

# Rights and Community in Confucianism

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## I. INTRODUCTION

There is an interesting turn toward Confucianism in much U.S. scholarship on Chinese philosophy. Heiner Roetz, in a recent book on Confucian ethics, detects certain frequently recurring themes in this scholarship. Quoting and paraphrasing from authors such as Herbert Fingarette, Henry Rosemont, David Hall, and Roger Ames, Roetz summarizes the themes in the following way:<sup>1</sup>

China can teach us to recognize that the mentality of self, autonomy, and freedom has run its course. Together with the Chinese, we should recall our "communal rituals, customs, and traditions"<sup>2</sup> and "inherited forms of life."<sup>3</sup> We should abandon the "myth of objective knowledge," and adopt a "thinking that avoids the disjunction of normative and spontaneous thought."<sup>4</sup> Confucius especially presents us with a model which for our world is perhaps "more relevant, more timely, more urgent" than it has been even in China herself.<sup>5</sup>

Roetz criticizes the line of thought he finds in these authors for its apparent paradoxicality: the criticism of negative developments within Western society presupposes general normative criteria, yet the allegedly better model - Confucianism - is deployed to argue for a "contextualism which is no longer interested in questions of right and wrong, or relativity and objectivity."<sup>6</sup> Furthermore, Roetz argues that context and tradition sanctified foot-binding in China, widow burning in India, and slavery in the United States. Roetz asks, "How can we criticize the unspeakable injustice inflicted upon man in the name of traditions and contexts if we leave the final say to both and abandon any ethical reserve?"<sup>7</sup> Roetz goes on to argue for an interpretation of Confucianism that finds within

it important universalistic ethical themes relating to Habermasian and Kohlbergian conceptions of moral development.

Now I am not certain that the authors Roetz mentions would agree that they hold the particular combination of views he attributes to them.<sup>8</sup> But on the other hand, it is not unusual to find this combination of views in Westerners who react favorably to Confucianism - both the view that Confucianism reveals something important that one's own tradition has neglected or underemphasized and the view that it is wrongheaded to search for some transcendent truth about which tradition is objectively superior to others. I suspect that many of us who do comparative ethics get caught in the tension between these two views. In this essay I want to explain a way to live with both. I stake out a position between the new contextualist and postmodernist approaches to Confucianism, on the one hand, and the universalist approach that can find insight or injustice in Confucianism.

I want to focus on the question of whether moralities ought to recognize individual rights and in particular the rights to speech and dissent. The common view, one to which I have contributed in the past, is that rights do not find a congenial home in Confucianism because of its emphasis on community. In this essay I want to take a more complex position. I still maintain that there is a significant difference between typical rights-centered moralities and the community-centered morality of Confucianism. I will argue for a pluralism that accepts both rights-centered and Confucian moralities, and in that respect I am with the contextualists and postmodernists. On the other hand, I also will argue that there are universal constraints on morality rooted in the human condition and human nature, and that these constraints push Confucianism and rights-centered moralities closer together through the recognition of the interdependence of rights and community. To lay the groundwork for this argument, let me re-introduce the ways in which I have distinguished Confucianism from rights-centered moralities.

## II. COMMUNITY-CENTERED AND RIGHTS-CENTERED MORALITIES

In previous work, I have characterized Confucianism as a virtue-centered morality with the core value of a common good at its center. This common good consists in a shared life as defined by a network of roles specifying the contribution of each member to the sustenance of that life. This

communally oriented morality contrasts with a rights-centered morality, which gives no comparable emphasis to a common good. Rather it emphasizes what each individual, *qua* individual, is entitled to claim from other members. Rights-centered moralities spring from a recognition of the moral worth of individuals independently of their roles in community.

It now seems necessary to qualify my original distinction in several ways. First, I need to distinguish at least in theory between virtue-centered and community-centered moralities. I originally identified the two types because they have been historically linked through the concept of a virtue as a quality needed by members to contribute to the common good of community. However, it now seems to me at least theoretically possible that virtues can become uncoupled from a common good and be deemed desirable qualities on some basis other than their necessity for a shared life.<sup>9</sup> Having said this, let me stipulate that my focus shall be on community-centered moralities in which the concept of virtue *is* associated with the qualities necessary for sustaining the common good of a shared life.

Second, I now want to emphasize that my conception of a rights-centered morality includes a conception of the characteristic ground for the recognition of individual rights, as well as a generic conception of rights. We may think of the individual's moral rights as that to which the individual is legitimately entitled to claim against others as her moral entitlement. But a rights-centered morality typically assumes as a basis for such entitlements that the individual has substantial domain of morally legitimate personal interests that may conflict with the goal of promoting public or collective goods. Rights constitute constraints or limits on the extent that individual personal interests may be sacrificed for the sake of public or collective goods. Let me call this kind of ground for the recognition of rights "the autonomy ground." I do not want to claim that this is the only ground for rights recognized in the modern Western democratic tradition, but I do think it is probably the most recognized ground in that tradition and that it is the predominant ground in terms of its widespread acceptance and the degree of importance attached to it.

Third, I want to identify another possible ground for the recognition of rights that may exist alongside the autonomy ground. Rights may be recognized on the basis of their necessity for promoting the common good. Community-centered moralities, I shall argue, can and should recognize this sort of "communal ground" for rights. Rights-centered and community-centered moralities, then, need not differ because one

recognizes rights while the other does not. They must differ in the sort of basis they offer for the recognition of rights.

### III. THE COMMUNAL GROUND FOR RIGHTS

Seung-hwan Lee has argued<sup>10</sup> that the Confucian virtues do involve rights, if rights are conceived as enabling persons to make justified claims against others whose duty it is to fulfill them. This is in effect what I want to call the "generic" conception of rights, and Lee goes on to point out that in Mencius in particular there is a conception of rights in this sense. The Mencian virtue of righteousness (*yi*) involves "dutifulness in discharging of one's obligation, rightfulness in respecting other's due, and righteousness in recognizing the limit of one's own desert."<sup>11</sup> In the case of rites and propriety (*li*), Lee points out that the rules governing duties between people standing in the cardinal relationships, such as father and son, can be conceived as rules specifying correlative rights and duties.

But Lee warns us not to equate the rights found in Confucianism with the type of "individualistic" rights found in Western traditions. And one major reason for his warning is that "the Confucian ideal of a communitarian society in which good of the community always precedes individual good tends to devalue individualistic assertion of one's rights against the common good."<sup>12</sup> This is connected, Lee argues, with the Confucian conception of the human being as a relational being. In terms of my framework, Lee is according a communal ground to the generic conception of rights, not an autonomy ground.

So conceived, Confucian rights do not seem to offer much aid and comfort to those Chinese intellectuals and reformers who see a need for rights of dissent, of free speech, and of the democratic election of leaders in a multiparty political system. Lee seems to conclude as much, arguing that Chinese society needs a dose of Western individualism in order to counter an "excessive emphasis on the collectivist conception of the common good," in the name of which "people's assertions of basic rights and freedom have been neglected."<sup>13</sup> However, I think the turn to an autonomy ground for rights may be premature. We need to see what rights a communal ground can yield.

Roetz, for example, calls for a "nonregressive appropriation of tradition" that "combines the interpretation and adaptation" of the Confucian heritage with "the modern demands for democracy and change."<sup>14</sup> He points to themes in the Confucian canon that seem especially relevant to

rights to dissent and freedom of speech. Consider the following passage from the *Zidao* (*The Way of the Son*), chapter 29 of the *Xunzi*.

Zigong said, "If a son follows the order of the father, this is already filial piety. And if a subject follows the order of the ruler, this is already loyalty. But what is the answer of my teacher?"

Confucius said, "What a mean man you are! You do not know that in antiquity, if there were four frank ministers in a state with ten thousand war-chariots, its territory was never diminished. If there were three frank ministers in a state with a thousand war-chariots, that state was never endangered. And if there were two frank subordinates in a clan with one hundred war-chariots, its ancestral temple was never destroyed. If a father has a frank son, he will not do anything that contradicts propriety. If a scholar has a frank friend, he will not do anything unjust. *How, then, could a son be filial if he follows the order of his father? And how could a subject be loyal if he follows the order of the ruler? One can only speak offilial piety and loyalty after one has examined the reasons why they follow the order.*"<sup>5</sup>

The implication of this passage is that one has a duty to speak frankly when the violation of propriety and justice is in question, even if it is the ruler who is about to violate them. The basis for such a duty to speak is the sort of communal ground I have been describing. It is in the interests of having a community that realizes propriety and justice that a minister or a son speaks out. It might be thought that the duty to speak frankly implies as a necessary correlate the right to speak. After all, if one has a duty to speak, should one be allowed to speak and in fact be protected from interference through force and coercion?

It is important to recognize the ways in which Xunzi's argument has a more limited scope than we might assume. For one thing, Xunzi would not have thought the duty to frank speech applied to *daughters* in relation to their fathers, nor is it clear that he meant the duty to frankly speak to one's king to apply to everyone in the empire below the rank of minister. Xunzi's duty does not correspond to a modern, liberal democratic right to free speech held by all citizens. Furthermore, it is at least logically possible that the duty to speak as Xunzi conceived was not even associated with any *right* to speak. As I indicated previously, one could begin to make an argument for a right to speak only if relevant others have a duty to let one speak. But the fact that a minister or a son may have a duty to speak frankly does not necessarily imply that a king or a father has a general duty to let him.<sup>16</sup> Indeed, if one keeps in mind Xunzi's abiding and deep concern for political and moral order and the way that order is under constant threat from an anarchic and self-serving human nature, one could imagine him holding that the king or father may have a duty to

punish **the minister or son for** speaking out if it threatens the political and moral **order within the** kingdom or the family. This duty to punish may hold **even if the** minister or son has spoken truly and appropriately.

There is another ground for blocking the inference of a *general* right to speak from Xunzi's argument. This argument is consistent with the possibility that a minister or son has a general *prima facie* duty to follow orders from his king or father *without* questioning them in frank speech. Xunzi may have been saying that such a duty can be overridden, say, if it is needed to correct some especially grave error in these orders. On this interpretation, the duty to speak would be one that arises on specific and relatively infrequent occasions. Under these assumptions, there could not be a general right to speech corresponding to the duty to speak, since such a duty would arise only under specific and infrequent circumstances.<sup>17</sup>

So I do not mean to suggest that one finds in the Chinese classical tradition anything like a full-blown argument for a right to free speech. What I do mean to suggest is that we do have the *germ* of an argument in the idea that the common good is sustained by recognition of a duty to speak. The full-blown argument requires further substantial claims that are broadly empirical and that are, I shall argue, consistent with a communal ground for the right. Some of the issues involve criticism of traditional hierarchies that accord more powers and privileges to ministers and sons than to other subordinates and daughters. I have made such arguments elsewhere so I will not do so here. I do want to address here the issues of whether one can have a duty to speak without others having a duty to let one speak and whether there really is a good argument for a general *prima facie* duty to obey the orders of political authorities without frank questioning. I intend to dispute that the common good is actually promoted by failing to recognize a duty to let others speak or by limiting the duty to dissent to especially grave and infrequent occasions.

Let me start with an argument Allen Buchanan gives in the context of the contemporary Western debate between communitarian and rights-centered theorists. As a theorist who bases rights on the autonomy ground, Buchanan addresses communitarians on their own ground when he writes that

individual rights can play a valuable role even in societies in which there is unanimous agreement as to what the common good is and a universal commitment to pursuing it. For even in such a society there could be serious, indeed violent, disagreements either about how the common good is to be specified concretely and in detail or about the proper means and strategies for achieving it. Individual

rights, especially rights of political participation, freedom of expression, and association can serve to contain and channel such disagreements and to preserve community in spite of their presence.<sup>18</sup>

It seems to me pretty plausible that the sort of disagreements Buchanan mentions are a regular and constant feature of human societies, and that therefore the "need to protect and allow for the peaceful transformations of communities"<sup>19</sup> requires regular and institutionalized channels for dissent, not simply the occasional recognition of a duty to frank speech in specific and infrequent circumstances. Such regularized channels of dissent would require the recognition of duties to let others speak and more positively to protect them in speech from threat and coercion by others. It is to allow those who would speak to publicly hold others to this duty to allow and to protect their speech, something that is involved in being able to claim something as one's right. Once we have such duties, I think we are pretty close to something like a modern democratic right to speak.

Indeed, a communal grounding for a right to speech could be made within a contextualist and postmodernist interpretation of Confucianism, provided that such an interpretation still leaves room for criticism of the tradition. Hall and Ames, well known for their postmodernist interpretation of Confucius and for their vigorous defense of him, nevertheless observe that "The most serious failings of Confucius's philosophy are due to the provincialism and parochialism that seem inevitably to result from the institutionalization of his thinking." This parochialism, they charge, retards "cross-cultural communication" and fosters abuses that cross the "fine line that keeps social order beginning at home separate from nepotism, personal loyalties from special privilege, deference to excellence from elitism, appropriate respect from graft," and, finally, "appropriate deference to the tradition and a cultural dogmatism that has too frequently been in the interests of particular groups."<sup>20</sup> In the spirit of such criticism, one could argue that an appropriate remedy for these failings is recognition and vigorous protection of rights to free speech and dissent.

The argument thus far weighs in favor of recognizing various duties to allow and to protect dissenting speech. Implicit in this argument is an assumption worth making explicit: dissenting speech will not be heard often enough to serve the common good if it is not allowed and protected from interference. This assumption may appear trivially true, but if so, it is so only to us. As I indicated earlier, Xunzi probably recognized a

duty to frank speech while denying a duty to allow it. He was theoretically consistent, but in practice, I want to argue, inconsistent.

The recognition that speech and dissent must be publicly recognized and protected in order for it to serve its function in promoting the common good is a lesson that some Chinese thinkers learned from Chinese history. Andrew Nathan has identified a succession of Chinese intellectuals in the early part of the twentieth century who argued for democratic rights on the ground that China's problems in modernizing stemmed from the "systematic overconcentration of power" and its abuse. At the same time, Nathan points out that these intellectuals very rarely put forward a line of reasoning central to the Western democratic tradition: "that the individual's interests are separate from the group's, that certain of them are so basic as to have the status of 'rights,' and that democracy is first of all a system that protects these rights."<sup>21</sup> Implicit in this characterization of Chinese democratic thought, I claim, is a communal grounding for rights of speech and dissent.

To give another example of this sort of grounding in the Chinese tradition, seven eminent intellectuals led by the historian Xu Liangying recently protested a series of arrests of dissidents by connecting human rights with modernization:

To talk about modernization without mentioning human rights is like climbing a tree to catch a fish. Two hundred and five years ago, the French Declaration of the Rights of Man stated clearly that being ignorant, neglectful and disdainful of human rights is the sole cause of the general public's misfortunes and corruption in government. China's history and reality have verified that longstanding truth.<sup>82</sup>

If one could make the case for substantial rights to free speech and dissent in this way, as I believe one can, what are the implications for the debate between universalism and postmodernist contextualism? It suggests to me that there are human tendencies that span very different cultures, tendencies that render community-centered moralities subject to certain kinds of liabilities. These liabilities need not be judged in Western terms, and not specifically in terms of a moral perspective that places a premium on the value of individual autonomy. Rather, the liabilities are failures to realize the ideal of the common good itself. If, as Buchanan suggests, communitarian traditions frequently give rise to serious and even violent disagreements over questions as to how concretely to realize a common good, democratic rights may be necessary to ensure the peaceful resolution of such disagreements. If, as Hall and Ames suggest, and as many generations of Chinese intellectuals and reformers have

concluded, centralized authority unchecked by dissenting voices from below tends toward abuse of power, nepotism, and isolation and ignorance of what those below really do need, democratic rights may be part of the required remedy, if not the entire remedy.

Having roughly outlined the case for the possibility of communally grounded democratic rights, let me note that a communal grounding is different from a utilitarian grounding for rights, though both groundings are consequentialist in character. A utilitarian grounding of rights would make the case for their utility, where the sum total of utility is a function of the welfare of individuals. For most utilitarians, anyway, the character of the relations between individuals does not in itself necessarily count as part of the total good to be promoted.<sup>23</sup> But it is precisely the character of the relations between individuals that is the primary focus of community-centered moralities. Underlying this focus is a normative and descriptive conception of the person as constituted by her relationships to others and whose good is constituted by relationships that fulfill a moral ideal of appropriate respect and mutual concern. A community-centered morality must, of course, concern itself with some of the same goods with which utilitarianism is concerned. Both Mencius and Xunzi, for example, knew full well that their moral ideals of community could not begin to be fulfilled without a minimal level of material security for the people. And that has remained a preoccupation for Confucians up to the present. But a community-centered morality locates the importance of individual welfare within the larger context of a common good. In fact, the individual's good and the common good are inextricably linked.

#### IV. THE DIFFERENT OUTCOMES OF THE COMMUNITY AND AUTONOMY GROUNDS

Having noted the possibility of providing a communal ground for rights, however, we must note what such a ground does not provide. The scope of rights grounded in community will not be the same as the scope of rights grounded in autonomy. As Buchanan notes, if one were to justify individual rights only by reference to the moral requirement of autonomy, one might justify a "rather broad, virtually unrestricted right to freedom of expression." If, however, we allow the value of community "independent weight as a factor in determining the scope of the right of freedom of expression, we might find that only a more restricted right of freedom of expression can be justified." Therefore, concludes Buchanan, "In the justification of individual rights, the traditional liberal and the

I rights-minded] communitarian may travel the same path for some time, but eventually the path may fork and they may be forced to part company."<sup>24</sup>

Indeed, it might be that the rights-minded communitarian and the traditional liberal will part sooner rather than later, and quite dramatically, depending on what the communitarian perceives as necessary for the common good. Nathan's historical study of Chinese conceptions of democracy reveals the fragility of rights when seen solely as instrumental to collective goods such as prosperity and modernization. Time and again, rights championed as necessary for the common good have been suspended or curtailed because of fear of chaos and national weakness.

Such an observation will lead to the conclusion that a significant difference between community-centered and rights-centered moralities remains, even if both kinds of moralities are constrained by the need for rights to dissenting speech. On the one hand, human nature and the human condition place common constraints on what could count as an adequate morality. Human beings in power tend often enough to abuse that power or to confuse the personal interests served by their exercise of power with the ethical interests of their communities, and therefore need to be checked through the protected use of dissenting speech. Even if a morality provides no autonomy ground for rights to dissenting speech, it must provide for some version of those rights. However, significant moral differences are consistent with such common constraints. Not only do the two types of morality endorse democratic rights for different reasons, the scope of the rights endorsed and their relative immunity to being overridden by other considerations may differ significantly.

#### V. WORRIES ABOUT THE COMMUNAL GROUND FOR RIGHTS

However, a worry arises from reflection on the ways in which communally grounded rights within the Chinese tradition have easily given way to fear of chaos and national weakness. The concept of communally grounded rights may be too weak an instrument for combating the liabilities of community-centered traditions. Especially instructive in this regard is Nathan's account of the way that the Communist Party, from Mao onward, moved toward the idea of free speech and dissent, only to withdraw support for it when it threatened to undermine the equation between the interests of the party and those of the people.<sup>25</sup>

This worry may remind us of the familiar charge against consequentialist groundings of rights: that they provide an uncertain and inconstant grounding for them.<sup>26</sup> In one sense, of course, the community-centered moralist must admit this charge. As noted previously, rights with a communal grounding will never be as wide in scope or as secure from being overridden by other moral considerations as they would be with an autonomy grounding. From the perspective of the community-centered moralist, this is how it should be. But such a moralist still has reason to worry because she may wonder whether *the common good* is harmed when rights to speech and dissent are as insecure as they have been in the Chinese tradition.

The recognition of rights by itself will be ineffectual when the decision to override them for the sake of the common good is in the hands of a class that is motivated to identify its interests, and not necessarily morally legitimate ones, with the common good. But to say that the real problem may be an overcentralization of power is not to say what should take its place. The facile answer is to propose a transplanting of Western democratic machinery and to suppose that will take care of the problem. A real solution to the insecure grounding of rights within communal traditions, I suggest, must look to the character of civil society and not solely to democratic machinery.

William de Bary has recently identified two reasons for the failure of Confucianism to be more influential than it has been in its native country: first, an inability to realize its ideal of education for all people which would infuse a unified national consciousness, and second, a failure to mobilize the people as a politically active body, capable of supporting its initiatives and proposed reforms. The second failure, suggests de Bary, was linked to the lack of an infrastructure of politically effective associations that could serve as channels of communication and influence between the family and local forms of community on the one hand, and the ruling elite on the other.<sup>27</sup> A major concern of some democratic theorists in this country is the possible disappearance or eroding authority of precisely such an intermediate infrastructure. These theorists see Tocqueville as prescient about the dangers of an atomistic individualism that leaves citizens isolated, pursuing their purely private interests, and quite ineffective in making their voices heard in the political sphere because their voices are single. Now I am uncertain as to whether our intermediate institutions have gotten weaker or fewer, as these theorists worry, or whether these institutions have always been as sporadically effective as they seem to be

now. In either case, I believe there is justifiable concern. The common element of concern in both scenarios is that there is not enough community (whether it is less community than in the past or not) to support effective democracy.

#### VI. THE INTERDEPENDENCE OF RIGHTS AND COMMUNITY

A common problem for both the Chinese and American democratic traditions, I suggest, is that they have not possessed enough community, at least enough community at levels above the family and local community. The problem for the American tradition goes beyond alienation from the political process for average citizens. Consider Tocqueville's definition of individualism as a "calm and considered feeling which disposes each citizen to isolate himself from the mass of his fellows and withdraw into the circle of family and friends," such that "with this little society formed to his taste he gladly leaves the greater society to look after itself." Such people, Tocqueville observed, form "the habit of thinking of themselves in isolation and imagine that their whole destiny is in their hands." They come to "forget their ancestors" and also their descendants, as well as isolating themselves from their contemporaries. "Each man is forever thrown back on himself alone, and there is danger that he may be shut up in the solitude of his own heart."<sup>28</sup>

Tocqueville's warning about isolation from our contemporaries and our descendants is reflected in the persistent and large inequalities of income and wealth in this country and in a shamefully high proportion of our children who are growing up in poverty; most importantly, it is reflected in the national inability or unwillingness to address these problems. And this brings me to the other side of the coin: if community-centered moralities should move closer to rights-centered moralities, at least in recognizing some of the most fundamental democratic rights, so too must rights-centered moralities recognize the indispensability of community for the realization of democratic values of self-governance and social justice. That is why I suggested at the beginning of this essay that rights and community are interdependent.

The lesson, to return to the issue of universalism versus postmodern contextualism with which I began, is that adequate moral traditions need both community and rights. Rights-centered traditions require a range of viable communities to nurture effective moral agency (a requirement of which Confucianism is well aware) and to make for the effective use of democratic machinery. They require viable communities to foster the

sense of common project and fellowship that in turn promotes real and effective concern for meaningful equality among all citizens. Community-centered traditions need rights for the moral renewal of community and their peaceful transformation through the many disagreements it will experience over the common good. These necessities are grounded in our human nature. This is the sense in which I side with the universalists. However, this does not mean that rights and community must have precisely the same content across traditions, nor does it mean that they have to be given the same emphasis and the same rationale. This is the sense in which I side with the postmodernists.

#### VII. A FURTHER COMPLICATION

Rights-centered theorists have resisted appeals for community because they resist the ideal of a shared vision of a common good. I believe that they are right to do so if this ideal involves the impossible ideal of unanimity of belief about what the common good is, but I also believe that it is an error to reject community as a necessary moral ideal. The sort of community needed by both kinds of tradition must accommodate considerably more diversity of views on the common good than is commonly recognized by the more simplistic forms of communitarianism. Such forms typically envision their ideal communities as centered on some shared and unambiguous conception of the common good. Yet if we look at actual communities, even those with strong traditions of belief in a common good, we find continual disagreement and conflict over the common good. In part, this is the result of the complex nature of the common good. It is not one good, but an array of goods. These goods can be mutually supporting but also in tension with one another.

We can see this clearly in the Confucian tradition. If filial piety and brotherly respect are the root of *ren* or comprehensive moral virtue,<sup>29</sup> it also may conflict with other aspects of moral virtue, such as our concern for others outside the family. If loyalty to family nurtures a respect for authority not based on coercion, and if this respect is absolutely necessary for the cultivation of public virtue,<sup>30</sup> it may also encourage a partiality for one's own that is damaging to public virtue. Confucian ethics, as Hall and Ames have observed, is liable to continuous disagreement as to when the line between a rightful loyalty to family has crossed the line into nepotism and special privilege. And lest we take this as an occasion for condescending condemnation of Confucianism, let us recall that from different parts of the political spectrum in this country there has arisen

a regret for the passing of the big city political machines. Back then, "taking care of one's own" was at least taking care of *someone well*, and the average person on the street could feel capable of real influence on political decision making.

My point then is not to condemn Confucianism for this difficulty but to take it as indicative of the tensions between the goods that make up the complex whole called the common good. Or to take another issue that very much bears on present-day China: the provision of material security for all may be necessary for the moral flourishing of Chinese society, as Mencius and Xunzi rightly observed, but at the same time the necessary means for development and modernization in the future can have enormously destructive effects on the moral quality of a society in the present. I have in mind the extremely coercive one-child policy and the growing gap that modernization and a measure of capitalism have produced between an impoverished countryside and some relatively affluent classes in cities.

Because the common good is a complex whole including a plurality of goods and within which these different goods may come into conflict, there always will be some disagreement over which goods are included and the most reasonable way to deal with conflicts between the goods that are included. The vision of a society united around a shared and unambiguous vision of a common good is dangerously simplistic and, moreover, ignores bases for community other than such a shared conception of the common good. Actual communities are based not only on some degree of agreement in moral belief but also on a shared history, often of struggle and internal conflict, ties of affection or loyalty, or on a limited set of common goals that may be educational, artistic, political, or economic in nature.

Given the inevitability of serious disagreement within all kinds of moral traditions that have any degree of complexity, a particular sort of ethical value becomes especially important for the stability and integrity of these traditions and societies. Let me call this value "accommodation."<sup>31</sup> To have this value involves commitment to supporting noncoercive and constructive relations with others even though they have ethical beliefs that conflict with one's own. Why is this value important? From the standpoint of the integrity and stability of a society, this value is important given the regularity of occurrence of serious ethical disagreement. If such disagreement always threatened to become the source of schism, no society could survive for very long without brutal repression.

To conclude, both rights-centered and community-centered traditions need a conception of community that is not based on an unattainable ideal of a shared vision of the common good. This new conception must accept significant diversity and disagreement and must maintain community in spite of that disagreement - not only through the recognition of rights but also through acceptance of the value of accommodation. To accept this value is to seek to find creative ways for conflicting sides within a community to stay within a community and yet not yield entirely to the other. If democratic virtues are needed here, it is not so much the ability to insist on one's rights, but the creative ability to negotiate, to give and to take, to create solutions that fully satisfy neither side in a conflict but that allow both sides to "save face."

This value has a basis in the Confucian tradition. Consider Antonio Cua's interpretation of the Confucian virtue of *ren*. This virtue, he says, involves an attitude toward human conflicts as subjects of "arbitration" rather than "adjudication." Arbitration is an attempted resolution of disputes oriented toward the reconciliation of the contending parties. The arbitrator is "concerned with repairing the rupture of human relationship rather than with deciding the rights or wrongs of the parties" [which is adjudication] and accordingly attempts to shape "the expectations of the contending parties along the line of mutual concern, to get them to appreciate one another as interacting members in a community."<sup>32</sup> Now I think Cua's interpretation underemphasizes real themes of "adjudication" to be found in Confucius, Mencius, and Xunzi,<sup>33</sup> but it does capture a theme of accommodation and reconciliation in Confucianism<sup>34</sup> that could have received greater emphasis than it did in the tradition as it actually evolved.

Unfortunately, the way in which Confucianism became institutionalized resulted in a deemphasis of this theme and in a corresponding greater emphasis on agreement in conception of the common good. For example, Nathan identifies a crucial assumption running throughout the advocacy of democratic rights by Chinese intellectuals. The assumption is that such rights would tap the energies of the people, check abuses of the ruling elite, further development, *and produce harmony in the sense of all sharing the same ideals*,<sup>35</sup> It is this last element of the assumption that is fatal.

Nathan unfortunately tends to draw the wrong lesson from his observation. He equates this aversion to disagreement with the assumption that the legitimate personal interests of the individual must ultimately

harmonize with the common good.<sup>36</sup> This is a natural assumption for a Westerner to make: to deemphasize the legitimacy of disagreement and conflict is to deemphasize the legitimacy of conflicts between individuals and their communities. But conflict and disagreement can come from differences over conceptions of the common good. And because the common good of a complex society will include the goods of different communides contained within that society, there will be conflict between the goods and the communities. Mozi had a better insight into the source of disagreement and conflict in community-centered traditions: he recognized that much conflict can arise from people's *social identities*, from their identifications with family that lead to conflict with other families, from their identifications with their states that lead to conflict with other states.<sup>37</sup>

I believe there is sufficient plasticity in human nature so that people in community-centered traditions have to a greater degree relational identities. I believe that a life lived in accordance with such an identity can have great satisfactions. It of course can have deep frustrations, as do lives lived in accordance with identities that are much less relational in nature. The problem with Confucianism has not lain in its claim that a life shared and lived in relation with others is a morally flourishing life. The problem has lain in its assumption that the different aspects of a person's social identity, which correspond to the different goods that go into the common good, can all somehow be subsumed and ordered under some grand harmonizing principle. Here, perhaps, we might have wished not only that institutionalized Confucianism had taken rights more seriously, but also for a greater synthesis of Confucianism and Daoism, and more specifically, Zhuangzi's appreciation for difference and the multiplicity of perspectives.<sup>38</sup>

#### Notes

1. Heiner Roetz, *Confucian Ethics of the Axial Age: A Reconstruction under the Aspect of the Breakthrough toward Postconventional Thinking* (Albany: State University of New York Press, 1993), p. 2.
2. Roetz here refers to Henry Rosemont, Jr., "Kierkegaard and Confucius: On Finding the Way," *Philosophy East and West*, vol. 36 (1986), pp. 208-9.
3. The reference here is to Herbert Fingarette, *Confucius: The Secular as Sacred* (New York: Harper, 1972), p. 69.
4. The reference here is to David Hall and Roger Ames, *Thinking Through Confucius* (Albany: State University of New York Press, 1987), pp. 73, 43.
5. Fingarette, op. cit., p. 72.
6. Roetz, op. cit., p. 2.

## Whose Democracy? Which Rights?

### *A Confucian Critique of Modern Western Liberalism*

Henry Rosemont, Jr.

#### I. INTRODUCTION

One of the major reasons for engaging in comparative philosophical research is to make a small contribution to the intercultural dialogues that are becoming a more prominent part of international affairs, especially those dialogues that take up basic human issues such as democracy, human rights, and global justice - with the ultimate goal of these dialogues being to increase the probability that the over six billion human citizens of the global community will live more peaceably with one another in the twenty-first century than they did in the twentieth.

If this ultimate goal is to be realized, it is essential that the dialogues be genuine dialogues, with give and take, and with all sides being willing to entertain seriously the possibility that their own moral and political theories might not capture the essence of what it is to be a human being.<sup>1</sup> The necessity of the dialogues being genuine is of especial importance to citizens of the United States, for it is clearly the most powerful voice in virtually every international gathering; the World Court would be a far more effective institution if the United States would agree to abide by its decisions, our oceans would be much more ecologically sound if it would sign the Law of the Sea, and the world would be safer if it would agree to the Comprehensive Test Ban Treaty it urges other nations to ratify. But if the United States is to become more internationally responsible, its regnant ideology must be challenged. We certainly have a monopoly on power, but once the political rhetoric is seen for what it is, it is by no means clear that we occupy a similar position with respect to concepts of truth, beauty, justice, or the good.

The regnant ideology I wish to challenge may be loosely but usefully referred to as "modern Western liberalism," meaning by the expression support for a partial welfare state so long as it does not conflict with the basic concern of classical liberalism, namely, to protect individual freedom against the power of the state.<sup>2</sup> But challenges will come to naught if they are based on premises or presuppositions that are either factually mistaken, or embody basic values that modern liberalism finds abhorrent. Thus it will do no good to defend, for example, female genital circumcision solely on the grounds that it is embedded in a culture different from the West's but with its own integrity, and hence should be left alone to evolve in accordance with its own dynamics. Similarly, Western liberals - and many others - are rightfully skeptical of arguments that a particular people aren't ready for democracy yet, or that rights are a luxury the peoples of poor nations cannot afford. I wish, in other words, to question the conceptual framework of liberalism, but at the same time believe that those who accept the framework nevertheless have moral instincts that closely approximate my own.

To be at all useful then, a challenge to modern Western liberalism will have to show that certain values central to the Western intellectual tradition cannot be realized so long as other values championed by modern liberalism dominate our moral and political discourse, and that a rival tradition - in the present case, classical Confucianism - is superior to liberalism in this regard.

It is for this reason that I have entitled my paper to signal an indebtedness to the writings of Alasdair MacIntyre.<sup>3</sup> MacIntyre is, of course, as deeply suspicious of modern Western liberalism as I am. He is usually portrayed as an arch-conservative, fully committed to a modern version of Aristotelian Thomism. But he is not a relativist - pragmatic or otherwise - and unlike the great majority of "liberal" philosophers and political theorists, he takes Confucianism seriously as a genuine rival moral tradition.<sup>4</sup> Perhaps most important, he has argued well that incommensurable discourses between rival traditions can be made commensurable if certain conditions are met, and thus genuine dialogue can indeed take place. In his own words:

[T]he only way to approach a point at which our own [moral] standpoint could be vindicated against some rival is to understand our own standpoint in a way that renders it from our own point of view as problematic as possible and therefore as maximally vulnerable as possible to defeat by that rival. We can only learn what intellectual and moral resources our own standpoint, our own tradition of theoretical and practical inquiry possesses, as well as what intellectual and moral resources its rivals may possess, when we have understood our own point of view

in a way that takes with full seriousness the possibility that we may in the end, as rational beings, have to abandon that point of view. This admission of fallibilism need not entail any present lack of certitude, but it is a condition of worthwhile conversation with equally certain antagonists.<sup>5</sup>

Most philosophical conversations of this kind, because of historical determinants, are being conducted in English, as are the great majority of the intercultural dialogues on human rights, democracy, and justice. This linguistic hegemony, if such it is, is not merely owing to the economic and military superiority of the West, for which English is now the lingua franca. It is deeply embedded in and has established the agenda for the intercultural dialogues themselves. There are no traditional close semantic equivalents for "democracy," "justice," or "rights" in most of the world's languages; these are Western. The former two have their origins in Greek *demos* and *dike*, and "rights" we owe largely to the writings of John Locke, with conceptual roots that may go back to the *sokes* and *sakes* of late medieval England, and perhaps earlier.<sup>6</sup>

Thus, if we are to follow MacIntyre methodologically, we must allow the other their otherness, and, without in any way surrendering rationality, nevertheless allow for the possibility not only that we don't have all the answers, but also that we may not have been asking all the questions in as universal a vocabulary as has hitherto been presupposed. Specifically for the early Confucians, there are, in addition to "rights," "democracy," and "justice," no analogous lexical items for most of the modern Western basic vocabulary for developing moral and political theories: "autonomy," "choice," "private," "public," "dilemma," and - perhaps most eerie of all for a modern Western moral theorist - no term corresponding to English "ought," prudential or obligatory.<sup>7</sup> Thus the comparativist must be especially sensitive to the choice of terms employed in dialogue, so as not to beg the questions, for or against, the views under analysis and evaluation.

Another narrative difficulty facing the comparative philosopher is that the hypothetico-deductive, adversarial style of discourse common in Western analytic philosophical work is not found in most non-Western philosophical writings (which is why a great many analytically trained Western philosophers do not take the non-Western writings seriously).

Still another narrative difficulty facing comparativists is that the texts they study do not as tidily separate metaphysical, moral, religious, political, and aesthetic human concerns as do their Western counterparts. This problem is painfully acute for a student of classical Confucianism for, as I shall be suggesting in some of the pages to follow, much of the persuasiveness of the Confucian vision lies in its *integrating* these basic

human concerns, rather than seeing them as disparate spheres of human life. But in order to make such a case, I would have to take up each of these areas (each treated in specialized journals) in the depth they deserve, resulting in this essay becoming much longer than the entire anthology of which it supposed to be only a small part.

A final narrative difficulty facing (at least) the classical Chinese comparativist is that in the texts more purely philosophical statements are closely interwoven with judgments about current events in the lives of the writers, a style I shall follow, even though it is altogether alien to the modern Western philosophical tradition of discourse. (How much of the horror of the Thirty Year Wars is discernible in Descartes' *Meditations*?<sup>8</sup>)

As a consequence of all of these methodological difficulties attendant on engaging in comparative philosophical dialogue, comparativists must steer between the Scylla of distorting the views, and the manner in which those views are presented, in the non-Western texts they study and the Charybdis of making those views, and the manner in which they are presented, appear to be no more than a sociopolitical screed, and/or philosophically naive to the analytically trained Western philosopher. Briefly, what follows is Confucian in narrative flavor (I think) but, for all that, rational (I hope). My focus will be on the concept of what it is to be a human being, with special reference to human rights, and, to a lesser extent, to democracy. Current events loom large in my narration, I will employ the technical philosophical vocabulary of contemporary English as litde as possible, and I will run together the aesthetic, the political, the moral, and the spiritual in using a hurried sketch of the early Confucian vision to challenge modern Western liberalism in its variant philosophical guises, the challenge itself occupying center stage throughout.

## II. CONCEPTUAL BACKGROUND

Although the scholarly study of Confucianism in the West looks very different today than when it began with the first Jesuit mission to China, at least one feature of those studies has remained constant: Western investigators have sought similarities and differences between Confucian principles and those principles embedded in their own Western conceptual framework.

Originally that framework was Christianity, and beginning with Father Ricci, running through Leibniz, and even extending in some circles to the present, many scholars have declared Confucianism, in either its classical or Song formulations or both, to be compatible with basic Christian

principles and beliefs.<sup>9</sup> Other scholars, beginning with Ricci's successor Nicolo Longobardi, running through Malebranche, and again even extending to the present, found Confucian principles and beliefs sufficient to necessitate their rejection as a precondition for conversion.<sup>10</sup> But however much these two groups differed in their analyses and evaluations, they shared the same presupposition, namely, that the fundamental principles and beliefs of Christianity were universal, and, therefore, binding on all peoples.

To be sure, not all Christians agreed on what the fundamental principles and beliefs of their faith were, or ought to be; there was much room for theological and metaphysical debate. But at least a few beliefs were indeed fundamental, paramount among them being the Passion of Christ from which much else of Christianity follows.

A somewhat different conceptual framework is employed by contemporary students of Confucianism. Most Western scholars - and not a few Chinese - now seek similarities and differences between Confucian moral and political principles and beliefs and those embedded in a conceptual framework that clusters around the concepts of democracy and human rights. While Christian concerns may still underlie some research, they no longer have pride of place in the great bulk of comparative studies.<sup>11</sup>

This change has been significant, and it is equally significant, I believe, that many scholars have argued cogently that much of Confucianism is compatible with the modern Western moral and political principles and beliefs centered in the concept of human rights, and democracy.<sup>12</sup> What has not changed, however (or so it seems to me), is that almost all contemporary scholars share a common presupposition, in this case the presupposition that the rights-based Western conceptual framework is universal, and therefore binding on all peoples.

To be sure, within this conceptual framework of rights, there is room for legitimate disagreement (just as in the framework of Christianity). For those who embrace deontological moral and political theories, especially of a Kantian sort, rights are absolutely central; whereas for most consequentialists, they are more adjunctive. But again, some things are fundamental, paramount among them being that human beings are, or ought to be, seen as free, autonomous individuals. If, for Matteo Ricci and his colleagues, the rejection of the Passion of Christ was tantamount to turning the world over to the Devil, so today the rejection of the free, autonomous individual seems tantamount to turning the world over to repressive governments and other terrorist organizations. But just as one can be skeptical of Christian theology without endorsing Old Scratch, so too, I believe, one can be skeptical of a rights-based conceptual

framework, and a uniquely American notion of democracy, without giving any aid or comfort to the Husseins, Milosevics, or Li Pengs of this world.

In other writings, I have taken into account differences between rights theorists on such issues as natural rights, absolute rights, rights as "trumps," defeasible rights, and so forth, but herein I want to concentrate on what binds them together (and binds them as well to most social scientists, especially economists): the vision of human beings as free, autonomous individuals, rational and self-interested.<sup>13</sup> For myself, the study of classical Confucianism has suggested that rights-oriented moral and political theories based on this vision are flawed, and that a different vocabulary for moral and political discourse is needed. The concept of human rights, and related concepts clustered around it like liberty, the individual, property, autonomy, freedom, reason, and choice, do not capture what it is we believe to be a human being, have served to obscure the wrongness of the radical maldistribution of the world's wealth - both intra- and internationally - and, even more fundamentally, cannot, I believe, be employed to produce a coherent and consistent theory, much less a theory that is in accord with our basic moral intuitions, intuitions that have been obscured by concepts such as "human rights" and "democracy" as these have been defined for us in the contemporary capitalist West. Other definitions are possible.

### III. WHOSE DEMOCRACY?

The basic moral ideal that underlies our espousal of democracy is, I suggest, that all rational human beings should have a significant and equal voice in arriving at decisions that directly affect their own lives.<sup>14</sup> This is indeed an ideal, for it does not seem to ever have been realized even approximately in any nation-state, with the possible exception of Catalonia for a few months in early 1937 before the Communists and the Falange combined to crush the anarchist cooperatives established there.<sup>15</sup>

If this be granted, it follows that all ostensible democracies are flawed, and consequently must be evaluated along a continuum of more or less. A basic criterion used in the evaluation will of course be how much freedom any government grants its citizens. By this criterion the so-called democratic republics of Vietnam, North Korea, and the Congo fare very poorly, and the United States ranks high.

But while a healthy measure of freedom is necessary for considering a state democratic, it cannot be sufficient. By many standards, the citizens of

the United States enjoy a very large amount of freedom. But an increasing majority of those citizens have virtually no control over the impersonal forces - economic and otherwise - that directly affect their lives, and they are becoming increasingly apolitical. They have a sense of powerlessness, with good reason: democracy has been pretty much reduced to the ritual of going to the democracy temples once every four years to pull a lever for Tweedledee or Tweedledum, cynically expressed in the saying "If voting could really change things, the government would make it illegal."<sup>16</sup>

My point here, however, is not simply to criticize the United States for the present sorry state of democracy within its borders. Rather the criticism is based on the slow evolution of the democratic ideal since 1789. The United States has always been a flawed democracy - slavery, institutionalized racism, lack of women's suffrage, and so on - but it was a fledgling democracy at least; most white males had some voice in political decisions that directly affected their lives. And of course democracy developed: slavery was abolished, women got the vote, and institutional racism was dismantled. Most of these evolutionary changes did not, however, come about by voting; slavery was effectively abolished on the battlefields of Shiloh, Antietam, and Gettysburg, not at the ballot box, and it was the courts that initiated the breakdown of the institutional racism it had earlier strengthened when *Dred Scott* and *Plessy v. Ferguson* were replaced by *Brown v. Board of Education*. And the rights of women, and all working people (now being lost), were obtained by their own militant organizing efforts.<sup>17</sup>

Given then that the U.S. form of democratic government has been in existence for over two hundred years, how much has been accomplished toward realizing the democratic ideal? That is to say, another criterion we must employ in evaluating nation-states with respect to democracy is the extent to which they nourish those qualities of character that enable their citizens to be self-governing, and sustain those institutions intermediate between the individual and the state (schools, local government, churches, unions, etc.), which are necessary for self-government to be effective, and hence for democracy to flourish.<sup>18</sup>

By these lights, the United States may well not be evaluated as at the higher end of the democratic scale, as the modern liberal tradition would have it. To see this point another way, let us contrast the United States with a very different contemporary state.

Malaysia's Prime Minister, Mahathir Mohamad, along with Singapore's Lee Kuan Yew, are usually portrayed in the West as advocating "Asian authoritarianism" - more or less Confucian inspired - as against the

liberal democratic tradition of the West. And Mahathir surely has been vocal in criticizing Western social, economic, and political institutions, as has Lee. But then what are we to make of Mahathir's Asian authoritarianism when he says:

When Malaya became independent in 1957, our per capita income was lower than that of Haiti. Haiti did not take the path of democracy. We did. Haiti today is the poorest country in all the Americas. We now have a standard of living higher than any major economy in the Americas, save only the United States and Canada. We could not have achieved what we have achieved without democracy.<sup>19</sup>

Moreover, Mahathir has publicly criticized China for its policies on Tibet, the Indonesian government for its atrocities in East Timor, and the Burmese generals for their ill-treatment of Muslims; and of course there are contested elections in Malaysia: the opposition party Pas currently governs two provinces.<sup>20</sup> What, then, might Asian authoritarianism mean, other than as a shibboleth?

If we assume that Mahathir was sincere in his statement, then we might see the policies of his "National Front" government as designed to foster self-government, and to foster many basic human rights as well. Malaysia - like Singapore and many other nation-states rich and poor - is multiethnic, and the avowed goal of the government was to achieve a strong measure of economic equity between the ethnic groupings so as to minimize communalist ethnic strife. Further, while Malaysia allows market forces to operate, the government requires major corporations to measure their success largely in terms of production and employment, rather than the way U.S. corporations measure their success in the market (i.e., by consumption and return on investment).

Malaysia remains a flawed democracy; its citizens are not as free as their U.S. counterparts: free speech has been restricted in the past on university campuses, and the government's prosecution of Anwar Ibrahim is surely deplorable. But it has given its citizens the franchise, and tolerated criticism, as has Singapore, despite its caning practices, and ban on gum chewing. Given how little a democratic base the Malaysian government had in 1957 (and Singapore in 1961), these countries have indeed come a long way socially, politically, and economically by their focus on equity across ethnic and religious boundaries and have equally been encouraging of self-government within and between those communalist groupings. (In both countries today, and in Hong Kong, Taiwan, South Korea and Japan, there are strong and vocal opposition political parties, all of which criticize governmental policies.)

If this be so, and when it is realized how many young nation-states are multiethnic today, then an argument can be made for Asian authoritarianism perhaps being not altogether authoritarian, but rather sensitive to cultural influences historically, yet supportive of a democratic ideal,<sup>21</sup> perhaps a better one than is insisted upon by the United States. And if this argument has merit, it will follow in turn that the fledgling democracies of East and Southeast Asia might provide a better model for the evolution of self-government than the U.S. model proffered by modern Western liberalism, and it may well fall to these Asian countries to be the true champions of democracy and human rights in the twenty-first century. This is precisely the claim - startling as it initially appears - made by political scientist Edward Friedman in an incisive recent article:

Since it is difficult to long maintain a fledgling democracy without economic growth... dynamic Asian societies are seeking communalist equity.... [I]f the economic pie does not expand, then the only way the previously excluded can get their fair share of the pie is to take a big bite out of what established elites already have\_\_\_\_Lacking the benefits of East Asia's more dynamic, statist and equitable path to growth, a polarizing democracy elsewhere, in neo-liberalist guise, can quickly seem the enemy of most of the people. This has been the case with numerous new democracies in both Latin America and Eastern Europe.

At the end of the twentieth century... pure market economics further polarizes a society. What is emphasized in the post-Keynesian orthodoxy is containing inflation. What is rewarded is creating a climate welcomed by free-floating capital. The concerns of the marginalized, the poor, and the unemployed are not high on this agenda\_\_\_\_State intervention on behalf of equity - as with the way Singapore tries to make housing available to all, as with Malaysia's success with state aid to rural dwellers - is far more likely to sustain democratic institutionalization.<sup>22</sup>

Without idealizing the governments of East and Southeast Asian fledgling democracies - some defenders of Asian authoritarianism are indeed authoritarian and hostile to democracy - it remains that countries like Malaysia - and to a lesser extent, Singapore and the five "mini-dragons" - have come a fair distance in nourishing self-government, and their record is especially impressive when compared to that of the United States: they began with much less, both economically and politically, and they have achieved much, both economically and politically, in only one-fifth of the time the United States has been at it.

To deepen our analysis of this state of affairs, and to bring the Confucian persuasion more directly to bear on the analysis, we turn now from this woefully brief consideration of democracy to the other issue central to intercultural dialogue today: human rights.

#### IV. WHICH RIGHTS?

A global concern for human rights has grown appreciably since the U.N. Declaration of 1948, with human rights activists found in every country, sufficient in quality and quantity as to render flatly wrong the view that human rights - and democracy - are simply Western conceits. There is increasing international insistence that human rights be respected, and democracy encouraged.<sup>23</sup>

In the course of these dialogues, and in recent political and moral theory, rights have been roughly placed in three categories: civil and political, social and economic, and solidarity rights. It is usually understood that each succeeding set of rights is a natural progression from the preceding set, evidenced in the terms by which we refer to them: first-, second-, and third-generation rights.<sup>24</sup>

Unfortunately, upon closer examination, it becomes less obvious that second-generation rights are a natural conceptual progression from first-generation rights. And if we are to understand the early Confucians, we must first come to appreciate the difference between the two.

For Locke, civil and political rights accrued to human beings as gifts from their Creator. But God is seldom invoked today to justify first-generation rights. Instead, they are grounded in the view that human beings are basically autonomous individuals.<sup>25</sup> And if I am indeed essentially an autonomous individual, it is easy to understand and appreciate my demands that *ceteris paribus* neither the state nor anyone else abridge my freedom to choose my own ends and means, so long as I similarly respect the civil and political rights of all others. But on what grounds can autonomous individuals demand a job, or health care, or an education - the second-generation rights - from other autonomous individuals? There is a logical gap here, which no one has successfully bridged yet: from the mere premise of being an autonomous individual, no conclusion can follow that I have a right to employment. Something more is needed, but it is by no means clear what that something might be, unless it conflicted with the view of human beings as basically autonomous individuals.

Put another way, jobs, adequate housing, schools, health care, and so on, do not fall from the sky. They are human creations, and no one has been able to show how I can demand that other human beings create these goods for me without their surrendering some significant portion of their first-generation rights, which accrue to them by virtue of their being autonomous individuals, free to pursue their own projects rather than being obliged to assist me with mine.

That I, too, can claim second-generation rights to such goods is of no consequence if I believe I can secure them on my own, or in free association with a few others, and thereby keep secure my civil and political rights. It is equally irrelevant that I can rationally and freely choose to assist you in securing those goods on my own initiative for this would be an act of charity, not an acknowledgment of your rights to those goods.

To see the logical gap between first- and second-generation rights in another way, consider this difference between them: 99 percent of the time I can fully respect your civil and political rights merely by ignoring you. (You certainly have the right to speak, but no right to make me listen.) If you have legitimate social and economic rights, on the other hand, then I have responsibilities to act on your behalf, and not ignore you. And what would it take for your social and economic rights claims to be legitimately binding on me? Basically what is required is that I see neither you nor myself as an autonomous individual, but rather see both of us as more fundamentally commembers of a human community. No one would insist, of course, that we are either solely autonomous individuals or solely social beings. But if we believe we are fundamentally first and foremost autonomous individuals, then our basic moral obligation in the political realm will be to (passively) respect the first-generation rights of all others. If we are first and foremost commembers of a community, on the other hand, our moral obligation to (actively) respect the second-generation rights of all others will be binding - as it would be for Confucians.

## V. A CONFUCIAN RESPONSE

Against this background let me quickly sketch my answer to the question of whether precursors of the concept of human rights - and derivatively, democracy - may be found in classical Confucianism. Unsurprisingly, my answer is "yes and no." It is "no" if the most basic rights are seen as civil and political, grounded in the view that we are autonomous individuals, but it is "yes" if our most basic rights stem from membership in a community, with each member assuming a measure of responsibility for the welfare of all other members.

I do not believe much argumentation is necessary to establish that the classical Confucians did not focus on the individualism of human beings. *Ren*, the highest human excellence, must be given expression in interpersonal endeavors. Rituals (*li*), necessary for self-cultivation and

the ordering of society, are communal activities. In order to exercise *xiao*, I must have parents, or at least their memory. This point is virtually a truism: in order to give human expression to the qualities inherent in being a friend, spouse, sibling, or neighbor, I must *have* a friend, spouse, sibling and neighbor, and these all-too-human interactions are not an accidental or incidental part of my life, for a Confucian; on the contrary, they are absolutely essential if I am to achieve any significant measure of human flourishing.<sup>26</sup>

It is not merely that we are obliged, of necessity, to interact with others; we must care about them as well, and this caring, while it begins with the family, must nevertheless extend beyond it. The obligation to be attentive to the needs of all others in the community- large or small - can be traced as far back as the *ShuJing*, in the well-known passage that "Tian hears and sees as our people hear and see."<sup>27</sup>

This same theme permeates the *Lun Yu*, with Confucius insisting that even the humblest peasant was entitled to his opinions - which deserved attention - and insisting as well that the first responsibility of an official was to see that the people under his jurisdiction were well fed, with the attendant disgrace if he should be well fed when the people were not; and after they have been fed, they should be educated.<sup>28</sup> And that is exactly what is also required for generating those qualities of character that lead to public self-government - the democratic ideal. Moreover, think of how often the disciples ask socially oriented questions: about government, about filial piety, about rituals, and so on. A very common question, of course, concerns the qualities of the *jun zi*. In the overwhelming majority of cases, the Master places his response in a social setting: in the presence of superiors, the *jun zi* does X; in the presence of friends, Y, and in the presence of *xiao ren*, Z.<sup>29</sup>

Albeit in a semantically camouflaged way, Mencius justifies regicide when the ruler does not care for his people, and places him at the bottom of the moral hierarchy even when he does.<sup>30</sup> At a much more profound philosophical level, Mencius maintains that this caring for others is, to borrow Irene Bloom's felicitous term, a "foundational intuition"<sup>31</sup> in humans, as the child/well "gedanke experiment" is designed to establish.<sup>32</sup> And of course the "man in the street can become a Yao or a Shun."<sup>33</sup>

Moreover, this caring for all others was not to be only a personal excellence to be nurtured but to be institutionalized as well. Xunzi's *Wang Zhi Pian* makes this point explicitly. To take only one example, after insisting that the ruler appoint ministers on the basis of their moral qualities

rather than on the basis of lineage or wealth, he goes on to say:

When it comes to men of perverse words and theories, perverse undertakings and talents, or to people who are slippery and vagrant, they should be given tasks to do, taught what is right, and allowed a period of trial.... In the case of the Five incapacitated groups, the government should gather them together, look after them, and give them whatever work they are able to do. Employ them, provide them with food and clothing, and take care to see that none are left out [L]ook after widows and orphans, and assist the poor.<sup>34</sup>

This remarkable passage - and there are many others in a similar vein in the *Wang Zhi Pian* - requires comment. First, despite a number of semiauthoritarian pronouncements in this and other chapters, Xunzi is clearly advocating the functional equivalent of job training programs, Aid to Families with Dependent Children, welfare, and Medicare for the Chinese peoples; on this score he is far to the left of either Republicans or Democrats in the United States. What makes this advocacy all the more impressive is that it requires the state to provide many goods and services to groups of people who cannot possibly pose a threat to that state's power; Machiavellian it is not.

Second, it is significant that Xunzi's concern for the well-being of the sick, the poor, the marginalized, and the unlettered is not mirrored in the political treatises composed by his near-contemporaries on the other side of the globe; we will read Plato's *Republic* and the *Laws*, and Aristotle's *Politics* in vain if what we wish to learn is the obligations of the state toward its neediest members.

Third, and perhaps most important in attending to this passage, to the several others cited previously, and to a great many others in the classical Confucian corpus, is it not possible to discern not only a sense of self-governance, but a sense of the importance of nurturing self-governance in others as well? Might we here be seeing a genesis for the development of social and economic rights, and for democracy? The answer, of course, is "no," if our model of democracy is autonomous individuals freely exercising their franchise at the voting booth. Xunzi's view of government is surely of the people and for the people, but not explicitly by the people. But bracket Lincoln and the United States, and return for a moment to Mahathir Mohamad's Malaysia and Lee Kuan Yew's Singapore. If we agree that these countries, warts and all, are nevertheless fledgling democracies, whose theoretical perspective more significantly underlies the social, economic, and political progress that has been made, Xunzi's or John Locke's?

As a final example of the Confucian claim that we cannot merely dwell among the birds and beasts (i.e., we are not autonomous individuals) and at the same time meet the common objection that Confucian community norms are highly particularistic, let us examine a very familiar passage from the *Da Xue* for a moment. There is a strong spiritual dimension to this text, signaled by the large number of times worlds like "repose," "tranquility," "peace," and "the highest good" - *ding*, *jing*, *an*, and *zhi shan*, respectively - appear in it.<sup>35</sup>

Its religious message is, however, singular; I know of no close parallel to it in other traditions. To find peace and to dwell in the highest good, as defined by the West, for example, we are uniformly instructed to look inward: to know our selves, as Socrates put it, or to know ourselves in relation to deity, as the texts of the three Abrahamic religions make clear. In the *Da Xue*, on the other hand, looking inward and coming to know our selves is more of a means than the ultimate end toward which we must strive. That goal is to augment *tian xia*, which may fairly be translated as "the world community," despite the monocultural orientation of the Han author(s) of the text. And we reach this goal by first shrinking our perspectives and activities from *tian xia* through the state, the clan, the family, and then to our own heart-mind. But once this task is accomplished, we must then begin to expand our perspectives and activities outward again, until they eventually encompass the world community.<sup>36</sup> Herein lies the highest good, to "serve the people" (*wei ren min*), Mao's abuse of the expression two millennia later notwithstanding.

There is a great deal more I could say to justify the claim that a sound conceptual basis for second-generation rights, grounded in membership in a community, is contained in both the letter and the spirit of the classical Confucian writings. And I will go further, to also claim that if we can learn to read those writings against a global background that goes beyond modern Western liberalism, we may also see a basis for the development of democracies that is of direct relevance today. I am not suggesting that "Alle Menschen werden Bruder" is reflected in the classical corpus; to my knowledge, Zhang Cai's beautiful *Xi Ming* is the first text to do that. But "No man is an Island" thoroughly permeates classical Confucianism, and very probably we must fully appreciate Donne's vision before we can embrace Schiller's.

In sum, Confucian selves are much less autonomous individuals than they are relational persons, persons leading lives integrated morally,

aesthetically, politically, and spiritually; and they lead these lives in a human community. As Confucius said:

We cannot run with the birds and beasts  
Am I not one among the people of this world?  
If not them, with whom should I associate?<sup>37</sup>

All of the specific human relations of which we are a part, interacting with the dead as well as the living, will be mediated by the courtesy, customs, rituals, and traditions we come to share as our inextricably linked histories unfold (the *li*). By fulfilling the obligations defined by these relationships, we are, for early Confucians, following the human way. It is a comprehensive way. By the manner in which we interact with others our lives will clearly have moral and political dimensions infusing *all*, not just some, of our conduct. By the ways in which this ethical interpersonal conduct is effected, with reciprocity, and governed by civility, respect, affection, custom, ritual, and tradition, our lives will also have an aesthetic dimension for ourselves and for others. And by specifically meeting our defining traditional obligations to our elders and ancestors on the one hand, and to our contemporaries and descendants on the other, the early Confucians offer an uncommon, but nevertheless spiritually authentic form of transcendence, a human capacity to go beyond the specific spatiotemporal circumstances in which we exist, giving our personhood the sense of humanity shared in common, and thereby a sense of strong continuity with what has gone before and what will come later, and a concomitant commitment to leave this earth in a better condition than we found it. There being no question for the early Confucians of the meaning of life, we may nevertheless see that their view of what it is to be a human being provided for every person to find meaning *in* life.<sup>38</sup>

This, then, is an all-too-brief sketch of the conceptual framework of Confucianism, wherein rights-talk was not spoken, and within which I am not basically a free, autonomous individual. I am a son, husband, father, grandfather, neighbor, colleague, student, teacher, citizen, friend. I have a very large number of relational obligations and responsibilities, which severely constrain my choices of what to do. These responsibilities occasionally frustrate or annoy, they more often are satisfying, and they are always binding. If we are going to use words like "freedom" here, it must be seen as an achievement, not a stative term, as Confucius suggests in describing the milestones of his life. And my individuality, if anyone wishes to keep the concept, will come from the specific actions I take in

meeting my relational responsibilities. There are many ways to be a good teacher, spouse, sibling, friend, and so forth; if Confucian persons aren't free, autonomous individuals, they aren't dull, faceless automatons either. As Herbert Fingarette has noted well, for the Confucians there must be at least two human beings before there can be any human beings.<sup>39</sup>

Furthermore, the language of Confucian discourse is rich and varied, permitting me to eulogize a Martin Luther King; it allows me a full lexicon to inveigh against the Chinese government for its treatment of Han Dongfang, Falun Gong members, and others and against the Indonesian government for the horrors visited on the East Timorese people. I not only can express outrage at the rape of Bosnian women and the NATO/U.S. bombing of Kosovo and Serbia but also petition the Governor of Pennsylvania to grant a new trial to Mumia Abu Jamal. I can, in sum, fully express my moral sentiments in any democracy without ever invoking the language of first-generation human rights.

Perhaps then, we should study Confucianism as a genuine alternative to modern Western theories of rights (and democracy), rather than merely as an implicit early version of them. When it is remembered that three-quarters of the world's peoples have, and continue to define themselves in terms of kinship and community rather than as rights-bearers, we may come to entertain seriously the possibility that if the search for universal moral and political principles - and a universally acceptable language for expressing these principles - are worthwhile endeavors, we might find more of a philosophical grounding for those principles, beliefs, and language in the writings of Confucius, Mengzi, and Xunzi than those of John Locke, Adam Smith, and their successors. To emphasize this argument, let us return to the contemporary world.

## **VI. BEYOND THE LIBERAL TRADITION**

The best way to go beyond modern Western liberalism in a global context is, I believe, to focus on economics. Large corporations are increasingly unrestrained in their behaviors both intra- and internationally, in an increasingly relentless drive for greater profits. The adverse social effects of this drive are obvious, yet we seem incapable of changing things; why?

One major reason, I submit, is that the Western - now international - legal system that is designed to protect the first-generation civil and political rights of autonomous individuals equally protects the rights of autonomous individual corporations to do pretty much as they please, and the so-called democratic process, especially in the United States, is so

money-driven that those corporations can usually choose whichever candidates please them.

Consider a statement from Robert Reich, the former Secretary of Labor. Upon being challenged for expressing a measure of unhappiness at AT&T's recent decision to lay off 40,000 workers after declaring near-record dividends, he responded:

I don't question the morality of AT&T. In fact, I am very much against villainizing any of these people. And with regard to whether they did it wisely - the share price went up. By some measures, AT&T did precisely what it ought to have done. But the fundamental question is whether society is better off.<sup>4</sup>"

This is an astonishing statement. If society is better off for AT&T's action, then it would *prima facie* suggest the action was moral; and if society is worse off, then immoral. How, then, could Reich not wish to question the morality of AT&T's action? Worse, the answer to the "fundamental question" he asks surely appears to be that U.S. society is worse off for the job losses, even when we take shareholder gains into account: a great many AT&T shares are owned by a very few people.

In this light, we may better appreciate why the governments of the fledgling democracies in East Asia are so often called "authoritarian": they enact laws prohibiting major corporations from laying off large numbers of workers in order to secure greater profits, and in this way, those governments restrict "free trade."

Japan, too, restricts free trade, which is at least partially responsible for the "Asian authoritarian" label continuing to be affixed to the way the country is run. The curmudgeonly economist and political analyst Edward Luttwak has brought home succinctly the difference between a restrictive Japan and a free United States:

When I go to my gas station in Japan, five young men wearing uniforms jump on my car. They not only check the oil but also wash the tires and wash the lights. Why is that? Because government doesn't allow oil companies to compete by price, and therefore they have to compete by service. They're still trying to maximize shareholder value, but they hire the young men. I pay a lot of money for the gas.

Then I come to Washington, and in Washington gas is much cheaper. Nobody washes the tires, nobody does anything for me, but here, too, there are five young men. The five young men who in Japan are employed to wash my car are, here, standing around, unemployed, waiting to rob my car. I still have to pay for them, through my taxes, through imprisonment, through a failed welfare system. I still have to pay for them. But in Japan at least they clean my car.<sup>4'</sup>

Similarly, Clinton defended the North American Free Trade Agreement by claiming that it would raise the Gross National Product and

create more hi-tech jobs. But as Luttwak also noted, the United States already has the highest GNP in the world, and it is not important, for the vast majority of U.S. citizens, to give great weight to increasing it further. And to ascertain just how badly we need a lot more hi-tech jobs, just ask virtually any recent college graduate. What we do need is more decent-paying semiskilled jobs for those five young men waiting to steal Luttwak's car, and for millions more young men and women just like them.

Perhaps I am mistaken here, we might indeed need to increase GNP and secure more hi-tech jobs. That is not my point. Rather I wish to suggest a question: why is it in this most free of all nations, we freely choosing autonomous individuals have no democratic choice about whether we want to spend our money having our windshields washed or building more prisons?

More directly: the anti-World Trade Organization demonstrations in Seattle made clear that many U.S. citizens would like to abolish the organization. Yet the four major candidates for the presidency early in the year 2000 - Gore, Bradley, Bush, and McCain - all supported the WTO, as do the corporations that finance their campaigns; for whom can the Seattle demonstrators and other like-minded citizens vote to represent them in this "democracy"?

Consider the results of a poll conducted by the Preamble Center for Public Policy (completed shortly before President Clinton signed the end-of-welfare bill): 70 percent of 800 registered voters believed corporate greed, not the global economy, was responsible for downsizing; and an equal number supported increased governmental action to curb that greed and promote socially responsible conduct. Almost 80 percent favored obliging large employers to provide health benefits and pension plans, and equally favored "living wage" laws.<sup>42</sup>

As indicated earlier, one reason we have little or no real choice in such matters is that our legal system, significantly designed to protect and enhance the first-generation rights of autonomous individuals, equally protects and enhances those rights for large corporations.<sup>43</sup>

A related reason is a cardinal tenet of modern Western liberalism: the government, being public, must say nothing of the highest good; that is a private matter, for each autonomous individual to choose freely for him/herself. The state cannot legislate morality (which is why Secretary Reich did not wish to question AT&T's actions).

This is a powerful point, which contributes greatly to the support we are inclined to give to modern Western liberalism: we - especially we intellectuals - do want to be free to choose our own ends; we each have our individual hopes and dreams, and do not want our manner of expressing

them dictated or altered by others. Herein lies, I believe, the basic appeal of the concept of civil and political rights for autonomous individuals.

But as Michael Sandel has argued in a recent work:

By insisting that we are bound only by ends and roles we choose for ourselves, [modern Western liberalism] denies that we can ever be claimed by ends we have not chosen - ends given by nature or God, for example, or by our identities as members of families, peoples, cultures, or traditions.<sup>44</sup>

For the Confucians, this liberal denial is flatly mistaken at best, self-serving at worst, for human beings do indeed, they insist, have ends they have not chosen, ends given by nature and by their roles in families, as members of communities, and as inheritors of tradition. The highest good is not many; it is one, no matter how difficult to ascertain, and it is communally realized in an intergenerational context. Confucius himself was absolutely clear on this point, for when a disciple asked him what he would most enjoy doing, he said:

I would like to bring peace and contentment to the aged, share relationships of trust and confidence with friends, and love and protect the young.<sup>45</sup>

This, then, in far too brief a compass, is a sketch of a challenge to modern Western liberalism from a Confucian perspective. I believe I have met MacIntyre's criteria for intercultural discourse, for I have attempted to challenge contemporary Western liberalism largely on its own grounds, without recourse to any views liberals would claim to be patently false, and by appeal to a number of basic values the majority of liberals would endorse. And I have also attempted to show how those basic values cannot be realized in the modern liberal tradition owing to endorsing other values, namely, those that attach directly to autonomous individuals - and transnational corporations.

If my challenge is at all sustainable, it suggests that either (1) the liberal or some other tradition must conceptually reconcile first- and second-generation rights claims much more clearly in the future than has been done in the past; or (2) we must give pride of place to second-, and third-generation rights in future intercultural dialogues on the subject, and future dialogues on democracy and justice as well; or (3) we might abandon the language of rights altogether and seek a more appropriate language for expressing our moral and political concerns cross-culturally. But if either of the latter, it must follow that these dialogues can no more be value-neutral than can the governments of fledgling democracies in East and Southeast Asia or in not-so-fledgling democracies like the United States.

The spell of the concept of autonomous individuals - once a needed bulwark perhaps against totalitarian regimes - is not confined to the economic and political dimensions of our (increasingly disjointed) lives; it affects us metaphysically and spiritually as well, which Aldous Huxley has well captured succinctly:

We live together, we act on, and react to, one another; but always and in all circumstance we are by ourselves. The martyrs go hand in hand into the arena; they are crucified alone.<sup>4®</sup>

Or as A. E. Housman put it:

I, a stranger and afraid  
In a world I never made<sup>47</sup>

Much as I admire Huxley and Housman, this is a frightening universalist view to foist on the global community, and as most U.S. citizens and third-world peoples are beginning to understand, has the quality of being a self-fulfilling prophecy. Thus it seems imperative to challenge U.S. ideology at its moral, political, and metaphysical roots, both for the sake of its citizens and for the sake of the rest of the world, whose peoples share the burden of having to live with the untoward consequences of U.S. foreign policies defended by reference to that ideology.

There are alternatives to the Western liberal tradition, alternative visions that just might be endorsed by all people of good will, no matter what their cultural background.

There is nothing wrong with seeking universalist values; indeed, that search must go forward if we are ever to see an end to the ethnic, racial, religious, and sexual violence that has so thoroughly splattered the pages of human history with blood and gore since the Enlightenment. Rather does the wrongness lie in the belief that we - or any single culture - are already fully in possession of those values, and therefore feel justified, backed by superior economic and military threats, in foisting those values on everyone else.

Classical Confucianism proffers an alternative.<sup>48</sup>

#### Notes

1. I appreciate that "essence" is a buzzword in most postmodern discourse today. For details, see my "Against Relativism" in G. Larson and E. Deutsch eds., *Interpreting Across Boundaries* (Princeton, NJ: Princeton University Press, 1987)-