

## Confucianism and Human Rights: Rhetoric and Reality

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### Introduction

Over the last decade, argument about various key concepts has been widespread in the international human rights debate. Given its fundamentally political nature, much of this recent input is inherently controversial. Two concepts which have been widely considered and argued over are universalism and cultural relativism.<sup>1</sup>

Our purpose in this article is not to conduct a comprehensive review of the content and meaning of these concepts. We do wish, however, to discuss them within the context, principally, of an examination of the historical and contemporary political role of Confucianism in China. Our primary focus is on developing an understanding of the political significance of Confucianism in a human rights context.

It is widely acknowledged that Confucianism has had great influence well beyond China. Perhaps outside greater China (the People's Republic of China (PRC), Taiwan, Hong Kong (now part of the PRC) and Macau), the countries most strikingly influenced have been the two Koreas and Vietnam. Japan, also, has been subject to some Confucian influence, although the impact on present-day Japan is a matter of significant debate.

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<sup>1</sup> We should make it clear at the outset that we do not regard culture as a static concept but one which adapts. One commentator has recently argued that culture "grows out of a systematically encouraged reverence for selected customs and habits". (See Rothkopf 1997: 39.) We use the term culture as an appropriate shorthand to capture the concept of accumulated practices and ideas having an enduring impact within a given society. The authors also wish to thank the anonymous reviewers for their valuable comments.

Other parts of East Asia<sup>2</sup> have been subject to Chinese imperial control and mass Chinese immigration at various times and these processes have left some political and social imprints. Again, the degree to which this has occurred is controversial and the level of contemporary effect even more so. In Singapore, however, that predominately Chinese city - state has openly acknowledged and promoted the Confucian heritage.

In the case of China, the signal importance of Confucianism as a shaper of political norms is beyond dispute. The more modern role of Confucianism in the PRC is less certain but it does seem also beyond doubt that, at the very least, the political manifestations of Confucianism continue to have a strong bearing on life in the PRC.

In the debate over China's human rights record, various arguments have been voiced by the PRC to counter Western and especially American and European Union criticism. Some arguments, such as those related to state sovereignty, are sweeping denials of the rights of nation A to criticise the internal workings of nation B. Other arguments tackle the merits of critical comments. Here one often finds China attacking doctrines of the universality of human rights as dogmatic and devoid of any recognition of cultural, social and economic difference. In the case of China, there are, broadly speaking, two aspects to this difference. First, there is China's underdeveloped status, economically and socially. China must ensure rice or bread for all, it is said. This is the single most important (group) human right for China and it may sometimes have to override other (individual) rights. Secondly, there is China's vast cultural history which marks it out as a separate and different civilization. The underpinning constant of the last two millennia of this cultural difference has been Confucianism.

In this article we first summarise the general debate about universalism versus cultural relativism. We also include a short summary of the controversial criticisms of universalism advanced at the governmental level in East Asia. Next, we review the broad political and social impact of Confucianism in China. These first sections of the article provide the foundations for a more detailed discussion of cultural relativism in Part Three and a closer examination in Part Four, of the relationship between Confucianism's political - social legacy and any project to strengthen the protection of individual human rights within that context. In Part Five we reflect on the material encounter between Confucianism and human rights in China since the late Ching Dynasty.

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<sup>2</sup> We use the term East Asia to encompass those parts of Asia *not* including : South Asia (India, Pakistan, Sri Lanka, and related smaller states); Central Asia (the former Republics of the former Soviet Union); Russian Asia and the Middle East.

Based on our examination of the Chinese experience, our considered view is that some genuine cultural differences on the concept of human rights and the prioritizing of rights do exist. Nevertheless, in view of the misuse of such differences, including their use to reject outright any universal concept of human rights, the validity of cultural relativism must be judged and assessed according to carefully established objective standards. Politically motivated assertion of the validity of cultural relativism by self-interested governments cannot serve as a substitute. Equally, though, denial of either or both the existence and significance of cultural relativism is intellectually dubious. Moreover, this approach can prove to be seriously counter-productive. The hard task is to take cultural relativism seriously and to work with it, around it and, where necessary, against it.

### **Universalism and Cultural Relativity**

Generally speaking, advocates of universalism argue that human rights originate from the natural rights of every human being. They are inborn rights of humans which cannot be restricted by governments in the absence of stringently tested justification. These rights, because of their inborn nature, are not the gift or grant of governments. On the contrary, according to this view, the foundation of governments, regardless of their form, is based on the rights of their citizens - governments are primarily legitimized through their role in the enforcement and protection of such rights (Attali 1997: 58). And since these rights are inborn, they are correlated with individualism. Therefore, when there is a conflict between individual rights and the collective rights of the society or the group to which that individual belongs, his or her individual rights usually ought to prevail. Because human rights are enjoyed by human beings from birth, there is no distinction with respect to their context - and, thus, enforcement from people to people - simply because they are now subject to the rule of different governments. The universal nature of human rights is, according to this theory, the very foundation of the concern of other countries and the basis for international supervision and even intervention to ensure human rights enforcement and protection. However, there is a danger of overstating the individualistic nature of human rights. It is accepted by those who take a universalist perspective that human rights can be overridden or modified on the grounds of collective interest in special circumstances (Ghai 1993: 350).

Advocates of cultural relativism take a quite different view. Although human rights may, in principle, be universal in nature, they are not equally

enforceable in every country, because each country has its own particular culture important for national identification and as an essential component in the daily lives of the nationals of that country. Certain cultural values may conflict with certain claimed standards of human rights. Amongst the advocates of this school of thought, the most forceful are probably drawn from the political elites of certain East Asian countries. What they promote is that human rights are not universally enforceable by one and only one set of standards. Their enforcement in a particular country should take into account that country's historical, cultural, economic and social circumstances before any assessment of enforcement can be made. Moreover, these nations emphasise that their countries are different from those of the West in that they place the consensus of the community, cohesion of the people in the community and the interests of the community and the country over individual interests. Whenever collective interests conflict with individual interests, the former should usually take priority. This, they claim, is an essential element in the success of their economies and their political stability.<sup>3</sup> And this is the very factor which is wilfully neglected by Western commentators when criticizing their human rights records. The ignorance of these commentators is driven solely, it is argued, by political motives; they simply wish to meddle in the internal and domestic affairs of these countries. Another aspect of this argument is the strong claim that human rights issues are subject solely to the jurisdiction of each particular country. They are therefore closely linked to the principle of the sovereignty of each country which is recognised in international law.

The extreme version of cultural relativism is that "culture is the sole source of the validity of a moral right or rule", while the extreme version of universalism claims that "culture is irrelevant to the validity of moral rights and rules", for moral rights and rules are valid throughout the world regardless of differences between cultures and social and political systems in each country (Donnelly 1989: 109). In between these two extremes there is strong cultural relativism, which "holds that culture is the principal source of the validity of a moral right or rule. Universal human rights standards, however, serve as a check on the potential excesses of relativism" (Donnelly 1989: 109). The extreme version of the cultural-relativist ideology would, at most, concede that a few basic rights are universally applicable, thus leaving most commonly listed human rights subject to the application of mediating cultural factors. On the other hand, weak cultural relativism claims only that "culture may be an important source of the validity

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<sup>3</sup> This linkage between economic success and cultural relativism looks less convincing as an argument based on experience in view of the East Asian financial crisis which commenced in mid-1997.

of a moral right or rule. Universality is initially presumed, but the relativity of human nature, communities, and rights serves as a check on the potential excesses of universalism" (Donnelly 1989: 110). This view accepts only occasional and limited exceptions to the applicability of universal rights together with universal assessment. When we apply the above classifications, the official views of certain East Asian governments could be categorized as examples of extreme or strong cultural relativism which reject or barely accept scrutiny according to international standards of human rights.

### **Official Criticism of Universalism**

One of the common grounds for the claim by Asian countries that universal human rights standards should not apply to them is that the West has made use of those standards as an excuse to interfere in their internal affairs. The memory of having been exploited and deprived of basic human rights under the rule of Western powers, sometimes within the last decades, is still fresh in many Asian minds. This memory gives rise to fears that zealous advocacy of human rights by the West is a new form of an old imperialism (Douglas/Sara 1996: 74; Christie 1995: 205).

Another common argument voiced by some Asian governments is that there are inherent cultural differences between the East and the West. China and Singapore are well-known for promoting the importance of this difference in human rights debates with Western countries. One commentator has summarised this argument as follows "The concept of human rights is a product of historical development. It is closely associated with specific social, political and economic conditions and the specific history, culture and values of a particular country. Different historical development stages have different human rights requirements. Countries at different development stages or with different historical traditions and cultural backgrounds also have that different understanding and practices of human rights" (Boyle 1995: 86; Information Office 1991: 83). Singapore has also argued that Confucian ethics are useful in "social engineering as well as being an asset in promoting economic development and modernization" (Kuah 1990: 374).

The official view of many of these Asian countries is probably best captured in the Bangkok Declaration of 1993. When one reviews the Preamble, it is not difficult to see why the position of East Asian countries, especially, is often criticised as being self-contradictory. On the one hand, the Preamble concedes that human rights are a matter of international

concern and subject to scrutiny while on the other, it insists that human rights should be filtered through different cultural, social and political realities in each country and therefore no world-wide standard can be applied. Moreover, it is not stated exactly when and in what circumstances the principle of universalism should not be applied and exactly when and in what circumstances the principle of cultural relativism ought to apply. Further, even though these countries agree, in principle, on the statements in the Declaration, they, in fact, place different stresses on different aspects of "Asian values". The variations in what they conceive of as Asian values have weakened any claim that these apply throughout East Asia. Rather the term ends up being a title for a set of often unrelated, separate values prevailing in a range of countries.

### Confucianism and Chinese Values

When rebuking the claims of universalism some Asian countries, especially the PRC, hold that the ideas and practices of certain Asian countries nowadays are still governed by regional value-systems, including Confucianism. Confucianism is a key ingredient in the Asian values "recipe". The relevance of Confucianism in contemporary China is supported by certain academics. Gu Mu, the Honorary President of the China Confucian Foundation, is of the view that "in building our new socialist culture, we should at one and the same time both inherit and reform our nation's traditional culture, including Confucian thought ... and absorb [and merge] them with advanced aspects of foreign culture" (Chan 1996: 33). Prof. Zhang Dainian of Beijing University has also stated "Confucian doctrine still has a far-reaching influence upon the common culture and psychology of the Chinese nation" (Chan 1996: 33). Confucianism is thus still seen as a thought system which provides guidance for people's daily social life and moral values.

Some other commentators have explained the impact of Confucianism in more directly instrumental terms. Bonavia, for example, argues that the lack of any tradition of institutionalized opposition in China's political history has made Confucianism crucially dominant, both politically and socially, during all periods of Chinese history; imperial, republican and communist. He draws on his work in the former Soviet Union to amplify this view by pointing to the lack of an equivalent of the enduring Soviet dissident movement in China. He notes how that movement was led very clearly from outside the Communist Party of Soviet Russia by cultural heroes such as Solzhenitsyn and Sakharov. In China, in contrast, dissident

movements have usually played out their roles within (the often very wide) ideological confines of the Chinese Communist Party (Bonavia 1989: 265).

But what, today, is embodied by the term Confucianism? To answer this question we need, first, to look briefly at its historical role in China. Although Confucianism arose during the Spring and Autumn Period (770-476 BC), it became orthodoxy in the political, social and cultural spheres only during the Han Dynasty (206 BC - 220 AD). Legalism was the leading ideology until then. In the following dynasties Confucianism had to give some credit to the relative emphasis and utility of Legalism in the eyes of the ruling classes. "There was thus a co-existence of both *li* [rules for proper individual and social conduct] and *fa* [law] in traditional China, which has been explained by the idea that *fa* is to be employed as a last resort to maintain social order when *li* has failed to do so" (Chen 1992: 11). In the modern world, however, the maintenance of social order and the security of a country depends far more on the effectiveness of law enforcement than on a society's consensus on the appropriateness of behaviour. In other words, *fa* has become the principal means of maintaining order while *li* plays at most a "second fiddle" role. The recent trend towards emphasising the importance of Confucianism really demonstrates a re-emphasis of the utilitarian value of social consensus which facilitates the upholding of the status quo by discouraging potentially subversive forces.

The essence of Confucianism is "a set of moral and ritualistic norms for the regulation of human relationships. Among its central precepts are *jen* (moral feeling towards other people or feelings of humanity), *i* (moral integrity, or consciousness of moral obligations), and *li* (rites, customs or rules as to proper individual and social conduct)" (Chen 1992: 11). According to Wang, there are three, at least, varieties or levels of Confucian values. The first level, which is the essence and the prime version of the ideology, concerns "the values which Confucius, Mencius and their immediate disciples saw as being at the core of Confucian values" (Wang 1991: 259). This level concerns academic Confucian values which are not the prime interest of contemporary East Asian countries concerned with resisting the West's criticism of their human rights records. The second level incorporates the values which "have legitimized the emperors and their political institutions for numerous dynastic houses. ... These Confucian values were also alternatively rejected, modified and re-employed whenever necessary. Over time, they were so integrated into the mandarin system that it can be argued that imperial mandarin power and classical Confucian political values had become a seamless web." (Wang 1991: 260) By the time of the Song Dynasty, imperial power was completely infiltrated by Confucian ideology. This kind of Confucianism was therefore politically

adopted and adapted for centuries. It formed the core of ideology in China in the past. It is this style of Confucianism which certain East Asian governments are attempting to apply today. The third variety of values are "those practical and axiomatic parts of Confucianism which virtually all Chinese accepted over time as essential to their well-being. They are values about family and community relationships which were probably deeply rooted in Chinese society even prior to the times of Confucius and Mencius ... The key point is that they had always been broadly communal, tolerant of other values and ready to be inclusive of other belief-systems." (Wang 1991: 260) This type of Confucianism is represented by the communal values broadly shared by Chinese communities in Asia, especially prior to the permeation of capitalism and the increased material prosperity that it can bring. These values are commonly found also in countries strongly influenced by Chinese culture, including the two Koreas, Japan, Vietnam and Singapore. The influence of these values can also be seen, to a degree, in countries with large Chinese minorities such as Malaysia.

In order to apply the second and third varieties of Confucian values in Wang's typology effectively, it followed that every individual in truly Confucian society is morally required and expected to take up the role assigned by society without dissent (or without too much dissent). The political significance of Confucianism, in such a model Confucian society "lies in its integrated vision of the family and the state, or of morality and politics. ... Respect for authority was generally stressed. Within the family the cardinal virtue was filial piety. The state or nation as a whole was conceived of as an extended family, and the importance of filial piety in the family corresponded to the emphasis on the duty of absolute loyalty and obedience on the part of subjects to the ruler." (Chen 1992: 10) The essence of Confucianism is therefore not aimed at "finding new truth by free speculation and originality". Instead, it stresses the need to "imitate and revive past traditions while affirming, at the same time, the values of the social organisation and family system" of former times which Confucius admired (Nakamura 1985: 265). Thus, the teaching of Confucianism is not focused on any alteration of the existing system or of the social organisation of society. Confucianism is therefore typically understood as, ultimately, a crucial tool of the ruling class and those holding high positions in society. It has been argued that "superiority in society and status in the governing class was the important thing. A one-sided obedience of the lower class to members of the upper class was emphasised. ... The fact was that Confucian morality protected the position and the power of the government and gave it justification." (Nakamura 1985: 265)

Confucianism is, of course, sometimes used by certain East Asian countries in a crass political way and, as we have noted, it is often deployed



politically to reject the claims of Western universalism. Confucianism is also, however, an ideology which has been adopted by millions of Chinese people. Why is it that the Chinese have been so "willing" to adhere to this old philosophy, generation after generation? According to Nakamura "The way of thinking in which the Chinese prefer particular, concrete, and intuitive explanations may be seen in their way of explaining ideas and teaching people by the use of particular examples. To most Chinese, therefore, ethics is not understood or taught as part of a universal law, but is grasped on the basis of particular experiences, and is then utilized to realise human truth" (Nakamura 1985: 198). The Chinese are inclined to see past experiences as precedents which assume a sense of validity not attainable by other new ideologies. For this reason "China has never had a revolution in her world of thought" (Nakamura 1985: 208). Despite the fact that China has experienced numerous fundamental changes in social and political aspects of life since 1949, the basic idea of adhering to social precedents has always persisted. In Singapore, although the history of this city-state is relatively short, the ancestors of the Singapore Chinese were immigrants from China and the present Singapore government places much emphasis on preserving this traditional ideology.

At the very least, second and third level Confucian values, according to Wang's typology, continue to have an "overhang" effect in shaping contemporary political life in the PRC. There are, however, signs that the effect is still quite dynamic, i.e. Confucianism, as we have shown above, is not in the process of becoming a historical curiosity but is showing signs of further adaptation based on modern political and social experience. This is not simply the result of manipulation and exhortation by political elites, but constitutes an on-going social phenomenon in day to day interaction across all levels of society. Attempts either to deny the existence of this context or to sweep it aside may hold political appeal for more evangelical human rights activists. This does not, however, suggest itself as the best route to developing meaningful improvement in human rights protection in China. A potentially more successful strategy would take advantage of the adaptive capacity of Confucian influenced political culture.

## **The Relevance of Cultural Relativism**

Despite the fact that claims of universal human rights are based, *inter alia*, on ideas of basic human needs and human dignity, they still suffer from some serious problems. "How theorists derive specific human rights from needs or dignity remains entirely obscure. ... Someone must decide what

needs are truly basic, and, inasmuch as different judges will perceive different needs as taking highest priority, this approach does not circumvent the challenge of diversity. ... There is no way to prove the validity of any particular interpretation because no procedure is established by which the legitimacy of particular human rights can be judged." (Renteln 1990: 49) Apart from that, the presumption of universalism also suffers from problems related to the claim of the self-evident nature of particular human rights. The idea of the self-evident nature of human rights implies that people all over the world think in the same way and must all be seeking the same justice in their lives. This moral theory therefore assumes there is only one moral reasoning. According to Renteln: "It is plausible that individuals from the same culture might agree to the same principles. Americans conceivably would designate Rawls's principles as their own. But if one transposes the scenario of the original position to an international setting, it becomes doubtful whether all the participants will acquiesce. The presupposition is that individuals stripped of their cultural and political heritage would be pure rational beings and would thus dutifully select liberal democratic principles of justice. The premise that individuals could negotiate for fundamental principles in the absence of culture is quite fantastic. And this is precisely the root of the problem : underlying the presumption of universality is the belief that all peoples think in a similar fashion." (Renteln 1990: 50). Kiely concludes that "all social theories are inherently value laden. According to this view, there exists no objective science or truth, and all science rests on implicit values which cannot be easily refuted. ... As far as the Enlightenment is concerned, post-modernists argue that its claims to 'know' universal justice are in fact claims that the West is inherently superior to the rest of the world - that is, the West is regarded as a model for other parts of the world to follow. ... When looked at in this way, Enlightenment views of the world can be seen as rationalisations for colonialism, aid with strings attached, and western intervention in the 'uncivilised' world." (Kiely 1995: 167) Post-modernists thus argue that "the search for universal standards of truth and justice should be abandoned. The world is in fact composed of a plurality of language games, local 'truths' and discourses" (Kiely 1995: 168). As it happens, this theory, happily marries with the relativist approach embodied in the "Asian values" zealously marketed by certain East Asian leaders.

Even putting aside the views of post-modern theorists, it is a fact that human rights have been a matter of intense international concern only since the end of the Second World War. The terrible atrocities committed by the German state during the Nazi era (and the special horrors of the Japanese occupation of East Asia during the Second World War) provide the principal explanation for this impetus. The development of human

rights in European history has followed a long and twisting path and their promotion has been closely linked to economic development. It is also irrefutable that Western countries now strongly urging the importance of human rights practices, have violated basic human rights in East Asia and elsewhere in the past. This political background does not establish "non-universality", but it does show how modern, at a practical level, the concept of universality is. It also emphasises how the contemporary strength of this concept is derived significantly from relatively recent political experience.

The increasing use of arguments based on cultural relativism can also be understood from the standpoint of Orientalism. Orientalism has been characterized by Said as "a style of thought based upon an ontological and epistemological distinction made between 'the Orient' and (most of the time) 'the Occident'" (Said 1978: 2) concerning the people, customs and the mind of the former. "Taking the late eighteenth century as a very roughly defined starting point, Orientalism can be discussed and analyzed as the corporate institution for dealing with the Orient ... in short, Orientalism as a Western style for dominating, restructuring, and having authority over the Orient." (Said 1978: 3)

When one looks closely at official statements on Asian values with their emphasis on cultural relativism, what they promote is, in one sense, the essence of Orientalism with their stress laid on fundamental differences between East and West. The irony is that Orientalism is a product of the West at the zenith of the West's colonial era. Another way of putting this is that China and certain other East Asian countries claim that their cultural and social practices have not changed significantly, despite the substantial improvement, in some cases, in their economic circumstances. It follows from this that the perception of individual rights differs from that prevailing in the West. This perception, it is argued, arises by communal consensus. It is now appropriate to look at an example of this process at work.

### **Confucianism and Human Rights: Ideological Encounters**

As we have seen, Confucianism is an ideology advocating and preserving the practices of a paternalistic and hierarchical system of society in which "obligation does not in itself even suggest, let alone establish, the existence of rights on the part of those in whose interests one is obliged to act" (Donnelly 1989: 54). Therefore, although notions akin to "human rights" did develop in traditional China, and basic "human rights" were protected via the one-sided obligation owed by the rulers to their subjects, this is still "an

approach that does not involve real human rights" (Donnelly 1989: 55) for the rights enjoyed by the subjects were not the consequence of inborn rights. They arose out of the benevolent exercise of the ruler's powers influenced by the ruler's obligations to Heaven. In fact, the rights protected by traditional rulers were not individual rights, but were, at most, collective rights of the whole nation, the basic human rights of food, shelter, water, warmth and spiritual participation. The promotion and re-emphasis of Confucianism is really a "renaissance" of basic rights or collective rather than individual rights. The priority of economic and social rights over civil and political rights is the mirror of that re-emphasis. That collective rights rank first should not surprise the West, since it is a Chinese tradition that "the individual was not central" in society and "Individuals were not equal, and society was not egalitarian but hierarchical. ... In traditional China the ideal was not individual liberty or equality but order and harmony, not individual independence but selflessness and cooperation, not the freedom of individual conscience but conformity to orthodox truth. There was no distinction, no separation, no confrontation between the individual and society, but an essential unity and harmony, permeating all individual behaviour. The individual was to be yielding, not assertive, and both rights and duties were negotiable and subsumed in the commitment to harmony. ... The purpose of society was not to preserve and promote individual liberty but to maintain the harmony of hierarchical order and to see that truth prevailed, ... Government was not a necessary evil but an essential and desirable organisation to assume harmony, although the harmonious society needed only minimal government." (Edwards/Henkin/Nathan 1986: 21)

The introduction of socialism into China has not reduced the impact of traditional thought on the relationship between the state and the individual. It has, on the contrary, further strengthened the old way of thinking. One commentator has argued that "if traditional China did not concentrate on the individual or think of his status in society in terms of claims, entitlements, or rights, the advent of socialism did not bring to China any strong commitment to human rights either. ... At least, socialism implies a commitment to the welfare of the society as a whole. The individual is not the foundation or the focus of society, though he (and his descendants) are, of course, the beneficiaries of a socialist society. ... Man can achieve true freedom only in community. The dominant value or goal, perhaps the only rights of the individual, then, is to live in a socialist society. In such a society, a person enjoys, meaningfully and fully, benefits, opportunities - call them freedoms, rights - not freedom from or rights against the society, but rights and freedoms within it, as a member of society." (Edwards/Henkin/Nathan 1986: 22)

The rationale behind this theory of rights is that individual freedoms commonly enjoyed in bourgeois societies (or, nowadays, capitalist societies) are negative and destructive to the potential full enjoyment of rights of the people in a society as a whole. In the light of this understanding of individualism, the PRC government therefore aims for the "individual satisfaction of basic human needs, and society provides the individual with particular rights, the reward for fulfilling his obligations to the society. These rights include economic and socialist rights implied in the socialist system, and such civil and political rights as are conducive to socialism, that enable the citizen to participate in socialism. ... Within, and subject to socialism, the individual enjoys freedoms, not freedoms from socialism but freedom to maintain, protect, and participate in socialism. There can be no freedom or autonomy that is inconsistent with the needs of socialist society, ... The ideal individual is cooperative, conformist, and prudent" (Edwards/Henkin/Nathan 1986: 28). The implementation of socialism has, accordingly, acted as a catalyst for resisting Western advocacy of internationally recognised human rights practices.

Human rights in the West arise from a quite different conception of the relation between the individual and society. They are "the rights that one has simply because one is human. They are held by all human beings, irrespective of any rights or duties one may (or may not) have as citizens, members of families, workers, or parts of any public or private organization or association." (Donnelly 1993: 19) Since human rights are entitled to be exercised simply because one is a human being, they are universal in nature and they cannot be "renounced, lost or forfeited" and they are "inalienable" (Donnelly 1993: 19). It is the foundation of Western social contract theories that governments are set up to secure better protection of individual human rights. This is the reason why individuals are required to "release" control over their own rights to a certain degree, and hand that share of control to government. Therefore, if the government fails to protect human rights, there is no point in upholding that particular government. This system of rights thus "places limits on the actions of government and on collective decisions by offering a measure of protection to individuals and specific groups" and "offers individuals and specific groups the right to seek redress and gives them a margin of liberty in the imposition of these limits" (Steiner/Alston 1996: 174). According to Donnelly, the term right has two meanings. One is "something being right", and the other, which is the central theme of human rights, is "someone having a right with the implication that that person is entitled to have and to enjoy a specific right." Therefore, "the right ... governs the relationship between right-holder and duty-bearer, insofar as that relationship rests on the right. In addition, and no less important, to have a right is to be em-

powered to press rights *claims*, which ordinarily 'trump' utility, social policy, and other moral or political grounds for action. This ascendancy places the right-holder in direct control of the relationship; the duties correlative to rights 'belong to' the right-holder, who is largely free to dispose of those duties as he sees fit." (Donnelly 1989: 9) The claim that "something is right" is only a claim that a particular matter conforms with established standards while "someone having a right" means a particular person can exercise a particular entitlement. There are three levels of rights enjoyment and entitlement. First, there is the "assertive exercise" of a right "in which the right is exercised (claimed) and the duty-bearer responds by respecting (or violating) the right. As a result of 'assertive exercise' we can say that the right is enjoyed (or not enjoyed) in the strongest sense of that term." Next there is "direct enjoyment" of a right, "in which the duty-bearer takes the right actively into account in determining how he or she will behave, so that we can speak of the right being respected (or violated) and even enjoyed. In 'direct enjoyment', there is no exercise (claim) of the right by the right-holder." Thirdly, there is the "objective enjoyment" of a right, "in which we might say that the object of the right is 'enjoyed' but the right is not exercised, and it would be stretching the term even to say that it was 'respected'." (Donnelly 1989: 11) According to these classifications, Western human rights are based on the notion of the "assertive exercise" of a right while the ideas and practices of the Chinese are based on the "direct enjoyment" of a right. The "rights" of Chinese people under the dominance of Confucianism are not the rights embedded in the collective "mind" of the West.

The historical differences in dominant social and political ideology between the East and West does not mean that the concept of individualism does not exist in the mind of the Chinese. As Nakamura argues "the significance of the individual was fully admitted in ancient Chinese philosophy" (Nakamura 1985: 247), for example in the *Analects*, IX, 25 it is stated that "although the leader of three armies can be captured, the will of a common man cannot be destroyed". Individualism was clearly manifest in certain practices, for example "while property was held in common, each son had his inalienable right to inheritance. There was no individual vote guaranteed by any constitution, and yet in village meetings, every male adult was a voting member by natural right." (Chan 1962: 92) He opines that the Chinese do not lack the spirit of altruism. The main difference between the Chinese and Westerners is that "Chinese individualism was limited by several cultural factors ... Among these factors were ... the traditional Chinese attitude of static understanding, their way of thinking which emphasises concrete particulars, their way of thinking which imposes upon the individual the great importance of past events and the tra-

ditional wisdom of the sage. ... To these limitations on Chinese individualism must be added the factor of the traditional Chinese tendency towards a 'closed' society and morality. That is to say, the Chinese always regarded themselves as confined to life around such limited human relations as the family which provides the most intimate of personal relations." (Nakamura 1986: 247)

The rights concept of the Chinese may be summarised as follows: although the idea and practice of individualism existed in traditional China, this individualism was circumscribed by collective experience and past precedents. Moreover, the rights enjoyed in traditional China were rights related to basic human needs, rather than (more abstractly) related to living a life with dignity. To the Chinese, an individual was only a component in society and no stress was placed on identity as an "individual". To Westerners, the individual has become an independent unit of society with a unique irreplaceable value to it. He or she lives only because he or she is an "individual". To the Chinese, government was good for communal existence which in turn benefited the existence of individuals, although it was set up without the consensus of its subjects. In the West, good government exists when it furthers and protects an individual's rights or inborn life entitlements. To the Chinese, no such rights concept existed, rather, duties had to be observed by individuals to secure a united and harmonious community. In the West, rights rather than duties are pre-eminent. The notion of rights exists in the people's minds, and their existence should lead to self-realisation. To the Chinese, the order of the community was maintained by the people's consensus and conscience, law was a last resort in seeking that purpose. In the West, the community is divided and society's order requires legal mechanisms and, frequently, constitutionalised rights. Such "human rights" have, historically, not developed in the same sense in China as in the West, that is, individualism does not take priority over collective interests when the two are in conflict. This was the situation of the past and, due to the persistence of the Confucian legacy in the minds of the modern Chinese, it remains a significant component in the make-up of contemporary China. Christie has argued strongly that although East Asians may grumble about autocratic leaders in private, they still defer to them and will often vote them into power or tolerate them. There is, compared to the West, a wider acceptance of the need to sacrifice the interests of the individual for the good of the community (which concept is often equated with the state in East Asia). "Rights" are still seen as a bonus conferred from above (Christie 1995: 208).

Some may counter that this is no different to the way things used to be in the West. In other words, this is no more than an Eastern version of a typical autocratic power structure. Appealing as this explanation may be

for many, it is fundamentally flawed. In the case of the PRC, what underpins the macro-political structure as described by Christie, is some 2000 years of carefully developed political and social practice which in turn builds on a community fundamentally different from European communities in a number of respects. China's economic, religious and international contacts, for example, immediately set it apart from Europe. The Chinese autocratic experience has grown from China's social, economic and cultural realities. That experience, today, remains a product of the *interaction* of mass practice and experience and elite, autocratic control.

### Confucianism and Human Rights : Material Encounters

Although Confucianism represents the mainstream of thought in China since the Han Dynasty, it is indisputable that its influence has eroded with time and, in fact, has been seriously challenged since the late Ching Dynasty.

As we have noted above, one of the important principles of Confucianism was to uphold the existing hierarchical, social and political systems of society. It follows from this principle that the powers of the head of a family and therefore of the leader of the country must be highly (though not absolutely) respected. However, faced with a corrupt imperial government which had repeatedly failed to protect the country from a succession of crises involving foreign powers, some Chinese intellectuals strongly argued the need to move away from the almost bankrupt feudalism of the past. They argued the need for recognizing human rights as a component in solving China's economic, social and political difficulties.

The first movement for improved human rights in China was led by K'ang Yu-wei, T'an Ssu-t'ung, Liang Ch'i-ch'ao and other intellectuals after the Ching Dynasty had been defeated by the Japanese, despite the introduction and use of modern Western weapons by the Ching military forces.<sup>4</sup> K'ang and others advocated (and systematised) a policy of estab-

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<sup>4</sup> It had been the common understanding of the Ching officials that the success of the West was simply due to their advanced technology and modern military weapons. Therefore, they advocated the idea of importing Western technology and weapons but not the underlying principles and ideas of the Western ruling system. They still clung to the old principles of autocratic feudalism. On the other hand, a group of reforming intellectuals strongly promoted a policy of limiting the powers of the emperor, emphasising the importance of citizens' rights and setting up a system of government involving popular participation. The works of these intellectuals paved the way for the subsequent human rights movement of Kang and others (Hsiao, 1994, Ch.3).



lishing citizens' rights and constitutionalising the powers of the emperor. They also set up various political associations and published newspapers with the purpose of spreading their reformist political ideas. Their ideas were not only reformist - they also presented an unprecedented challenge to the ancient principles of Confucianism. Despite their best efforts, K'ang and others could not ultimately persuade the influential officials of the Ching Dynasty. The movement was thus doomed to failure (Hsiao/Liu 1994: Ch. 4).

The second major movement for improved human rights arose with the overthrow of the Ching Dynasty and the establishment of the New Chinese Republic by Dr. Sun Yat-sen in 1911.<sup>5</sup> The overthrow of the Ching Dynasty meant that traditional Confucian political ideas, particularly related to the relationship between the ruling class and the public, could no longer be justified. However, the overthrow of the Ching Dynasty did not of course mean that Confucian precepts vanished in the minds of the general public with the change of the political system. Such ideas were ingrained ever since the Han Dynasty. Mainly, they concerned the inter-personal relationships between an individual and his family, friends and others - while the change of political system concerned the relationship of the ruling class with the people as a whole. In addition, the objective circumstances encouraging the advocacy of Western human rights concepts were principally crises visited upon China through the continuous invasions of foreign powers. In other words, the awakening of a sense of an entitlement of rights amongst the Chinese was not caused by any fundamental change in the notion that rights were benefits bestowed by the ruling class. This human rights movement emphasised the collective rights of the people rather than their individual rights. Moreover, even though a number of Chinese intellectuals believed that the traditional Confucian concept of rights was not justifiable, such an understanding was still not widely shared by the general public. In terms of political development, far more important at this time were influential military officials in the central government, such as Yüan Shih-k'ai, who still clung to the idea of feudalism and who still sought opportunities to revive the old imperial system. Under these circumstances, the human rights movement lasted for only a short time and had but a very limited effect.

The third movement for human rights was the well known "May Fourth Movement" led by Ch'en Tu-hsiu, Li Ta-chao, Lu Hsün, Hu Shih and others. The major differences between this movement and previous ones

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<sup>5</sup> The main ideas of Dr. Sun included: the equality of races; the right to democracy (involving the overthrow of autocratic feudalism); sovereignty of the people and livelihood rights with emphasis on the right of surviving and the right of development (Hsiao/Liu 1994: Ch.8).

were that it clearly advocated individual rights and its target was the youth of the country. In order to break the bounds of traditional ideas and ways of thinking, the main aim was, once again, to attack the teachings of Confucianism. Ch'en published the *New Youth* (formerly *Youth Magazine*). Through the publication of the newspaper, the principles and ideas of Western human rights, including individualism and individual rights, were widely spread amongst the young generation as never before. The principles of Confucianism came under severe attack by Ch'en and his colleagues (Hsiao/Liu 1994: Ch.11; Pa 1993:22). The success of the May Fourth Movement was assisted by the unfair treatment of China by the Western powers at the Paris Conference in 1919, after the defeat of Germany in the First World War.<sup>6</sup> As a result of this international incident, the Chinese masses began to understand that individual rights could never be fulfilled unless the rights of the country could be protected and enforced. This understanding of the co-relationship between individual and collective rights was unparalleled. The merging of the two sets of rights meant that of individual rights were not regarded as absolute and superior to all others (for example, collective rights) but as subject to modification through justifiable limitations when the circumstances of a country so require. This understanding about the co-existence and the complementary nature of the two sets of rights in turn paved the way for the particular emphasis on collective interests by the Chinese Communist Party (CCP). These, the CCP argued, should rank first (in accordance with Confucian principles) in modern China.

Since 1949, the struggle to assert human rights has continued in the PRC. There is not space here to recount this struggle with its many heroic efforts and setbacks. It is appropriate to note, however, that the PRC government now accepts the legitimacy of a Western-shaped discussion on human rights in China. Whilst the PRC government continues to vigorously rebut criticisms of its human rights record, it nevertheless accepts that: (a) such matters are topics for discussion; and (b) the Western framework for such discussions is a fact of international political life (Information Office 1991).

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<sup>6</sup> China demanded that the British, American and French governments return Germany's leased area at Shandong and repeal all Germany's rights in the same area. However, the three Western governments ignored the demands of the Chinese government in favour of the Japanese request to be given Germany's leased areas and the rights attached to the same. The representative of the Chinese government had advised it to accept the decision of the Western powers. This news triggered off large scale and nationwide protests. Under public pressure, the government finally decided to dismiss some of the officials, who were inclined to support the Japanese government, and refused to sign the Treaty of Paris.

## Conclusion

The process by which Confucian ethics are imbued in a society is beyond the scope of this article. Nor is there space here to discuss in detail how the Chinese might find a non-violent accommodation between their traditional values and Western individual values and what that accommodation should encompass. The aims of this article have been: (a) to demonstrate that Confucianism is a body of concepts and practices which have been adopted by the Chinese as a major part of their culture; and (b) that the social and political aspects of these concepts and practices do affect the perception of Chinese people (and not just their leaders) on human rights issues. The introduction of market-oriented economic policies in China together with the continuous, increasing social contacts with the West are eroding traditional culture. Moreover, movements to enhance the emphasis on individual rights within the last 100 years have had an important impact. It is hard, however, to measure the extent of the erosion of traditional values. It seems that the influence of culture varies from country to country, depending whether a claimed dominant culture is truly dominant or does, in fact, co-exist with other competing cultures. In the case of China, it is clear that there is a dominant culture which has been sustained in remarkably intact form over millennia as a result of elite proselytizing and mass practice.

Many complex questions arise related to the improved protection of human rights in less developed jurisdictions, e.g.: is the political system compatible with the nature and degree of individual freedom commonly practised in advanced Western economies?; is the economic system compatible with the practice of full individual economic rights?; and is the legal system of a country sufficiently prepared to protect legitimate individual interests? All of these are realities that a country has to consider in fulfilling its full obligations with respect to human rights. When there are genuine incompatibilities, it will take time to reduce the gap between local practice and international best practice on human rights. When we speak of genuine incompatibilities, we are referring to widely held views on the relationship between the individual and society which stress obligated - connectedness rather than atomistic individualism. In recognizing these differences, we are *not* suggesting that they can ever be used to justify flagrant human rights abuses such as those involving physical violence or the arbitrary deprivation of basic political rights. What we do argue is that it is not appropriate to use human rights as a blunt instrument to disrupt a country's political and economic order with the sole purpose of imposing some Western model of international human rights practice. Cultural relativity is not irrelevant in the human rights debate. It should not be dis-

missed without consideration or after only piecemeal or half-hearted deliberation. The simple fact is that cultural differences do exist in the case of China (and throughout East Asia). They are important in their influence. They can be perniciously negative in their social impact but they can also be a highly positive social force. Perhaps, most importantly, they are perceived by many ordinary people as having proved their utility over long periods of time. They have not been eliminated by Western social and economic influences.

The historical development of Confucianism suggests that, despite being so heavily anchored in the past, it can prove remarkably adaptable. The closed nature of Confucian Chinese society during the imperial era led many dynasties to reject any relationship with the outside world as far as possible. Yet China today is clearly a member of the modern global community. But it also retains many Confucian influences in political and social practices. This suggests that one key to developing stronger protection for individual rights in China is to take advantage of this adaptability. This approach does not involve suspension of criticism of China's notorious instances of abusing individual rights. Those criticisms need to be made. But they should not be used as a platform to argue that sweeping revolutionary change is mandatory. Any such change would be bound to be highly disruptive in China. And almost certainly counter-productive in terms of human rights protection. The experience in Russia is noteworthy. Within the democratic space created by the abrupt collapse of communist rule, a form of "Mafiocracy" still appears to be making grim headway almost a decade after the collapse of Marxism-Leninism in Eastern Europe.

China and the world have a vested interest in positive political change in the PRC. Achieving step-by-step change is a hard, complex and frustrating task. Coming to terms with cultural relativism in a serious manner, without resorting to mere slogans, is a part of that task. The principal thesis of this article is that we should take culture-related arguments seriously when analysing China's political past, present and future - but we must be vigilant to ensure that those arguments do not predetermine the outcome of the debate.

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