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1. Introduction

In a volume focusing on the theory and practice of human rights in contemporary China, why begin with a chapter on human rights in Chinese tradition? The answer must be that the relation between human rights and Chinese tradition makes a difference to the theory and practice of human rights today. Perhaps, for example, the tradition is inimical to human rights, and helps to explain why the ideas and institutions of human rights are not more vibrant in China. Or perhaps the tradition has been supportive of human rights from the beginning? Both scholarly and political voices have made each of these claims in recent years, as well as a variety of more nuanced positions in between these two extremes. In fact, we can identify three different approaches: the Chinese tradition is (1) an *obstacle* to human rights, (2) an *alternative* to human rights, or (3) a *source* of human rights. While some scholars have insisted on one or another of these approaches, I will argue here that there is truth in all of them. Nothing about the Chinese tradition determines, once-and-for-all, what modern Chinese must think about human rights, but there is no question that it

has had, and will continue to have, varying kinds of influences on people today. The task of this chapter is to explain the senses in which (1) through (3) are all correct, and thus lay the groundwork for the more detailed examination of contemporary human rights discourse that follows in later chapters.

In the balance of this introductory section I have two tasks: I specify more clearly what I mean by some of the key ideas of the chapter, and then offer some of the modern historical context that frames the debates about human rights and tradition that I explore in the chapter's main sections. To begin with, then, what are "human rights" and what is the "Chinese tradition"? For the purposes of this chapter, we need neither a philosophically technical definition of human rights nor an extensive enumeration of what rights count as "human rights," but we do need a basic understanding. As a starting point, then, let us agree that human rights are a special kind of protection for some of our most basic values or interests—protections that all humans deserve. This is general enough to encompass a range of specific views of human rights but also specific enough to differentiate human rights from other moral or political ideas. The idea of human rights is related in various ways to ideas like freedom, human dignity, human nature, ethical good, personal and societal interests, individual and collective responsibilities, and moral rightness, but it is not the same as any of them, and only confusion follows from blurring the lines between human rights and other moral ideas and on this basis claiming that all cultures have acknowledged human rights.¹ Admittedly, though, one or more of these other ideas may be used to justify today why it is that all humans have rights, and what those rights may be. In the context of questions about human rights in Chinese tradition, we want to define the

¹ (Lauren 1998, 10) is an example of this kind of blurring.

category of human rights in a way that both is general enough to be open to finding discussions of human rights there, and also specific enough to hold out the possibility of not finding human rights there—or perhaps finding that discussions of human rights emerge at some point. After all, many have argued that the idea of human rights (in our present sense) comes to prominence only fairly recently in Euro-American contexts as well.

Three features of the idea of tradition are especially important here. First and most obviously, traditions involve the on-going re-invocation of past ideas and values. It is not the case that each generation makes up its key concepts and values from scratch: we learn from our elders how to make sense of the world.² The second important feature is that this “re-invocation” is an actual and often contested process, not an automatic programming of our individual software. As the institutions that support a tradition’s continual re-invocation change or collapse, the tradition will likely be affected in turn. Even in periods of relative institutional stability, the reasoning on which traditions rest will itself spur questions and challenges, often leading to significant developments within the traditions.³ The third feature of traditions, therefore, is that they are dynamic and internally diverse, rather than being static and monolithic. This is especially true in the case of China, where traditions of thought and practice have been evolving over thousands of years.

In one important way, however, I will narrow down the diversity of Chinese traditions in this chapter. Almost all discussions of the relation between human rights and Chinese tradition have focused on Confucianism, and I will follow this same practice. This is

² See discussion in (Angle 2002), and the helpful revision offered in (Major 2016, 156-157). Major cautions us not to overly dichotomize agents and the tradition that they are enacting; he draws on Gadamer’s idea of “prejudices” to emphasize that traditions are always-already shaping us.

³ One important work that emphasizes this side of traditions is (MacIntyre 1988).

not because Confucianism is the whole of Chinese tradition or culture, nor because I assume that it is somehow the best that the tradition has to offer. Rather, the reason is that Confucianism has dominated historical discussions of the topics most obviously related to human rights. It is certainly the case that values and ideas found in non-Confucian strands of Chinese tradition—such as Daoism, Legalism, and Mohism, and perhaps also Chinese Buddhism—can be connected to human rights in various ways, and perhaps political thinkers or social actors will pursue these avenues in the future. For past and present China, though, it is the Confucian tradition that has mattered most to both positive and critical discussions of human rights. And confining ourselves to Confucianism does not mean abandoning the idea that traditions are dynamic and diverse, because the 2,500-year-old Confucian tradition is itself significantly dynamic and diverse.

To illustrate those characteristics of the Confucian tradition, let me now turn to a brief historical account, with special emphasis on what I call the “permeability” of the Confucian tradition. That is, like all live traditions, Confucianism has never been hermetically sealed from interaction with other traditions, whether these are fellow strands of the broader Chinese tradition, or discourses with origins further afield. Instead, it has grown and changed in part through these interactions. During its classical era—roughly the fifth century BCE through the second century CE—influential thinkers starting with Confucius (551–479 BCE) developed key concepts and values in response to both societal and intellectual challenges.⁴ Confucianism’s second important period of creative growth is the era of “Neo-Confucianism,” a sophisticated revival of Confucianism in the very different political, social, and intellectual context of the eleventh through eighteenth

⁴ (El Amine 2015) is a good overview of classical Confucianism political thought.

centuries CE. This era sees Confucians grappling in various ways with the tremendous stimulus and challenge coming from Sinicized schools of Indic Buddhism: it is important to keep in mind that China's encounter with European civilization is not the first time that Confucianism has challenges and opportunities on such a level.⁵ The twentieth and twenty-first centuries CE, finally, can be labeled the era of "modern Confucianism."

To conclude this introductory section, I sketch the contours of modern Confucianism in a bit more detail, in part because it is modern Confucians themselves who shape key parts of our current debates about human rights and Chinese tradition. After the collapse of the last imperial dynasty in 1911, in 1915 Chinese intellectuals inaugurated a "New Culture Movement" (later also called the "May Fourth Movement") that sought fundamental changes to Chinese values, practices, and even the Chinese language. In many ways this movement was a more pervasive cultural revolution than the later Maoist movement of that name. The values of "modern civilization" were on the rise and older traditions like Confucianism were roundly criticized.⁶ Modern Confucianism is born under these challenging circumstances. Major Confucian thinkers in the mid-twentieth century argued that Confucians should embrace modern political innovations like human rights and constitutional democracy because the individual security and choice that human rights and constitutionalism promise are necessary for the achievement of the moral goals that Confucians seek.⁷ After the founding of the People's Republic of China in 1949, this sort of modern Confucianism was largely confined to Taiwan and Hong Kong. Beginning late in the century, the idea that "Asian Values" were either inimical to human rights or else led to a

⁵ For an introduction to Neo-Confucian philosophy, see (Angle & Tiwald 2017).

⁶ See, for example, (Chen 2001 [1916]).

⁷ See, for example, (Liang 2001 [1921]) and (Zhang 2001 [1946]).

different understanding of human rights began to be heard in places like Malaysia, Singapore, and to some degree in China.⁸ More recently, a similar-sounding opposition to “universal values” (of which human rights is a central instance) has been sounded both by government officials in the People’s Republic and by some Chinese Confucian intellectuals.⁹ At the time the present volume is being produced, there is no consensus among modern Confucians concerning human rights, which we will see in more detail throughout the remainder of the essay.

2. The Confucian Tradition as an Obstacle to Human Rights

The relation between human rights and Chinese tradition has been explicitly discussed for a little more than a century, and over that period the most common view has been that the tradition is an obstacle to the development of both ideas and institutions of human rights.¹⁰ For some, the alleged incompatibility of human rights and the Confucian tradition is actually a good thing, because its flip-side is an alternative normative order which they argue is superior to that undergirded by human rights. In the next section, I will look at these arguments for positive alternatives within the tradition to human rights. Here, I focus on four negative arguments aiming to show that it is difficult or impossible to build human rights on a Confucian foundation: (1) Confucianism is based on hierarchical rituals; (2) Confucianism lacks a concept of human rights; (3) Confucianism cannot allow human

⁸ See (Jacobsen and Bruun 2000).

⁹ See discussion in (Angle 2015) and (Zeng & Guo 2013).

¹⁰ See Section 4, below, for a brief review of the emergence of explicit discussion of human rights in China.

rights to categorically trump other values; and (4) Confucian relationality is incompatible with human rights.

In a famous essay from 1916, Chen Duxiu writes that “the essence of Confucianism is called the ‘ritual teachings’ (*lijiao* 礼教),” that this ritual order is fundamentally hierarchical, and that the resulting hierarchy is incompatible with equality, democracy, and human rights.¹¹ Aware of attempts to rebut this kind of argument, Chen asserts that ideas of ritual and hierarchy were already central to the earliest Confucianism, even if late-classical and Neo-Confucian thinkers were the ones who made some of the key premises explicit and thus established Confucianism as “an ethical view with a complete structure.”¹² As Chen sees it, the genuine virtues emphasized by Confucianism are valuable but not unique to Confucianism or to China: they “have all been observed by experts in practical morality all over the world.”¹³ Chen implies that it is perfectly acceptable to continue to promote such virtues, but the basic ritual structure of Confucianism must be rooted out and replaced with a new public culture that will support a constitution based on European models.

Chen’s argument that a Confucianism based on hierarchical “ritual teachings” is incompatible with human rights is powerful and still resonates today with both critics and supporters of Confucianism—for example, when contemporary conservative Confucians argue that China should resist adopting human rights norms because to do so would be to

¹¹ (Chen 2001 [1916], 68). See also similar ideas from a decade earlier in (Anonymous 2001 [1903]). For discussion, see (Svensson 2002).

¹² (Chen 2001 [1916], 72).

¹³ (Chen 2001 [1916], 73).

reject Confucian hierarchies.¹⁴ One way to circumvent the argument is to insist that Confucian virtues really are distinctive and in fact they, rather than specific rituals, are the core of Confucianism. In Section 4 I will show how some more progressive, modern Confucians develop this line of thought in order to embrace both Confucianism and human rights.

In addition to Chen's ritual-based argument that Confucianism is a barrier to human rights, another influential set of claims maintains (1) that traditional Chinese had no word for "rights" or "human rights," (2) that these concepts were therefore not discussed, (3) that these ideas were difficult to translate into Chinese when this was attempted in the nineteenth century, and (4) that the translation for "rights" that was eventually chosen—namely "*quanli* 权利"—is actually a poor and even misleading translation. In short, there is an awkward fit between the idea of human rights and the Chinese language and tradition, which forms a barrier to Chinese human rights discourse.

In order to assess these claims, it is helpful to divide them into those relating to the traditional (pre-nineteenth century) situation, on the one hand, and those relating to translation and conceptual innovation, on the other. To begin with the tradition, virtually all scholars agree with (1), but (2) has been subject to considerable debate. In a much-cited essay that was published in 1949 in conjunction with debates about the emerging Universal Declaration of Human Rights, Chinese philosopher Chung-Shu Lo acknowledges that the "problem of human rights was seldom discussed by Chinese thinkers of the past," but then goes on to assert that "the idea of human rights developed very early in China."¹⁵

¹⁴ (Zeng & Guo 2013).

¹⁵ (Lo 1949, 186).

Lo cites various early texts that express what he calls a ruler's "duty to Heaven to take care of the interests of his people." Lo also says that "the right of the people to revolt against oppressive rulers was very early established," and though he mentions no text that makes this "right" explicit, he surely has in mind the famous passage in *Mencius* in which it is made clear that rulers who "mutilate benevolence" and "cripple rightness" no longer count as true rulers; to kill such a person is to punish an outcast rather than to commit regicide.¹⁶ This passage clearly supports the idea that the people's well-being is of paramount importance, to which any ruler must be committed in order to merit his position. Other passages in *Mencius* lead me to reject the idea that the text treats rebellion as a people's right, however. For one thing, a later passage says explicitly that while ministers lacking royal blood should remonstrate with a misguided ruler, they cannot depose him; only ministers with royal blood can depose a ruler who ignores their repeated advice.¹⁷ In addition, *Mencius* also indicates that while people who act against a bad ruler cannot be blamed for what they do, they still do not act rightly. The following passage, which criticizes those rulers who hoard all "enjoyments" for themselves, is quite explicit:

Should there be a man...who is not given a share in [the realm's] enjoyments, 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.¹⁸

Another passage makes the related point that for a ruler to fail to provide properly for his people, and then to punish them when they "fall into excesses" seeking what they need, is

¹⁶ *Mencius* 1B:8; (Mencius 1970, 68).

¹⁷ *Mencius* 5B:9; (Mencius 1970, 159). For more details on the various constraints on changing a ruler that are mentioned in *Mencius*, see (Tiwald 2008).

¹⁸ *Mencius* 1B:4; (Mencius 1970, 63).

to “trap” the people.¹⁹ The stress throughout is on the ruler’s responsibility to the people, rather than on any correlative right that the people might have. The fact that speaking ill of a bad ruler is still wrong makes clear that no general right to speak out is intended—even though speaking out cannot be avoided.

In short, (1) and (2) from above are correct: Chinese tradition does not discuss human rights as such. We will see in Section 4 that the tradition embraces several values that themselves can serve as foundations for human rights, but Confucianism develops a way of thinking about human relations and responsibilities which does not make use of the idea of rights. However, does it follow from this that (3) and (4) are true? Is the absence of explicit human rights language in the tradition a barrier to the modern development of Chinese human rights discourse?

These are complicated questions and the full answer takes up an entire book, but my basic reply is as follows.²⁰ We should not assume that there is one, precisely defined concept of human rights that a community either has or lacks, and we should not assume that translation is simply the process of trying to precisely replicate in a “target language” the concepts that already exist in a “source language.” This is not how linguistic and conceptual innovation actually work, and it neglects the motivations and commitments of the agents doing the translation. Chinese intellectuals were not aiming to perfectly mirror European or American ideas: their objective was to learn from the experiences and ideas of others in order to generate ideas, values, and institutions that made sense in the specific context of a rapidly changing China. In so doing, they both unconsciously and consciously drew on their tradition, as well as consciously manufacturing new ideas that had not been

¹⁹ *Mencius* 1A:7; (Mencius 1970, 58).

²⁰ See (Angle 2002).

explicit in the tradition, and in some cases were difficult to express without these innovations.²¹ All of this is to say that while the process of generating an explicit Chinese human rights discourse was complex and controversial, the lack of a pre-existing, explicit notion of human rights was not an insuperable barrier, nor should we conclude that the modern ideas of *quanli* (rights) and *renquan* (human rights) are problematic because they do not perfectly mimic European or American correlates.

Even setting aside these issues of conceptual development, there is another sense in which Confucianism may set a potential barrier to accepting human rights. Human rights are a special kind of protection for some of our most basic values or interests. Theorists disagree on exactly how to articulate this special protection, but the idea that human rights are somehow distinct from and have priority over other values is central to their meaning. According to a number of interpreters of Confucianism, though, it traditionally recognized but a single realm of value, which we can label as “ethical” value.²² Therefore, Confucians face a challenge in explaining why there might be human rights. It is not that Confucians ignore the existence of putative conflicts among values, such as when filial devotion and public responsibilities seem to pull in different directions, but the tradition has tended to argue that when situations are understood and seen correctly, a harmonious solution is always achievable.²³ There seems to be no room in this framework for a special set of distinctly protected interests. To be sure, Confucians have said that we should benevolently care about the well being of all, but this should be harmonized with other sorts of more local responsibilities. Such harmonizing is a particularistic matter, to be judged on a case-

²¹ In (Major 2016), Philippe Major has helpfully emphasized the importance of unconscious influences from one’s tradition.

²² (Angle 2009).

²³ For strands of the tradition that reject this “harmony thesis,” see (Ing 2017).

by-case basis. The idea that there are straightforward, public, unbendable constraints on each of us does not fit well into a Confucian framework.

Let me take stock. The first barrier we looked at was based on equating the existing “ritual teachings” in Chinese society around the turn of the twentieth century to Confucianism as a whole, and then arguing that these hierarchical rituals were incompatible with human rights. A possible way around this barrier is to understand the Confucian tradition as centered around something other than the current rituals, as we will see below. The second barrier had to do with the absence in traditional Confucianism of the explicit idea of human rights, a barrier that might be circumvented through conceptual innovation. The third barrier comes from Confucianism’s unified field of value and particularist approach to any given ethical question, which fits poorly with human rights. Modern Confucians have faced this challenge in two ways, both of which require significant innovation and both of which will be discussed in Section 4: by inserting human rights as a “fallback apparatus” into Confucianism, or by arguing that Confucians should embrace human rights as part of a necessary “self-restriction.” I now turn to a final potential barrier, this one rooted in Confucianism’s emphasis on human relationality, as paradigmatically expressed in the family. If Confucianism insists that people can only be understood within relationships, whereas human rights rest on the idea that persons are atomistic individuals, then it may be that there can be no Confucian doctrine of human rights, and no human rights without abandoning Confucianism.

To arrive at these conclusions, we need to be convinced by both of the argument’s premises: (1) Confucianism understands people only through their roles and relationships, and (2) human rights depend on viewing people only as isolated individuals. While some

scholars have indeed defended these strong claims, each of them has been subjected to criticism.²⁴ For example, Joseph Chan argues:

It would be a mistake to think that Confucianism sees all duties, or rights, as arising solely from social roles.... The Confucian ethics of benevolence is ultimately based on a common humanity rather than differentiated social roles—it carries ethical implications beyond these roles.... Although the sites for the realization of *ren* are commonly found in personal relationships, such as those between father and son or husband and wife, there are *nonrelational* occasions where moral actions are also required by *ren*.²⁵

Another way to resist the idea that relationality is a barrier to human rights is by denying the argument's second premise. For example, Randall Nadeau has suggested that Confucians can maintain that human rights accrue to individuals-in-community, emphasizing that moral self-actualization takes place only within relationships and so each individual-in-community must be protected, via human rights, so as to be able to develop as a moral being.²⁶

Still, even if we agree with Chan or Nadeau that the strong version of the relationality argument does not rule out human rights, there might still be a problem. Justin Tiwald has argued that the mere existence of an explicit code of human rights can undermine the types of relationship that Confucians believe to be central to human flourishing. He imagines a case in which a wealthy sister is considering whether to acquire expensive medicine for her poor, sick, younger brother, and writes:

²⁴ An important early articulation of this argument against Confucian human rights is (Rosemont 1988); see Section 3 of this chapter.

²⁵ (Chan 2014, 117-18)

²⁶ (Nadeau 2002).

Awareness of their claimable rights might encourage them to think of their interests as competitive with one another. If the brother has a right to garner his sister's wages, just knowing that he could potentially enforce this right would cast a shadow over their relationship, warping their feelings and motives in ways fundamentally at odds with family life.²⁷

Given how important familial and other intimate relations are to Confucians, if the warping of these relationships is inevitable, then perhaps Confucians must resist human rights after all?

The proper response to this challenge, I believe, is to remember that explicit codes of human rights did not exist in traditional China. The question of how human rights and a tradition like Confucianism can fit together is a new question, and so deserves to be answered by a modern Confucianism that has continued to develop in light of new ideas and societal changes; I will look at such approaches in Section 4. For now, we can sum up this section with two thoughts: historically, the Confucian tradition did not employ the idea of human rights, and modern Confucians wishing to embrace human rights face a number of challenges.

3. The Confucian Tradition as an Alternative to Human Rights

Some of the thinkers who argue that the Chinese tradition is a barrier to human rights believe that Chinese should therefore reject their tradition, but others hold that Confucians do not need human rights, since Confucianism provides for a satisfying

²⁷ (Tiwald 2011).

normative order in other ways—and indeed, this alternative avoids problems that (these thinkers argue) inevitably accompany a rights-based order. Two articles published in 1988 are the points of departure for this line of reasoning in English-language philosophy: Henry Rosemont, Jr.’s “Why Take Rights Seriously? A Confucian Critique” and Roger Ames’s “Rites as Rights: The Confucian Alternative.”²⁸

The two ideas at the heart of Rosemont’s and Ames’s arguments are the roles that we occupy in relation to one another, and the rituals (or rites; *li* 礼) that mediate or specify what those roles are. As Rosemont puts it, “for the early Confucians there can be no *me* in isolation, to be considered abstractly: I am the totality of the roles I live in relation to specific others.” He continues:

All of the specific human relations of which we are a part, with the dead as well as the living, will be mediated by the *li*, that is, the courtesy, customs, and traditions we come to share as our inextricably linked histories unfold; and by fulfilling the obligations defined by these relationships we are ... following the human Way.²⁹

Ames makes it even more explicit that the rituals are not to be thought of as rigidly imposed on passive subjects; to the contrary, to perform ritual is “to contribute oneself to the pattern of relationships which ritual entails, and thereby have a determinative effect on society.... *Li* is not passive deference to external patterns. It is a *making* of society that requires the investment of oneself and one’s own sense of importance.”³⁰ We see here a subtle difference between Rosemont and Ames, both of whom differ from the position of Joseph Chan, which I mentioned above. The question is: to what degree is there a distinct

²⁸ (Rosemont 1988) and (Ames 1988).

²⁹ (Rosemont 1988, 177).

³⁰ (Ames 1988, 200).

“me” able to serve as the bearer of rights that are the same for all humans, distinct from our particular roles? Rosemont’s position is that we are only our roles, while Chan says that we have obligations (and, presumably, rights) beyond our roles: “The Confucian ethics of benevolence is ultimately based on a common humanity rather than differentiated social roles.” Ames’s suggestion that one invests oneself into rituals and roles points toward a position in between Rosemont and Chan, since while it requires an idea of “oneself” that is somewhat independent of one’s roles, Ames clearly believes that this “self” becomes more fully realized precisely by living out one’s roles in society.³¹

There are two issues at stake here. One is how to understand the “alternative” Confucian vision that Rosemont and Ames are working to articulate; the second is to decide whether that alternative is sufficient on its own, or must be supplemented by human rights. There is no question that the mainstream view within the Confucian tradition has emphasized roles and rituals in something like the manner that Rosemont and Ames say. One famous statement of the view occurs in the *Analects*:

The Master said, Lead them with government and regulate them by punishments, and the people will evade them with no sense of shame. Lead them with virtue and regulate them by ritual, and they will acquire a sense of shame and moreover, they will be orderly.³²

Using explicit mandates to direct the people and employing punishments when people fall short will not lead the people to internalize a sense of shame, so that they will violate government mandates without shame if they can evade detection. In contrast, leading with virtue and ritual, according to the *Analects*, will result in moral people who will order

³¹ For a recent, subtle treatment of these issues, see (Neville 2016).

³² *Analects* 2:3; translation from (Brooks & Brooks 1998).

themselves. Confucians also believe that a ritual order affects the leaders as well, both because their participation in rituals helps them to internalize morality (thus becoming more virtuous) and because the leaders' participation with their subjects in a shared ritual culture empowers the subjects to demand compliance with the rituals on the parts of the leaders. As scholars have shown, ritualization did in fact empower individuals and constrain emperors, at least to some extent.³³

While more could obviously be said about the theory and practice of Confucian political ethics, the pressing question for us here is whether this Confucian approach to governance is sufficient, in the present day, without appeal to human rights. Rosemont takes the position that it is. He says that the "rich and varied" language of Confucianism allows him to "fully express my moral sentiments without ever invoking the language of human rights"; in particular, it gives him "a full lexicon to inveigh against" moral and political transgressions, including by governments.³⁴ Still, there are indications even in the *Analects* and more explicitly elsewhere that coercive laws are still a necessity in light of human fallibility. Indeed, some Confucians have put even more weight on the need for public, external standards and institutions than have the mainstream.³⁵ Admittedly, these laws and other standards were not historically conceptualized in terms of "human rights," but the existence of this strand within the tradition strongly suggests that there is room to develop human rights ideas further if that is thought to be necessary. For his part, Ames is very reluctant to put weight on human rights. He writes:

³³ (Chu 1998).

³⁴ (Rosemont 1988, 64).

³⁵ (de Bary 1998) notes this tendency in late Neo-Confucian thinkers like Lü Liuliang and Huang Zongxi; Justin Tiwald and I examine some related ideas in detail in (Angle & Tiwald 2017, ch. 9).

Reliance upon the application of law and human rights as a subset of law, far from being a means of realizing human dignity, is fundamentally dehumanizing, impoverishing as it does the possibilities of mutual accommodation and compromising our *particular* responsibility to define what would be appropriate conduct.³⁶

We can see here an early version of the argument that Tiwald would later develop, as discussed in this chapter's prior section. Nonetheless, Ames does not categorically reject the use of human rights. A few sentences later he applauds the Confucian model because "it tempers the readiness of the individual to pursue legal measures by providing reasonable alternatives." As I said above, modern Confucians should agree that our readiness to resort to law should be tempered, but I cannot agree with Ames's stronger statement that any appeal to human rights is "fundamentally dehumanizing." We must recognize that when individuals and minority groups are faced with extreme threats, they need the explicit and powerful defense of human rights. Rituals provide no defenses, in the end, from tyrants; a system of laws can. And Confucianism can come to respect and even appreciate the importance of law, as a number of modern Confucians have argued that it must.³⁷

4. Confucianism as a Source of Human Rights

Early in this chapter I was somewhat critical of those who speak about human rights so loosely as to see them emerging in any tradition whatsoever that embraces humanistic

³⁶ (Ames 1988, 213).

³⁷ (Peerenboom 1998) argues strongly for the need for both rites and rights. (Mou 1991) is an important statement by an influential modern Confucian regarding the need for law and rights, and see also the development of some of Mou's ideas in (Angle 2012).

value. I have now argued that there was no idea of human rights in the historical Confucian tradition. Nonetheless, it is time to give credit to those scholars who have argued that there are values within the Confucian tradition that can serve as sources or bases of human rights, so long as modern Confucians, or modern Chinese theorists more generally, develop their thinking the right ways. Scholars have focused on three distinct Confucian values as possible grounds for human rights: dignity, legitimate interests, and virtue.³⁸ As we examine each of these, it will be important to keep in mind whether the value simply renders Confucianism *compatible* with human rights—that is, if one has an independent commitment to human rights, one can endorse human rights and Confucianism without self-contradiction—or demonstrates that (modern) Confucianism actually *requires* human rights.

Many modern Western defenses of human rights ground their arguments on the idea of “human dignity,” and the first article of the *Universal Declaration of Human Rights* (*UDHR*) stipulates that “all human beings are born free and equal in dignity and rights.” With this in mind, Irene Bloom asks whether we can find a concern for human dignity in early Confucianism, and answers in the affirmative. As a result, she says that the fundamental intuitions of Confucianism “are consistent with and morally and spiritually supportive of” modern documents like the *UDHR*.³⁹ Bloom focuses on the *Mencius* and cites a number of passages asserting that there is a special kind of nobility or honorableness

³⁸ A fourth value, autonomy, is occasionally mentioned, but no one that I know of has tried to argue for a connection between human rights and Confucianism on the basis of the latter’s endorsement of the strong version of autonomy that would be necessary to ground human rights. (Chan 2014, ch. 6) discusses the possibility of adding a modest version of “personal autonomy” to modern Confucianism, but this does not figure into his argument for Confucian human rights, on which see below.

³⁹ (Bloom 1998, 111).

distinct from the ranks and honors that human society bestows. As she explains, “Mencian dignity is based on moral potential and, more particularly, on the psychological awareness of that potential within the minds of individuals.”⁴⁰ Importantly, however, this form of honor is not something that we lack until we have fulfilled our moral potential; as Bloom reads the text, our moral potential itself is the source of each person’s “nobility of Heaven” (*tianjue* 天爵). She adds that it is possible to lose one’s dignity through self-abasing, immoral behavior, but as stories of a wayfarer and a beggar show, dignity cannot be taken away from one unwillingly. In short, this Mencian conception of dignity bears key similarities to the Kantian notion of dignity that has often been tied to human rights.

As Bloom makes explicit, focusing on Mencius’s idea of human dignity leaves aside a great deal, and this idea was not generative of human rights thinking in Mencius’s day. (Some of the reasons for this might lie in the barriers to human rights discussed earlier in the present chapter.) Bloom’s goal, though, is to show that if one wanted to work out a Confucian basis for the human rights listed in modern “consensus documents” like the *UDHR*, then human dignity is a good place to start.⁴¹ Even this limited conclusion has been challenged by Peimin Ni in a recent article arguing for a quite different Confucian understanding of dignity—something that has to be achieved through cultivation. Ni sees his alternative Confucian account of dignity as attractive because it promotes a strong sense of personal responsibility and also avoids certain problems that he finds with the modern, Western idea of human dignity (or “*Menschenwürde*”).⁴² Since those who have not

⁴⁰ (Bloom 1998, 107).

⁴¹ For an influential discussion of achieving consensus on human rights by working through the resources in distinct traditions, see (Taylor 1999).

⁴² (Ni 2014, 186-7).

successfully cultivated themselves would lack this kind of dignity (or have it only to a degree), though, Ni's understanding of Confucian dignity would not be a very promising point of departure for universal human rights. This is not the place to make a detailed textual case for one or another of these two views of Confucian "dignity," but I will say that in my judgment, Ni's evidence does not rule out the idea of dignity that Bloom finds in the text. At the same time, I believe that much more would have to be done to actually build a case for human rights on the foundation of Bloom's notion of dignity, and that both the other approaches I am about to examine are more promising. Let us therefore leave these debates about dignity behind.

The next traditional source of human rights to examine is the protection of a person's legitimate interests. Many readers will be familiar with the ideas that Confucianism opposes the pursuit of profit and that it sees selfishness as lying at the root of wrongdoing. The *Mencius* famously begins with Mencius criticizing a ruler for asking Mencius for assistance in profiting the ruler's state; Mencius says that the ruler should focus on "benevolence and righteousness" instead.⁴³ As for the problems with "selfishness" (*si 私*), we can see the antecedents of this concern in classical Confucianism, and it is an explicit and central theme for virtually all Neo-Confucian thinkers. Despite these worries about profit and selfishness, though, Confucianism has always recognized that we also have legitimate interests whose fulfillment is an important part of living a good life. One theme of my book *Human Rights and Chinese Thought* is showing how this strand of the Confucian tradition becomes more prominent in later Neo-Confucianism, and ultimately helps to explain the interest of nineteenth- and early-twentieth-century intellectuals in the ideas of

⁴³ *Mencius* 1A:1.

quanli (rights) and *renquan* (human rights).⁴⁴ With this historical background in mind, it makes sense that modern Confucians would look to the protection of interests as a justification for human rights.

The contemporary thinker who has done the most to develop this line of thought is Joseph Chan. Beginning with an important essay published in 1999 and especially in his recent book, Chan has developed an argument for modern Confucian support of human rights based on the following key premises:

1. Human rights as articulated in the *UDHR* do not depend on the idea of “autonomy” nor on other controversial ideas incompatible with Confucianism.
2. “Confucian ethics sees no opposition between the individual good and the common good (i.e., social order and harmony can only be pursued by affirming and protecting people’s interests in terms of security, material goods, social relationships, and fair treatment).”⁴⁵
3. “In nonideal situations, where virtuous relations break down and mediation fails to resolve conflict, human rights can serve as a fallback apparatus for the protection of fundamental human interests.”⁴⁶

The distinction between “ideal” and “nonideal” situations plays an important role in Chan’s more recent arguments for human rights. In some ways I prefer his earlier way of putting things which allows us to see how virtues and rights might be operative at the same time; after all, our actual world will always be “nonideal” in some ways, but we should still be doing our best to be virtuous:

⁴⁴ (Angle 2002, esp. ch. 4).

⁴⁵ (Chan 2014, 120).

⁴⁶ (Chan 2014, 129).

On the Confucian view, we should strive to resolve conflicts first by means of education, mediation, and compromise in order to preserve the spirit of mutual caring and trust, but this should not mislead us to believing that the instrument of human rights is unimportant. Both human rights and virtues are important in the reconstructed Confucian ethics, and they require each other. Virtues may fail at times, and so they are precarious in protecting human interests. On the other hand, virtues are needed to guide the conduct of the rights-holders in the exercise of their rights.⁴⁷

In either formulation, virtues and mediation are meant to have pride of place, with human rights serving as a “fallback” when things go badly wrong.

Two questions remain for Chan’s interest-based account of human rights. One is whether he has an adequate answer for Tiwald’s challenge, mentioned above at the end of section 2, that even the presence of an explicit code of human rights may undermine key human relations. Chan says that “we should strive to resolve conflicts first by means of education” and so on, but what is there to enforce this “should,” especially if all actual circumstances are “nonideal”? This is not a knock-down argument against Chan’s conception, but it does put pressure on him to explain how his understanding of human rights avoids being too strong for Confucianism (that is, doing too much damage to other valuable parts of Confucianism).⁴⁸ The other question suggests that Chan’s vision of human rights is actually too mild: are there any guarantees that Confucians have to embrace human rights? After all, Confucianism already has various mechanisms to protect people’s

⁴⁷ (Chan 1999, 237).

⁴⁸ Chan offers such explanations, explicitly responding to Tiwald’s challenge, at (Chan 2014, 126-129).

interests; what is the argument that they must add human rights to their toolkit? The core of Chan's argument is for the compatibility between human rights and Confucianism in "nonideal" situations; he says explicitly that "in the Confucian ideal society there is no need for human rights, and they are not necessary for human dignity or constitutive of human virtues."⁴⁹ So insofar as we inhabit a nonideal world, and especially if we have an independent commitment to human rights, then Confucians *can* accept human rights, but Chan does not show that Confucians *must* accept them. If we want an argument that at least purports to give a firmer Confucian basis for human rights, then we need to turn to the third approach, based on virtue.

It is relatively uncontroversial to say that Confucianism values the cultivation of virtues; indeed, on some interpretations, the central goal of Confucianism is to develop the virtue of everyone in the cosmos.⁵⁰ One scholar to connect this goal to human rights is May Sim, who in a series of articles has argued that since "both the first-generation and second-generation rights are required for achieving the conditions that are necessary for our cultivation of the many Confucian virtues," therefore Confucians can and must

⁴⁹ (Chan 2014, 129).

⁵⁰ There is a current debate about whether Confucian ethics is a form of "virtue ethics," but even those who reject such a formulation because it is overly individualistic still agree that cultivating "virtuosity" in our relations with one another is central to Confucianism (Ames 2011). There are certainly other ways to characterize the goal of Confucianism, such as realizing "cosmic Pattern" (*tianli* 天理) or "bringing peace to the world" (*ping tianxia* 平天下), but as texts like the *Greater Learning* explain, the only access we have to these ends is via the cultivation of virtue, and we have no independent grasp on what would genuinely count as fulfilling them, except through the exercise of our virtue. For some discussion, see (Angle 2009, 58-9).

acknowledge human rights.⁵¹ Sim's specific arguments for this conclusion sometimes move a bit too fast to be fully convincing, but she certainly has hit upon an argument that if successful, could show that Confucians must embrace human rights. In fact something like these same claims can be seen in the writings of influential modern Confucians from the twentieth century like Xu Fuguan and Mou Zongsan. In 1957 Xu argued that human rights are needed to protect citizens from oppression—including oppression by the government—and that the lack human rights had been an important reason why Confucianism historically was unable to achieve its aims of broad moral development.⁵² Mou Zongsan makes similar arguments in his treatise on political philosophy, *Authority and Administration*.⁵³

We can ask the same two questions of proponents of the virtue route to Confucian human rights as we did a moment ago of Chan and similar-minded proponents of the legitimate interests route: how do they answer Tiwald, and are human rights really necessary? Let us take the latter question first. The question is not whether being able to express oneself, or live without being tortured, or have a job is useful when it comes to developing virtue; rather, the question is whether having an explicit right to expression, avoiding torture, or employment is necessary in order to develop virtue. After all, many people in societies without these rights nonetheless are able to express themselves, avoid torture, and work. Why would Confucians say that they still cannot develop virtues? Sim draws on A. I. Melden's conception of human rights to offer an answer, and elsewhere I

⁵¹ (Sim 2011, 18), and see also (Sim 2004) and (Sim 2013). Another defender of the virtue route to human rights in Ruiping Fan (Fan 2010, 58-60); I discuss his ideas briefly at (Angle 2012, 82-4).

⁵² (Xu 1980, 461).

⁵³ (Mou 1991).

have drawn out some ideas of Mou Zongsan's in order to offer my own, one core idea of which is that anyone's possessing Confucian virtue depends on the possibility of everyone's possessing it, and that possibility can only be guaranteed with a framework of human rights.⁵⁴ The details of each approach are somewhat technical and need not detain us here; suffice for now to say that this dimension of the Chinese tradition might be able to ground the necessity of human rights, so long as the argument can be satisfactorily made out.

Finally, there is Tiwald's issue: does the mere existence of explicit, claimable human rights undermine the Confucian pedigree of an approach like Sim's or mine? Speaking here for myself, I think that the answer is "no," but it is important to recognize that this answer cannot be justified simply by looking back into the tradition. I suggest that a modern Confucian will ask how to best realize virtue in the context of human rights, and will arrive at two kinds of answers. First, the legal institutions defending human rights need to be understood within the society as what I have called a "system of second resort." Laws and legal procedures should be structured in such a way as to encourage morality and even moral growth, but without falling into the trap of "last resort" avoidance of resort to law.⁵⁵ Second, Confucians need to learn to have a deep respect for the law, seeing it as vital to the growth and well-being of fallible human beings who live in communities that are susceptible to selfishness and power. Respecting rights and law does not mean making them our sole master, however: a key responsibility of modern Confucians is to teach us to appreciate the distinct, mutually-supporting roles played in our lives by virtue, law, and rituals.⁵⁶

⁵⁴ (Sim 2004, 348-9) and (Angle 2012).

⁵⁵ See (Angle 2009, 216-21).

⁵⁶ For more on this theme, see (Angle 2012, especially the concluding chapter).

My final topic in this section is the distinctive contents of human rights in light of Chinese tradition. That is, assuming that there are human rights (however exactly they are justified), might Confucianism lead us to expect that certain rights will receive different emphases than they do in other cultural contexts? One common way to approach this question has been to think about the ways that values stressed by Confucianism might lead to particular human rights, such as Chenyang Li's argument that Confucians should embrace a human right to education or Joseph Chan's discussion of the rights of the elderly.⁵⁷ For several reasons, Chan has also argued that Confucians should prefer "a short list of human rights consisting of (1) those rights whose violation (often by governments) poses serious setbacks to social order and individual interests, and (2) those rights that can most easily be implemented and protected by law."⁵⁸ One consequence of this is to focus on civil and political rights, and to attend to people's social and economic interest via means other than rights. On the other hand, there are those who because of the Confucian tradition's long emphasis on the economic well-being of the people have suggested that Confucians (or those living in societies with Confucian heritage) should prefer socio-economic rights to civil-political ones.⁵⁹ Finally, I have argued elsewhere that the right way for modern Confucians to think about the contents of human rights is not to infer directly from pre-existing Confucian values and seek to universalize them, but to participate in negotiations aimed at a universal, world perspective through an inclusive process. This approach respects the diverse perspectives to which different groups bring to the process,

⁵⁷ (Li 2017) and (Chan 1999, 235-6).

⁵⁸ (Chan 2014, 127).

⁵⁹ For some discussion, see (Bell 2006, ch. 3).

and best enables arriving at a set of institutionalizable global principles that has been authorized by all participants.⁶⁰

5. Conclusion

This chapter has been organized around three contrasting perspectives on the relation between Chinese tradition and human rights: the tradition as barrier to, alternative to, and source of human rights. Each of the forms of barrier—hierarchical rituals, lack of concept, unified field of value, and relationality—is genuine but not insuperable, and in fact I have argued that modern Confucians should embrace the development of their tradition in directions that open up space for human rights discourse. Chinese tradition also offers attractive alternatives to human rights, but I join with those scholars who see both the Confucian “alternatives” and human rights norms as jointly necessary in the modern world. The different approaches to finding a source for human rights in Chinese tradition—dignity, interests, and virtue—all show some promise, though none simply demonstrates that Confucianism was ready-made to adopt human rights when it entered the modern age. These sources are excellent starting points for modern Confucian arguments in favor of human rights (possibly, as I have noted, somewhat different in scope and detail from other lists of rights), but once again the tradition needs to grow and adapt if it is to welcome human rights.

⁶⁰ See (Angle 2012, 87-90), where I further argue that the actual process of global human rights norm articulation since 1948 has, to some extent, actualized the kind of process that Confucians should endorse.

In sum, this review of the relations between Chinese tradition and human rights leaves much unfinished business ahead. How will Confucianism—and other strands of the tradition—develop in the future? Tradition does not just teach us a single lesson about human rights and then retire from the field: traditions are dynamic, contested, and continue to be with us. Some of the reasons for the distinctive shape of modern Chinese human rights discourse lie with these traditional inheritances, though a range of political, legal, economic, and social factors also play into the on-going story. As the next chapter of China’s debates over human rights is written, it is my hope that modern Confucianism will play a constructive role.

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