & Tu, 1998, p.41).
- <sup>8</sup> This is only the briefest statement of a complicated argument. In short, I place myself more with those scholars, both Chinese and foreign, who see a basic compatibility between Confucianism and human rights, but recognize the need for "correction" on both sides, with Confucian cultures offering incentives for Western cultures to be more fully attentive to social and economic (second generation) rights, and Western thought encouraging Confucian cultures to be more attentive to civil and political (first generation) rights. However, in my view, Confucianism offers more in the way of conceptual tools for alleviating the potential conflict between first-generation and second-generation human rights.

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