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REVIEW ESSAY

HUMAN RIGHTS, CHINESE RITES, AND THE LIMITS OF HISTORY

Confucianism and Human Rights. Edited by W. Theodore de Bary and Tu Wei-ming. (New York: Columbia University Press, 1998. Pp. xxiii, 327. \$40.00.)

In this final year of the century, human rights (*renquan* in Chinese) is a topic of considerable moment and international interest. The academic prominence of this concern is evident in the increasing number of essay collections on this subject that have appeared in the last few years, including Michael C. Davis, ed., *Human Rights and Chinese Values*; R. Randle Edwards, Louis Henkin, and Andrew J. Nathan, eds., *Human Rights in Contemporary China*; Claude E. Welch and Virginia Leary, eds., *Asian Perspectives on Human Rights*; Susan Whitfield, ed., *After the Event: Human Rights and Their Future in China*; and W. Theodore de Bary, ed., *Asian Values and Human Rights: A Confucian Communitarian Perspective*, as well as the volume under review. What these books and a litany of articles and working papers on identical topics demonstrate is a significant scholarly commitment to exploring the indigent possibilities for civil rights in those modernizing states displaying "Asian values." Moreover, as readers are reminded in ambitious works of global vision, such as David Landes's *The Wealth and Poverty of Nations*; André Gunder Frank's *ReOrient: Global Economy in the Asian Age*; and, most notably, Samuel Huntington's *The Clash of Civilizations and the Remaking of the World Order*, the "Asian affirmation" must be reckoned with as a fundamental condition of preparedness for the next millennium. China, the most populous nation on the planet and manufacturer to the world, is the most strident voice of this affirmation, but it is a nation whose global prominence is belied by a heinous disregard for human rights and a widespread spiritual malaise among its citizens.

Thus, *Confucianism and Human Rights* could not have been published at a more propitious juncture, coming as it does on the fiftieth anniversary of the United Nations' promulgation of the Universal Declaration of Human Rights and following a year (1997-1998) that, according to the U. S. State Department's annual report on human rights, was one of China's worst as it rounded up throngs of democratic activists and tortured or executed prisoners of conscience (particularly Tibetans and Muslims). In paradoxical lock-step, China has taken dramatic formal steps to register its commitment to human rights, even signing the International Covenant on Civil and Political Rights (ICCPR) on August 5, 1998. The Chinese government has now endorsed the principal covenants constituting the International Bill of Human Rights; however, numerous rights advocacy groups contend that these official acts do not insure China's creation of instruments necessary to their application. Therefore, without necessary political means, such overtures resemble the most public calculation of a cynical casuistry in which written agreements conceal an assumption that they will not be implemented.

Perhaps that is why, in the summer of 1995, an international conference on Confucianism and human rights was convened at the East-West Center of the University of Hawai'i. It was the second of three planned convocations (the most recent having been held in Beijing in June of 1998), all of which were intended to "promote nonconfrontational, multicultural dialogue on the basic value issues underlying human rights concepts and practices" (xviii). To this end, the conference organizers—the Confucius Foundation in Beijing, the American Council of Learned Societies, the Heyman Center for the Humanities and the Human Rights Center of Columbia University, and the East-West Center—invited an international complement of scholars to explore the specific cultural and historical circumstances of Chinese modernization in an effort to arrive at "some consensus on fundamental human values" (xix). The varied and contentious textual consequences of this multicultural dialogue on human rights are vividly displayed in this volume edited by intellectual historians W. Theodore de Bary and Tu Wei-ming, the world's two most renowned scholars of Confucianism. The book begins with a preface that recalls the circumstances of the conference and an introduction that situates each of the essays in the broader context of scholarly reevaluation of Confucianism as both the cultural resource of Asian development and the ideology of an emergent civil society. These are followed by 15 chapters and two epilogues.

Though considerations of space limit the range of this review of the collection, its definitive tensions (chiefly those produced from the antagonism between advocates of traditional "Confucian" values as propaedeutic to human rights and critics of this advocacy) may be illustrated by examining a few of its more salient contributions. These tensions run consistently along a fault of interpretative disposition, which is well articulated by D. W. Y. Kwok in "On the Rites and Rights of Being Human":

One group . . . maintains resolutely that there is no evidence for the presence of "human rights" in Chinese tradition . . . [saying] that China was a society steeped in Confucian rites and as such possessed a civilization of several thousand years that was superior in its achievement of "human harmony." This being the case, China has no need for a Western notion of human rights that takes as its starting point the autonomy of the human being. . . . Another group holds the view that any society, whether or not it has any native term for "human rights," nevertheless has its own notions of "right" and "rights" . . . [F]or such a rites-centered civilization as that of China . . . society has placed above such notions of "right" those ideas of "rites" which govern moral behavior. (83-84)

The latter apologetic group (to which a majority of the contributors, including the editors, belong) presumes, yet does not actually prove, an indigenous tradition of Chinese rites susceptible to inculcation of human rights. Yu Feng in "Might and Right: The 'Yellow Emperor' Tradition as Compared with Confucianism" states: "As an encouraging and laudable development, more and more people have come to the realization that Asian traditional values may contribute to the enrichment and improvement of a universal concept of 'human rights' whose current interpretation is still primarily set in Western terms" (154). The adversarial rhetorical posture (assumed by most of the historians) is represented well in Jeremy

Paltiel's ("Confucianism Contested: Human Rights and the Chinese Tradition in Contemporary Chinese Political Discourse") astute contention that: "The extent to which Chinese discourse adapts or adopts rights discourse today has much less to do with primordial factors in the Chinese tradition, than with the circumstances which have forced Chinese to turn their attention to Western modes of political discourse" (271).

Essays by Sumner Twiss ("A Constructive Framework for Discussing Confucianism and Human Rights"); Henry Rosemont Jr. ("Human Rights: A Bill of Worries"); and Julia Ching ("Human Rights: A Valid Chinese Concept?") navigate the divided contemporary terrain of the human rights and native values debate that lies within the space of these two poles. Twiss, a professor of religious studies, delivers an opening brief on behalf of a Chinese cultural anthropology of human rights, defining the troubling term by reference to the International Bill of Human Rights. He believes that "the parameters of the Confucian tradition" are "(1) . . . that the human person is essentially a social being . . . ; (2) giving primacy of place to the duties that persons have to the common good . . . and the virtues needed for the fulfillment of these duties; and (3) casting reciprocal social relationships and roles as fundamental to common flourishing and its shared vision of the good," and points out that Article I of the 1948 Universal Declaration of Human Rights was shaped by a Chinese delegate, P. Chang, attentive to each of these parameters (40-41). Further, he admirably demonstrates the complexity and historical development of the concept by articulating three "generations of human rights—civil-political, social-economic, and developmental-collective" (39). It is upon this nuanced articulation that his contestation of a defensive cultural relativism that shields China from global scrutiny depends.

Twiss presumes the universality of human rights yet avoids the pitfalls of a singular moral didacticism by employing a "two-level approach," which "allows . . . that while human rights may be justified on grounds of pragmatic agreement at the point where moral traditions may overlap in their shared insights and commitments, they may also be justified and even construed within different moral idioms as appropriate to cultural moral diversity" (36). Arguing in this manner, he addresses the chief complaint, more an ideological reflex, against any claim of rights universality—that it is disrespectful of native values and is a deceptively "humane" assertion of Western political hegemony. This is the charge instinctively leveled by the Chinese government when its human rights record is assailed, as for instance when China's representative to the 1993 United Nations Conference on Human Rights in Vienna, Liu Huaqiu, declared, "the concept of human rights is a product of historical development. . . . Countries at different development stages or with different historical traditions and cultural backgrounds also have different understanding and practice of human rights" (179). Liu is correct, of course, but Twiss and the others of apologetic persuasion insist that the specific "historical traditions and cultural backgrounds" of Chinese moral life and even law are the prefigurative foundations of contemporary human rights.

Henry Rosemont, in diametric opposition, argues that such a presumption of compatibility between the value complex of traditional Confucianism and contemporary practice is false, for the Enlightenment-enshrined concept of individual right is fundamentally and unalterably incompatible with the Confucian understanding of the person. They are specific

to incommensurable discourses, one grounded in the individual rights bearer and the other in the relational obligations of kinship and community. Considering this contrastive moral discourse, Rosemont asserts that “we should study Confucianism as a genuine alternative to modern Western theories of rights, rather than merely as a potentially early version of them” (64). Philosophical incompatibility thus places the Chinese case as an alternative and not a precursor, more fitting for life in our transnational present and global future.

Julia Ching stands between Rosemont and Twiss, offering a poignant expression of ambivalence for the apologetic position that human rights usher forth from the native soil of Confucian values. Yet, she also criticizes the Western liberal tradition of right while taking the Chinese government to task for its failure to uphold the principles of its own most recently redacted constitution, which states:

Citizens of the People’s Republic of China have the freedom of speech, of the press, of assembly, of association, of procession, and of demonstration. . . . The freedom of the citizens of the People’s Republic of China is inviolable (78).

Such freedoms are bestowed by the state, Ching points out, not “inalienable rights” derived from a greater natural law; consequently rights are understood as privileges. She warns that because of “the misuse of political power in defense of entrenched, repressive regimes,” any Chinese cultural predisposition toward human rights will invariably come to grief (80).

The philosophical and literary contributions of Chung-ying Cheng (“Transforming Confucian Virtues into Human Rights: A Study of Human Agency and Potency in Confucian Ethics”), Yu Feng, and Wejen Chang (“Confucian Theory of Norms and Human Rights”), with varying degrees of essentialist bias and an overt tendency to treat concepts as philosophical entities rather than distinct intellectual products of specific historical/cultural circumstances, founder on the shoals of the implausible compatibility of Confucian virtues and human rights. By insisting that *ren* (humaneness), *dao* (the path), *yi* (righteousness), *de* (virtue), *li* (rites), and other such ethical dispositions may be treated as timeless “Confucian norms,” they reveal the undue prejudicing of their textual work and make even more problematic the delicate relation between the historian and his/her object of study. Through such transference they deny the historically evolving conditions to which such “virtues” were an active response.

For these authors, the signal absence of a concept of “right” in the classical texts does not mean that traditional culture lacked an understanding of civil and political rights: “Thus, although the Confucians did not talk about ‘human rights,’ they maintained that people should treat each other as fellow human beings and help one another to live a good, human way of life. This idea is clearly compatible with the concept of ‘human rights’” (133). The collective thrust of these essays is an antiautocratic critique grounded in the contention that the fundamental cultural values of the Chinese—mutual respect for personal dignity, family loyalty, moral self-discipline—are conducive to the development of a polity that is respectful of human rights.

Their ambition, unfortunately, exceeds even the immodesty of this judgment, for Chung-ying Cheng states that in “Confucius’s moral humanism of virtue . . . [b]oth sociality and

humanity are experiences of a holistic human existence extending in time and space" (143). Thus, Confucian norms are, if genuine, cosmic dictates, and compliance with them would necessarily convey their follower beyond the immanent where law alone will define individual right. The text scholar and lawyer, Randall Peerenboom ("Confucian Harmony and Freedom of Thought: The Right to Think Versus Right Thinking"), articulates this problem for such theorists and to a lesser extent for scholars of Rosemont's temper: "Before Confucianism can be evaluated as a basis for a new political order or corrective to liberal democracy, there must be a general theory of Confucian rights" (238). More than a cognate complex of values amenable to the introduction of "right," and visible in selected texts, or excerpts from such texts of classical antiquity, one must find indigenous textual evidence of a legally defensible theory of rights. While Peerenboom considers such discovery unlikely, he takes up the smaller task of assessing the response of Confucianism to one category of rights claim—the civil-political liberty of freedom of thought—and finds no warrants for its protection in the "second generation rights" enshrined within the Confucian values of the apologetics.

The more philosophical considerations of the human rights issue and the repeated generalizations about "Confucianism" cry out for greater attention to historical context, particularly with respect to invocations of the Western intellectual tradition. In all the contributors' instinctual references to "Western political theory," "Western liberal democracy," and to the works of Hobbes and Locke, especially the latter's *Two Treatises of Government*, there is not the slightest consideration of the historical circumstances of these conceptual inventions. And so the naturalness, as it were, of liberal political theory or of empiricism (both possessing an unquestioned mythic narrative of a constant human nature lying below all social and political organization) is asserted *against* history. A critical reading of the *Second Treatise*, in light of the sustained critique of Sir Robert Filmer's defense of monarchical authority in the *First Treatise*, makes clear that Locke's "state of nature" and the attendant concept of "natural right" were not empirical, but textual, compensations for an eclipsed biblical narrative of creation and as such undermine the real prospects for modern civil society, especially that of the late twentieth century.

History proves even more valuable in contesting the "special conditions" exception invoked by the Chinese government. By adducing evidence of historical precedent in "Confucian" practice or for the civil-political rights called for in the U.N. Covenants, cultural exceptionalism collapses under the weight of its own defense. Such historical corrective is found in the work of Alison Conner ("Confucianism and Due Process"), Joan Judge ("The Concept of Popular Empowerment (Minquan) in the Late Qing: Classical and Contemporary Sources of Authority"), and Peter Zarrow ("Citizenship and Human Rights in Early Twentieth-Century Thought: Liu Shipai and Liang Qichao"). Focusing on the practices of late imperial law (from the seventeenth to the nineteenth centuries), and intellectuals and political culture between 1890 and 1920, each essay is crafted from a keen sense that "present is prelude to the past." Their inquiry is formed in the context of a contemporary hope for indigenous democratization. In this spirit the essays document relevant precedents for citizenship, due process, and what Zarrow deems a "civility that would in effect protect human rights" (228).

Conner's essay seeks to offer historical evidence in support of a claim for "due process" in late imperial Chinese justice, thus widening the usually narrow space separating the traditional and contemporary legal systems. Yet, even after having demonstrated a Chinese institutional preference for substantive rather than procedural justice as well as a concept of "fair trial," the fundamental difference between a law that enhances the power of the state rather than protecting the rights of the individual persists. Does this legal conception actually derive from the past, and, if so, which past is it? The common interpretive reflex of scholars faced by the schizophrenia of Chinese law ("good administration by good officials") paired with corporal punishment, torture, the ruthless extraction of confessions, and execution, is to identify the former as "Confucian" and the latter as "Legalist." Conner avers that the legal conception of the People's Republic of China derives from the latter, as if they could be so segregated philosophically.

Joan Judge and Peter Zarrow are on firmer ground, and their able reconstructions of the innovative political discourses of the 1890s and 1920s offer compelling evidence of lost opportunities for a more liberal, rights-honoring definition of self and society. According to Judge, the journalists of the late nineteenth and early twentieth century associated with the journal, *Shibao*, labored in a native conceptual "workshop of equivalences" assembling a new, Chinese political discourse of constitutional rights and the free expression of opinion. Most importantly (and here they resembled the students who in May 1989 assembled the "Goddess of Democracy" in Tianan'men Square), these journalists demonstrated that the language of reform politics was a hybrid of "two historically and geographically distinct sources. . . foreign notions of popular empowerment and democracy. . . [and] China's 'ancient constitutionalism'. . . corresponding to the continued importance of the construct of 'the people as foundation of the nation'" (202). In this de-familiarizing light, the present government's nativist appeal to the cultural specificity of Chinese values is rudely exposed as cant.

In returning as a closing gesture to the obvious contemporary relevance of the volume's scholarly exchanges, one must not overlook their intellectual descent from an inspired scholarly enterprise that began in the late seventeenth century, when Jesuit translations of Chinese works for European audiences called attention to the unique compatibility of "Confucian" rites and the practices of the Catholic Church. It was at this historic juncture that "Confucius" and the nominal, moral complex, "Confucianism" were invented, the legacy of a project to pacify the internecine political and religious conflicts of Europe's nascent nations. As such, "Confucianism," which has long lacked any indigenous linguistic equivalent, was not Chinese at all, but a refracted image bestowed upon Europe at a critical moment in the making of its "Enlightened" self-image. Thus, it is ironic that some three hundred years later, Western and an increasing number of Chinese intellectuals would follow the trajectory of this earlier cultural creation and bestow upon the Chinese an image drawn from an enlightened, rights-based Western culture amenable to embrace by "Confucian" Chinese. Nonetheless, it is precisely this irony of representation, the fictional, ideological quality of "Confucianism" implicit in many of the volume's essays that is responsible for the explicit favor shown scholars of this new tradition by the Chinese Communist Party.

Confucianism must have a distinct historicity to be something that actually exists and, more importantly, has existed among Chinese. If “Confucianism” is not genuinely Chinese and cannot stand as a Western translation for a native tradition, then whatever traditional values are drawn from it are fictional products of scholarly desire, mere ideology. Thus, such a construct may serve as an exogenous explanatory mechanism for Chinese economic growth, as well as a justification for an authoritarianism that, by controlling workers’ organization and depressing wages, ensures the perpetuation of national income growth. The constant reliance on “Confucian” and “Confucianism” as integers in the ambiguous equation of Chinese cultural life also prompts one to wonder: is the Confucianism and human rights debate vital among Chinese laboring to expand freedom beyond economy to politics?

Today, human rights are less of a concern for the average resident than, say, corruption, official malfeasance, rising crime, unemployment, and ecological adversity. In fact, the issues of air and water pollution, so appallingly destructive of the commonweal, are becoming the most critical for Chinese and have been reconceived as defining criteria of human rights. What more fundamental right can there be than the right to breathe? The rhetorical quality of this question suggests that “Confucianism” has little to offer. However, if we dispense with this Western term and rely instead upon the Chinese episodic cultural complex of rites, obligations, and duties governing face-to-face communities of sentiment (*guanxi*, in Chinese), then the advance of environmental deterioration suggests that elemental human rights are being violated as much by the collapse of community and its values as by government directive.

In retrospect, the reasons for China’s recent embrace of “rights talk” are complex, but de Bary and Tu are banking on the political overture for dialogue with the government on values and rights as evidence of a willingness to humanize the state by opening it to the enduring virtues of “Confucianism.” But, this reviewer fears that their efforts to affect the political and economic disorder of contemporary China are being cynically manipulated in a manner similar to the specious signings of human rights covenants, something that emerges in juxtaposing their claims with the official understanding of “Confucianism” (*rujia*, *rujiao*).

While Tu sees in Confucianism incontrovertible evidence of a mandate to be “more obligated, responsible, and duty-bound to assure the well-being of others,” and insists that “we can demand that those in power fulfill their responsibility of caring for the good of society,” a 1996 article in *People’s Daily* (*Renmin ribao*, the party’s newspaper) declared that it is Confucianism’s “rule of virtues,” “code of ethics and authority” that are “beneficial to giving shape to and maintaining a harmonious and stable social and political order” (304). Moreover, the official view pronounces Confucianism in concert with the nation’s market economy, for its ethics is “the soul of the modern enterprise culture and the key to gaining market share and attracting customers.” In this opportunistic capitalist context, the new official appreciation of Confucianism as “a cure to the political and moral crisis in China and . . . a corrective to the excesses of Western liberal democracies” offers no avenue for a reasoned consideration of the legal defense of human rights derived from the ethical substrate of Confucian moral principles (252).

The next century will judge scholars of China and the Chinese government by the political products of de Bary’s “dialogue . . . on deeper cultural issues,” specifically the institution

of a legal system able to guarantee the sanctity of all human rights covenants and a government capable of representing the wide range of China's political pluralism. However, the uncritical persistence of academic focus on essentialized cultural traits and of the conceptual myopia that blurs the historical vision of the Western character of "Confucian values" will ensure that the activist "Confucian" longings of intellectuals at home, in exile, and abroad will rattle but not replace the Chinese state's postmodern iron cage.

Beyond the substantive counsel of greater historicity and questioning of scholarly presumption, several matters worthy of recommendation to the editors remain. Romanization of Chinese graphs is generally consistent, virtually every term transcribed in the official *pinyin* notation; however, the educated general reader's negotiation of the diverse territory of the essays would have been helped by the provision of a glossary of the critical terms. This is an unfortunate oversight for it limits the intelligibility of some of the contributions, restricting them to more informed, sinological readers.

Copyediting, though rigorous on the whole, was not adequate to eliminate a number of errors in grammar. Stylistic foibles of this sort are not salient or common enough to command more than a mention, overshadowed as they are by the honorable ambitions of Professors de Bary and Tu.

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