Human Rights and Harmony

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Abstract

There are a number of reasons for thinking that human rights and harmony, two values much discussed with regard to contemporary China, make poor bedfellows. They emerge from different traditions and may apply in different ways: human rights setting a minimal standard and harmony articulating an elusive ideal. In addition, might not harmony demand the sacrifice of one person's rights in order to achieve some larger objective? Does not individual striving to protect one's human rights smack of disharmony? Drawing on both Confucian and contemporary Western philosophy, however, this essay argues that a simultaneous commitment to human rights and to harmony is both coherent and desirable.

I. Introduction

As I write these words, there is considerable speculation among legal circles in Beijing that the Chinese Constitution will soon be amended to add “socialist harmonious society” to the list of China’s paramount ideals. The last constitutional amendment, in 2004, added a commitment to human rights to the constitution, albeit not in the all-important Preamble. There are a variety of questions that might be raised about what role items like these will play in future Chinese jurisprudence, and there are at least as many questions about the regime’s actual commitment to these values. Rather than focusing on such relatively concrete matters, though, my concern in this essay will be with a more abstract and, I think, prior question: Can one be simultaneously committed to human rights and harmony, or is there a serious tension between them?

There are a number of reasons for thinking that human rights and harmony make poor bedfellows. Especially when talking about China, it may be thought that the values emerge from very different traditions and, thus, that there is no particular reason to expect them to be

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reconcilable. It is also natural to think that they apply in very different ways: human rights setting a floor below which we must not fall, and harmony articulating an elusive ideal toward which we may gaze fondly but without expectation of its realization. If they apply so differently, then any attempt to realize them both or to give them equal weight--much less to give more weight to harmony--may seem doomed to confusion or contradiction. Furthermore, do not individual striving to protect one’s human rights smack of disharmony? For that matter, might not harmony demand the sacrifice of one person’s rights in order to achieve some larger objective? Finally, even if all of these questions can be answered, worries may remain that while human rights have clear routes to institutional protection, the value of harmony cannot be so readily institutionalized and so will remain an unbound variable in political and legal equations, ready to be deployed to justify arbitrary exceptions to the rules.

My argument in this essay is that all of these questions can be answered as follows: a simultaneous commitment to human rights and to harmony is coherent and desirable. To be sure, there are significant differences concerning how the values should figure in both our individual lives and our collective institutions, but these differences can be spelled out in robust, nonarbitrary ways. To make this argument, I will draw on contemporary Western moral and political philosophy and on modern Confucian philosophy while also making reference to earlier Confucian views, particularly regarding the idea of harmony itself. Although current issues in China have played a special role in motivating my discussion, I take all my sources and the arguments I derive from them to be quite generally applicable. This is not just an argument about human rights and harmony in China: I aim to show that these twin values can and should be endorsed by all of us.
II. Traditions and Definitions

Neither individuals nor groups are confined, in their reflections upon values, to what their forbearers have thought or done. Traditions and cultures are useful frameworks in many respects, but it will be a premise of my arguments that they are malleable. We can learn and legitimately influence one another across traditions and cultures. Such cross-cultural communication can take place despite many differences in the ways we understand and value our worlds—differences that often have their sources in our historical traditions and cultures. Often cross-cultural encounters lead to changes in one or more of the parties to the encounter, although internal critiques and local reactions to economic and social developments are also common sources of changes to our traditions and cultures. In short, the mere fact that human rights and harmony emerge from different traditions would be no reason to worry that they will be incompatible.

Be this as it may, it is useful first to note that we should not exaggerate the degree to which human rights and harmony are alien to one another. Attention to the contexts in which these values have interacted will also help with definitions, for while there is considerable agreement today both within and across cultures on the meaning of “human rights” and “harmony” (and their myriad translations), careful attention to context can reveal subtle but sometimes persistent differences. Elsewhere I have used the slogan “engagement despite distinctiveness” to call attention to the fact that not withstanding any of these contingent differences, we can and do have constructive dialogue. Still, as we explore the relations among human rights and harmony, it would be well to have a clear and grounded sense of what we are talking about. Since my focus is China, I will discuss harmony and human rights as they have been discussed and have interacted in that context. The general arguments that follow, as I have
already said, are meant to apply outside of China as much as inside, but some of the details may need adjustment to differing contexts. This is in keeping with what we can call “rooted global philosophy,” which means to pursue philosophical argumentation from a particular starting point, for example the range of conceptual resources readily available to a contemporary Chinese thinker, but simultaneously to be open to concepts and reasoning from other traditions. Arguments made in this mode should be widely accessible--and, if successful, widely convincing--but the precise way that they apply will vary.\(^2\)

A. Confucianism and Harmony

Let us look, then, at the value of harmony in China. There is no need here for an extensive historical review; instead, I will summarize some of the key aspects of the Confucian articulation of *he*, of which “harmony” is an apt translation.\(^3\) Musical and culinary analogies dominate early discussions: harmony is the balance of complementary differences that leads to the exquisite flavor of a complex soup or to the moving music of an ensemble of early Chinese instruments. Harmony is regularly contrasted with uniformity (*tong*), in which a lack of variety in flavors, sounds, opinions, and so on, leads to a poor result. Harmony does not emerge from the application of unchanging rules--even if there might be useful rules-of-thumb that often can guide one well--but depends on situational appropriateness. While we can speak of attaining perfect harmony in a given moment or context, harmony is still understood to be dynamic, requiring responses to ever-changing situations. Especially in later Confucian thinking, harmony involves not only political or psychological balance, but also a balanced, mutual connectedness among all things in the cosmos. In this regard, it is critical not to misunderstand the Confucian
ideal of “forming one body with all things” in terms of uniformity: as an expression of harmony, it means recognizing an organic interconnectedness based in our complementary differences rather than seeing all people, or even all things, as equivalent in value.

It is commonly thought that Confucianism teaches one’s own interests in favor of those of one’s community or nation and to obey authority, both of which are seen as based in Confucianism’s commitment to unity. Indeed, Confucians do ask us to understand our interests in the context of our relationships with others: part of my own flourishing is bound up in the flourishing of my parents, children, students, friends, community members, and fellow citizens. Similarly, respect for legitimate authority, in the home, in the workplace, and in the public sphere, is also a genuine Confucian value. In both of these cases, though, the distinction between harmony and uniformity helps us to see why talk of sacrifice and obedience is misleading. A uniform or single-minded commitment to the nation might well suggest that our own, individual interests are of no account when compared to those of the nation. Any and all sacrifice would be warranted. A uniform, unbending obedience to leaders would mean that the content of the leaders’ commands do not matter: we simply must obey. Confucians are very explicit, though, that such uniformity is mistaken, out of balance, and missing the fundamental value of harmony. The value of harmony comes precisely from its ability to preserve and respect differences, because we are all better off when these differences are meshed, to whatever appropriate degree, rather than flattened.

I submit that this summary of harmony is one that all Confucians would recognize and accept. Confucian talk of unity, as opposed to uniformity, which in many contexts is also an important value, must be seen through the lens of their still more basic commitment to harmony. It is significant that some non-Confucian thinkers in the twentieth century also saw the value of
harmony and were attracted to Western political ideals, like Hobhouse’s or Laski’s varieties of social liberalism, which also valued harmony. An embrace of uniformity—with its language of individual sacrifice and unquestioning obedience—can be seen in much Chinese political rhetoric of the century, however. As we pursue the relation between harmony and human rights, we will have to be careful to keep harmony and uniformity distinct.

B. Human Rights in the Chinese Context

Let me turn now to a brief look at human rights in the Chinese context. I will begin with two facts from the history of Chinese human rights discourse that suggest that there may be relatively more room in a Chinese context for human rights and harmony to coexist as core values. First, Confucians played important roles in the early articulation of rights and human rights in China; second, the explicit acceptance of Confucian values by human rights thinkers continued to varying degrees thereafter. This is important for our subject because these individuals typically saw human rights and harmony as conceptually interrelated. On the one hand, a common understanding of the function of rights was to protect legitimate personal interests and spheres of action, and these interests and actions were precisely those that could be harmoniously realized together with the corresponding interests and actions of others. Rights, in this view, had harmony built in. On the other hand, human rights increasingly came to be understood as those personal interests and spheres of action necessary for individuals to realize their full humanity. Full humanity, though, was not a purely individualistic concept; the fully-developed human personality was understood to depend in part on flourishing communal life, which in turn meant commitment to a kind of harmony.
These two views were most explicitly endorsed in the nineteenth and first part of the twentieth century, but harmony has continued to be a theme in much Chinese human rights theorizing down to the present day. Be this as it may, I cannot simply declare victory by stating, “you see, Chinese understandings of human rights are explicitly designed to fit with harmony, so there is no conflict,” because from various perspectives, the challenges motivating this inquiry still need to be answered. For instance, even if one says that one’s concept of human rights is built around a notion of harmony, challenging cases may reveal internal ambiguities or even conflicts. Perhaps an understanding of human rights common in China today is not as robustly supportive of harmony as is believed. Another result of considering my challenges could be to show that while both human rights and harmony can be simultaneously valued, this is only on the basis of a version of human rights that is shown to be extremely weak compared with other understandings of human rights, and thus potentially problematic. Cross-cultural dialogue could reveal, in other words, that there is a significant cost entailed by embracing a notion of human rights that is fully compatible with harmony. In fact, this will not be my conclusion: I argue instead that a proper understanding of harmony is compatible with a fully robust conception of human rights. What I am calling a “proper understanding” of harmony is built rather closely on the Confucian concept discussed above, and I endorse it both because of its intrinsic attractiveness, its superiority to uniformity, and its ability to live with, and even enhance, a commitment to human rights. To see how this proper understanding of harmony is compatible with human rights, we must now turn to my more specific challenges.

III. Non-Arithmetic Balance
I will begin with the notion of complementary differences that is central to harmony. Suppose that the interests of a large group could be enhanced by significantly ignoring the interests of one individual. Would this not be an instance of complementary differences? Such a putatively harmonious solution might lead to group flourishing and growth. Instead of uniform treatment for all, a superior result might come from worse treatment for a few. Why is this not an instance of harmony condoning, or even actively endorsing, the violation of individual human rights?

Before answering, first note that not all instances of differential regard for people’s interests are violations of human rights. Many social, economic, and political systems treat people unequally without that treatment threatening their human rights. Of course, some social, economic, or political systems may be such as to systematically violate people’s human rights, but exploring that question is beyond the scope of this essay. The unequal treatment we are considering, then, must be severe enough to count as a human rights violation.

With this in mind, can we say that harmony allows for the violation of one person’s human rights to be balanced out by improvements for others? To answer this question, I propose that we review what the contemporary American philosopher Michael Slote has said about the concept of balance, because his non-arithmetic notion of balance offers a clarification that goes a long way toward responding to the current challenge. Slote is interested in how our care for others is, and should be, apportioned. Unlike some philosophers who have argued that the notion of caring cannot accommodate the idea that we have obligations to strangers, Slote believes that reflection on the structure of caring shows that two different kinds of balance characterize a good person’s caring for others. One the one hand, there is intimate caring, which applies to people we know; on the other hand, humane caring applies to strangers. Different notions of balance are appropriate to the different kinds of caring.
Slote explains the first kind of caring and balance through a discussion of two cases. In each, we are to imagine a father with “two children in their twenties, one independent and successful, the other dependent and handicapped.” In the first case, we are to suppose that there really is not much the father can do for the handicapped child; in the second case, we imagine that “the father might be in a position to do a great deal for the worse-off child and that the better-off one can manage fairly well (and without resentment) on her own.” The key to Slote’s discussion is his claim that if the father loves his children equally, “he will invariably make efforts on behalf of both and pay attention to both.” In the first case, his efforts may deliver very little, whereas in the second case, consequentialist considerations of justice might demand that he spend all his time on the less well-off child. However, the loving father will not always do that which promotes the greatest aggregate good of his children. Instead, he will “strike some sort of balance between the concern or love he has for the one and that which he has for the other, and that means he will at least some of the time help and/or pay attention to a much-better-off child, even though the time could be spent doing more good for the other.” Slote says that the notion of balance in question is a specific, if nontechnical, idea. It is not the same as equality; instead, two considerations are balanced, in this sense, neither dwarfs the other and the relation between them is not “disproportionate or lopsided.”

Slote continues, stating that while loving concern for particular, known individuals tends to allocate itself according to the nonaggregative type of balance he has just explicated, humanitarian concern does operate aggregatively. Slote explains:

For example, a person may wish the people of Bangladesh well and even make charitable contributions toward their well-being, without knowing, much less loving, any particular individual in that country. And such a humane or humanitarian attitude of caring tends to yield or embody utilitarian-like aggregative thinking of the sort love rules out. Given such an attitude, the moral concern one feels for an unknown Bangladeshi (whose name one has perhaps happened to hear) is fungible, so to speak, within the larger humanitarian
concern one feels for the Bangladeshi people or Bangladesh as a whole. When concerns are thus fungible within some larger concern(s), considerations of overall utility or good apply to them, and this means that when one acts in a humanitarian fashion, one doesn’t, as with love, feel the need to help any given individual . . . at some cost to considerations of overall or objective good.  

For Slote’s two-pronged approach to balance to work, of course, he must be able to explain how caring for intimates relates to humanitarian concern. His solution is to again invoke the idea of balance. In this case, though, “the balance is not between the concern the moral individual has for any given intimate and the concern she has for any unknown other person, but rather between the concern she has for her intimates considered as a class and the concern she has for all (other) human beings considered as a class.” The idea is that a good individual might strike this balance in different ways, often the balance coming down in such a way that we do more for those we love most, when we could be doing more for humanity as a whole. Exactly how we balance will depend on our sense of integrity--that is, I take it, what gives our life a feeling of integrity or wholeness. Slote says: “If one’s integrity, one’s deepest identity, is privatistic or narrow enough, then a morality of balanced caring will not find it acceptable.”

With these distinctions between two types of caring, and two corresponding types of balance, let us now return to our question about whether valuing harmony might lead to a situation in which one person’s human rights are violated in order to help many others. The initial answer suggested by Slote’s work is that if valuing harmony works like balanced caring for intimates, then the individual whose human rights were under threat will be safe from violation. Even if some amount of differential treatment could be countenanced, imbalance so severe as to result in human rights violations would surely be disproportionate and, therefore, unacceptable. Valuing harmony thus leads to the same conclusion as valuing human rights, so there is no tension between them.
Three objections to this answer immediately suggest themselves. First, human rights should paradigmatically be seen as protection for strangers, and yet aggregative caring seems to allow strangers’ interests to be treated in precisely the way the original challenge envisioned. Second, why does valuing harmony lead to caring harmoniously? Where does the caring come from? Third, even if nonaggregative balance does turn out to be applicable, it may seem to be merely a contingent likelihood that harmonious caring will lead to the same result as human rights, when what we need is a genuine guarantee of protection.

Consider first the worry about aggregative caring. It is certainly true that most human rights issues concern nonintimates. Between intimates and the broad, vague groups of others to which humanitarian caring applies, though, there is a large middle ground. Slote also notes that his morality of caring may have to deal with “gradations in between” the two extremes he considers. Perhaps the best way to characterize the middle ground is those who are not well-known to one, but are still individuated. This includes “strangers,” insofar as we are talking about one specific stranger rather than another. In addition, I would argue that nonaggregative balance (or harmony) applies to this group, albeit perhaps in a more attenuated form than applies to intimates. In other words, even if caring for various individuals one does not know allows for significant differences in treatment, genuine caring for them is not compatible with the severely disproportionate treatment that would lead to human rights violations. As for vague, undifferentiated groups of others, Slote gives us no reason not to treat them as subject to a pure kind of utilitarian calculus, so long as they remain vague and undifferentiated to us. This cannot be the source of human right violations, however, because our interaction with the vague group is too distant.
The answer to the second objection will help to reinforce my answer to the first objection. Caring is basic to Confucianism and is linked with harmony almost from the beginning. Harmony, in a Chinese context at least, is not about an abstract balance of inanimate objects but about the interactions of life-valuing, generative, caring creatures--including the interactions of such creatures with their broader, inanimate, or at least nonsapient, environment. Any effort to divorce harmony from this sense of “being alive to others” is thus a major departure from the tradition out of which the Chinese concept of harmony emerged, and it would risk emptying harmony of the rest of its content discussed above. Noting this connection to Confucian ideas of caring reinforces the idea that the kind of balance appropriate to nonintimate individuals is nonaggregative because another central aspect of Confucian caring is the injunction to extend one’s caring from those closest to one outwards toward other people and, ultimately, one’s broader environment. I believe that there is still room in this picture for aggregative, humanitarian caring, but it will apply best to the vague groups Slote uses in his examples.

Finally, I must address the problem that even if all the above is accepted, harmonious caring may not seem to be as strong a protection for human rights as we require. With this I completely agree, and later in the essay I will argue for a way that the primarily moral demands of harmony can be seen as relating to the primarily political demands of human rights such that human rights receive the objective, institutional protection they require. Still, note that this concern is not really an objection to the argument I have been making in this section, the goal of which has been to show that harmony does not, in general, push us toward the violation of human rights.

IV. Rocking the Boat
My next challenge to the compatibility of human rights and harmony takes a different approach. Let us suppose that someone’s human rights have been violated. Does harmony push us toward passivity, toward not rocking the boat, so that those aware of the violation end up doing too little to seek redress and reform? I will answer in several steps. Our starting point must be a review of the “harmonious but not uniform” doctrine, already mentioned above, which urges people to make explicit their diverse perspectives on the issues at hand. Be this as it may, my second step will be to acknowledge that a commitment to harmony will indeed inflect both the ways in which such perspectives are voiced and the institutions we have through which to register our complaints. Third, I argue that notwithstanding these differences (as compared to a non-harmony-seeking approach), members of a community committed to harmony will still be able to raise powerful criticisms of injustice in general and human rights violations in particular.

We begin with the most fundamental issue, namely the idea that harmony not only allows for differences of opinion and criticisms to be expressed but actually demands such expression. To flesh this out, let us look briefly at a classical Confucian text that contrasts harmony (he) with uniformity (tong). Yan Zi is speaking to his lord, the Marquis of Qi, about the difference between harmony and uniformity:

Harmony is like a broth, wherein water, fire, vinegar, minced meat, salt, and plum sauce are used to boil fish meat. Cooking it over firewood, the chef harmonizes it, proportioning it with flavor; adding to what falls short and taking away from what is in excess. The nobleman partakes of it and thereby sets his mind in balance (ping).

It is likewise with a ruler and his ministers. Where there is something unacceptable in what the ruler deems admissible, the ministers point out to him what is unacceptable, so as to bring perfection (cheng) to that which is admissible. . . . It is thus that governance is balanced and yields no violation, and the people have no inclination toward struggle. . . .

The proportionate blending of the five flavors and the harmonizing of the five tones by the former kings was done for the purpose of setting their minds in balance and bringing
perfection to their governance. . . . Now with Ju [another minister], it is not thus. What your lordship deems acceptable, Ju also calls acceptable; what your lordship deems inadmissible, Ju also calls inadmissible. If water were added to [enhance] water, who could make a meal of it? If the qin and se zithers struck the same [notes], who could [bear] listening to them? It is thus that uniformity is unacceptable.23

“Yes men” make bad ministers because they fail to play their crucial role of correcting leaders who are tempted to rule in a one-sided or selfish way. This same theme is expressed more succinctly in the famous Analects saying: “The gentleman is harmonious but not uniform (tong). The little man is uniform but not harmonious.”24 It is a matter of some controversy whether classical Confucians would have insisted with equal conviction on common people--and not just ministers--speaking their minds.25 Whatever we decide for the historical tradition, it seems clear that the injunction to be harmonious but not uniform should apply universally today, so people should speak up if they witness or experience wrongs.

So far, so good, but in fact the current challenge cannot be dismissed quite so quickly. We have not yet specified the means by which individuals should protest or resist the violations. In addition, when a friend complains of his or her treatment at the hands of the state, what are my responsibilities? Should I try to balance out that criticism, suggesting we look at things from the perspective of the state? The first thing I should remember--or indeed, already have internalized--is that rather than seeking an arithmetic balance, caring harmoniously for my friend (the victim) demands a situationally appropriate reaction. I must take into account the nature of the injury, any needed healing process, physical or psychological, and the role of power imbalances in achieving appropriate resolutions both in the short term and the long term. As a result, even though a charitable effort to understand the state’s motivations may play some role in my reaction, it seems likely that the various considerations I have listed will move me to stand quite
firmly on the side of my friend, adding my voice to his or hers as we seek redress and longer-term reform.

It is crucial that harmony be seen as multidimensional and dynamic. In practice, this means that a potential short-term harmonious resolution must also be viewed from the perspective of moving toward a still-better, longer-term harmony. This is precisely one of the motivations for not being uniform: deciding to meekly go along with a bad decision or someone’s serious mistreatment undermines the potential for better harmonies to be reached in the future. At the same time, a genuine commitment to harmony requires that we take into account the consequences of both the substance of our complaint and how we make it. Although strong reactions to serious violations will almost always be appropriate, in many cases it will still be possible to overreact: to react in a way that worsens the possibilities for harmony overall. A community shaped by the value of harmony will, for one thing, put significant value in mediated solutions to conflicts; for another, they may design the incentives associated with lawsuits so as to nudge us toward thinking of other solutions as our first resorts. These are delicate matters. The institutions and values surrounding mediation must be carefully considered so that it does not simply function to support the more powerful parties to any dispute. Any system of civil law will have an incentive structure built in. To successfully incorporate the value of harmony in the way I have articulated it here, incentives must be designed so that the full legal system is available to those who genuinely need it. 26

I said that it is sometimes possible to overreact to situations, by which I mean a reaction that is suboptimal when viewed from the perspective of achieving greater harmony. Even when strong, angry reactions are appropriate. Someone looking at the situation from the perspective of harmony will say that these reactions are best when measured, applied only to those genuinely
meriting anger. One’s anger should not cloud one’s judgment or color one’s reactions to other people who are more tangentially involved. This all sounds rather utopian, though. What if, given the state of one’s actual psychological resources, one really only has two choices: blow up, with a strong risk of overreacting, or else squash one’s feelings and let the violation go by?

No blanket answer to this question can be guaranteed to be correct in every circumstance, but it is at least true that choosing to not rock the boat cannot be seen as the default position. That is, harmony does not teach us to sit back and take it, unless we are able to respond in a perfect, measured way. Underreaction is at least as bad a fault as overreaction; given the “harmonious but not uniform” teaching, we might well see underreaction as worse. In addition, a modest overreaction is certainly better than a severe underreaction, and sitting by without complaint when subject to or witness of a violation of human rights is surely a severe underreaction. In general, then, harmony will not stand in the way of resistance to human rights abuses, and in fact it calls upon us to stand up and be heard.

I have been focusing on situations in which one needs to stand up and raise one’s distinctive voice in response to a wrong one has experienced or witnessed. One might wonder, however, what about differences in general? Does harmony lead us to squash or at least mitigate our differences from one another? Put another way, how much pluralism can a doctrine of complementary differences allow? Given that my focus here is on the compatibility of harmony and human rights—rather than, say, the broader question of harmony’s relation to liberalism—I will narrow this question down to the issue of whether harmony can be consistent with the human right to freedom of expression. We can approach such a problem from two perspectives. On the one hand, does acceptance of this human right mean we must abandon harmony as a
goal? On the other hand, if we start from valuing harmony and complementary differences, will this put pressure on our right to free expression?

Given the human right to free expression, is harmony a lost cause? When harmony is understood in the way I have done here, there need be no tension in this direction. I noted above that harmony in the Chinese tradition is understood to be dynamic, requiring situationally-specific responses to ever-changing situations. New perspectives and new inputs are thus needed in order to deal with new challenges, and there is no saying in advance which inputs these are. In addition, listening to each other will help us to recognize interdependencies, which may enable differences to be complementary. Certainly, insofar as we value harmony we may endorse values and institutions, as discussed elsewhere in this essay, that will nudge us toward more constructive, more open-minded presentations of our own views and receptivity toward the views of others. The question is, however, will these values and institutions go so far as to put pressure on our right to free expression? Does endorsing harmony bring in tow a grandmotherly figure continually admonishing: “Quiet down, dear, that’s not a ‘complementary’ view”? If harmony is not about a static or preordained set of differences, though, who is to say what is complementary? In general, new music or recipes demand new differences, innovation. To be sure, there will be limits based on broad consensus of public welfare, but there is no reason to think this will be any different from such limits accepted in many countries, for instance no shouting “Fire” in a theater.

More than most arguments in this essay, these points rely rather heavily on the specific notion of harmony developed in China, against the background of a metaphysics that begins from ideas of change and continual growth. This is unproblematic from the perspective of “rooted global philosophy,” which proceeds through argumentation meant to be widely
accessible, but it relies on defeasible premises deriving from particular philosophical traditions. I suspect, though will not attempt to argue here, that alternative metaphysical backgrounds can produce a very similar notion of harmony, as is suggested by John Stuart Mill’s classic arguments for free speech in *On Liberty.*

V. Moral versus Political Values

So far I have dealt with challenges to the mutual realization of harmony and human rights from two directions, showing that harmony justifies neither human rights abuses themselves, nor sitting idly by while they occur. Still, it is possible to worry that the consistency I have demonstrated between the values is quite fragile, since it rests on abstract arguments about what the moral value of harmony entails. Harmony may be a nice thing, and not as dangerous as first appeared, but it does not belong in the Constitution. Human rights and harmony, one might argue, operate at different levels; if these are confused, trouble follows. I agree that there is a real foundation to this kind of concern, and one of my goals in this section will be to spell out a way of distinguishing between moral and political values that gives the latter an important kind of independence from the former. As we think further about human rights and harmony, though, it will become apparent that each has its moral and political aspects.

Merely not having one’s human rights violated does not guarantee that one is living a good life. We hope for more in our lives than not being tortured, not being silenced, and not being prohibited from finding work. Rather than representing an ideal life, human rights express an essential foundation upon which a good life can be built. They are not optional goods that one hopes will be part of one’s life, but necessary goods on which one relies at all times. In addition,
human rights do not, in general, admit of degrees: either one’s human right has been violated, or it has not. One cannot be partly tortured.\textsuperscript{29} Contrast all this with harmony, which seems like part of an ideal life, even if it is not the only value we would want to be realized in an ideal world. It makes sense to talk about partial realizations of harmony. Harmony does not seem to be the kind of foundational value that human rights are; rather, it is something that virtuous people will aim for, though perhaps not always achieve. In many senses, harmony and human rights are different types of values. One way of putting this is that human rights are foundational political values: necessary for humans to live together in political society but ultimately limited in what they ask of us. Harmony, on the other hand, could be seen as a moral value, the realization of which depends in large part on the continual striving for virtue of individuals. If harmony is an ideal, then perhaps it will never really be fully realized but can continue to stand as an aspiration for both individuals and their societies.

If we distinguish human rights and harmony in this way, then we can connect them with an issue that has long vexed Confucian philosophers, namely the best way to understand the relationship between the moral and political realms. If they are seen as completely continuous—if, that is, human rights and harmony are seen as on par with one another—then we risk inappropriately trading off human rights for other values. In the words of leading twentieth-century Confucian philosopher Mou Zongsan, this is to have morality “swallow” political values and institutions.\textsuperscript{30} Since I believe Mou has considerable insight into this issue, I will jump directly to the solution he has proposed, rather than telling more of the story of Confucians’ struggles with the problem. Mou’s solution will help us to settle the question of how harmony and human rights can both be endorsed.
Mou Zongsan’s insight is that the relation between morality and politics is “dialectical.”

For instance, rather than seeing a leader’s political virtue as a direct extension of his or her personal, moral virtue, Mou argues that there needs to be an indirect relation between them. Politics and political virtue must develop out of morality, but nonetheless have an independent, objective existence. This means that human rights, for example, must have a basis in morality, but come to be measured by standards that are separate from moral standards. The converse is also true: full moral virtue requires that which “negates its essential nature (ziwo kanxian),” namely, objective structure. Objective structures, like laws, are fundamentally different from the subjectively-felt, internalized morality after which we should all strive. What does it mean for such structures to negate subjective virtue? It does not mean to completely negate. Mou explicitly says that the objective approach cannot contain the needed “moral edification.”

Objective political values are critical, yet they are limited, unable to touch the whole of human life. Second, we must be very careful if we want to think of Mou’s dialectical relation along pure Hegelian lines, in which a thesis is negated by an antithesis, out of which emerges a third thing, a synthesis. Unlike the application of this framework to historical developments, the putative antithesis objective structures is not overcome but persists. Also persisting is the perspective of personal moral cultivation. From either of these vantage points, it may appear that there has been no synthesis at all but simply an on-going tension. This is to miss the genius of Mou’s insight, however. The synthesis lies in the new possibility of attaining full virtue; full virtue, he argues, is not even conceptually possible without the existence of objective structure. The concrete implication of this is that no matter what one’s level of moral accomplishment, “insofar as one’s virtue is manifested in politics, one cannot override the relevant limits (that is, the highest principles of the political world), and in fact must devote one’s august character to
the realization of these limits.” In short, sages cannot break the law nor violate the constitution. Politics thus has its independence from morality.

The importance of Mou’s insight is two-fold. First, for those whose foremost commitment is to realizing ideal moral values like harmony, it explains why they must nonetheless restrain themselves by the objective demands of human rights. As Mou Zongsan’s student, Tu Wei-ming puts it, this means that “Confucian personality ideals— the authentic person, the worthy, or the sage— can be realized more fully in the liberal-democratic society than either in the traditional imperial dictatorship or a modern authoritarian regime.” Mou himself argues quite explicitly that a critical failing of Confucianism has been its blindness to the need for objective, institutionalized political values, even though, according to Mou, Confucianism saw the importance of these same values in the purely moral realm. Second, from the perspective of those committed first of all to human rights, Mou’s framework offers both a useful way to think about the source of human rights and a means of understanding the inviolability of human rights— that aspect which is sometimes referred to as their ability to trump other values. Human rights are just the set of the most fundamental political values, which emerge out of an understanding of what it is that allows for us to flourish as human beings.

Rather than pursue the details of Mou’s argument further, let me suggest a few ways in which we need to supplement it. First of all, let us keep in mind that the relation of human rights to morality is not simply one of derivation, which would mean that once we have understood the moral reasoning behind the need for human rights then they can leave behind the fuzzy world of morality for the hard, objective, and institutionizable world of political value. No, human rights still need morality because it is primarily from moral education that we acquire our motives to respect human rights. Moral education means many things, and Mou Zongsan certainly
recognized the need for a kind of general moral edification.\textsuperscript{38} I would add that we should also include what Richard Rorty has called “sentimental education” in which our awareness and concern for others is extended as we are encouraged to attend to these others through fiction, art, and other means.\textsuperscript{39} In any event, as Confucius long ago realized, the inculcation of moral values is far superior to the threat of punishment as a means to realize our various ideals.\textsuperscript{40}

The institutionalization of human rights, primarily through domestic and international legal regimes, is an issue that has been well-studied, and perhaps the only comment I need to make is to urge that we continue to explore the ramifications of nonlegal, as well as legal approaches to human rights.\textsuperscript{41} In addition, despite its status as a moral value, a value like harmony can also admit of some degree of institutionalization. The degree of institutionalization depends on the degree to which the state in question is committed to perfectionism. Perfectionism is the idea that the state can and should promote valuable conceptions of a good life on the parts of its citizens, rather than leaving it entirely up to its citizens to seek--or not to seek--genuinely valuable lives. This latter view, according to which the state should not promote any particular conception of a good life, is known as state neutrality, and is often asserted as part of liberalism. State perfectionism is a large and complex topic into which I cannot delve in any depth here. For our current purposes, it suffices to note that careful and convincing arguments have been advanced to show that certain kinds of state perfectionism can be modest, and thus consistent with human rights even though not consistent with complete state neutrality.\textsuperscript{42} In such polities, broadly-shared values can be promoted, albeit non-coercively. Possible means include education, tax policies, public support for arts, and both the availability of mechanisms of dispute resolution other than litigation, and an incentive structure built-in to the legal system that
encourages the exploration of such options. Whatever options are chosen must be handled carefully so as to respect everyone’s rights and keep the perfectionism modest.\footnote{43}

Finally, this discussion of institutionalizing harmony brings upon me an important objection to much of the discussion in this section. I have been consistently referring to harmony as a moral value, but some might think that the current discussion in China of socialist harmonious society is really about a broader political value--possibly even one that should play as foundational a role as human rights. Rather than the Confucian moral value of harmony, might this putative melding of socialist and Confucian values really be what is at stake?

VI. Conclusion

Perhaps socialist harmonious society really has nothing to do with harmony. Perhaps it is really simply about stability, about people not challenging the regime, and about people resting content with economic differentiation as opposed to the Chinese Communist Party’s earlier goals of equality. However, I submit that it is too soon to say what Chinese intellectuals and leaders will make of their revived talk of harmony. Perhaps, instead, socialist harmonious society will mean something along the following lines: a dynamic, growing, participatory society, characterized by balanced and complementary differences coupled with a significant concern for equality. This understanding draws in obvious ways on the tradition of Confucian discourse about harmony that I have been discussing. In addition, it is not at all clear that such an understanding can be captured by an objective, institutional, political value comparable to human rights. Rather, the harmony in such a society, which is of course quite distinct from issues of equality, emerges from the moral values of its participants. These moral values may be supported
by certain sorts of institutions, as discussed above, but the harmony in socialist harmonious society remains a fundamentally moral ideal. To whatever degree such an understanding comes to predominate—as opposed to a simple equation of harmony and stability—then the arguments I have put forward in this essay will stand as defenses not just of the compatibility of harmony and human rights but of also of human rights and a socialist harmonious society.
Endnotes

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2 The most obvious way the present argument would have to be adjusted for an American context would be to further articulate the sources in local traditions for concern with harmony, and along the way to spell out precisely what this value means in a contemporary American context.


4 Here is one recent expression of these widespread views: “Confucian values--altruism, unity,
morality, respect for authority—have been used by emperors and presidents throughout the ages as a means to maintain hierarchies and order.” Jonathan Watts, *Family Tree of Chinese Sage Branches Out to Include Women: Traditional Teachings of Confucius Find Favour as China Looks to Fill Ethical Vacuum in Wake of Market Reforms*, *The Guardian* (London), 28 Sept. 2006 at 23.


7 Here is a representative sentiment, from Deng Xiaoping: “We have stressed the need for the strengthening of Party leadership, democratic centralism, and centralization and unification. The most important aspect of centralization and unification is the unification of thought. This is essential if we are to have unity in our actions.” *Deng Xiaoping, Selected Works of Deng Xiaoping Vol. I*, at 286 (The Bureau for the Compilation and Translation of Works of Marx, Engels, Lenin, and Stalin, Central Committee of the Communist Party of China trans., 1st ed. 1992).

8 *Angle, supra note 1."

9 *Id.* at 225-39.


11 *Id.* at 67.

12 *Id.*

13 *Id.*

14 *Id.* at 68.

15 *Id.*

16 *Id.* at 69.

17 *Id.* at 70.

18 Slote sees it as a strong-point of his theory that the theory’s requirements appear to fall in between Singer’s extremely demanding consequentialism, and Williams’s extremely loose theory of moral integrity. *Id.* at 73.

19 *Id.* At 78.
20 Many kinds of violation of women’s human rights constitute an important exception to this generalization.

21 SLOTE, supra note 10, at 65.

22 What about a multi-national corporation whose managers choose policies that wreak havoc on vague, undifferentiated groups of strangers living in the vicinity of the company’s factories? The problem here is not the aggregative nature of their concern for the factories’ neighbors, but the imbalance between their concern for their own wellbeing and their concern for the strangers’. This latter relation, recall, must meet the test of non-aggregative balance.

23 ZUO ZHUAN, Zhao 20; translation from HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 67 (Rebecca J. Cook ed., 1994). [Anne, check on format for Zhao]


25 The famous discussion of regicide in Mencius is often taken to endorse a right to revolt against tyranny, but other passages in the text strongly suggest that the author only applies this doctrine to political elites, rather than to the common people. Compare Mencius 1B:8 and 5B:9. See also 1B:4, which explicitly says that common people should not criticize the ruler: “Should there be a man...who is not given a share in [the realm’s] enjoyment[s], he would speak ill of those in authority. To speak ill of those in authority because one is not given a share in such enjoyment is, of course, wrong. But for one in authority over the people not to share his enjoyment with the people is equally wrong.” Translation from MENCUS 58 (D. C. Lau trans., 2003).

26 See Albert H. Y. Chen, Mediation, Litigation, and Justice: Confucian Reflections on a Modern Liberal Society, in CONFUCIANISM FOR THE MODERN WORLD 257 (Daniel A Bell & Chaibong Hahm eds., 2003) for a good discussion of some of the issues surrounding mediation, with specific reference to both historical and current practice in China. In an unpublished manuscript, I discuss both mediation and the delicate relation between moral and legal norms in more detail. My argument there is that Confucians would favor a system of law as a second resort: readily available, but typically not the first place to which one turns to resolve a problem. See Sagehood: The Contemporary Significance of Neo-Confucian Ethical and Political Philosophy (2007).

27 Thanks to Joseph Chan for making clear the relevance of this concern to my goals here.

28 JOHN STUART MILL, ON LIBERTY (Michael B. Mathias ed., Pearson Longman 2007 (1859)).

29 There are, admittedly, some complex matters here. For instance, the human right to free expression is not a right to say whatever one wants under any circumstances: certain kinds of dangerous, libelous, or hateful speech, for example, are rightly prohibited. So long as these
Distinctions are clear, though, the right to freedom of expression is still either violated or not, in a given instance. Another issue is the reliability with which rights are protected. It is certainly true that some states have more developed systems of protections, and thus some do a better job than others of guaranteeing protection against “standard threats.” See Henry Shue, Basic Rights (2d ed. 1996). Still, this is an issue of degrees of protection, not degrees of the rights themselves.


31 Id. at 57.

32 Id. at 59.

33 Id. at 124-5.

34 Id. at 125.

35 Id. at 128.


37 Mou, supra note 30, at 114-23.

38 Id. at 124.


40 See Analects 2:4.


43 My brief discussion of mediation and of law as a system of second resort in Section IV, above, is meant in precisely this spirit.