

Religion and Human Rights

An Introduction

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OXFORD
UNIVERSITY PRESS

- Örücü, Esin and David Nelken, eds. *Comparative Law: A Handbook* (Oxford: Hart Publishing, 2007)
- Rai, Lal Deosa. *Human Rights in the Hindu-Buddhist Tradition* (New Delhi: Nirala Publications, 1995)
- Rankin, Aidan. *Many-Sided Wisdom: A New Politics of the Spirit* (Ropley, UK: O Books, 2010)
- Sharma, Arvind. *Are Human Rights Western?: A Contribution to the Dialogue of Civilizations* (New Delhi: Oxford University Press, 2006)
- . *Hinduism and Human Rights: A Conceptual Approach* (New Delhi: Oxford University Press, 2004)
- Simpson, Edward. *Muslim Society and the Western Indian Ocean. The Seafarers of Kachchh* (London: Routledge, 2006)
- Viswanathan, Ed. *Daddy, Am I a Hindu?* (Mumbai: Bharatiya Vidya Bhavan, 1992)

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Confucianism and
Human Rights

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The relation between Confucianism and human rights is a complex issue and raises a number of questions. Is Confucianism compatible with the idea of human rights? Is there a place for human rights in an ideal society as understood in Confucianism? Under what conditions would Confucianism accept human rights, if at all? Can it accept the specific human rights listed in the Universal Declaration of Human Rights? Different answers have been given to these questions, in part because they are based on different understandings or evaluations of both Confucianism and human rights. Some scholars who hold an incompatibilist position give Confucianism a rather positive portrayal and human rights a negative one, arguing that Confucianism as an ethics of benevolence and harmonious social relationships has no place for rights that are premised upon individualism and self-assertiveness. Others taking the same incompatibilist position give an opposite account, holding that Confucianism preaches an authoritarian morality and politics that has to be rejected and replaced by a political philosophy of human rights and democracy. The compatibilists, however, argue that while Confucianism may have no difficulty in accepting the idea of human rights, it may not accept a full-blown conception of human rights as expounded by certain liberal philosophies of rights or developed in international laws. Before examining these various controversies, let us start with a brief, and hopefully uncontroversial, description of the Confucian tradition and the idea of human rights.

As a tradition of thought, Confucianism began life in China more than 2500 years ago.¹ Although its core ideas can be traced back to the teachings of Confucius (551–479 B.C.E.), this tradition was never thought to be wholly created by Confucius himself. In fact, the original Chinese term of Confucianism, “*ru-jia*,” makes no reference at all to Confucius. It rather refers to a school of *ru*, “a type of man who is cultural, moral, and responsible for religious rites, and hence religious.”² Confucius himself stressed that he was not an inventor of any radically new vision of ethics or ideal society, but only a transmitter of the old tradition—the rites and social values developed in the Zhou dynasty (traditionally, mid-eleventh century to 256 B.C.E.) and even earlier. Nevertheless, it was Confucius who most creatively interpreted the tradition that he had inherited, gave it a new meaning at a time when it became stifling, and expounded it so effectively that his views have influenced a great number of generations of *ru* to come. *The Analects*, a record of his ideas and teaching compiled primarily by his disciples and later scholars, is the

most fundamental text in the Confucian tradition. However, Confucius handed down no systematic philosophy—*The Analects* left a number of basic questions undeveloped, such as those about human nature, the metaphysical grounds of ethics, and the proper organization of the State. It was Mencius (ca. 379–289 B.C.E.) and Xunzi (ca. 340–245 B.C.E.) who filled in the details and more systematically developed the tradition into new, and different, directions. The thoughts of these three thinkers, together with the early classics upon which they drew, such as the *Book of History* and the *Book of Poetry*, constitute the classical tradition of Confucianism.

Confucianism has continued to evolve ever since its inception, in part as a response to the political needs of the time (as in Han Confucianism), and in part to the challenges of other schools of thought (as in Song-Ming Confucianism). Han Confucianism made Confucian ethics and politics rigid and hierarchical, placing the father and ruler at the center of absolute power in the family and polity, respectively. Song-Ming Confucianism, on the contrary, turned its inquiry inward into the human mind in order to meet the challenges of Buddhism and constructed robust theories of the inner life of human individuals. No matter what innovations were made in these later developments, however, classical Confucianism, especially the Mencius strand, has been recognized as the canon of the tradition, something which later thinkers claimed only to appreciate, vindicate, and enrich. This was exactly the kind of moderate claim made by Confucius himself regarding his attitude toward the tradition before him. In this sense, a deep respect for tradition—thinking that it was the sages in the past who had got things right—has always been a salient mark of Confucianism.

What are the core ideas in Confucianism? And how much influence has it had? Most simply put, Confucianism holds that people should cultivate their minds and virtues through life-long learning and participation in rituals and that they should treat their family members according to the norms of filial piety and fatherly love and show a graded concern and care for all outside of the family.³ Political leaders should do their best to care for the ruled and serve as a moral exemplar for them. Learned intellectuals above all others should devote themselves in politics and education to promote the Way—the ideal ethical and political order—and help build the good society. More will be said concerning the content of Confucian ethics later in this chapter. But even this much characterization enables us to see that the Confucian vision of human life has fundamentally shaped the Chinese culture and the basic structure of society in the past two thousand years or so. Its vision, however, has extended far beyond the Chinese borders and has penetrated deeply into neighboring countries. Today, those East Asian societies that have been influenced by the Confucian culture, namely, mainland China, Hong Kong, Japan, Korea, Singapore, Taiwan, and Vietnam, have undergone modernization and been exposed to the powerful forces of global capitalism that have eroded their Confucian cultural traditions to a considerable extent. But Confucian values such as the importance of the family, the respect for learning and

education, and the emphasis on order and harmony remain significant in these societies.

It is important to note that Confucianism has never been an established religion, although it has a strong religious dimension that stresses the harmony and unity of humanity and Heaven. The interest of Confucianism as a religious humanism lies in its concern for this world, with a clear mission to improve human life and society.⁴ There was no official spokesperson for Heaven or revelation of Heaven's will in the form of a book or person. Confucius and other sages were not prophets, the *Analects* was not the Bible. The Way had to be embodied and expounded in human action, and the teachings in the classics were never meant to be timeless sacred creed handed down from Heaven. This fact about Confucianism has implications for its relation to human rights. Because Confucianism has always been an evolving tradition of thought, with many self-identified participants sharing only a cluster of values, beliefs, and practical concerns rather than a set of fixed creeds, the participants are at liberty to reinterpret, revise, and further develop the tradition of thought in a way they see fit. So the question about the compatibility of Confucianism and human rights is not a purely interpretive issue fixed by the canons, but a conscious normative choice to be made and defended by participants in the debate.

Similarly, with regard to the question of compatibility, we need to detach the idea of human rights from its associated doctrines or philosophies that have developed in recent centuries. Although Western natural law theories and various liberal thoughts have contributed much to the development of human rights, today the idea of human rights—minimally defined as rights that human beings have by virtue of their humanity—has gained currency in many different religions and cultures and has been supported by people appealing to different philosophical and religious traditions of thought. As will be seen later, some of the attacks on human rights made by Confucian-inspired scholars might better be seen as attacks on the kind of rights talk commonly found within certain strands of liberalism. Of course, the extent to which human rights as developed in international laws today can be separated from Western liberalism may be an open question, but it is a mistake to simply assume or assert an equivalence of the two.

■ REFUTING THE INCOMPATIBILITY VIEW

With these preliminary remarks in place, we may now consider some alleged Confucian arguments that reject human rights. The first is what we may call the argument of incompatibility, which holds that the idea of human rights carries some presuppositions that are either philosophically problematic or fundamentally at odds with Confucianism. This view is well represented in the work of Henry Rosemont, Jr., who points out that it is “a bedrock presupposition of [Western] moral, social, and political thinking that human beings have rights,

solely by virtue of being human." However, every human being, he argues, "has a definite sex, a color, an age, an ethnic background, certain abilities; and we all live in a specific time and a specific place. From these facts some disturbing considerations follow. The first is that if rights are borne by human beings regardless of these differentiations, then those rights must obtain for human beings altogether independently of their culture. But then it becomes extremely difficult to imagine actual bearers of rights, because there are no culturally independent human beings."⁵

According to this view, the concept of human rights presupposes *acultural* (or *asocial*) beings, a view not only antithetical to the Confucian conception of personhood, but also philosophically untenable. But this argument misunderstands the nature of human rights. Rosemont is right in taking human rights as rights people have solely by virtue of being human, irrespective of their sex, ethnic, cultural, and historical background. He is mistaken, however, in arguing that the concept implies that human beings can be thought of as having none of these attributes. The concept asserts not a *descriptive* claim about human nature but a *moral* view about distribution of rights—one's sex, race, or culture is a morally irrelevant consideration insofar as one's entitlement to basic human rights is concerned.⁶ Neither are international charters of human rights guilty of this charge. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) protects people's interests in having a meaningful social and cultural life. The freedoms of expression and of religion in the International Covenant on Civil and Political Rights (ICCPR), which are taken by Rosemont and others as individualistic rights, are to protect people's *social* interest in communication with others and joining religious associations, respectively. These rights presuppose the fact that people are social and cultural beings.

Even if the concept of human rights does not presuppose *acultural* or *asocial* beings, Rosemont continues, it is "closely related to our view of human beings as freely choosing autonomous individuals, a view which is at least as old as Descartes and which is reaffirmed in the 1948 United Nations Declaration of Human Rights." Indeed, "this concept is overwhelmingly drawn from the culture of the Western industrial democracies and is concerned to propose a particular moral and political perspective, an ideal, appropriate to that culture."⁷ Other cultures or moral perspectives, in his view, do not affirm this idea of a free, autonomous self. In early Confucianism, according to Rosemont, "there can be no me in isolation, to be considered abstractly: I am the totality of roles I live in relation to specific others. I do not play or perform these roles; I am these roles. When they have all been specified I have been defined uniquely, fully and altogether, with no remainder with which to piece together a free, autonomous self."⁸ In a similar vein, Roger Ames argues that "there is much in the Confucian tradition that might be a resource for rethinking our notion of autonomous individuality, especially that aspect of the individual which, given its priority over society and environment, effectively renders context a means to individual ends."⁹

This argument is problematic in both its understanding of the Universal Declaration of Human Rights (UDHR) and the Confucian conception of personhood. Nowhere in the UDHR can we find the concept of freely choosing autonomous individuals. Not only is this concept never mentioned, but none of the major ideas in the document can be easily construed as promoting a liberal-individualistic ideal of autonomy. In the UDHR, individual freedom is not an absolute value or license to do anything one pleases. The first article stipulates that "all human beings are born free and equal in dignity and rights," but what follows immediately is that "they are endowed with *reason* and *conscience* and should act towards one another in a spirit of *brotherhood*." The last article again insists that "everyone has duties to the community in which alone the free and full development of his personality is possible," and that the exercise of one's rights and freedoms must meet "the just requirements of morality, public order and the general welfare in a democratic society." In addition, the UDHR is silent on the grounding of civil rights, other than by associating it with "the dignity and worth of the human person." It certainly does not give an autonomy-based justification of those rights. In fact, even in the West, freedom of expression has often been justified on the grounds that it contributes to truth, arts, democracy, monitoring of government, and so forth, grounds that are not directly related to personal autonomy as such. Similarly, the rights not to be subjected to torture, arbitrary arrest, detention, or exile, the right to fair hearing, and the right to be presumed innocent until proved guilty are typically justified on the basis of our interests in a minimal notion of freedom, physical security, and fair treatment rather than any robust liberal idea of autonomy.

It is also problematic to describe the early Confucian conception of person as purely role-based. If by this, Rosemont means that Confucian individuals have no internal capacity to step back from social conventions to reflect upon, affirm, or reject their social roles and associated norms, then this is an incorrect interpretation of Confucian thought.¹⁰ There is no shortage of discussion in the classical texts as to whether people should accept or continue to play their roles and how one should do so: whether a ruler should give up his throne, a gentleman should join the government, a son/minister should follow his father's/ruler's instruction, and so forth. All of this presupposes that Confucian individuals have the capacity to reflect critically upon their roles.

To be sure, Confucianism does place significant ethical constraints upon human action, and a good number of these have to do with social roles. But it would be a mistake to think that Confucianism sees all duties, or rights if any, as arising solely from social relationships, as Rosemont's description of the Confucian conception of personhood seems to imply. Although Confucianism does place great emphasis on particular social relationships, it is not a purely role-based or relation-based ethics. Confucian ethics of benevolence is ultimately based upon a common humanity rather than differentiated social roles—it carries ethical implications beyond these roles. For example, Mencius holds that people have compassion to

help others in suffering even if they do not have any personal relationship with them. Confucius's golden rule—"do not impose on others what you yourself do not desire"—is also a moral principle applicable to everyone irrespective of social roles or status. Confucianism can accept non-role-based moral claims.¹¹

Kwong-loi Shun argues that "while Confucian thinkers regard human beings as autonomous in having the capacity to reflect on, assess, and shape their lives without being determined by external influences, they also regard the exercise of this capacity as intimately linked to the social order." In particular, the basis of any claim individuals can make in such an order is "based on an understanding of the social dimensions of human life rather than on a conception of human beings as individuals who need protection in the pursuit of their individual ends."¹² I think it is fair to say that Confucianism does not give importance to the idea of individuals freely choosing their own ends, whatever these ends may be. The emphasis is more on acting rightly than freely, and to act rightly is to act in accordance with one's best understanding of the requirement of Confucian morality. But Confucianism never denounces or belittles individual interests understood as the needs and legitimate desires of individuals. One discourse in Confucianism that denounces "interests" refers to the self-interests (often selfish interests) of rulers, not those of the people; rulers are supposed to care for the people's basic interests first before caring their own. As Xunzi says, lordship is established for the people, not for the ruler.¹³ For Confucianism, one of the important functions of a ruler is to "benefit" (*li*) the people, meaning to promote their interests (*li*). As the classical texts clearly show, the ruler's job is to protect people's interests in the subsistence and pursuit of material goods, in fair treatment in allocation of rewards and punishments, and in having proper familial and social relationships. Shun claims that "the focus of Confucian thinkers viewing the legitimate claims that an individual has on others is less on how the claims serve to protect that individual, but more on how they are part of a social setup that is to the communal good."¹⁴ This seems an overdrawn conclusion, for he also notes, rightly in my view, that Confucian thought does not "downplay individual interests and subordinates it to the public good;" rather, "there is no genuine conflict between individual interest and the public good." I think one reason for the absence of genuine conflict is that the public or communal good is partially constituted by individual needs and entitlements. Peace and harmony are based on recognition of each other's due, or on fair treatment of individuals, as Xunzi puts it.

Xunzi fleshes out the idea of fairness in civil matters in exactly the same way as ancient Greek philosophers do—that justice or fairness consists in rendering to each person his due according to his personal characteristics, circumstances, or conduct.¹⁵ "As a general principle, every rank and official responsibility, and each reward or punishment, was given as a recompense that accorded with the nature of the conduct involved" (*Xunzi* 18.3). The coming of honor or disgrace, therefore, is a reflection of one's inner virtue [*de*] (*Xunzi* 1.5), offices must be matched by appropriate ability, rewards must correspond to achievement, and penalties to

offenses (*Xunzi* 8.3). It is important to note that for Xunzi, when it comes to justice, each person should be treated as an independent individual who is separate from other individuals, including family members. On this point, Xunzi maintains, "If rank fits the worth of the individual holding it, there is esteem, where it does not, there is contempt. In antiquity, penal sanctions did not exceed what was fitting to the crime, and rank did not go beyond the moral worth of the person. Thus although the father had been executed, his son could be employed in the government; although the elder brother had been killed, the younger could be employed. . . . Each was allotted what was his due according in every case to his true circumstances (*Xunzi* 24.3)."

Mencius and Xunzi also take justice as a moral imperative that trumps political goals such as the gaining of an empire. Mencius says that it is wrong to "kill an innocent man" or "take what one is not entitled to" in order to gain the empire, for doing so is contrary to rightness (*yi*) and benevolence (*ren*).¹⁶ Xunzi is of the same view, namely that a gentleman (*ru*) "would not commit a single act contrary to the requirements of justice nor execute a single blameless man, even though he might thereby obtain the empire. Such a lord acts with justice (*yi*) and faithfulness (*xin*) toward the people" (*Xunzi* 8.2).

In light of this understanding, we may conclude not only that Confucian thought would not oppose basic individual interests as constituting the common good, but rather that it would take them as a basis for a legitimate social and political order. So Confucianism would not reject human rights on the ground that they protect fundamental individual interests. In fact, it would be hard to imagine Confucians rejecting such civil rights in the UDHR as the rights not to be tortured or subjected to arbitrary arrest and the right to a fair hearing, precisely because they protect the fundamental individual interests in physical security and fairness. The UDHR's notion of human rights does not presuppose or entail any notion of freely choosing autonomous individuals that ignores community responsibility or social relationship, nor does Confucian ethics see an opposition between the individual good and the common good. Social order and harmony can only be pursued by affirming and protecting people's interests in security, material goods, social relationships, and fair treatment. On these issues, at least, there is no incompatibility between Confucianism and the concept of human rights.

■ THE VALUE AND FUNCTION OF HUMAN RIGHTS

While there is no strict incompatibility between Confucianism and the idea of human rights, the tensions between the two lie in the more subtle issues about how Confucians understand the value of human rights and their proper function, and which of the many human rights in the international human rights treaties they accept as fundamental. There are two common approaches to understanding the value and function of fundamental human rights. One is an instrumental approach

that takes human rights as an important device to protecting people's fundamental interests. The other approach does not deny the instrumental value of human rights, but insists that they also have non-instrumental value, in the sense that they are necessary expressions of human dignity or worth. In what follows, I shall argue that Confucianism would accept the first approach but not the second.

Joel Feinberg has made an influential argument for the expressive value of human rights.¹⁷ He asks us to imagine "Nowheresville," a world in which "the virtues of moral sensibility" and "the sense of duty" flourish, and where it is filled with "as much benevolence, compassion, sympathy, and pity as it will conveniently hold without strain." What is lacking in this world is individual right—people have no right to make claims against each other. On Feinberg's view, having a right enables the right-holder to make certain claims against others, that is, to demand others to fulfill the duties they owe to her, to make a complaint and demand for compensation if she is wronged, and so forth. In Nowheresville, however, if people are treated inappropriately, they can do none of these things, and accordingly, they lack self-respect and human dignity. For having the capacity to assert rights claims is a necessary condition for self-respect and human dignity. Feinberg writes:

Having rights enables us to "stand up like men," to look others in the eye, and to feel in some fundamental way the equal of anyone. To think of oneself as the holder of rights is not to be unduly but properly proud, to have that minimal self-respect that is necessary to be worthy of the love and esteem of others. Indeed, respect for persons (this is an intriguing idea) may simply be respect for their rights, so that there cannot be the one without the other; and what is called "human dignity" may simply be the recognizable capacity to assert claims. To respect a person then, or to think of him as possessed of human dignity, simply is to think of him as a potential maker of claims.¹⁸

Feinberg does not, however, give any argument for the claim that human dignity "may simply be the recognizable capacity to assert claims." In any case, Confucians would resist any view that tightly links human dignity with rights as the capacity to make rights claims. The concept of human dignity is broad and vague, and it allows different conceptions. If one minimally defines the concept as referring to the inner moral worth of human beings that entitles them a certain moral status and respect that no other living things or material objects possess,¹⁹ then it seems clear that different cultural or philosophical perspectives have different views of the source of inner moral worth and hence different conceptions of human dignity. According to Mencius and Xunzi, the source of inner moral worth that makes human beings *gui* (translated as noble, honorable, or valuable) is the human capacity for benevolence and righteousness (*ren* and *yi*). Mencius says "every man has in him that which is exalted (*gui*)," which is his "benevolence and righteousness," (*ren yi*) although "this fact simply never dawned on him" (*Mencius* VIA.17). For Xunzi, among all living things only humans possess "a sense of righteousness" (*yi*), and for this reason they are "the noblest beings in the world" (*Xunzi*, 9.19). This inner worth of human beings allows Mencius to say that in

politics "people are of supreme importance" (*Mencius* VII.B.12) and that not even an innocent life should be sacrificed in order to gain an empire (*Mencius* IIA.2). Confucians have no trouble seeing human beings as having an inner moral worth that gives them a special status and that the source for such worth lies in each person's potential capacity for benevolence and righteousness, not in the possession of rights.²⁰

In an ideal situation, a Confucian society is one in which people are more or less virtuous and act in the spirit of benevolence—a graded care or love for each other, for one's family and friends, for all strangers as brothers in "the four seas." When things go wrong in this society, when people misbehave, Confucians would first appeal to each other's sense of benevolence and righteousness and reaffirm the norms and rituals that they are expected to follow, hoping that people who go astray would return to the path of benevolence and righteousness. If conflicts or inappropriate conduct persist, the parties involved should be brought to those who enjoy an exalted status and command respect from all parties (typically village elders) for mediation, in the hope of reconciling conflict and restoring social harmony.²¹

If mediation does not work, Confucians allow the issue to be litigated in court, though they prefer, if possible, to avoid litigation. Confucius says, "In hearing litigation, I am no different from any other man. But if you insist on a difference, it is, perhaps, that I try to get the parties not to resort to litigation in the first place."²² But Confucius does not say that litigation should be avoided absolutely or at all costs. When people no longer act according to virtues or *rituals*—when they harm others, for example—there is a need to fallback on some institutional apparatus to protect the legitimate interests of those involved. More importantly, Confucius does *not* say that we should always yield to others at all times, particularly when we are unjustly harmed.²³ There is a passage that may correct this popular misunderstanding of Confucius, in which Confucius says, "Someone said, 'Repay an injury with a good turn. What do you think of this saying?' The Master said, 'What, then, do you repay a good man with? Repay an injury with straightness, but repay a good turn with a good turn'" (*The Analects* XIV.34). When we are wronged, injured, or harmed by others, Confucius says that it would be appropriate to react by recourse to straightness—to seek justice and compensation through litigation.

Confucians would approach the value and function of human rights in the same way they approach litigation. Human rights are not necessary to the expression of human dignity, nor are they constitutive of virtues or virtuous relationships. In a non-ideal situation, however, they can serve as an important fallback apparatus to protect one's basic interests and needs.²⁴ In a modern society, human rights function as both normative principles and legal instruments, but what ultimately gives human rights their significance and impact is the latter. As legal instruments, they protect powerless individuals from harm by governments, corporations, or social groups. Human rights laws are no ordinary laws; they are

higher laws that trump ordinary laws or policies made by governments. Human rights laws cannot be effective without rule of law and an independent court system with powers of judicial review. But when human rights laws are not yet in place or effective, human rights serve a powerful normative principle to critique the *status quo* and demand change, with the ultimate aim of turning human rights aspirations into effective positive laws.

We have seen that for Confucianism, when rituals and virtuous relationships break down, when local arbitration mechanisms fail, people may have recourse to litigation to protect their interests and to demand fair treatment. Confucians today, I believe, would also accept human rights as a fallback apparatus in the same spirit. Of course, as noted above, the human rights legal apparatus goes much further than the traditional Chinese penal and administrative law system in the following structural aspects (not to mention the difference in content): the distinction between higher and ordinary laws, judicial independence, judicial review, and the concept of a limited government. It would require another essay to examine in detail whether Confucianism can accept these structures and institutions. Suffice it to say that since Confucians regard people as being of supreme importance and put their interests before those of the State and rulers, Confucians today would embrace institutions that prove to be necessary to the protection of people's basic interests, even if in doing so they would have to revise or give up some of the traditional Confucian beliefs about political authority and institutions.

There is still a residual but important issue to address before Confucians can fully accept human rights as a fallback apparatus. In the Confucian view, the need to claim rights emerges only when virtues fail, rituals break down, and mediation becomes ineffective. But such actions, if frequently taken, can create a snowball effect that causes further social strain and encourages divisive ways of thinking and adversarial tactics. And the more readily people can access the rules and procedures of human rights, the more likely they are to use them in the first instance. In this scenario, rights would be brought from the background to the foreground, serving as the first resort rather than as fallback.²⁵

We should be careful in understanding the problem. The first point to note is that a culture of litigation and adversarial actions may develop even without the introduction of human rights apparatus. When the level of general trust is low in a society and ordinary social norms and mechanisms are too weak to guide behavior, litigation might become the only lawful way to protect one's interests in case of conflicts, whether or not there are human rights laws. To prevent a culture of litigation from developing, we should try to rebuild social capital, revitalize social norms and mechanisms, and above all make sure the law is enforced in a fair and effective manner, before discouraging the use of litigation.

Second, whether, and how likely, the human rights apparatus will encourage rights talk and litigious behavior depends on a number of factors: how human rights are perceived, how wide-ranging the scope of these rights is, and whether there are alternative mechanisms to resolve conflicts or prevent abuses of power.

A culture of rights talk and litigious behavior will be more likely to develop in a society if human rights are given an exalted status and human rights protection covers a wide range of aspects of people's lives. In recent decades, the number of human rights international treaties and laws has significantly increased, expanding the "first generation" of rights from civil and political rights, to social and economic rights, and to minority and group rights and environmental rights. New bodies and mechanisms have been created to monitor compliance and implementation. These developments have encouraged rights movements and rights talk in international and national contexts. Many philosophers have challenged the long list of human rights that has been enumerated, raising questions about the coherence of the so-called "new generations" of rights. What is more worrying is that in public and academic discourse, rights talk seems to have eclipsed traditional moral vocabularies such as justice, common good, and duties and has become the main moral currency to tackle social problems. James Griffin, for example, has argued that "the fairly recent appearance of group rights is part of a widespread modern movement to make the discourse of rights do most of the important work in ethics, which it neither was designed to do nor . . . should now be made to do."²⁶ Coupled with the exalted status of human rights, this rights talk trend would have the effect of impoverishing people's moral vocabularies and encouraging a culture of rights-claims and litigation.

In my view, Confucianism should resist such a development. We have already seen that Confucians want to give human rights only a fallback-instrumental role, rather than construing them as an abstract ideal that expresses human dignity. To avoid the above problems, it seems obvious that Confucians would prefer a short list of human rights to a long one. The short list should consist of those rights (1) the violations of which are serious setbacks to social order as well as individual interests and often come from governments, and (2) which can be more easily implemented and protected by law than other kinds of rights. The first generation of rights—civil rights and political rights—appear to fit these two criteria better than social and economic rights and other kinds. Confucians certainly do not belittle the social and economic interests of people. Arguably they may be more basic than the interests in some civil liberties such as freedom of speech and association. But unlike civil rights, the protection of social and economic rights can hardly be done through litigation; they are to be realized in politics and policies, not the courtroom. What governments need to do is to make and enforce sound policies and institutions to promote economic growth and a fair distribution of resources. To appeal to the language of rights in these matters runs the risk of turning a complicated balancing of competing values such as social justice, basic needs, equal opportunity, efficiency, and general utility into a simplistic kind of legalistic reasoning. More importantly, the introduction of civil and political rights can help prevent violations of people's social and economic rights, for the latter are often a result of government corruption, maladministration, and mismanagement of economic policies. Amartya Sen has famously argued that famines are almost

always associated with authoritarian political rule and that democracy plays an important instrumental role in preventing famines. "Famines are easy to prevent if there is a serious effort to do so, and a democratic government, facing elections and criticisms from opposition parties and independent newspapers, cannot help but make such an effort."²⁷ "The positive role of political and civil rights," Sen continues, "applies to the prevention of economic and social disasters in general."²⁸

The nature of Confucianism also makes civil and political rights a priority. A long-standing feature in traditional Confucian thought (and in the Chinese political tradition) was the ruler's unchecked supreme status and authority. Although, theoretically, people were supposed to enjoy supreme importance, in reality they were not protected by legal institutions or empowered to protect themselves through political participation. The introduction of a human rights apparatus in the civil and political sphere would therefore help to redress the heavy imbalance of power between rulers and ruled. Relatively easy access to the legal apparatus to assert one's civil and political rights and legally challenge rights-violating laws and policies is actually something to be welcomed rather than deterred, for it provides powerless individuals a powerful means to defend themselves.²⁹

On the contrary, rich cultural and ethical resources already exist within a Confucian society to deal with the sort of concerns raised by social and economic rights. There is no lack of emphasis on government's responsibility to cater to people's material needs, which is another long-standing feature in Confucian thought. A large part of the Confucian ideal of benevolent rule requires the setting up of social and economic policies to distribute land and economic opportunities for the ruled. Mencius's influential idea of a "well-field system" articulates what we may call today the sufficiency principle of social justice, which holds that government has a responsibility to provide for each household a certain amount of land to own and plough so that members of that household can live a decent material life and have spare time to learn and practice virtues in their dealings with family members and neighbors.³⁰ Mencius writes, "Hence when determining what means of support the people should have, a clear-sighted ruler ensures that these are *sufficient*, on the one hand, for the care of parents, and, on the other, for the support of wife and children, so that people always have sufficient food in good years and escape starvation in bad; only then does he drive them towards goodness (*Mencius* 1A.7, *italics mine*)."

It is interesting to note that like Sen, Mencius attributes poverty and famines to political factors rather than natural ones. Mencius is keenly aware of the seriousness of poverty and inequality of wealth in his times. He refers to the situation in which some people have "so plentiful good to be thrown to dogs and pigs," while "some drop dead from starvation by the wayside" (*Mencius* 1A.3). He also says, "nowadays, the means laid down for the people are sufficient neither for the care of parents nor for the support of wife and children. In good years life is always

hard, while in bad years there is no way of escaping death" (*Mencius* 1A.7). The cause, for Mencius, is "despotic rulers and corrupt officials," of whom he observes, "Benevolent government must begin with land demarcation. When boundaries are not properly drawn (*ching*), the division of land according to the well-field system and the yield of grain for paying officials cannot be equitable (*jan, ping*). For this reason, despotic rulers and corrupt officials always neglect the boundaries. Once the boundaries are correctly fixed, there will be no difficulty in settling the distribution of land and the determination of emolument (*Mencius* 3A.3)."

In fact, Mencius goes so far as to claim that if people die of starvation under a ruler, then that ruler has not only failed in his obligation but has behaved no differently than if he had killed them, observing, "Now when food meant for human beings is so plentiful as to be thrown to dogs and pigs, you fail to realize that it is time for collection, and when men drop dead from starvation by the wayside, you fail to realize that it is time for distribution. When people die, you simply say, 'It is none of my doing. It is the fault of the harvest.' *In what way is that different from killing a man by running him through*, while saying all the time, 'It is none of my doing. It is the fault of the weapon.' Stop putting the blame on the harvest and the people of the whole Empire will come to you."³¹

■ CONCLUSIONS

In this chapter I have argued that there is no incompatibility between Confucianism and the idea of human rights. Confucians would regard human rights as a fallback apparatus to protect fundamental individual interests—they are important when virtuous relationships break down and mediation fails to reconcile conflicts. However, human rights are not necessary for human dignity or constitutive of human virtues. To avoid the rise of rights talk, Confucians would prefer to keep the list of human rights short. They would restrict it to civil and political rights, not because social and economic needs are less important, but because these rights are more suitable for legal implementation, while the promotion of economic rights requires sound economic institutions and policies that cannot be easily captured by legal human rights language. In addition, there are three reasons for giving civil and political rights a priority over social and economic rights in a Confucian-inspired society. First, the adoption of civil and political rights redresses a strong tendency within Confucianism to over-empower political leaders. Second, there are rich conceptual and ethical resources in a Confucian-inspired society to protect and promote people's material needs and social relationships, things that are the concerns of social and economic rights. Third, early Confucian thinkers such as Mencius recognize the contemporary argument that the chief cause of severe poverty and famine is political corruption and despotism and that a political solution is called for. This solution today is precisely a robust set of civil and political rights and legal apparatus, which protects not only people's physical security and freedom but also their fundamental material needs and interests.³²

■ NOTES

1 This and the next two paragraphs are adapted from Joseph Chan, "Confucian Attitudes toward Ethical Pluralism," in *The Many and the One*, eds. Richard Madsen and Tracy B. Strong (Princeton: Princeton University Press, 2003), 154–58.

2 Tang Chun-I, *Essays on Chinese Philosophy and Culture* (Taipei: Students Book Co. Ltd, 1988), 362.

3 Which means particular levels of concern for different categories of people outside the family are hierarchically determined or preferred by proximity to the family.

4 For a discussion on whether Confucianism is a religious tradition, see Xinzhong Yao, *An Introduction to Confucianism* (Cambridge: Cambridge University Press, 2000), 38–47.

5 Henry Rosemont, Jr., "Why Take Rights Seriously? A Confucian Critique," in *Human Rights and the World's Religions*, ed. Leroy Rouner (Notre Dame, IN: University of Notre Dame Press, 1988), 167.

6 See Joseph Chan, "A Confucian Perspective on Human Rights for Contemporary China," in *The East Asian Challenge for Human Rights*, eds. Joanne R. Bauer and Daniel A. Bell (Cambridge: Cambridge University Press, 1999), 216.

7 Rosemont, "Why Takes Rights Seriously," 168.

8 Ibid., 177.

9 Roger T. Ames, "Rites as Rights: The Confucian Alternative" in *Human Rights and the World's Religions*, 212.

10 See Kwong-loi Shun, "Conception of the Person in Early Confucian Thought," in *Confucian Ethics: A Comparative Study of Self, Autonomy, and Community*, eds. Kwong-loi Shun and David B. Wong (Cambridge: Cambridge University Press, 2004), 188–90.

11 For a more detailed discussion, see Chan, "A Confucian Perspective on Human Rights," 217–19.

12 Shun, "Conception of the Person," 194–95.

13 Xunzi: *A Translation and Study of the Complete Works*, 3 vols., trans. John Knoblock, (Stanford, CA: Stanford University Press, 1988–1994), Chapter 27, section 68 (hereafter references will follow the format 27.68).

14 Shun, "Conception of the Person," 195.

15 For a fuller elaboration of this point, see Joseph Chan, "Is There a Confucian Perspective on Social Justice?" in *Western Political Thought in Dialogue with Asia*, ed. Takashi Shogimen and Cary J. Nederman (Lanham, MD: Rowman & Littlefield, 2008), 261–77.

16 Mencius: *A Bilingual Edition*, trans. D.C. Lau (Hong Kong: The Chinese University of Hong Kong, 2003), Book 2A, section 2 (hereafter 2A.2).

17 Joel Feinberg, "The Nature and Value of Rights," *The Journal of Value Inquiry* 4 (1970): 243–60.

18 Ibid., 252.

19 Rhoda E. Howard, "Dignity, Community, and Human Rights," in *Human Rights in Cross-Cultural Perspective: A Quest for Consensus*, ed. Abdullahi A. An-Na'im (Philadelphia: University of Pennsylvania Press, 1992), 83; Doron Schultziner, "Human Dignity: Functions and Meanings," in *Perspectives on Human Dignity: A Conversation*, eds. Jeff Malpas and Norelle Lickiss (Dordrecht, The Netherlands: Springer, 2007), 81.

20 For another critique of Feinberg's view from a Confucian perspective, see Craig K. Ihara, "Are Individual Rights Necessary? A Confucian Perspective," in *Confucian Ethics*, 11–30.

21 For a detailed discussion of the Confucian practice of mediation in traditional and modern China, see Albert Chen, "Mediation, Litigation, and Justice: Confucian Reflection

in a Modern Liberal Society," in *Confucianism for the Modern World*, eds. Daniel A. Bell and Hahm Chaibong (Cambridge: Cambridge University Press, 2003), 257–87.

22 *The Analects*, 2nd ed., trans. D.C. Lau, (Hong Kong: The Chinese University of Hong Kong, 1992), Book XII, section 13 (hereafter XII.13).

23 And so, on the level of states, defensive wars can be morally legitimate, according to Mencius. For a detailed account of Mencius's view, see Daniel A. Bell, *Beyond Liberal Democracy: Political Thinking for an East Asian Context* (Princeton: Princeton University Press, 2006), 23–51.

24 See Chan, "A Confucian Perspective on Human Rights," 219–22.

25 For this argument, see Justin Tiwald, "Confucianism and Human Rights," in *Handbook of Human Rights*, ed. Thomas Cushman (New York: Routledge, 2011).

26 James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), 256.

27 Amartya Sen, "Democracy as a Universal Value," *Journal of Democracy* 10(3) (1999): 8.

28 Ibid. This point goes some way to resist a common argument made by some Asian governments in the so-called "Asian Values" debate, which holds that civil and political liberties need to be sacrificed in order to meet more basic material needs. For a detailed discussion of the trade-offs argument and other points of contention in the "Asian Values" debate, see Bell, *Beyond Liberal Democracy*, 52–83. Bell, however, points out that while "the general claim that civil and political rights must be sacrificed in the name of economic development may not stand up to social scientific scrutiny, East Asian governments also present narrower justifications for curbing particular rights in particular contexts for particular economic or political purposes. These actions are said to be taken as a short-term measure to secure a more important right or more of that same right in the long term." Ibid., 56–57 (italics in original).

29 Space does not permit me to distinguish, and elaborate on, two kinds of civil freedom: One kind concerns political matters such as political speech, public demonstration, and association; the other has more to do with cultural and moral matters such as pornography, assisted suicide, homosexuality, and so forth. Elsewhere I have argued that Confucians would favor a more liberal approach to the first sort of freedom and a more conservative one to the second, which is another issue often discussed in the so-called "Asian Values" debate. For a detailed discussion of the issue about human rights and cultural and ideological differences, see my "Hong Kong, Singapore, and 'Asian Values': An Alternative View," *Journal of Democracy* 8(2) (1997): 35–48; "Thick and Thin Accounts of Human Rights: Lessons from the Asian Values Debate" in *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia*, eds. Michael Jacobsen and Ole Bruun (Surrey, U.K.: Curzon Press, 2000), 59–74; and "Moral Autonomy, Civil Liberties, and Confucianism," *Philosophy East and West* 52(3) (2002): 281–310.

30 For a detailed account of the early Confucian views on social justice, see my "Is There a Confucian Perspective on Social Justice?"

31 Mencius 1A.3 (italics mine); see also ibid., 1A.4.

32 My work on this essay was supported by a grant from the Research Grants Council of the Hong Kong Special Administrative Region, China (HKU 741508H).

■ RECOMMENDED READING

Ames, Roger T. "Rites as Rights: The Confucian Alternative," in *Human Rights and the World's Religions*, ed. Leroy Rouner (Notre Dame: University of Notre Dame Press, 1988), 199–216

- Angle, Stephen C. *Human Rights and Chinese Thought* (Cambridge: Cambridge University Press, 2002)
- The *Analects*, 2nd ed., trans. D.C. Lau (Hong Kong: The Chinese University of Hong Kong, 1992)
- Bell, Daniel A. *Beyond Liberal Democracy: Political Thinking for an East Asian Context* (Princeton: Princeton University Press, 2006)
- Chan, Joseph C. W. "Hong Kong, Singapore, and 'Asian Values': An Alternative View." *Journal of Democracy* 8(2) (1997): 35–48
- . "A Confucian Perspective on Human Rights for Contemporary China," in *The East Asian Challenge for Human Rights*, eds. Joanne R. Bauer and Daniel A. Bell, (Cambridge: Cambridge University Press, 1999), 212–37
- . "Thick and Thin Accounts of Human Rights: Lessons from the Asian Values Debate," in *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia*, eds. Michael Jacobsen and Ole Bruun, (Surrey, UK: Curzon Press, 2000), 59–74
- . "Moral Autonomy, Civil Liberties, and Confucianism." *Philosophy East and West* 52(3) (2002): 281–310
- . "Is There a Confucian Perspective on Social Justice?" in *Western Political Thought in Dialogue with Asia*, eds. Takashi Shogimen and Cary J. Nederman (Lanham, MD: Rowman & Littlefield, 2008), 261–77
- Chen, Albert. "Mediation, Litigation, and Justice: Confucian Reflection in a Modern Liberal Society," in *Confucianism for the Modern World*, eds. Daniel A. Bell and Hahm Chaibong (Cambridge: Cambridge University Press, 2003), 257–87
- Feinberg, Joel. "The Nature and Value of Rights." *The Journal of Value Inquiry* 4(4) (1970): 243–60
- Ihara, Craig K. "Are Individual Rights Necessary? A Confucian Perspective," in *Confucian Ethics: A Comparative Study of Self, Autonomy, and Community*, eds. Kwong-loi Shun and David B. Wong (Cambridge: Cambridge University Press, 2004), 11–30
- Mencius: A Bilingual Edition*, trans. D. C. Lau (Hong Kong: The Chinese University of Hong Kong, 2003)
- Rosemont, Henry, Jr. "Why Take Rights Seriously? A Confucian Critique," in *Human Rights and the World's Religions*, ed. Leroy Rouner (Notre Dame, IN: University of Notre Dame Press, 1988), 167–82
- Shun, Kwong-loi. "Conception of the Person in Early Confucian Thought," in *Confucian Ethics: A Comparative Study of Self, Autonomy, and Community*, eds. Kwong-loi Shun and David B. Wong (Cambridge: Cambridge University Press, 2004), 183–202
- Sim, May. "A Confucian Approach to Human Rights." *History of Philosophy Quarterly* 21(4) (2004): 337–356
- Tiwald, Justin. "Confucianism and Human Rights," in *Handbook of Human Rights*, ed. Thomas Cushman (New York: Routledge, 2011)
- Wong, David B. "Rights and Community in Confucianism," in *Confucian Ethics: A Comparative Study of Self, Autonomy, and Community*, eds. Kwong-loi Shun and David B. Wong (Cambridge: Cambridge University Press, 2004), 31–48
- Xunzi: *A Translation and Study of the Complete Works*, 3 vols., trans. John Knoblock (Stanford, CA: Stanford University Press, 1988–1994)
- Yao, Xinzhong. *An Introduction to Confucianism* (Cambridge: Cambridge University Press, 2000)

6

Buddhism and Human Rights

SALLIE B. KING

In the early 1990s, a number of non-Buddhist Asian political leaders, prominently including Lee Kuan Yew of Singapore and Mahathir Mohamad of Malaysia, ignited the "Asian values" debate with their claim that human rights are a part of Western culture and therefore excessively individualistic; human rights, they claimed, did not suit Asian culture, which was inherently communitarian. These claims notwithstanding, already by that time a number of important contemporary Buddhist social and political activists, known as "Engaged Buddhists," had deeply incorporated the language of human rights into their campaigns to bring about fundamental political changes in their home countries. While there is debate among Buddhist intellectuals about the extent to which the concept of human rights is compatible with Buddhist culture, Buddhist activists continue to rely heavily upon the language of human rights as an integral part of their work.¹

The most significant examples of Buddhist usage of human rights language can be found in Burma, Tibet, and Cambodia. Since the 1960s, Burma/Myanmar has been ruled by a brutal military dictatorship. Systemic human rights violations documented in Burma by Human Rights Watch include: summary executions; the killing of civilians by the military; forced labor; forced portage; predation of the military upon civilians; condoned military rape of women and children; destruction of the villages of ethnic minorities; the forcible recruitment of children into the military; and severe restrictions on movement, assembly, and speech. The struggle against this dictatorship is led by the National League for Democracy, which describes itself as a movement for democracy and human rights. This movement is led by Aung San Suu Kyi, students, and Buddhist monastics. In 1988, during the first popular uprising against the ruling junta, the Burmese people (who are almost all Buddhists) filled the streets, singing, "I am not among the rice-eating robots. . . . Everyone but everyone should be entitled to human rights."² In 2007, during the so-called "Saffron Revolution" (named after the color of Buddhist monastics' robes), the streets of Burma were again filled with Buddhist monks and nuns, calling upon the government to respect human rights or step down.

Since 1959, the Chinese annexation and occupation of Tibet has resulted in the deaths of an estimated one-million Tibetans, about one-sixth of the population, from both direct causes (executions, reprisals, torture, and harsh conditions in prisons and labor camps) and indirect causes (largely famine resulting from Chinese agricultural policies). The International Commission of Jurists announced