



Review

Reviewed Work(s): Confucianism and Human Rights by Wm. Theodore de Bary and Tu Weiming

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Book Reviews

Confucianism and Human Rights. Edited by Wm. Theodore de Bary and Tu Weiming. New York: Columbia University Press, 1998. 408 pp.

This is a collection of fifteen papers, with a Preface and an Introduction by de Bary, and an Epilogue each by Tu Weiming and Louis Henkin. The papers arose out of a conference held at the East-West Center in Honolulu on “Confucianism and Human Rights” in August 1995. It was planned as the first in an ongoing dialogue with scholars in the People’s Republic of China (PRC). As de Bary says in the Preface:

There is a need for discussion of these problems on the basis of a deeper cultural awareness than is commonly shown when human rights are linked directly to economic issues and pressures — as in trade negotiations — or in highly publicized diplomatic confrontations, spotlighted by the media, which may give the appearance of one country’s interfering in the affairs of another.

Ironically, as a result of tensions over Taiwan in 1995, some scholars from the PRC did not attend. Only one paper in this volume is from a PRC scholar. Two others are from Taiwan, while the rest are from North America.

The papers can be broadly divided into three categories: conceptual issues, historical episodes, or contemporary social and political realities. Under the first category, Sumner Twiss argues that it is a misunderstanding to construe the notion of human rights as a Western moral ideology that aims to supplant the moral perspectives of other traditions. The Universal Declaration of Human Rights, adopted by the United Nations in 1948, was a pragmatic document drawn up by representatives from various countries, including China. As such, the relationship between human rights norms and particular cultural traditions were

taken account of. Henry Rosemont takes a diametrically opposite position. The notion of an individual with autonomous choice is fundamental to the language of human rights. However, the assertion of individual civil and political rights gives rise to many of the intractable moral and social conflicts within the United States, and it is pernicious to want to impress the whole idea of human rights with its underlying conception of the individual as an autonomous entity, on another country. On the other hand, several contributors argue for the compatibility of traditional Chinese concepts of rites and virtues with human rights norms. Julia Ching and Irene Bloom separately observe that incipient ideas of human equality, dignity, and even popular sovereignty arose very early in Chinese thought, for example, in the *Analects* and the *Mencius*. Wejen Chang and Daniel Kwok separately discuss the concept of *ren*, or humaneness, and *zuoren*, or what it is to be human. Chungying Cheng argues that Confucian virtues can be preserved, while extrapolating from them an ethics of rights for modern society.

In the historical category, Ron Guey Chu describes four episodes in Ming China where courageous officials opposed the emperor's edicts in overturning the rights of individuals to the performance of certain traditional rituals. The claim is that there are resources within the rites tradition for recognizing individual rights. Yu Feng, the only PRC scholar represented in this volume, describes the Machiavellian "Yellow Emperor" tradition, with its emphasis on the might of the government, although this concept of "might" is based on developing a prosperous and stable economy. The present attitude towards human rights of the Chinese government, giving priority to the rights of subsistence, may well have its historical roots in this tradition. Alison Conner describes the due process in the Qing dynasty, where it was necessary to obtain a confession before a case could be closed, and this often meant the use of torture. There were statutes that limited its use, but these failed to prevent abuse. Although there was also a system of review, Qing law was in reality merely administrative, and not designed directly to protect the rights of the individual. Both Joan Judge and Peter Zarrow describe the efforts of journalists and activists like Liang Qichao in publicizing the concept *minquan*, or popular empowerment, during the early part of the

twentieth century. Rendering *minquan* compatible with both the Chinese conceptual universe and with their own political agenda, they embedded it within the dynastic structure and imbued it with collectivist content. For Liang, the weight of popular power rested on the right of political participation, while his individualism was defined less in terms of legally guaranteed civil liberties than in terms of the autonomy and freedom necessary for the citizen to participate. Liang is said to have created the notion of citizenship in China.

There are three papers dealing with contemporary social and political realities. Merle Goldman notes that since the 1980s Chinese intellectuals have become increasingly independent, seeking to influence society directly rather than through association with political leaders. Being further removed from the Confucian era, they are less conscious of Confucian teachings. Yet, the words, cadences, and even some of the values of that era still inspire them. Jeremy Paltiel observes that the legal profession in China has arrived at a position which recognizes the universality of human rights and, moreover, the applicability of international conventions. Rights discourse has penetrated Chinese society among urban intellectuals, but not simply as an ideological construct. Among articulate members of Chinese society, the awareness and responsiveness to rights discourse belies assertions that Chinese culture is hermetically sealed off. Randall Peerenboom's is perhaps the most penetrating and uncompromising of all the papers in this volume. He argues that contemporary advocates of Confucianism must respond to the challenge of rights, and in particular to the charges that Confucianism not only failed to develop a theory of rights but that it is in some fundamental sense incompatible with rights. One of the criticisms aimed at the PRC is that the rights included in the constitution — from which, according to Peerenboom, freedom of thought is conspicuously absent — “are not legally enforceable, but merely programmatic, a wish list of hortatory ideals to be realized at some future date”. The primary function of rights as originally conceived is to protect individuals and minorities against the majority, be it the community or the state. In a pluralistic, heterogeneous society, people will have different interests and conflict is inevitable. Rites simply do not serve the same anti-

majoritarian role as rights. They were never intended to protect the individual and minorities against the majority. For Confucius, social and political harmony was an ethical ideal. He and his followers assume that the interests of the individual can be reconciled with the interests of the majority of the state. But while rites often complement rights, there is a tension between them, and when they conflict, according to Peerenboom, rites must give way. If communal pressure in the form of rites is able to trump rights, then the rights are hollow. Peerenboom recognizes, however, that while rights will most likely be part of a post-socialist Confucian China, they will differ in theory and practice from rights in Western liberal democracies. The extreme position that an individual possesses an inviolability that even the good of society as a whole cannot override is incongruous with the Confucian emphasis on harmony and stability. Rights will most probably continue to be understood by the Chinese as a kind of interest rather than as trumps over interests, and thus less likely to serve to the same degree the anti-majoritarian function of rights in Western liberal democracies. In practice, even a revamped Confucianism will tend to support and uphold restrictions on political and civil liberties, limit or deny rights in the name of rites, and suppress or at least curtail freedom of thought and speech in the name of community solidarity, social harmony, and stability.

In his epilogue, Tu Weiming argues that the richly textured Confucian values can serve as a source of inspiration for representing human rights as the common language of humanity. A confrontational strategy adopted by Western political leaders and activists, if not politically arrogant and culturally insensitive, is predicated on and handicapped by, an outmoded faith in instrumental rationality. In the long term, a better strategy is to cultivate a communal critical self-awareness that instruments for promoting human rights, while universally connected, are firmly grounded in indigenous cultural conditions as well. Confucian humanism offers an account of the reasons for supporting basic human rights that does not depend on a liberal conception of persons, and that operates from within an ethical outlook dominated by notions of persons as embedded in social relations and subject to the obligations

associated with those relationships. The critical issue, then, is not traditional Confucian values versus modern Western values, but how East Asian intellectuals can be enriched and empowered by their own cultural roots in their critical response to the human rights challenge. In the other epilogue, Louis Henkin argues that the conception of human rights is rooted in a conception of human dignity. The requirements of human dignity limit the restrictions on rights that may be imposed in the public interest. The values reflected in the commitment to human dignity, in the idea of human rights, and in the particular rights set forth in the Universal Declaration, do not appear to be foreign to the values of Confucianism as presented in this volume. Confucianism sought to achieve the good society by the development of moral character, notably in the leaders of society, and through them all members of society. The human rights movement also recognizes that respect for human rights is enhanced if the moral character, particularly of those in authority, is developed. But one cannot rely on character alone. It is necessary to articulate norms and establish institutions both to bolster and to protect against failures of moral character.

In sum, the papers in this volume as a whole agree that conceptually, Confucianism is compatible with human rights. More work needs to be done to specify how, exactly, communitarian concepts can be said to be compatible with human rights, especially when human rights are more usually linked with the concept of a liberal democracy and the notion of an autonomous individual. As Peerenboom has noted, the form of human rights finally arrived at in China may take a very different shape. Hopefully, future volumes will hold the views of PRC intellectuals and legal experts.

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