

**A Comprehensive Analysis of the Discourse Between Human Rights Theory and  
the Chinese Confucian Intellectual Tradition:  
John Rawls and Tu Weiming in Conversation**

by

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## Abstract

Liberal human rights theory has informed Western political policy for decades. An ascending China challenges Western dominance in political theory and philosophy and forces Western theorists to respond. A comprehensive analysis of Western scholarship on human rights and the Confucian tradition makes it clear that there are many structural and systemic issues within this area of study. It also makes it clear that there have been many potentially useful observations and methodologies suggested throughout the literature that have been obscured. One such approach is applied that brings the political theory of John Rawls and Tu Weiming into conversation. As a result, a more nuanced understanding of the Chinese Confucian intellectual tradition in both Western *and* Chinese terms can be developed, while important questions are raised about human rights theory.

Key words: Liberalism; human rights; Orientalism; political philosophy; China; Confucianism; John Rawls; Tu Weiming

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To Albert  
for your guidance

And to Rachel  
for everything else

## Table of Contents

|  |   |    |
|--|---|----|
| <u>Table of Contents</u>                 |   | i  |
| <u>Introduction</u>                      |   | 1  |
| <u>Chapter 1 – Talking to Each Other</u> |   | 4  |
| 1.1                                      | Why We Talk to Each Other                       | 4  |
| 1.2                                      | The ‘Other’, Orientalism and Occidentalism      | 6  |
| 1.2.1                                    | Orientalism and the ‘Other’                     | 6  |
| 1.2.2                                    | Occidentalism                                   | 8  |
| 1.2.3                                    | The Legacy of Orientalism on Critical Discourse | 12 |
| 1.3                                      | Advocacy Scholarships and Critical Discourse    | 15 |
| 1.4                                      | The Consequences of How We Talk to Each Other   | 20 |
| <u>Chapter 2 – What We Have Said</u>     |   | 22 |
| 2.1                                      | Intentions, Presumptions and Methodology        | 22 |
| 2.1.1                                    | Intentions                                      | 22 |
| 2.1.2                                    | Presumptions                                    | 23 |
| 2.1.3                                    | Methodology                                     | 25 |
| 2.1.3.i                                  | Focus   | 25 |
| 2.1.3.ii                                 | Comprehensive Analysis Criteria                 | 30 |
| 2.1.3.ii(a)                              | Methodology                                     | 30 |
| 2.1.3.ii(b)                              | Rigour  | 33 |
| 2.1.3.ii(c)                              | Perspective                                     | 35 |
| 2.1.3.ii(d)                              | Logic   | 37 |
| 2.1.3.ii(e)                              | Potentially Useful Ideas and Observations       | 37 |
| 2.2                                      | Research Data                                   | 38 |
| 2.2.1                                    | Methodology                                     | 39 |
| 2.2.1.i                                  | Comparative Philosophy                          | 39 |
| 2.2.1.i(a)                               | Cherry-Picking                                  | 39 |
| 2.2.1.i(b)                               | Narrow Comparison, Broad Conclusion             | 40 |
| 2.2.1.ii                                 | Orientalism                                     | 42 |
| 2.2.1.ii(a)                              | Traditional Orientalist Worldview               | 43 |
| 2.2.1.ii(b) $\alpha$                     | ‘Othering’ for Western Edification              | 44 |
| 2.2.1.ii(b) $\beta$                      | ‘Othering’ to Fix Asia                          | 44 |
| 2.2.2                                    | Rigour  | 46 |
| 2.2.2.i                                  | Lack of Context                                 | 46 |
| 2.2.2.i(a)                               | Ineffective Attempts to Contextualize           | 46 |
| 2.2.2.i(b)                               | Broken Linkage between Study and Reality        | 47 |
| 2.2.2.ii                                 | Essentialism                                    | 49 |
| 2.2.2.ii(a)                              | Essentialism to Understand or Inform            | 49 |
| 2.2.2.ii(b)                              | Essentialism to Advocate                        | 50 |

|   |   |     |
|---|---|-----|
| 2.2.3   | Perspective   | 52  |
| 2.2.3.i   | Advocacy  | 52  |
| 2.2.3.i(a)                                      | West fixes East   | 53  |
| 2.2.3.i(b)                                      | East fixes West   | 55  |
| 2.2.3.i(c) $\alpha$                             | Confucian challenge to the Chinese Government           | 58  |
| 2.2.3.i(c) $\beta$                              | An Asian fix for Confucian or East Asian Society        | 59  |
| 2.2.3.i(d)                                      | Self-Promotion  | 62  |
| 2.2.4   | Logic   | 63  |
| 2.2.4.i   | Logical Fallacies                                       | 63  |
| 2.2.4.i(a)                                      | Profound Logical Fallacies                              | 64  |
| 2.2.4.i(b)                                      | Notable Logical Fallacies                               | 65  |
| 2.2.5   | What We Have Said                                       | 66  |
| <u>Chapter 3 – The Good Things We Have Said</u> |   | 68  |
| 3.1   | Useful Ideas and Observations                           | 68  |
| 3.1.1   | Overview  | 68  |
| 3.1.2   | Helpful Observations and Useful Intellectual Frameworks | 69  |
| 3.1.2.i   | Helpful Observations                                    | 69  |
| 3.1.2.ii  | Useful Intellectual Frameworks                          | 75  |
| 3.1.3   | Novel Methodologies                                     | 81  |
| 3.2   | The Good Things We Have Said                            | 88  |
| <u>Chapter 4 – New Conversations</u>            |   | 90  |
| 4.1   | Preparing to Speak                                      | 90  |
| 4.1.1   | Setting the Stage                                       | 90  |
| 4.1.2   | Finding our Voice                                       | 91  |
| 4.2   | The Participants  | 93  |
| 4.2.1   | John Rawls as Western Liberal                           | 93  |
| 4.2.1.i   | Law of Peoples  | 95  |
| 4.2.1.i(a)                                      | Terms of Reference                                      | 96  |
| 4.2.2   | Tu Weiming as Chinese Confucian                         | 104 |
| 4.2.2.i   | A Confucian Worldview                                   | 107 |
| 4.3   | John Rawls and Tu Weiming in Conversation               | 108 |
| 4.3.1   | The Impact of the West on China                         | 108 |
| 4.3.2   | The Chinese as a People                                 | 116 |
| 4.3.3   | Confucian China in the Society of Peoples               | 127 |
| 4.3.4   | Dénouement  | 130 |
| <u>Conclusion</u>                               |   | 134 |
| <u>Bibliography</u>                             |   | 137 |
| <u>Appendix: Comprehensive Analysis Data</u>    |   | 141 |

## Introduction

Westerners do not understand China. We may never understand China. Certainly in some ways and in some particular areas, those scholars and academics among us have parsed this or that subject and translated this or that text. However, a comprehensive understanding of China as a civilization and the Chinese intellectual tradition on its own terms and in its own language has remained elusive. It is likely that there will always be parts of Chinese thought sealed off to us forever – just as there are parts that are almost completely inscrutable even to contemporary Chinese scholars. In our globalized, interconnected age, it seems vitally important that we learn how to productively engage with the Chinese, their civilization and their traditions. Currently when China factors into these conversations, it is in terms of the conduct of the People’s Republic of China and the Chinese Communist Party. While it is likely that we will continue our attempt to engage China in these terms regardless of our chances at a successful outcome, it is becoming imperative that we figure out how to engage them in a constructive manner that produces results that more accurately reflect lived China in the past and present. Our context for any conversation may therefore need to be based on the broader intercivilizational conversation rather than a discussion of the laundry list of concerns we have for the PRC. By doing so, we may find ourselves sitting at the table as the Chinese as a civilization tries to determine its place on the world stage, rather than simply protesting outside.

This study sets out to explore Western engagement with the Chinese intellectual tradition through the lens of human rights theory and Confucianism. Academic scholars are attempting to engage the conversation about human rights in China by analysing the

Confucian tradition. They bring the tools and perspectives of Western human rights theory that can be seen to best penetrate the discourse. What we will see is that the current approaches Western academics employ and the frameworks they produce are deeply flawed. Instead, new theoretical frameworks and methodologies need to be implemented to ensure that future engagement and conversation actually engenders open, constructive communication. This study will discuss some of these new frameworks and perform a conversation between the traditions that should prove instructive.

In Chapter 1 the manner in which the West has engaged the Chinese intellectual tradition is discussed. Why it is important for the West and China to come into conversation with each other is laid out, as well as a discussion about why we need to do a better job at conversing.

In Chapters 2 and 3 a comprehensive analysis of academic works on human rights theory and the Chinese Confucian intellectual tradition is performed. Chapter 2 teases out the various problematic methodologies, failures in rigour, unhelpful perspectives, and logical fallacies that typify the discourse. By performing a comprehensive analysis we can see what Western scholars have said about the Chinese Confucian intellectual tradition and the common problematic issues their scholarship presents. In Chapter 3 the useful ideas, observations, and methodologies uncovered in the analysis are discussed. Here we can see what we are doing right and begin the process of formulating better approaches and frameworks for engaging the Chinese intellectual tradition.

In Chapter 4 two principle figures of political philosophy from the West and China are brought together: John Rawls and Tu Weiming. Employing the useful



frameworks and methodologies from the comprehensive analysis, we place Rawls and Tu together into a conversation in order to better understand each tradition.

The goal of this study is to situate the Western study of the Chinese Confucian intellectual tradition and its relationship with human rights in order to provide one possible way to better engage China. By taking new steps toward understanding, Western theorists can foster mutual understanding and meaningful dialogue. This, in turn, may help us bring about an unforced consensus on rights that seeks to place all sides of the conversation on equal footing and allow them to engage the other in their own terms.

## Chapter One: Talking to Each Other

### 1.1 – Why We Talk to Each Other

This study is based off of two fundamental assumptions. First, Western and Chinese philosophical traditions and civilization are now firmly intertwined in ways that would have been unimaginable even a century ago. This intertwining is the product of economic and political forces, and these forces have quickly outpaced the ability of laypersons to comprehend, and commentators and academics to provide context and analysis. Second, because Western voices are always playing catch-up, there is an ever-growing need for some approach to be devised to foster meaningful inter-communication. Centuries of imperialism combined with the geo-political divisions of the Cold War has made relations between China and the West chilly, and this more recent thaw following the opening of China to the West has left many unsure how to proceed. These two civilizations are going to have to learn how to communicate with each other in a meaningful way if progress or stability is to be achieved.

The West is now almost uncomfortably close to China. From this vantage point, Westerners have caught a glimpse of exactly how Chinese civilization and its political institutions operate in a manner never before available. The last time the West had any real access to China and its political system was at the end of the Qing and a great much has changed since then. Now, on seeing the way Chinese society is organized and the way it treats some of its citizens, many in the West have become vocal critics of the Chinese state. Westerners have grown accustomed to certain rights and freedoms since the end of the Second World War, and the fundamental correctness of these liberties seemed to be confirmed by the fall of state communism in Europe. To see that there

remains a large segment of the world community that is not enjoying these rights is problematic for many Westerners and they have attempted to use their collective influence on a state, social and economic level to persuade China to reform. These attempts at persuasion have met with little success.

To evoke a cliché: China is a foreign country; they do things different there. The Chinese have their own history, story, self-conception and vision of the world that is obscure to the West. Westerners are used to getting their way in terms of foreign policy. They are also used to not having to be particularly sensitive to the impact their actions have on other cultures, nor are they used to being particularly cognizant of their own troubled or imperialist past. Chinese intellectuals and state officials are very much aware of the West's history and conduct on the world stage and has become expert at sidestepping Western demands. There is a growing awareness that the West might not have its way this time, leading to a growing call for a different approach for engaging China.

This chapter will explore some of the problematic ways in which the West has approached China and its tradition, and discuss how this frames current interactions. It will also place particular focus on how Western scholars have engaged the Chinese intellectual tradition in terms of human rights theory, as this is where there is a clear intersection between problematic approaches and competing interests. This discussion is being performed to set the stage for the comprehensive analysis of Western academic discourse on human rights theory and the Chinese intellectual tradition (Chapter 2). It also sets some guidance for how the potentially useful ideas Western academic discourse has produced should be oriented (Chapter 3).

## 1.2 – The ‘Other’, Orientalism and Occidentalism

### 1.2.1 – *Orientalism and the ‘Other’*

Any discussion on the encounter of Western thought and Chinese thought cannot be adequately explored outside the framework of the Orientalist critique. In his seminal work, *Orientalism*<sup>1</sup>, Edward Said outlines and lays bare the fundamental presumptions and operating principles of Western intellectual engagement with those cultures and civilisations ‘other’ to it. While the specifics and details of *Orientalism* itself can be debated regarding its limited scope and merits, or Said’s particular political and philosophical motivations scrutinized, the central argument he presented over thirty years ago has profoundly altered the manner in which Western academics engage in study of the ‘other’. From its earliest encounters, ‘the West’ studied ‘the Orient’ with a mind toward answering social, political and historical questions brought up by Western thinkers. While it is perhaps unsurprising that the personal motivations and perspectives of those engaged in the research determined what they investigated, Said’s position is that questions about ‘the Orient’ were not being asked in order to understand ‘the Orient’ in itself, but instead to support or inform Western conceptions of history, philosophy and political theory. In the West’s academic engagement with Confucianism, for example, “Western investigators have sought similarities and differences between Confucian principles and those principles embedded in their own Western conceptual framework” and these scholars “now seek similarities and differences between Confucian moral and political principles and beliefs and those embedded in a conceptual framework that clusters around the concepts of democracy and human rights.”<sup>2</sup> By engaging in research

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<sup>1</sup> Said, Edward W. *Orientalism*. New York: Vintage Press, 1979.

<sup>2</sup> Rosemont Jr., Henry. “Whose Rights? Which Democracy?” p52-53

through these Western filters, ‘the Orient’ and China were not being considered critically or in light of their own history and contexts. By filtering through the particular issues that the West deems important, issues which may be of more importance to those in ‘the Orient’ are minimized or ignored, artificially producing conceptions of ‘the Orient’ that have little basis in reality.

It may now seem obvious that in order to study a civilisation, one must actually attempt to have a clear view of what that civilisation actually looks like, but this is the very crux of the critique: Western scholarship under the Orientalist model is not actually concerned with understanding the object of study (in our case, China), but with understanding the West in contrast to their object of study. The entire orientation of this conceptual model is self-reflective and ‘the other’ is only relevant insofar as it informs, supports or highlights things of interest to the subject conducting the study. This subject-object, self-other dichotomy has the further consequence of automatically placing one side of the discussion in a subjugated position for “[i]f the Occident is both geographically and culturally speaking at the very center of the world, the Orient is undoubtedly at the periphery, subject to the power of this center.”<sup>3</sup> Intellectual subjugation was effectively established by placing Western intellectual practices, theories and conceptions of history as normative and, by extension, any and all alternate understandings as secondary, supplemental or deficient.

The concurrent observation is that this Orientalist approach manufactures the other – there is no such thing as ‘the Orient’ outside of the Western conception of it. China as a member of ‘the Orient’ is entirely constructed by Western theorists for Western audiences and may not bear any resemblance to actual, living China at any stage

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<sup>3</sup> Wang Ning, “Orientalism versus Occidentalism”. p58

in history. Through such a construction, the idea of China that is held in an orientalist framework is fundamentally essentialized – China is ‘a thing’ and can be studied as such, leaving out context and denying the Chinese civilization and its intellectual tradition variety in its voice. By placing Chinese civilization and the Chinese intellectual tradition in a subjugated position as ‘the other’, while at the same time essentializing the entirety of that tradition into artificially constructed categories, Orientalism effectively confined the discussion of China to Western scholars themselves.

### *1.2.2 – Occidentalism*

Western discourse on human rights and the Chinese intellectual tradition has operated continuously under some form of universalism and essentialism and the vestiges of Orientalism have not been fully jettisoned from the discussion. As a consequence, when the discussion of Western human rights theory and the Chinese intellectual tradition is housed in a fundamentally Western approach and for a fundamentally Western audience, it inadvertently continues the practices that Said laid bare. China as an actual subject, privy to and participant in the conversation proper is effectively left out, again relegated to the position as an object and ‘the other’ to compare Western human rights philosophy against. Unlike in the 19th century, however, Chinese intellectuals are not unaware of the on going discussion in Western scholarship. More broadly, they are acutely aware of the nature and history of Western orientalist approaches toward China, both academically and politically, and as a result are in a position to offer a philosophical rebuttal. If China is considered as it is conceived of by its own intellectuals and state officials, it is clear that it does not view itself as an object or as ‘other’. Rather, it stands

as a civilization on top of several millennia of continuous, recorded history and has certain strong conceptions of itself and its place in the world order: the centre. In essence, China may be said to view itself as the ultimate subject and observer of history, capable of investigating and critiquing world civilisations in relation to itself. Through this, the West and Western Civilisation become ‘other’ to the Chinese subject.

In its most extreme iteration, this Chinese ‘othering’ of the West takes the form of what has been termed ‘Occidentalism’, effectively a reversal of Orientalism. Stemming from the post-colonial critique, it has been used, under the name “‘Post-Orientalism’ (*hou dongfangzhuyi*)” by critics in Mainland China, Hong Kong and Taiwan, often to critique Chinese artists with broad western appeal for perpetuating Orientalism by producing art “exclusively for a Western Audience.”<sup>4</sup> Claiming the art as perpetuating Orientalism has been criticised as being Occidentalist by overseas Chinese scholars. While contemporary art is not necessarily representative of the Chinese intellectual tradition, the fact that such a Chinese discussion exists subverts the standard Western conceptual orientation toward China: Chinese people have conversations on their own about things that do not concern the West as other. This example is merely one accessible to those in the West that do not possess the language skills necessary to view the conversations Chinese have internally.

This process toward an ‘Occidentalist’ approach began as a reaction to Euro-American and Japanese imperialist incursions into China at the end of the Qing Dynasty and continues until the present. Politically, the early proponents were Nationalists interested in stemming the tide of outside influence on the fragile Chinese nation while simultaneously attempting to adopt potentially useful strategies from the West.

According to Wang, “while they pitted China against the West, they also hoped that

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<sup>4</sup> Wang Ning, p57

China could emulate and extend the Western success in modernization.”<sup>5</sup> In effect, they were asking questions of their ‘other’ in order to inform the social and political issues affecting them. It was through this process that some Nationalists came to Marxism as it was theoretically anti-imperialist in its conception. While it is perhaps ironic that the Chinese Communists in the People’s Republic of China have utilized one Western philosophical tradition to ‘other’ the West, it only remains ironic in an essentialist view of culture: “[h]owever Western these ‘Chinese’ ideas may be in their origins, it is undeniable that their mere utterance in a non-Western context inevitably creates a modification of their form and content. ... As a result of constantly revising and manipulating imperialistically imposed Western theories and practices, the Chinese Orient has produced a new discourse marked by a particular combination of Western construction of Chinese with the Chinese construction of the West, with both of these components interacting and interpenetrating each other.”<sup>6</sup> Regardless of how the information got into China, China has used it purposefully. Through consciously modifying it to its own ends, it has subverted an imperialist imposition of ideas on them. Further, Chinese Communists, with their Soviet historiographer allies and Marxist philosophy, viewed Western capitalist states and their philosophical underpinnings as the ‘other’ against Communism and Communist revolution. What is important here is that the PRC, through its Communist philosophy, continued to engage with what it considered to be ‘the West’ in terms of its status as ‘the other’, though the nature and intensity of this engagement varied throughout the 20th century: “[i]f in the pre-Cultural Revolution years Chinese historians searched for the demonized Other ... their search gained new purpose

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<sup>5</sup> Wang, Q. Edward, “Encountering the World”, p328.

<sup>6</sup> Xiaomei Chen, “Occidentalism as Counterdiscourse”, p688.



in the post-Cultural Revolution years.”<sup>7</sup> Resulting from a realization of the limitations of ideologically charged ‘othering’, “[f]or many historians of the younger generation, [the demonized Other] was to become the lowercase other, or the nonofficial other, inspiring them to expand their academic horizons and experimenting with new theories and methods from the West.”<sup>8</sup> This experimentation has continued to the present day, but has done so alongside varying degrees of more official ‘othering’ in the demonizing sense. Both approaches, though, retain the Occidentalism orientation in that they are still only looking toward the West and its traditions in light of internal social, political and historical questions.

There is one important distinction that should be made, however. Chinese “Occidentalism” is not strenuously “anti-Western” as might be inferred from other “Occidentalism” critiques.<sup>9</sup> As China does not physically or even culturally occupy Western space (yet?), Chinese Occidentalism is not concerned with outward imperialism like Orientalism is – it is much more specifically an internal discussion, with efforts being directed toward internal political, social and historical concerns.<sup>10</sup> As a result, it utilizes the same methodology and effectively ignores the concerns of its ‘other’ just like Orientalism.

Any intellectual engagement with Chinese civilization needs to be accomplished in light of the fact that ‘Occidentalism’ reversal of the gaze is in effect and is not going to disappear because Westerners ignore it. While it may be as much a barrier to the

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<sup>7</sup> Wang, Q. Edward, “Encountering the World”, p342

<sup>8</sup> Wang, Q. Edward, “Encountering the World”, p342

<sup>9</sup> See, for instance, Buruma, Ian and Avishai Margalit. Occidentalism: A Short History of Anti-Westernism. London: Atlantic Books, 2004.

<sup>10</sup> Xiaomei Chen, “Occidentalism as Counterdiscourse”, p688.

establishment of open discourse as an Orientalist approach is, it needs to be considered that such an approach is perhaps the logical result of centuries of foreign interference and cultural imperialism in Asia. As an emergent China asserts itself on the world stage, it is not surprising that it would engage in the same sort of practices as every other political entity before it. While it is certainly possible that some Chinese intellectuals are attempting to engage in actual cross-cultural dialogue and discourse devoid of this Orientalist/Occidental orientation, this is beyond the scope of the current study. Instead, the point to be taken away from this is that any approach to the Chinese intellectual tradition that presumes a captive audience, intellectual and philosophical superiority and Western normativeness is failing to understand the actual intellectual reality of contemporary China.

### *1.2.3 – The Legacy of Orientalism on Critical Discourse*

The Orientalist model of approaching China had defined the Western approach for decades and the contemporary intellectual discourse bears the scars of its genesis in this model. Currently, it is effectively verboten in mainstream, responsible scholarship to outwardly assume an orientalist perspective when studying different cultures. To do so would be seen as being intellectually and methodologically immature at best, and at worst viewed as downright racist or imperialist. Prior to Said, when scholarship operated under Orientalist presumptions, it occurred regardless of the personal attitudes and affectations the scholar may have had for their object of study. Indeed, the scholars and seekers themselves were largely unaware of these influences and the consequences of this approach and many were genuine students and admirers of the Orient. Orientalism was

simply the way things were done, the foundation on which the scholarship was established. Now, however, there is no longer this excuse from ignorance. As a result, on the surface, academia has made great efforts toward adopting pluralism as its model and governing philosophy.

However, instituting this philosophy in practice has proven problematic. Stemming from and running alongside Said's critique is the post-modern critique of knowledge with its seemingly inevitable slide toward relativism. Relativism, in its most pure logical extreme, cannot provide any perspective with precedence over any other. However, the fundamental role of academia is, on some level, to investigate phenomenon through the careful discrimination and separation of meaningful information from the irrelevant. Institutional scholarship is difficult at best in an atmosphere of relativism – how does one conduct research through adjudication and evaluation of quality, rigour and impact of information if 'research', 'quality', 'rigour', and 'impact' must all be understood in quotations as approximations or indefinable, and adjudication is to be made devoid of value judgments? At its worst, all discussions devolve into issues of definition, language and the justification of the current study itself. To avoid this in practice means that academic inquiry into any topic requires a certain amount of doublethink to function at all: theoretically relativistic in rhetoric and practically discriminating in execution.<sup>11</sup> Consequently, any actual progress away from essentialism has been retarded by this apprehension against relativism.

While the very fact that this institutional shift is not easy provides the best explanation for why it has not been fully implemented, this is not necessarily an excuse for its continuation. This is a false dichotomy, for not being essentialist does not

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<sup>11</sup> See: Hansen, Chad. "The Normative Impact of Comparative Ethics: *Human Rights*"

necessarily mean that one is being relativistic. Exactly where that middle ground is remains unclear. Perhaps it is best to consider this issue as a necessary hazard when entering into academic discourse. However, simply that this may be a structural problem in the academic inquiry into any topic does not abrogate those engaged in such inquiry from attempting to move beyond or through it. In other words, since an essentialist model is fundamentally flawed and relativism is profoundly unhelpful, scholars are obligated to actively endeavour to go beyond them, regardless of difficulty.

More specific to the point, in a philosophical framework that renders universal, objective truth-claims invalid by definition, what ‘human rights’, ‘China’ and the ‘Chinese intellectual tradition’ are and how they can be profitably compared becomes an extremely problematic issue. It has been the case that in order to engage in any discussion of ‘human rights’ and ‘China’, some degree of essentialism or universalism has been seen as necessary to employ. However, since both Western human rights theory and the Chinese intellectual tradition in particular defy essentialism through their variegated history and composition, such a deployment of a structured essentialism or universalism cannot be reasonably accomplished without thorough theoretical justifications. It is potentially more fruitful to employ the intellectual energies required to justify essentialism toward dealing with different traditions as they actually stand in reality. In this study, it will be seen that when Western scholars are talking about human rights and Chinese Confucianism, they do so mostly in terms of first-order, civil-political rights and liberalism on the one side, and classical Confucianism on the other. Whether these characterizations of human rights theory and Confucianism fairly reflect reality, it is the way that those Western scholars currently engaging in the conversation frame it.

Given this narrow conception that dominates the discourse, how to actually deal with the traditions as they stand has proven elusive

Since it is clear that essentialism and relativism are both unproductive and hopelessly inaccurate models to construct dialogue on, scholars writing on this topic have been left without a clear methodological foundation. Attempting to broker or at least point toward the possibility of such a method is one of the goals of this exercise, and such potentially profitable frameworks and methodologies will be discussed in Chapter 3.

### 1.3 - Advocacy Scholarship and Critical Discourse

When academics and scholars engage in research and study of a particular topic they are under certain obligations when it comes to how they deal with their subject and how they present their ideas. The key principle that underlies such study is objectivity – the endeavour to disclose and minimize personal feeling, opinions and presuppositions and to systematically unearth and deal with the facts of the matter as they are, and not as we would like them to be. The role of the scholar in this form of academic inquiry is to act as the compiler of information and to come to conclusions and argument about topics and areas of study based on careful, reasoned analysis. This, in theory, is the stated, outward principle that most scholars would agree to. With some issues, however, subjective positions are harder to weed out and strongly held beliefs have a way of entering into the discussion regardless of the good intentions of the author. Further, as it has been made clear through the post-modern critique, objectivity in its pure form is not actually possible. People will always have certain biases and perspectives that they have an interest in putting forward and this will manifest in many ways. The attempt to suss

them out usually comes as the first step in a vicious, navel-gazing, eternal cycle. As the scholar necessarily has to filter information, it is often subconscious (or, to the worse transgressors, conscious) motivations that will shape the filtering process so that only certain voices, ideas and conclusions will be supportable. In effect, one's personal bias will shape the manner in which research is conducted, points are laid out and conclusions drawn.

That subjectivity in academia is problematic is not a new observation. The issue in the case of human rights theory and the Chinese Confucian intellectual tradition, however, is that the issue of subjectivity is not just a niggling side note and nuisance. As there are no universally agreed upon authorities on China or human rights theory, the topic is discussed by many voices for many purposes. As it stands, there are currently no disinterested parties discussing human rights and China. The conversation is currently mired in the political machinations of states and the philosophical goals of NGOs and other such groups. The very structure of the debate and the various players involved means that those engaging in *academic* discussion of the topic are under an even greater obligation to struggle for objectivity because otherwise they may be grouped in with one or another of the interested voices.

The Chinese government and their Western counterparts are not attempting to broach this issue under any semblance of objective consideration. Instead, they are coming to their conclusions on the topic based off of a mixture of historical events, political realities and foreign and domestic policy goals. Beyond the state-level political interests, there are also the international political interests as embodied by institutions like the United Nations. Often, because this organization's policy and perspectives are

shaped by the very countries engaged in individual political manoeuvring mentioned above, there is no real third, 'international' voice coming from the United Nations. Given the particular historical underpinnings of the United Nations and certain documents, charters and declarations that it passed in a time where Western political interests were by far the most dominant, the institution often serves to bolster claims from particular cultures over another, leading to not unreasonable scepticism about the organization by some parties. So, in the discussion of human rights theory and the Chinese intellectual history, there are many interested political entities that have great motivation to nudge the debate in certain directions.

The above discussion is meant to demonstrate that when it comes to any issue of geopolitical concern, not just human rights, there are many voices in contention. However, when one looks particularly at the issue of human rights, it can be seen that beyond the polities and other entities that engage this issue are the various Non-Governmental Organizations (NGOs) that have their own particular missions, motivations and *raison-d'être*s and are often stridently on one side or the other in the debate.<sup>12</sup> Into this category are organizations such as Human Rights Watch and Amnesty International, both of which explicitly value certain political, social and philosophical positions in their endeavours. While these NGOs also influence and are influenced by the discussions that occur at the state level and the international level and often times find themselves on one or another side of particular conflicts, more commonly they are plying their own path and have their own agendas. Human Rights Watch in particular releases

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<sup>12</sup> Onuma Yasuaki, in "Toward an Intercivilizational Approach to Human Rights", provides some insight into the position in the discussion and the problematic methodology of human rights NGOs: "This bias [toward civil and political rights] is also evident in the discourse of many major human rights NGOs, the majority of whose operations depend on the support of people in North America." Onuma, 113.

annual reports on the record of human rights abuses and concerns that it has uncovered in different parts of the world. The methodology it uses to collect this data is broadly statistical and scientific, but in cases where there is large-scale government interference and such study cannot be conducted, the data is collected through more secondary means. Regardless of the particular methodologies these groups employ, what is most important for this discussion is the fact that these groups exist solely to advocate for a particular political or philosophical position and employ any and all resources at their disposal to do so. Since these organizations only have particular interests, they will only find particular kinds of information when they conduct their research into the topic. In effect, they are wilfully placing certain filters on their research methods to produce certain kinds of information. This is not necessarily a wrong-headed thing for these organizations to be doing. To quote Onuma Yasuaki: “[t]his argument is not intended to deny that these NGOs have played an indispensable role in mitigating cruelties of human rights violations around the world for years. . . . However, given their enormous influence, their activities must be constantly scrutinized, their flaws must be rectified, and their intercivilizational legitimacy must be strengthened. Otherwise it would be difficult to respond to the criticism of ‘cultural imperialism’ or biased self-righteousness of the West often made by people in the Third World.”<sup>13</sup> The conversation here is merely to demonstrate that NGOs are not neutral, disinterested parties. Indeed it is avoiding this very charge of “cultural imperialism” that the broader conversation hopes to address.

That governments and international political bodies have particular interests in geopolitical events is not surprising. That NGOs and other advocacy groups are actively engaged in the attempt to bolster and spread certain positions is not surprising either. In

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<sup>13</sup> Onuma, 115



many ways, this is the primary function of both categories of institutions. Academics and scholars, on the other hand, are not supposed to be engaging in the sort of political manoeuvring of states, nor are they supposed to be engaging in advocacy for certain political and philosophical outcomes through their works. In the case of the discussion of Western human rights theory and the Chinese intellectual tradition, however, these lines are often blurred and often very strong political partisanship is elicited. Generally the voices are divided between those that wish for China to adopt first-order, civil-political rights, and those that think the West needs to implement second-order socio-economic rights before they can criticize China. While it has been noted that pure objectivity is not really possible, this is not an abrogation of the responsibility of scholars to endeavour toward it. Likewise, merely stating one's bias does not exonerate what they say of accusations of being biased. Like with the movement from essentialism and orientalism, while it may always be an on going process, the process still needs to be on going. When discussing human rights theory and the Chinese intellectual tradition in particular, scholars and academics must attempt to maintain an objective approach, if for only the utilitarian reason that there are already plenty of subjective, activist and advocative voices speaking on this issue and when academics engage in such advocacy through their scholarship, it actually serves to devalue their scholarship and undermine their goals.

When Amnesty International or the American State Department release reports on human rights in China, it should surprise no one when such reports reflect certain political and philosophical positions. Academics and academic scholarship, however, is presented as an objective discussion of reality in all its complicated mess and the conclusions drawn are only done so through careful, analytical reasoning. When that

scholarship is *also* advocating particular political and philosophical positions, it serves to undermine the credibility of the work overall. As we shall see later, Jeremy Paltiel's otherwise excellent work on contextualizing the contemporary Chinese intellectual milieu still, at its core, functions to advocate for the Chinese to adopt Western liberalism. In such a political topic, each of the voices motivated by their partisan positions would not feel any need to sincerely engage with works that disagree with them but are partisan in nature. It would be far harder for them, however, to dismiss works out of hand that do not betray or contain that advocacy and partisanship.

#### 1.4 The Consequences of How We Talk to Each Other

As noted, in the past all discussion of 'the other' was conducted with little regard to what that 'other' believed, cared about or valued. Further, with 'the West' and its political, social and philosophical systems being viewed as normative, there was a great tendency for Western thinkers and political powers to attempt to apply or advocate for 'correctives' for the 'savage' or 'barbarian' practices of the 'other'. This has been rightfully denounced as imperialistic. When academic scholarship utilizes the same advocative approach, it can also be denounced as perpetuating this sort of imperialist model. Regardless of the actual suggestions being made, when it is couched in the language of essentialism and from a perspective that presumes to tell a whole culture or tradition what to believe about itself or what to practice, it just comes across as arrogant and imperialistic. This, clearly, cannot help foster open, sincere discourse. To this end, the shift from institutional Orientalism and essentialism can be profitable because it treats the subject not as 'other', but as an entity with agency and complexity. If the movement

from essentialism and also toward objectivity is not made a priority, the consequence is scholarship that does nothing to add to any discussion. One political side of the scholarship will ally itself with particular polities and NGOs, while others will ally themselves accordingly. There are already enough interested, partisan parties in this discussion. It is becoming more necessary for some body to attempt to occupy an objective middle ground and analyse the complex issues as they stand in reality.

What follows is a presentation of scholarship on the topic of Western human rights theory as it approaches the Chinese Confucian intellectual tradition in order to demonstrate the state of the discipline as it stands. Currently, the problems outlined above are still present and dominant, but this does not mean that there is nothing of value in the scholarship. The treatment will systematically identify the problematic aspects of the scholarship (Chapter 2), then discuss the potentially useful ideas and observations that they bring forward (Chapter 3), and then apply those useful in a conversation between a Western and a Confucian political theorist (Chapter 4).

## Chapter Two: What We Have Said

### 2.1 – Intentions, Presumptions and Methodology

#### 2.1.1 – *Intentions*

The analytical core of this study is a comprehensive analysis of the English-language scholarship on human rights theory and the Chinese intellectual tradition relating to Confucianism. A critical, academic approach to this particular area of study has not yet been completely formulated and, as will be seen, much of the discussion focuses on particular views of human rights or Confucianism that fail to account for the complexity of traditions. Only certain forms of human rights or Confucianism are ever considered together and this basic inability to fully frame the conversation undermines the utility and worth of the scholarship. Given the contemporary political, social and economic realities of an emerging China, possessing its own particular self-conceptions, motivations and aspirations, it is becoming increasingly clear that areas such as this will become much less of a purely theoretical concern and far more politically and practically relevant. This adds urgency to this project. Since there is no central, clear statement of purpose for this area, there are many different voices with many different perspectives that are competing for dominance. It is now at the point where it is very unclear what has already been said, who has said it and for what reasons. This comprehensive analysis is designed to situate this area of study and demonstrate potentially fruitful areas for next steps. Concurrently, however, it is also designed to demonstrate the particular methodological, theoretical and other problematic issues that typify the study as it stands. There are many potential reasons for why there are the issues that exist – not least of which is the ‘anything goes’ atmosphere of the discourse – but the purpose here is not to

denounce or demonize the area of study. Instead, this analysis intends to clearly delineate the area of study and allow those academics and others interested in it to see what it is producing, away from its problematic portions and orientations. This will hopefully provide perspective and help in the formulation of the next steps toward discourse between Western human rights theory and the Chinese intellectual tradition.

### *2.1.2 – Presumptions*

Any conversation between human rights discourse and the Chinese intellectual tradition needs to be conducted with an eye toward the actual, lived political and social reality of the world as it is. Regardless of personal hopes, beliefs and aspirations – and in spite of isolationists everywhere – China and the West are now intertwined with each other. Who Western scholars ought to be talking to when they engage China is obscure, but there is an apparent reticence to engage with the CCP and officials in the PRC. This conversation, however, is arguably an intercivilizational conversation – the stakes are high enough on both sides that American and PRC’s political issues should perhaps not dominate the conversation. The intellectual, social and other conflicts that have been discussed in theoretical or other terms for decades are becoming lived reality with measurable consequences. Academics engaged in either the field of the Chinese intellectual tradition or in Western human rights theory are finding themselves being placed into areas of conversation that they may not be used to and seem perpetually ill-equipped to comment on. There are conversations that are being broached reasonably independent from the Chinese state and on topics like Confucianism, but those who have traditionally commented on human rights in China are accustomed to being engaged in

political gamesmanship and have less familiarity with Confucianism as such. Regardless of the readiness of the academic corps, they are and will be called on to provide thoughtful, meaningful analysis and discussion points for this on going interchange. That such interchange is occurring and that academics need to be a part of it is a basic presumption of this study.

A further presumption is that the purpose of engaging in such intercivilizational conversation is to facilitate critical, respectful discourse between the traditions.<sup>14</sup> The reasons for this can be boiled down to the issues of competence and relevance. Academics and experts in these fields are uniquely qualified to provide reasoned, thoughtful analysis on complicated issues. Without such analysis, it will be far too easy for overtly political and other opinions to be presented as established fact, and these nascent conversations about themes broader than simply the future of the CCP must not be extinguished. While this may be a common reality in many fields, in this particular field the consequences of such editorial and subjective interference serves to undermine actual communication in favour of partisanship and finger wagging. Operating under the assumption that louder is not always better or that might makes right, it seems necessary for there to be some voice in the crowd that is attempting to provided reasoned analysis.

Most importantly, if academics in this field fail to work toward critical discourse, they will effectively be talking to themselves. Given the legacy of earlier generations of Orientalists, and the political and missionary activities in China, if Western scholars are not attempting to engage with this intercivilizational conversation of the Chinese intellectual tradition in good faith and with an eye toward critical discourse, it is very likely that Chinese scholars and policy-makers will systematically ignore them. The

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<sup>14</sup> See: Onuma Yasuaki. "Toward an Intercivilizational Approach to Human Rights"

consequence of this is that the potentially impassioned, interesting and valuable discussions on human rights theory and the Chinese intellectual tradition will be had entirely in a vacuum, away from a position of influence. This is not to make the claim that if Western scholars attempt to engage in good faith, critical discourse with their counterparts that they will listen and respond in kind. Instead, it is simply stating the fact that if Western scholars do not even make this attempt, it is not exactly Chinese intellectuals' fault if they do not wish to listen. In this new political reality, the West is no longer in a position where it can presume that the whole world is listening to it regardless of whether or not the West is talking to them. As a result, it is necessary that Western scholars in this field become self-aware and sensitive to what they are saying about these issues, how they are conducting their research and for what purposes.

### *2.1.3 – Methodology*

#### *2.1.3.i – Focus*

Western human rights theory and the Chinese intellectual tradition is an extremely large topic and there are many different voices from various directions and with multiple purposes speaking all at once. What will be dealt with here primarily is the scholarship that deals with Confucianism and Confucian political theory relation to rights theory. These articles may deal with the idea directly, may engage in comparing different texts from both sides or may do neither. As the Confucian classical corpus of texts has been in wide circulation in English for over a century and contain (in translation at least) thoughts and writings which are recognizable as political theory, Confucianism has been viewed as the natural point of engagement for Western political theorists interested in the issue of

rights in a Chinese context. This is bolstered by the fact that Confucianism has been seen historically as the dominant political system in China and much of East Asia so it is supposed, naturally, that a discussion of Chinese and East Asian political philosophy *is* a discussion of Confucianism. So while it may not be entirely correct to conflate Confucianism with China, this is what the vast majority of the articles under review have done and as such the analysis has been structured to follow suit.

The scholarship under discussion here has also presented a particular form of human rights theory. Contemporary human rights theory finds its most relevant roots in the aftermath of the Second World War. There are certainly trends that can be traced back through Western philosophy and the development of the concept of rights, as well as the particular circumstances of various revolutions in Europe and America that established certain principles of governance and the treatment of people. The most commonly invoked definition given for human rights follows the principles embedded in the “Universal Declaration of Human Rights”,<sup>15</sup> ratified in 1948. This is where basic human rights are laid out in their most fundamental and pithy format. Given the broad language of the Declaration and the political environment at the time of its drafting, a reading of human rights theory that relies primarily on rights as established in this document may be of limited scope. Indeed, the lack of real say for non-Western voices in the aftermath of the Second World War helped lead to the adoption of the “International Covenant on Civil and Political Rights”<sup>16</sup> and the “International Covenant on Economic,

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<sup>15</sup> U.N. General Assembly, “Universal Declaration of Human Rights”

<sup>16</sup> U.N. General Assembly, “International Covenant on Civil and Political Rights”



Social and Cultural Rights”<sup>17</sup>, 1966, with implementation in 1976. These covenants, along with the Declaration, comprise a so-called “International Bill of Rights” and lay out in more detail the two major types of rights covered by the declaration.

Immediately it can be seen that there is a difference in conception between civil-political rights on the one hand, and socio-economic and cultural rights on the other. Civil-political rights are those rights perhaps most familiar to those in the West – democratic rights, freedoms of speech and association, freedom from arbitrary arrest and persecution, and so on. These form the basis of most conversations about rights in relation to China and are termed as “first-generation” rights. They also are the rights that are most often invoked in liberal political philosophy. Socio-economic and cultural rights, on the other hand, cover rights like the right to a livelihood, the right to basic healthcare, minority and indigenous rights, the right to one’s own cultural expression, and so on. That these rights are not generally factored into the conversation about China is problematic, especially since they should be seen as co-equal under international law. There are many reasons for this, but perhaps the most telling is that the “Covenant on Civil and Political Rights” has been ratified by effectively every member state in the world *except* for the PRC, while the “Covenant on Social, Economic and Cultural Rights” has been ratified by effectively every member state in the world *except* for the United States. It can be seen, then, that the political orientation of these two countries and their relationship with rights colours the discussion about rights more generally in human rights theory. American liberalism, as tends to dominate the discourse on human rights

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<sup>17</sup> U.N. General Assembly, “International Covenant on Economic, Social and Cultural Rights”

theory from Western perspective, does not generally concern itself with socio-economic rights.

It will be seen that the voices in the forthcoming analysis are focusing on one particular area of human rights, namely liberal, first-generation civil-political human rights, as the basis for their arguments. That is, the conversation about China and human rights is conceptualized by most Western voices as being about democracy and civil liberties. It is only those voices that are trying to offer a counter narrative that discuss the other rights. So, as with the discussion of Confucianism, while it is certainly not fair to reduce all of Western human rights theory into liberalism and civil-political human rights, this is the manner in which the scholars under review frame the conversation. Necessarily, the conclusions and suggestions that can be drawn from this comprehensive analysis will have to exist within and respond to the framework of human rights theory as liberal, civil-political rights, and the Chinese intellectual tradition as Confucian political philosophy. The broader conversation about the other forms of rights and the other aspects of Chinese civilization is one that must be had in addition.

There are of course other potential inroads for a discussion on Western human rights theory and the Chinese intellectual tradition. The most obvious alternative approach would be Buddhism. Buddhism, however, is not as useful an inroad as might automatically be assumed mainly because of its isolation as a field of study. There are various factors that have led to a certain ghettoizing of the study of Chinese Buddhist political philosophy. First was the Western subdivision of the disciplines of Sinology and Buddhology that dominated from the 19th century and remains mostly extant presently. The second is that Chinese Buddhism has been viewed as a historical phenomenon best

left for historians, having reached its peak in the Tang Dynasty (618-907) and faded slowly ever since. This is an extremely simplistic view of Chinese intellectual history and development. Further, as Confucianism has been viewed in the West primarily in its role as a political philosophy while Buddhism was viewed as merely a religious tradition, the tools traditionally brought toward studying them have been defined by the methodological differences between the political sciences and the academic study of religion, if not merely confessional, theological approaches. The result, then, is that Buddhist contributions to the Chinese intellectual tradition are often woefully neglected. That mere fact that there is basically no overlap in the discussion of the Chinese intellectual traditions between Buddhism and Confucianism as it relates to human rights demonstrates one of this area's serious flaws. Further, given the different genesis of the academic tradition surrounding Buddhist studies, and taking into account that many people interested in studying Buddhism may be doing so on confessional grounds, the approaches to Buddhism and human rights theory are often markedly different than their Confucian counterparts. There is still the comparative philosophical approach (though, more accurately, the comparative religion approach) as well as much more theological, devotional and soteriological approaches. Buddhism and Buddhist theory profoundly influenced and influences Chinese thought on issues ranging from the epistemological to the existential and much of Neo-Confucian thought developed in direct response to Buddhist social and political criticisms. Given this importance and the variety of articles and books on the topic, it is natural that Buddhism might occupy its own category for discussion.

However, it is simply the case that the discussion around human rights and Buddhism are profoundly flawed. The most common discussion relates to Buddhism as a world religion and are confessional, theological texts. More specific commentaries and discussions that deal with the political issues are difficult to find outside of well-known conflict zones like Burma (Myanmar) and Tibet, or are more accurately discussing issues around Theravada Buddhist countries in South East Asia. Discussing *Chinese* Buddhism as it is actually performed vis-à-vis human rights as an object of contemporary study has simply not garnered academic attention in any serious way. As it stands in this broader discussion, Buddhism simply does not seem to factor. This can be seen as one of the major flaws of the discussion between Western human rights theory and the Chinese intellectual tradition. It is also why the focus of the discussion here perhaps necessarily has to focus on Confucianism.

#### 2.1.3.ii – Comprehensive Analysis Criteria

This leads the conversation to the comprehensive analysis itself. In order to properly assess the scholarship on human rights and Confucianism, it is necessary to implement guidelines for separating the potentially profitable ideas and suggestions from those elements that are methodologically, academically or logically unsound. The criteria that are being used to assess the information fall into four broad areas: methodology, rigour, perspective and logic. The potentially fruitful suggestions will be dealt with afterwards.

##### 2.1.3.ii(a) – Methodology

The first criterion deals with the area of methodology and involves the issues of Orientalist, essentialist and comparative philosophical approaches. It is difficult, though

not impossible, for an academic study that is conceived, conducted and produced through a problematic methodology to provide useful and productive ideas and suggestions for fruitful discussion. Though there are many voices regarding correct methodology, some methods of inquiry are either outdated or simply unhelpful in this particular area of study. Problematic methodology in this study is largely concerned with the Orientalist or essentialist approach discussed in §1.2. This approach carries far too much historical and philosophical baggage to be of any real use to this discussion. Methodological flaws here also include imprecise and ill-defined comparative philosophical methods.

Comparative philosophy can be a very useful tool if it is implemented for the purpose of understanding the nature of the intellectual landscape as it stands. It is less helpful when it is merely engaged in comparison for comparison's sake. Specifically in relation to the Chinese Confucian intellectual tradition and human rights theory, it may make for interesting and thought provoking research to demonstrate that Confucius' *Analects* and Aristotle's *Politics* have everything, something or little in common. However, if *The Analects* is not viewed as important to contemporary Chinese intellectuals, or *Politics* only informs Western conceptions of human rights insofar as later thinkers referenced it, a strong argument will have to be made for how a comparison of the two will forward the cause of communication or inform contemporary discussions. Without that argument being made very clearly, it is far too easy to dismiss the analysis as cherry-picking at best. If *any* text or portion thereof in the Western philosophical tradition can be compared to *any* text in the Chinese intellectual tradition, then there are literally hundreds of thousands of texts to choose from. It is far from surprising that some overlap may be found – with corpuses of texts this extensive, some portion of some

text can be found to support effectively any philosophical or political position. As a result, unless the comparison is practically useful to understanding the current context of the discussion, it is very likely that it will offer little of value.

The further issue is that since these comparisons are drawing from so many different areas, it is very easy for scholarship to be put forward that has an expressly or implicitly advocative purpose that underlies it. Proving that *The Analects* and *Politics* have points in common – without clearly referencing how that informs the current discussion – makes it very probable that the work was being conducted to demonstrate that the West and China are more philosophically compatible than might previously have been thought, or that one side should adopt the other side's perspective (usually the West's). Or, an approach that tries to show that some narrow conception of Confucianism does not support some narrow conception of human rights does more to demonstrate a bias against compatibility than it does to present anything intellectually and philosophically useful. Fundamentally, arguments based on this comparative philosophical model that fail to account for actual lived political reality are arguments based on an essentialized view of knowledge and philosophical traditions. This is an example of the logical fallacy of composition, in this case in assuming that if something is true of part of the whole tradition, it must be true of the whole tradition. On these logical and practical grounds, therefore, unsupported attempts at comparative philosophy are a methodologically unsound and unhelpful approach to this area of study.

All of this aside, it must be admitted that there is a need for some comparison for any conversation to be held at all. As a result it is necessary to not simply dismiss all comparative approaches out of hand, as will be seen in Bai Tongdong's "Abstract

Translation” later. It needs to be kept in mind that whatever these two traditions do or do not have in common, they are fundamentally two different traditions. But, a view that sees them as *only* different traditions would fail to recognize that for the last couple centuries – and especially in the last few decades – some sort of interrelationship between the traditions has occurred. Indeed intellectual thought in China has been influenced by Western thought and vice versa. Any comparative discussion of the two traditions needs to be aware that at some point in their independent histories, the traditions became linked. This observation gets truer as time continues to pass – the traditions of human rights theory and the Chinese Confucian intellectual tradition are more intertwined now than they were a decade ago or a century before that, and this is part of what forms the fundamental basis for this current discussion. Any comparative or other approach to this overall topic and area needs to be conducted in a manner that recognizes that, regardless of compatibility, complementarity or hostility, China and the West – just like the political and social realities in which they are embedded – are intertwined with each other. As a result, it is necessary for the continued relevance of the academic engagement of this topic to develop an approach and methodology that embraces this fact and does not get bogged down in intellectual masturbation devoid of context or relevance.

#### 2.1.3.ii(b) – Rigour

The second criterion regards scholastic or academic rigour. This most often presents itself with an article failing to properly contextualize itself, providing a study divorced from the lived political and intellectual reality that the topic resides in. A conversation ostensibly about contemporary China, for instance, that does not offer any evidence that this contemporary context has been understood. In addition, this approach

often takes an extremely narrow scope where parts of a tradition are discussed, and then the current climate is discussed. There is a missing linkage in many of these studies in that it is only taken as a *prima facie* supposition that the two are linked. This argumentative strategy is open to easy criticism and thus undermines the strength of whatever observation the article is making. This is further compounded when such arguments are made to promote or establish a particular political position. Either of these issues severely limits the effective reach and persuasiveness of an argument and when both are put together, it can be very difficult for even a sympathetic reader to pull out the useful suggestions. This, of course, says nothing about those unsympathetic readers with whom the conversation should be taking place. Indeed, if due diligence is not exercised completely, the ‘facts’ on which a study is based may in fact have been discredited decades previously. The argument might be based on introductory or out-dated works on the topic that have failed to adequately demonstrate such shifts, undermining the credibility of the author. If it is clear to a Chinese scholar or other informed reader that the basic background of the argument is lacking, it becomes very easy to discount the entirety of an argument and potentially fruitful points and suggestions will be lost. In the attempt to engage in an intercivilizational conversation, it is important to demonstrate some familiarity or respect for the other side. So long as Western scholars approach China from a framework that is woefully out of date, their counterparts within China can easily dismiss any suggestions or criticisms.

Further, these two areas of rigour often contribute to essentialism. This is like Orientalism, but rather than having a specific motivation or worldview that relies on a reductive view of the subject, this is more the result of a lack of proper study. Small



examples being taken as demonstrative of the broader area essentialize the topic and this in turn can produce arguments and articles that are making claims that are not based on reality. In the intercivilizational conversation between Western rights theory and the Chinese Confucian intellectual tradition, these issues of rigour are more common than not and one side or the other of the discussion is often fundamentally flawed.

#### 2.1.3.ii(c) – Perspective

The third criterion is that of perspective, of which advocacy is the most prevalent. In its simplest terms, this is scholarship whose real purpose is to advocate for a particular political, religious or philosophical position in relation to human rights and China. This approach will take some text, tradition or system as normative in all cases and make arguments only to demonstrate relative superiority or to show how some other tradition is really just an iteration of the preferred one. Such a system could be a tradition like Confucianism, but could just as easily be American-style democracy if the argument is dogmatically evangelical about it. An example of this is when research is conducted not to analyse and understand the nature of the issue as such, but to demonstrate why China ought to adopt Western civil-political rights. Or, Confucianism may be presented as offering a corrective for the excesses or failings of Western political theory and advocate for Confucian political theory to be used as the framework for the debate. Generally speaking, the scholarship that advocates for civil-political rights looks at China through that lens, while those that attempt to offer a corrective look at China through the lens of socio-economic rights. The advocacy that defines many of the works serves to place restrictions on the types of information and frameworks that will be employed and this undermines the credibility of the work.

These sorts of approaches are academically problematic because it is not really necessary for the scholarship itself to be particularly well conceived, researched or presented as the purpose is not to inform or present the fruits of carefully conducted research. When academics and scholars publish academic books and articles whose purpose is advocative, the actual merit and value of the research conducted is much easier to miss under accusations of imperialism, and whatever rightful, good-faith and reasonable information and arguments that may be present are that much easier to dismiss out of hand. This undermines academic research in general because, rightly or wrongly, it can all be viewed as imperialist and continuing the Orientalist project by association. On the other side, those who attempt to offer correctives can be accused of being apologists for Chinese human rights abuses. If the intention in engaging in this discussion is to actually have conversations and discourse with the Chinese and the Chinese intellectual tradition, presenting information in such an insensitive and potentially offensive manner means that the only people that are going to seriously engage in those works are people who share those political, religious or other convictions that led to the advocacy in the first place.

Beyond the issue of advocacy are those articles that are based on subjective and pre-determined positions. Here, a topic is picked and an article and argument is constructed to support it. No real attempt at objective research is attempted – the argument is not so much based on research but on personal observation, hopes and aspirations. Simply put, these are more editorials than actual academic approaches to the topic. Certainly some figures have reached such a height as public intellectuals that everything they say is fundamentally a matter of personal observation, but the better

public intellectuals do not base their perspectives and opinions on whim and dogma. Separating informed subjectivity from editorializing is necessary for this discussion and subjectivity compounds the problems of imperialism and Orientalism because the article is even easier to dismiss on these grounds.

#### 2.1.3.ii(d) – Logic

The final criterion is that of logical fallacies and rhetorical issues. This is not as widespread an issue as the others, but such fallacies can severely undermine an argument's strength and represent potentially fatal structural flaws. Common fallacies in these particular areas of study are arguments to moderation, fallacies of composition or division, false dichotomies, and hasty generalizations. It is important to identify these fallacies because their presence undermines the potentially useful ideas that the papers are putting forward. So, it is not the intention to dismiss ideas because they are couched in logical and rhetorical flaws, but rather to attempt to rescue potentially useful ideas from the issues they are drowning in.

#### 2.1.3.ii(e) – Potentially Useful Ideas and Observations

These four analytical criteria are employed here with the purpose of filtering the potentially useful ideas and observations that are present in this area of study once problematic issues are removed. The overarching comprehensive analysis situates the area of study to demonstrate where it stands collectively. In general, it is hoped that this will provide the area with some sense of perspective and help scholars formulate their next steps in the intercivilizational discourse between China and the West. And while it is being contended that the manner in which an argument is made severely affects the manner in which it is received (if it is received at all), in many cases the methodological,

rigour, perspective and logical flaws are not substantive flaws. Although the state of this discipline is haggard, this is not to say that no meaningful and potentially fruitful ideas have been proposed. It is more simply that those ideas may not have been viewed apart from their moorings. In order to see exactly where this study stands, it is essential that these ideas be laid out end-to-end, away from their issues and problematic geneses. These potentially useful ideas will be dealt with in the next chapter.

The main data of the comprehensive analysis proper is contained in an appendix at the end of this study, separated by the above criteria. It also includes a column of the salient, meaningful points, contentions, suggestions and arguments that the various articles are making. What follows here is a discussion of the main themes, while after that, a more thorough discussion of some of the fruitful and interesting suggestions will be presented. These findings will form the methodological and theoretical framework of the conversation between John Rawls and Tu Weiming.

## 2.2 – Research Data

Under review are twenty-eight articles and book chapters that purport to deal with the issue of Confucianism or China and rights philosophy in some capacity. These texts are all English-language and available in wide circulation in Western libraries. There are undoubtedly other texts and treatises that may fit the rubric of “Confucianism and rights theory”, but not all are relevant, up-to-date or easily accessible in English or a Western language. As this study purports to look at the area as it stands, less relevant voices were necessarily omitted. Certainly there are many more of the type of strict comparative philosophy that, for instance, only look at that Analects or Mengzi in relation to some or

another Western philosophical school. These sorts of articles were omitted for the methodological issues listed above. The comparative studies that are included here are ones that attempt to situate themselves into contemporary relevance but have varying degrees of success. Some specifics for this problematic methodology, rigour, perspective and logic will be discussed presently. Following that, a layout of the potentially profitable ideas will be provided to help point the way forward.

### *2.2.1 – Methodology*

#### *2.2.1.i- Comparative Philosophy*

When an attempt is made to bring together trends in Western philosophy and Confucian or Chinese thought, some amount of comparison is going to have to be necessary. The articles assessed here all in some way attempted to locate their work in the contemporary conversation about rights and China and there are two basic approaches to comparative philosophy that they performed which are problematic: a) cherry-picked comparisons that jump all around a tradition to prove a broader point, and b) very narrow comparisons that are then used as stand-ins for the entire conversation.

#### *2.2.1.i(a) – Cherry-picking*

Charles Taylor<sup>18</sup> and Amartya Sen<sup>19</sup> present the most problematic cherry picking in their comparative approaches. Taylor takes bits and pieces from all over the Asian tradition without any particular concern for their relevance or coherence. When explicitly discussing East Asian Buddhism, he uses the Theravada conception of *nibbana* before jumping to a conversation of Lee Kwon Yew’s Asian values and then Islamic Sharia law. Why particular bits are chosen is not really discussed, but many of the

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<sup>18</sup> Taylor, Charles. “Conditions for an Unforced Consensus on Human Rights”

<sup>19</sup> Sen, Amartya. “Human Rights and Asian Values.”

choices would seem strange to anyone that is well conversant in Asian philosophy or Buddhism – it is a demonstration of a non-specialist wading into a discourse without conducting due diligence.

Since Taylor is by no means a student of Asia, it is perhaps unsurprising that he does not have a sophisticated understanding of the area. Sen has less of an excuse. In his article he is trying to demonstrate that the true Asian values present in Asia are liberalism, in distinction with the “Asian Values” promoted by some Asian states. To accomplish this, his article jumps from Confucius,<sup>20</sup> to the Indian egalitarian tradition established by Ashoka in the third century BCE, to the Moghul Akbar and his apparent acceptance of religious and civil freedom. The article is attempting to promote liberalism and undermine the authoritarian argument made by “Asian Values” advocates by demonstrating that there are other trends in Asian thought.<sup>21</sup> Both Taylor and Sen have broader arguments that they are making, but the manner in which they cherry-pick their sources undermines their credibility in the conversation.

#### 2.2.1.i(b) – *Narrow Comparison, Broad Conclusion*

Tan Sor-hoon (2010b)<sup>22</sup> and Kim Sungmoon<sup>23</sup> make their arguments about contemporary Confucian society by utilizing the most specific comparisons of any author under investigation. Tan pits the *Analects* and John Dewey’s democracy against each

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<sup>20</sup> Confucius, for example, is not “a democrat, or a great champion of freedom and political dissent, but there is reason enough to question the monolithic authoritarian image of him that is presented by the contemporary advocates of Asian values.” The evidence for this is a quote from the *Analects* (14.3) where he apparently calls for acting boldly in the face of a corrupt state. Sen, 18

<sup>21</sup> “The point of discussing all this is to indicate the presence of conscious theorizing about tolerance and freedom in substantial and important parts of Asian tradition.” Sen, 27

<sup>22</sup> Sor-hoon Tan, “Confucianism and Democracy” *Confucianism in Context* Eds Kalmanson, Lea and Wongsuk Chang. New York: State University of New York Press, 2010. (2010b)

<sup>23</sup> Kim Sungmoon. “Self-Transformation and Civil Society: Lockean vs. Confucian”

other<sup>24</sup> in order to demonstrate compatibility between East and West. However, while an argument could be made that the *Analects* are foundational to the Chinese intellectual tradition, little rationale is given for why Dewey is seen as representative of Western political theory. Similarly, Kim makes an argument that there is an overlap in Confucian and Lockean philosophy in their conception of a civil society, without giving any justification for why Locke is representative other than the fact that he shares the most in common with Confucius. As a result, these examples use very specific comparative approaches to compare the two traditions, but fail to coherently link the analysis with contemporary lived reality.

These are not the only two articles to draw wide conclusions from extremely specific comparisons. Bai Tongdong<sup>25</sup> compares Socrates' refusal to leave Athens though he had every reason to with the apparent Confucian call to leave unjust states in spite of the principles of political duty being of highest in Confucianism<sup>26</sup> and uses this to argue for the political duty of contemporary Confucians. Julia Ching<sup>27</sup> compares the legal system of Han Feizi and Xunzi to Locke and Hobbes in order to criticise the current Chinese constitution for its doublespeak, both offering Chinese citizens free speech,

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<sup>24</sup> For "the reconciliation of Confucianism and democracy I shall attempt in this chapter will focus on what I consider to be the most important of these texts, the *Analects*." Tan 2010b, 106. Further, democracy is a complicated philosophical issue, but "the limited space of this chapter does not allow an extensive exploration of the pros and cons of various conceptions" and so "I shall merely set out the basic outline of John Dewey's conception, which will be adopted for my purpose here." Tan 2010b, 106

<sup>25</sup> Bai Tongdong, "What to Do in an Unjust State?: On Confucius' and Socrates's Views on Political Duty." Dao 2010

<sup>26</sup> "Confucius seems to have every reason to encourage his pupils to enter and stay in a chaotic state, but he advises them not to. Socrates ... however, seems to have every reason to shun the polis and its politics, but he refuses to leave Athens even when the Athenians want to drive him out." Bai, 9

<sup>27</sup> Ching, Julia. "Human Rights: A Valid Chinese Concept?"

press, assembly and so on but only under the ‘dictatorship of the proletariat’ as manifested in the Chinese Communist party.<sup>28</sup>

Others do comparisons to make more generalized claims about contemporary China or Confucianism. Fred Dallmayr’s<sup>29</sup> entire approach to justify his call for mutual understanding is to simply make a comparison – a broader argument is not really attempted beyond this and the traditions are discussed much more generally. Joseph Chan<sup>30</sup> tries to support human rights philosophy by using a very narrow view of Confucianism, while David Elstein<sup>31</sup> tries to demonstrate their incompatibility by looking at some of the same texts. Chan looks to Mencius’ and Confucius’ view on community and social relationships and declares them compatible, while Elstein declares that “the thought of the *Analects* and *Mengzi* contains significant obstacles to democratic or republican ideals”.<sup>32</sup> The very fact that these two studies come up with two different interpretations demonstrates the shortcomings of comparative philosophy: one can really make the tradition – indeed, the same *text* within a tradition – say whatever needs to be said to prove an argument.

### 2.2.1.ii – *Orientalism*

As a result of this area of scholarship being located at the nexus between the dominant intellectual traditions of the East and West – Confucianism and Liberalism – it seems inevitable that the old patterns of Orientalism that have defined this conversation for centuries would still be present. The issues with Orientalism have been discussed at length (§1.2) and here will be divided between the two most common iterations: a)

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<sup>28</sup> Ching, 78

<sup>29</sup> Dallmayr, Fred. “Confucianism and the Public Sphere: Five Relationships Plus One?”

<sup>30</sup> Chang, Joseph. “A Confucian Perspective on Human Rights for Contemporary China”

<sup>31</sup> Elstein, David. “Why Early Confucianism Cannot General Democracy”

<sup>32</sup> Elstein, 14



Orientalism that perpetuates the traditional breakdown of the world as Individualist west versus communitarian east, and b) Orientalism that robs the ‘other’ of its agency to  $\alpha$ ) make observations about Western issues and political agendas, or  $\beta$ ) seek to impose Western correctives to Asian issues.

*2.2.1.ii(a) – Traditional Orientalist Worldview*

Thomas Berry<sup>33</sup> and Craig Ihara<sup>34</sup> both makes arguments that are based on typified views of the West and East. For Berry, his attempt to discuss the Chinese approach to the individual paints a picture of both the Western and Chinese traditions that is teleological and culturally based: China would always place community/social relations primary while the West would always place the individual first – China is defined by communitarianism, the West by individualism. Ihara evokes a series of analogies to try and translate liberalism and rights to a communitarian, family-oriented Asia. The article presents thought experiments that relate the language of rights to the areas of basketball, ballet and funeral practices<sup>35</sup> with the basic idea being to construct examples that demonstrate how rights do not really work in a Confucian context. Because “Asian families”, with their community- and family-based orientation would not have an issue understanding them, and a Westerner is incapable of abstract thought outside of a rights framework, these facile examples are provided instead.

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<sup>33</sup> Berry, Thomas. “Individualism and Holism in Chinese Tradition: The Religious Cultural Context”

<sup>34</sup> Ihara, Craig K. “Are Individual Rights Necessary?” 2004

<sup>35</sup> These activities are chosen because “these practices resemble the Confucian social ideal in some fundamental way” and “they are all intended to describe contexts in which there need not be any individual rights in the sense of special moral claims to something or other that one person has and that can be infringed by others.” Ihara 2004, 14

2.2.1.ii(b) $\alpha$  – ‘Othering’ for Western Edification

David Wong<sup>36</sup> argues liberal democracy’s lack of communitarian focus explains why China has failed to adopt it. However, this is also a structural flaw for the American context of democracy because it does not stress community enough.<sup>37</sup> The issue here is that the article is effectively presenting Confucian/Asian communitarian values as a corrective to the issues of Western liberal democracy, perpetuating the Orientalist tendency to be more concerned with how ‘the other’ affects ‘our’ traditions.

Likewise, both of Henry Rosemont Jr.’s articles (1998<sup>38</sup> and 2004<sup>39</sup>) look to Confucian philosophy in order to address his criticisms of Western liberal democracy and contemporary, American social and moral issues. The first looks to reimagine rights as duties in the West while the second looks to prioritize so-called ‘second generation’, socio-economic rights over political-civil rights. Confucianism is seen as offering a corrective in both cases: China and Confucianism is being “othered” to debate internal, Western philosophical issues.

2.2.1.ii(b) $\beta$  – ‘Othering’ to Fix Asia

These article fail to engage the Chinese intellectual tradition on its own terms or through the understanding that it has had agency and instead takes it as an object of study and interest, as well as a passives and willing recipient of Western direction and civilization. Fred Dallmayr presents a view of Western philosophy and liberalism that

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<sup>36</sup> Wong, David B. “Rights and Community in Confucianism”

<sup>37</sup> “A common problem for both the Chinese and American democratic traditions, I suggest, is that they have not possessed enough community” and as a result “adequate moral traditions need both community and rights”. Wong, David B., 41

<sup>38</sup> Rosemont, Henry Jr. “Human Rights: A Bill of Wonders” 1998

<sup>39</sup> Rosemont, Henry Jr. “Whose Democracy? Which Rights?” 2004

has come about as the perfectly natural, normative result of historical and social change,<sup>40</sup> so there is no question that China inevitably needs to adopt them as well. There is no serious problem seen with imposing Western ideas like the open-market economy and democracy onto China and no apparent understanding that the adoption of these values in other Asian countries are a direct result of Western colonial and Orientalist practice. What's done is done and as such the East may as well just finish up the job. Similarly, Jack Donnelley<sup>41</sup> insists that whenever Eastern and Western values conflict regarding human rights, it is up to Asia to adopt them, regardless of internal concerns.<sup>42</sup>

For Inoue Tatsuo<sup>43</sup> and Amartya Sen there is some acknowledgement of these internal concerns, that there is an articulate, internal resistance to Western philosophy and liberalism as is the case with the “Asian Values” critique. However, these Asian voices are further ‘othered’ and marginalized by these authors as being put forward by opportunists and inauthentic Asians: “the so-called Asian values that are invoked to justify authoritarianism are not especially Asian in any significant sense”,<sup>44</sup> even though they are being advocated by Asians in Asian countries.

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<sup>40</sup> “It is precisely due to the unleashing of market forces that modern societies, Confucian or otherwise, require the counterweight of a public sphere able to contain or regulate these forces through a common rule of law” and “the fact that all Asian societies have been refashioned on the model of the Western nation-state ... means that traditional segmental or holistic arrangements have been replaced by the pyramidal structures prevalent in Western politics.” Dallmayr, 208

<sup>41</sup> Donnelley, Jack. “Human Rights and Asian Values: A Defence of ‘Western Universalism’”

<sup>42</sup> “Where traditional practices conflict irreconcilably with internationally recognized human rights, traditional practices usually must give way – just as traditional Western practices such as racial and gender discrimination and the persecution of religious deviants have been required to give way.” Donnelley, 83

<sup>43</sup> Inoue Tatsuo. “Liberal Democracy and Asian Orientalism”

<sup>44</sup> Sen, 30

## 2.2.2 - Rigour

### 2.2.2.i – Lack of Context

As a result of the magnitude of this area of study, it is not surprising that there are many issues of academic rigour that come into play. All the articles here attempt to situate themselves in the contemporary discussion, but in one or more ways fail to contextualize themselves. There are two issues of context that will be discussed here: a) articles that discuss their topic in a vacuum and demonstrate no attempt to understand the contemporary context, and b) articles that discuss the contemporary context but provide no linkage between that and the tradition as such.

#### 2.2.2.i(a) – Ineffective Attempts to Contextualize

In many articles, the discussion about Confucianism or China present novel or interesting interpretations but do not account for the fact that these interpretations of the tradition have not been practiced in the manner they present. David Elstein takes one particular chunk of the tradition and interprets from there, all while offering no discussion of how this is relevant today. The study is strictly limited to classical Confucianism alone<sup>45</sup> and its compatibility with democracy, but no attempt is made to translate or contextualize it into the present. Wejen Chang's study presents an ideologically pure Confucian social structure that actively resists reality by ignoring historical breakdowns in the tradition as irrelevant.<sup>46</sup> Tan Sor-hoon (2010)<sup>47</sup> likewise presents an unpacking of

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<sup>45</sup> "Neo-Confucian thought is outside the scope of this article", Elstein, 7

<sup>46</sup> "if parties may follow different rules in their interaction, the relationship can become unbalanced and unfair – giving one party more of the benefits and the other more of the burdens. In fact, a system of norms supporting this kind of relationship between the authorities on the one hand and the common people on the other was developed later in china. This was not the system of Confucius's time, however, *and certainly not the system he wished to help build.*" Chang, 120. Emphasis mine.

<sup>47</sup> Tan Sor-hoon. "Authoritative Master Kong (Confucius) in an Authoritarian Age." *Dao: A Journal of Comparative Philosophy*. 9 (2010), pp137-149. (2010a)

Confucian classics toward understanding the true (or truer) meanings of some issues that have become controversial. However, the interpretation is novel in that it represents interpretations of Confucianism that have never been practiced, undermining any relevance to the contemporary situation. David B. Wong applies a Confucian idea of ‘good’ that is drawn from the *Zidao* of Xunzi (312-230 BCE) in order to demonstrate a ‘germ’ of support for rights<sup>48</sup> - all without discussing if this is a fair interpretation of the contemporary context. Fred Dallmayr’s argument completely fails to consider the fact that Chinese culture specifically and East Asian culture in general might have more to its social structure than just the five relationships (the Emperor is long deposed). The very fact that Confucian ideals presented here were not actually realized in practice should certainly cause some pause to arguments that, as an essential component, require Confucian ideals to be realized in practice.

#### *2.2.2.i(b) – Broken Linkage between Study and Reality*

Thomas Berry provides the more obvious example of an article that offers little to connect its argument to the present, mainly because its central argument is about ensuring that scholars remain aware of the culture they are studying<sup>49</sup> - useful advice for the post-colonial era. The conversation is clearly talking about how cultures change over time yet it discusses Chinese thought only by way of interpretations of the classics with the most modern interpretation belonging to Japanese Neo-Confucian Nakae Toju from the 17th

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<sup>48</sup> “I do not mean to suggest that one finds in Chinese classical tradition anything like a full-blown argument for a right to free speech. What we do mean to suggest is that we do have the *germ* of an argument in the idea that the common good is sustained by recognition of a duty to speak.” Wong, David B., 36

<sup>49</sup> For “while these patterns of society-individual interactions will possibly remain identifying features of Chinese and Western traditions, these traditions may in the future find it helpful to take greater cognizance of each other.” Berry, 54

century.<sup>50</sup> Kim Sungmoon follows suit, attempting to debunk the “contemporary Confucianists” claims of “Western liberalism as pitting the individual against society”<sup>51</sup> by way of a study of the figure of Confucius himself as a Lockean proto-liberal. Similarly, Bai Tongdong looks at Confucius and Socrates to provide advice on what one ought to do in an unjust state (read: PRC): leave or stay, and Fan Ruiping<sup>52</sup> discusses whether filial piety should be seen as a virtue, not as a vice. Wejen Chang<sup>53</sup> marries Confucianism with liberal rights to produce a specific, narrow and complete utopia, but leaves out the contemporary context of the existence of non-Confucian or liberal philosophies (say, Buddhism) in China. Chad Hansen’s article<sup>54</sup> discusses human rights theory and the Chinese intellectual tradition in largely theoretical and extremely narrow terms regarding the meta-ethical and meta-philosophical issues surrounding the definition of moral philosophy in the two traditions. Finally, Craig Ihara’s article presents anachronistic views of contemporary China and Asian societies, leading to troubling juxtapositions of Confucian literati performing ballet or CCP officials performing ritual harvest ceremonies.<sup>55</sup> The common thread of these articles is that they fail to provide sufficient justification for bringing their conversation into the present given the subject of their study.

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<sup>50</sup> Berry, 48

<sup>51</sup> Through discussing Locke’s philosophy in comparison to Confucian, “this essay shows that liberalism and Confucianism aim to reconstruct a society freed from antisocial passions entailing a vicious politics of resentment”. Kim, 383

<sup>52</sup> Fan Ruiping. “Why Confucian Morality is not Modern Western Morality”

<sup>53</sup> Chang, Wejen. “The Confucian Theory of Norms and Human Rights”

<sup>54</sup> Hansen, Chad. “The Normative Impact of Comparative Ethics: *Human Rights*”

<sup>55</sup> “In many societies, including China, it is thought that the ruler must perform certain ceremonies during the spring of the year to ensure a good harvest. This performance is not regarded as an act of supererogation on the part of the ruler, but as an essential part of the responsibilities of that position.” Ihara 2004, 20

### 2.2.2.ii – *Essentialism*

The other fundamental failing of rigour is an issue that arises given the scale of the area of study: essentialism. This is similar to Orientalism in that it pushes a monolithic view of a particular tradition or philosophy, but different in that it is not necessarily based upon the traditional view of Asia. Rather, it is due to lack of space, diligence or expertise in the field that leads to some fundamental essence being applied to an entire tradition, culture or civilization. Generally, this comes from studies that look at one text or interpretation, and then use it as a stand in for the entire tradition. There are two common orientations of this essentialism; a) those studies that essentialize in order to help promote a novel or broader understanding of the tradition, and b) those that essentialize in order to promote a particular ideology or solution.

#### 2.2.2.ii(a) – *Essentialism to Understand or Inform*

Louis Henkin<sup>56</sup> provides a clear example of this essentialism as his chapter provides an outline of the development of the idea of human rights and its relationship to Confucianism and cultural relativism. Because it is an epilogue to a larger edited book, it is summary in nature and this makes it generally complicit in essentializing information and traditions in an extremely optimistic and almost naïve manner.<sup>57</sup> Fred Dallmayr's intention is to provide some context on both Western and Eastern traditions so that they can be brought into conversation with each other. However, Chinese philosophy is essentialized: while six and a half pages is devoted to tracing Western philosophy from

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<sup>56</sup> Henkin, Louis. "Epilogue: Confucianism, Human Rights, and 'Cultural Relativism'."

<sup>57</sup> "Confucian teachings, we have learned, encouraged civility, and inspired humane concern and mutual respect. The enlightened emperor, and loyal, incorruptible official committed to Confucian values, practiced virtue and behaved justly, and set examples of justice and virtue for the people." Henkin, 310. That all Confucian officials were incorruptible or even committed to Confucian values (many were in fact Buddhists or self-interested, to say the least) is an impossible position to defend and even more so when discussing the various emperors of Imperial China.

Aristotle to Arendt, Confucianism is apparently something that can be covered in three and defined fundamentally and primarily by Confucius through the *Analects*, the five relationships and Tu Weiming's interpretation of the tradition. Joseph Chan argues for nuanced discussion, but defines Confucianism by Mencius alone, Jack Donnelley's discussion hinges on China being defined by duty and the West by rights, while Fan Ruiping focuses only on filial piety. Finally, Thomas Berry focuses on why the West is individualistic and China communitarian, essentializing both cultures.<sup>58</sup> Its conclusion states that China has fundamentally remained unchanged in its social outlook on the individual while the West has grown into individualism.<sup>59</sup> Generally, each of these articles is attempting to provide context for the larger discussion, but falling into a trap of essentialism given the complexity and enormity of this topic.

#### 2.2.2.ii(b) –*Essentialism to Advocate*

Sangjin Han<sup>60</sup> provides, perhaps, the most egregious example of essentialism with the purpose to advocate. The discussion focuses on one particular group of Confucians from South Korea in the 1980s and extrapolates what Chinese society ought to do from there. Indeed it does this wilfully.<sup>61</sup> This chapter is the result of a basic failure in rigour

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<sup>58</sup> The basic structure is to “deal first with the Western tradition and the manner in which its dominant doctrine of individualism has evolved over the centuries” followed by a consideration of “the manner in which the Chinese tradition has dealt with the individual in oneself and in one’s relations with the social order and with the natural world, the most comprehensive expression of social existence.” Berry, 39

<sup>59</sup> The final analysis of contemporary China and the West is stated by declaring that “[s]o far China has kept in a single functional vision what in the West has been divided: the primordial integrity of the universe, the existential order of historical time, and the future order of harmonious presence of the heavenly, the earthly, and the human to each other” while “the West differentiates these and places them in extreme tension with each other.” Berry, 54

<sup>60</sup> Han, Sangjin. “Chapter 7: Confucianism and Human Rights” *Confucianism in Context: Classic Philosophy and Contemporary Issues, East Asia and Beyond*. Chang, Wonsuk and Leah Kalmanson Eds. SUNY Press: Albany, New York. 2010

<sup>61</sup> “My argument is selective and normative. In other words, the paper is concerned more with communitarian than liberal approaches to human rights, but with specific focus and orientation.” Han, 121



and provides an almost evangelical advocacy for communitarian Confucian social organization, all based off of the actions of one group at one time. Henry Rosemont Jr. also has an overt political purpose: presenting essentialized constructions of Confucianism<sup>62</sup> designed to solve Western issues. No textual or other evidence for this conception of Confucian society being realistic is provided and all of Confucianism is dealt with in little more than two paragraphs.

Other examples are not political on this scale, but still use essentialized conceptions of the traditions to directly support their partisan arguments. Julia Ching, for example, forms its attack on Chinese state hypocrisy by reducing its entire worldview to the “first paragraph from the preface to the White Paper on Human Rights issues by the government of the People’s Republic of China in November 1991”<sup>63</sup> and comparing it to human rights theory. Wejen Chang constructs a version of Confucianism and liberal rights that make them fit together perfectly, all while leaving out any lived tradition. Chung-ying Cheng’s<sup>64</sup> article advocates for transformative revolution based on the idea that all Chinese are Confucian humanists and all Westerners rationalists. Demonstrating that a transformation is possible, or even that it is preferable, is not enough without dealing with lived context and reality and is therefore based on essentialist and utopian readings of both Confucianism and the Western liberal tradition.

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<sup>62</sup> There, all of the issues brought forth before are contrasted to the ideal Confucian society, “wherein rights-talk was not spoken, and within which I am not a free, autonomous individual. I am a son, husband, father, grandfather, neighbor, colleague, student, teacher, citizen, friend. I have a very large number of relationship obligations ... and my individuality, if anyone wishes to keep the concept, will come from the specific actions I take in meeting my relational responsibilities.... If Confucian persons aren’t free, autonomous individuals, they aren’t dull, faceless automatons either.” Rosemont 1998, 63-64

<sup>63</sup> Ching, 67

<sup>64</sup> Cheng, Chung-ying. “Transforming Confucian Virtues into Human Rights”

Finally, there are those that essentialize to put forward an idealistic view of Asia to serve as foil for their philosophical argument. Tu Weiming (1998)<sup>65</sup> pits an essentialized (and idealized) version of Asia against an essentialized (and vilified) version of the West.<sup>66</sup> The ecumenical approach he puts forward here is seen to be able to solve apparent incongruities but only because the actors in the examples are represented by an essentialized and idealized “Confucianism humanism” offered as a corrective to the more egregious failings of an essentialized, flawed individualism. Finally, Amartya Sen and Charles Taylor build constructs of Asian values and philosophy that are tailored for their arguments. They conflate traditions from all over continental Asia, jump centuries and millennia between them, and essentialize Asia writ large as homogenous and somehow unchanging.

### *2.2.3 – Perspective*

#### *2.2.3.i – Advocacy*

Any article or study at its core is trying to argue for something. However, in the discussion around human rights theory and the Chinese intellectual tradition there seems to be a disproportional amount of normative arguments that are advocating for a particular philosophical tradition to become dominant. As discussed above (§2.1.3.ii(c)), these approaches severely undermine the discussion because it is far too easy for those on other sides of the argument to discount anything useful that one might be saying because

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<sup>65</sup> Tu Weiming. “Epilogue: Human Rights as a Confucian Moral Discourse” 1998

<sup>66</sup> The way the West values the family and other social relationships and has led to a certain moral failure in the West: “the incongruity between what we do as responsible and responsive member of the family and as a rights-bearing and self-interested political animals” leads to “our willingness to tolerate preposterous inequality, greedy self-interest, and aggressive egoism [, and this has] greatly poisoned the good well of progress, reason and individualism.” This is pitted against a “Confucian humanism” that provides a “perception of human self-development, based upon the dignity of the person, in terms of a series of concentric circles: self, family, community, society, nation, world, and cosmos.” Tu 1998, 301.

of the advocative language it is couched in. There are four types of advocacy that will be discussed here: a) Western liberalism or human rights taken as normative and/or given as appropriate solution to Chinese problems, b) Confucianism seen as the antidote for Western problems, c) reimagined, ‘correct’ interpretations of Confucianism that either  $\alpha$ ) aim to challenge the current Chinese government, or  $\beta$ ) solve broad issues in Confucian or East Asian society, and d) articles with the normative goal of self-promotion.

### 2.2.3.i(a) West Fixes East

Chung-ying Cheng argues that in order to create an environment for human rights in China, Confucian virtues need to be transformed into rights.<sup>67</sup> It advocates that that Confucian duties-as-virtues *ought* to become rights, Confucian morality should be recast as further support for democracy and rights in general,<sup>68</sup> and they ought to make these changes to end oppression, presumably in China.<sup>69</sup> In other words, once virtues become transformed into rights, “revolutions become necessary”<sup>70</sup> to shake off the yoke of oppression. This article does not provide any critical insight as to how this might be done, instead only that it *could* theoretically be done.<sup>71</sup>

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<sup>67</sup> This “transformation of Confucian virtues into rights” and “the cultivation of virtues by individual-in-community should lead to an awakening of duty consciousness in an individual to the community and the public, which in turn should call forth an awareness of the individual’s legitimate potential for participating in public affairs”. Cheng, 151

<sup>68</sup> “[V]irtues, insofar as they are community-nurtured and community-oriented, represent a duty of the self to the community and a duty of the community to the self”, become rights through the “sense of oughtness [that] arises out of a sense of consistency between what one has been and what one could be” within that community. Cheng, 148

<sup>69</sup> “the need to protest or even fight against an oppressive rule is obvious” such “oppressive conditions may call for awakening the implicit consciousness of rights as individual claims for virtuous actions on the parts of individuals, in order to defend the community against the selfish interests of a rule.” Cheng, 149-150

<sup>70</sup> Cheng, 150

<sup>71</sup> Since “both the Chinese humanistic tradition of virtues and the Western rationalistic tradition of human rights could go hand in hand for the creation of a self-sustainable and ecologically sound social order in the century to come”, it follow that society ought to combine the two together, through revolution if need be. Cheng, 148

Donnelley provides a strong defence of Western liberalism as the only proper intellectual framework for the development and sustenance of human rights, mostly because such discourse is dominant<sup>72</sup> and because it represents the peak of human achievement.<sup>73</sup> Of course just because something is dominant does not mean it is correct and the very fact that there are Asian criticisms should cause some pause.<sup>74</sup> Whenever Asian perspectives are discussed, it is only those that allow for Western values that are seen as useful.<sup>75</sup> This makes it an argument for Asia becoming like the modern West in its practices and does nothing to allow for actual lived differences, provided that a liberal rights regime is established – indeed, this must happen.<sup>76</sup>

Henkin discusses the contemporary application of human rights by defending the non-imperialist nature of human rights and its compatibility with Confucianism.<sup>77</sup> This is an about face from an earlier characterization of the traditions as disparate. The final

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<sup>72</sup> Since human rights as espoused by the UN were drafted under liberal ideals and the standard interpretation is a liberal one, human rights are by definition liberal rights: “I take this understanding of human rights as given, not because I endorse it (although I do) but because it is the standard sense of ‘human rights’ in contemporary international discussions.” Donnelley, 62

<sup>73</sup> “Human rights, as specified in the Universal Declaration and Covenants, represent the international community’s best effort to define the social and political parameters of our common humanity. Within these limits, all is possible. Outside of them, little should be allowed.” That these covenants also call for social and economic rights of work, welfare and healthcare – decidedly less liberal values than this article espouses – demonstrates the partisan nature of this article’s orientation because many of the rights in these documents would support the rights put forward by Asian values conceptions. Donnelley, 87

<sup>74</sup> The article allows for this slightly, but nevertheless continues as though liberal interpretations are the only correct interpretation. The Asian criticisms are often provided with an idealized version of traditional culture and a hyper-critical condemnation of modern conceptions of rights: “Such an argument can easily run to a myopic romanticism that sees none of the faults of the traditional nor any of the virtues of the modern.” Donnelley, 80

<sup>75</sup> Indeed “arguments for an Asian third way, however, guard against such problems by advocating for a selective adoption of ‘Western’ values and practices to produce an Asian version of modernity.” Donnelley, 80

<sup>76</sup> “So long as individual and group choices are protected by and within the limits laid out by international human rights standards, they must be respected – both by foreigners and by Asian governments and elites. Anyone, anywhere, who denies these choices, must be opposed.” Donnelley, 87

<sup>77</sup> “The human rights idea is not monolithic, imperialist” and “with the imperial tradition vanished, and with it the quest for benign, wise, humane monarchy, societies committed to Confucian values need not find democratic theory and representative government uncongenial” as there is “no intrinsic tension between Confucianism and human rights.” Henkin, 313

assertion for compatibility between Confucianism and human rights theory, and the claim that “Asian values – Confucian values – are universal values”<sup>78</sup> are advocative and fundamentally problematic.

Dallmayr places Western social structures and historical development as normative and correcting. While it calls for both sides to come together in intellectual exchange and mutually concede positions, the Chinese are asked to adopt Western liberalism while what the West should concede in return is never mentioned.

### 2.2.3.i(b) East Fixes West

Han’s chapter argues forcefully in defence of communitarian human rights over all other forms and is by its own admission biased<sup>79</sup> and normative on human rights.<sup>80</sup> The subjects it studies are introduced and discussed in reverential, almost propagandistic terms<sup>81</sup> that ignore common criticisms.<sup>82</sup> This chapter is the result of a basic failure in rigour and provides an almost evangelical advocacy for communitarian Confucian social organization.

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<sup>78</sup> Henkin, 314

<sup>79</sup> “My argument is selective and normative. In other words, the paper is concerned more with communitarian than liberal approaches to human rights, but with specific focus and orientation.” Han, 121

<sup>80</sup> It is based on “the premise that as human beings we are entitled to both individual and collective self-determination. The latter is no less important than the former since individual sovereignty can be best sustained in a flourishing community” though precisely who this is so is never really argued for, just asserted. Han, 131

<sup>81</sup> For “insofar as we agree that the Kwangju citizens struggled for human dignity, it seems obvious that human rights were built into the Kwangju uprising. The moral outrage was constitutive of a struggle for recognition. ... Thanks to its temporary success, the uprising produces a peculiar community in which communitarian solidarity, fraternity, and cooperation were created and maintained over egocentric interests.” Han, 126

<sup>82</sup> The nation-state as Singapore – with its own shaky issues with perceived authoritarianism – is viewed uncritically as a exemplar of proper human rights values: “Singapore is an interesting example of Confucian communitarian ideology and practice. Certain Confucian ethics have been selectively used to establish a corruption-free, clean government as well as a clear society that protects the interests of the community.” Han, 133

Chang's article offers Confucianism as a corrective for the shortcomings of Western liberal rights theory. The vision of Confucianism to do this is noticeably idealized as it takes assertions for classical texts as a substitute for any lived reality.<sup>83</sup> The argument is one of a Confucian/liberal democratic utopia where people in both societies adopt the practices of the other, without any suggestion as to how it might be accomplished in practice.<sup>84</sup>

The clear intention of Inoue's article is to offer Asian values up to liberalism as a potential corrective. The challenges facing liberalism evidentially have the perfect corrective in 'Asian values' to fulfil its own promises regarding the inclusion of differing ideals of community or the individual.<sup>85</sup> It attempts to demonstrate that 'Asian Values' do not represent all the values of the peoples in Asia and that there are ways for broader Asian values to come together with liberalism.<sup>86</sup> As a result, Asian Values are seen as a potential compliment to liberalism and to be philosophically compatible.<sup>87</sup> This compatibility requires, however, a sufficiently broad definition of 'liberal democracy' that may not actually be present or in practice in the world.<sup>88</sup>

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<sup>83</sup> "This idea of love of all human beings was accepted by all Confucians as central to the concept of humanity" and underlined the inter-relationships between them. Chang, 118

<sup>84</sup> "[P]eople can first learn the Confucian norms and becomes compassionate and respectful toward one another and then be assured that they have certain 'rights' which they can, when necessary, assert and defend. People would then have the benefits of both approaches but the problems of neither." Chang, 134

<sup>85</sup> "Asian countries can communicate that the West can be no more complacent about its own record in developing liberal democracy than Asia can be contemptuous of this ideal. This should clear the way for a sincere critical dialogue and a sympathetic understanding between them concerning the follies, failures, difficulties, and aspirations that they share." Inoue, 59

<sup>86</sup> Inoue, 29

<sup>87</sup> "I think that their perspective is fundamentally compatible with the aforementioned core values of liberal democracy. They are endeavoring to tap Asian cultural resources to develop some distinctive variants of liberal democracy that could appeal to Asian people's sensitivities and imagination." Inoue, 28

<sup>88</sup> "There are points of contact between Asian voices and liberal democracy – not simply that there are some Asian voices sympathetic to liberal democracy, but that the latter can give us intellectual

Rosemont is stridently suspicious of Western liberal democracy.<sup>89</sup> The focus of his articles is not on China or inter-cultural dialogue in the manner that the introduction calls for, but instead a harsh, jarring condemnation of Western, specifically American, political hegemony.<sup>90</sup> Beyond this condemnation is the discussion of Confucianism that presents the tradition as a moderating and potentially corrective force against American hegemony.<sup>91</sup> An earlier article of his echoes this claim that Confucianism can solve the issue of an intractable deadlock in human rights theory, though it is left unsupported by a dearth of evidence or discussion, leaving this final assertion as simply uncritical advocacy of Confucianism over American individualism.<sup>92</sup>

Sumner B. Twiss's<sup>93</sup> and Wong's articles champion Confucian ethics and praxis as a corrective that will allow human rights to be properly implemented worldwide. Communitarianism is offered bluntly as a corrective for the failings of democracy and as the reason for why China is not democratic already because "adequate moral traditions need both community and rights".<sup>94</sup>

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and institutional resources that we need in order to accommodate the internal diversity and conflict among Asian voices and to resolve the problems raised by them." Inoue, 29

<sup>89</sup> It conflates the "presupposition that rights-based Western conceptual framework is universal, and therefore binding on all peoples" with the earlier belief "that the fundamental principles and beliefs of Christianity were universal, and, therefore, binding on all peoples." Indeed, "if, for Matteo Ricci and his colleagues, the rejection of the Passion of Christ was tantamount to turning the world over to the Devil, so today the rejection of the free, autonomous individual seems tantamount to turning the world over to repressive governments and other terrorist organizations." Rosemont, 2004. 53

<sup>90</sup> "Thus it seems imperative to challenge U.S. ideology at its moral, political, and metaphysical roots, both for the sake of its citizens and for the sake of the rest of the world, whose people share the burden of having to live with the untoward consequences of U.S. foreign policies defended by reference to that ideology." Rosemont, 2004. 68

<sup>91</sup> Ultimately the article concludes as such: "the wrongness lie in the belief that we – or any single culture – are already in full possession of those values, and there feel justified, backed by superior economic and military threats, in foisting those values on everyone else. Classical Confucianism proffers an alternative." Rosemont, 2004. 68

<sup>92</sup> The article's final plea, that "we should study Confucianism as a genuine alternative to modern Western theories of rights, rather than merely as a potentially early version of them", comes as a strictly political message rather than a philosophical one. Rosemont 1998, 64

<sup>93</sup> Twiss, Sumner B. "A Constructive Framework for Discussing Confucianism and Human Rights"

<sup>94</sup> Wong, David B., 41

### 2.2.3.i(c) $\alpha$ – Confucian Challenge to the Chinese Government

There are many articles here that attempt to deal directly with correcting the ills of the current Chinese state. Bai's title implies China is an unjust state; Confucius is offered explicitly as a corrective for Socrates<sup>95</sup> and the purpose of the comparison is to show Confucians/Chinese how they should not be like Socrates (even though that would be noble)<sup>96</sup> and instead leave an unjust state. The other purpose is to demonstrate to Confucian people their political duties in the face of an unjust state.<sup>97</sup>

Following on this, Ching offers a direct critique of the Chinese government and Chinese Marxist authoritarianism, and calls for a return to Confucian values. This rests on the claim that classical Confucianism supports the idea of human rights, but the arbitrary enforcement and modification of laws and expectations at the hands of the Chinese government – even contrary to their own constitution – makes such human rights politically impossible and elusive.<sup>98</sup> The content discusses the universality of human rights theory and counters claims of cultural imperialism.<sup>99</sup> The conclusion that this

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<sup>95</sup> Confucius is seen as offering a corrective for the problem of Socrates's refusal to leave Athens in spite of an unjust death sentence: "I will try to show how Confucius could solve these apparent contradictions." Bai, 1

<sup>96</sup> It is difficult to read a statement such as "one has to admit that, sometimes, the shining example of heroic death might serve a better political function than nurturing a local community, teaching and studying the classics" without wondering what political message a Chinese scholar based at Fudan University in Shanghai might be alluding to. Bai, 15

<sup>97</sup> "[T]o be human, we are fated to be faced with the questions of whether we have political duties and, if we do, how we should fulfil them. By understanding the answers by the masters of political philosophy, and by seeing the pros and cons in their answers, we may come to a deeper understanding of our own duties." Bai, 16

<sup>98</sup> "If obstacles remain to the observance of human rights in China, they are due not to any incompatibility of these concepts or practices with Confucian tradition, but to the misuse of political power in defense of entrenched repressive regimes." Ching, 79-80

<sup>99</sup> "universal and inalienable, to be enjoyed by equally by all who are human, without which they cannot live a life deemed to be fully 'human'" as it is considered in the West, or "mainly a Western Ideological export (to accompany trade delegations) bolstered by subtle claims of Western political and cultural superiority." Demonstrating universality is done by "seeking theoretical and historical justification within Chinese culture for a certain capacity to accept and adapt this concept" while countering the claims of ideological exportation (and thus invalidity) is done by discussing the



article presents is that it is not Chinese culture, Confucianism or some other essential part of East Asian culture that prevents human rights in China, it is singularly the Chinese government and the CCP – get rid of that and human rights may very well flow.

Likewise, Fan’s article calls for the return of the Confucian family<sup>100</sup> to combat political corruption, and bring in laws to prevent and “punish those who support a court case against a close family member”<sup>101</sup> as this will foster a return to traditional Confucian family values.

### 2.2.3.i(c)β – An Asian Fix for Confucian or East Asian Society

Other articles advocate positions about Confucianism that are more broadly about Confucian or East Asian society. Tan presents a Confucian apologetic, pitting a reinterpreted Confucianism as a corrective for the social ills of East Asian society.

Whatever authoritarianism present in Confucian texts and historical interpretations is excised to make a political point about how to restructure Confucian society<sup>102</sup> into a sort of Confucian democracy to avoid becoming Western.<sup>103</sup> Indeed, Confucian democracy that can be accomplished through reinterpreting the Confucian tradition.<sup>104</sup> The article asks whether “Confucianism and democracy can at least coexist in society” but not because of simple “ivory tower” concerns, but because such issues “have consequences

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Chinese constitution as well as pointing to the fact that the very Chinese that might claim such imperialism are also bedfellows with the exported philosophy of Marxism. Ching, 70

<sup>100</sup> “China will need to restore a notion of the family within a Confucian appreciation of virtue in order to combat corruption” because the corruption in contemporary China comes from that very “pernicious favoritism” that would be seen as morally corrupt by the universalist standard. Fan, 25

<sup>101</sup> Fan, 25

<sup>102</sup> Tan 2010a, 148

<sup>103</sup> The article is quick to conclude that “this does not mean turning Confucian societies into liberal democracies similar to the United States or other European democracies; the aim should be distinctively Confucian democracies.” Tan 2010a 148

<sup>104</sup> “[This article] then advocates a Confucian democracy by reconstructing, in the sense of a transformative understanding that renders past meanings relevant to the future, some key aspects of Confucianism.” Tan 2010b, 103

for the future of many societies in East Asia, and the relationship between East Asian societies and other societies in a globalizing era.”<sup>105</sup> The fact that analysis is conducted explicitly to go about “Rescuing Confucianism from authoritarian practice”<sup>106</sup> undermines the academic, objective credibility of this article. The article neglects historical practices and interpretations of the texts regarding obedience and submission to provide lessons for today.<sup>107</sup>

Jeremy T. Paltiel’s article<sup>108</sup> contends that China ought to engage Confucianism in a different way in order to bring about human rights. In doing so, it works from the presumption that human rights are normative and universal, and offers a new study of Confucianism as a path for Chinese intellectuals to create a form of human rights that might be palatable to Chinese sensibilities. The need to re-engage Confucianism is not framed out of deference or respect for the tradition or toward Chinese self-understanding and actualization, but as a pragmatic and necessary step toward limiting the influence of ‘incorrect’ social theories like Marxism.

Kim’s article makes prescriptive and advocative arguments for what contemporary East Asian people ought to be doing with their lives by advocating a proto-liberal Confucianism. By delving into an historical tradition without re-contextualizing it

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<sup>105</sup> Tan 2010b, 103

<sup>106</sup> This neglecting of actual historical practice is quite problematic but given that the article’s explicit aim is not to understand the past, but to “challenge this authoritarian interpretation and show why rejecting it for a more sympathetic reading of Confucius’ views on authority hold useful lessons for the modern age”, it can be seen that primary thrust is this article is advocative. Tan 2010a, 147

<sup>107</sup> “Authoritarian practice could be avoid by only, *inter alia*, de-centralizing power to ensure that no individual, no one group, has a monopoly of unlimited power; putting in place institutional constraints on political power; establishing official institutions of oversight as well as nurturing civil society organizations with the capacity to scrutinize and hold governments accountable for their actions; encouraging and enabling ordinary citizens to take an interest in politics, to be willing and able to hold their governments accountable and to remove bad governments without bloodshed and chaos. In other words, rescuing Confucianism from authoritarianism in practice requires democratization of Confucianism.” Tan 2010a, 140

<sup>108</sup> Paltiel, Jeremy T. “Confucianism Contested: Human Rights and the Chinese Tradition in Contemporary Chinese Political Discourse”

to the present it creates a disconnect that can be quite jarring.<sup>109</sup> The definition of liberalism and the philosophy of Confucius in this article are very narrowly conceived in order to facilitate that conclusion. Without recontextualizing Confucius after talking about his apparent interest in Machiavelli<sup>110</sup> and proto-liberalism seems presented only to demonstrate a fundamental philosophical compatibility.<sup>111</sup>

Finally, Amartya Sen discusses Asian values in an attempt to undermine the stated ‘Asian values’ promoted by some Asian states. Asian culture is heterogeneous, so the concept of ‘Asian Values’ is questionable as it relies on one particular interpretation of Asian traditions. Instead, the tradition ought to be read to allow support for rights and freedom because “the so-called Asian values that are invoked to justify authoritarianism are not especially Asian in any significant sense.”<sup>112</sup> Such a value judgment requires democracy and freedom to be normative. It states that although Asian political, social and economic priorities are different than Western ones,<sup>113</sup> and regional diversity is more

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<sup>109</sup> “East Asians must ask whether liberalism, even its best, is resonant with their moral sensibility and their ideal of the family in constructing their own civil society or civil societies in the unique post-Confucian social contexts”, though it is never made explicitly clear *why* they must. Kim, 399

<sup>110</sup> “Confucius was not so much interested in the state (and Machiavellism) as in a viable civil society. In this respect, Confucius is much closer to liberalism, *although he did not champion the values of freedom, equality, and right, nor was he preoccupied with non-intervention of government in private life*”, Kim, 391. Emphasis mine.

<sup>111</sup> The first issue is the presumption that Confucius could have been interested in Machiavellism two thousand years before Machiavelli was born. Secondly, and more importantly, is the claim that Confucius was close to liberalism because Locke was interested in civil society too, regardless of his lack of concern for almost every other classic liberal value. Liberalism in this article is defined by civility rather than ethics and morality and by that definition many otherwise illiberal thinkers may suddenly find themselves labelled liberals.

<sup>112</sup> Sen, 30

<sup>113</sup> Unlike in the earlier conception of rights as universal as put forward by the likes of Thomas Paine, “A new class of argument has emerged that denies the universal importance of these freedoms. The most prominent of these contentions is the claim that Asian values do not give freedom the same importance as it is accorded in the West. Given this difference in value systems, the argument runs, Asia must be faithful to its own political priorities.” Sen, 9

important than universalism in conceptualizing rights discourse,<sup>114</sup> authoritarianism is only justified by economic success<sup>115</sup> even though this linkage is often tenuous<sup>116</sup> as the actual economic data does not support either contention either way.<sup>117</sup> Indeed, “what is needed for generating faster economic growth is a friendlier economic climate, rather than a harsher political system.”<sup>118</sup> Beyond the economic argument, the article attempts to situate so-called ‘Asian values’ in actual Asia and finds it difficult at least.<sup>119</sup> As a result, then, it is incumbent on observers to remember that “[t]he people whose rights are being disputed are Asians ... [and] the rights of the Asians can scarcely be compromised on those grounds. The case for liberty and political rights turns ultimately on their basic importance and on their instrumental role.”<sup>120</sup>

#### 2.2.3.i(d) Self-Promotion

These articles have the more singular purpose of advocating for themselves in a manner a bit beyond the norm. Onuma Yasuaki’s<sup>121</sup> discussion provides a useful, if sometimes forceful, critique of the manner in which the discussion about human rights is conducted, especially by NGOs, along with critiquing the hubris of Western civilization

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<sup>114</sup> Asia, there is “the thesis that Asian values are less supportive of freedom and more concerned with order and discipline than are Western values” making civil-political freedoms less important. Sen, 10

<sup>115</sup> Sen, 10

<sup>116</sup> That South Korea or China have strong growth does not necessarily say anything about the link between authority and economic development any more than “we can draw the opposite conclusion on the basis of the fact that the fastest growing country in Africa ... is Botswana, which has been a oasis of democracy in that unhappy continent.” Sen, 10-11

<sup>117</sup> “The directional linkage seems to depend on many other circumstances” beyond the simple dichotomy of democracy/authoritarian. Sen, 11

<sup>118</sup> Sen, 12

<sup>119</sup> “There are no quintessential values that apply to this immensely large and heterogeneous population.” (Sen, 13) Heterogeneity, however, “does not, in any way, settle the issue of the presence or absence of a commitment to individual freedom and political liberty in Asian culture.” (Sen, 14)

<sup>120</sup> Sen, 30

<sup>121</sup> Onuma Yasuaki. “Toward an Intercivilizational Approach to Human Rights”

in its dealings with others.<sup>122</sup> Beyond such theoretical discussion there is less concrete discussion founded in providing realistic next steps.

Tu Weiming (1998) provides an indictment of the Western fixation of the individual versus the state. Its call for ecumenicism is buried within advocative and almost utopian language regarding the saving power of Confucian humanism. The arguments made to justify the Confucian humanism championed here rests on creative and entirely new interpretations of the tradition.

#### *2.2.4 – Logic*

##### *2.2.4.i – Logical Fallacies*

Digging deeply into any study will bring out some logical flaw or another. But while some logical fallacies such as appeals to authority and appeals to traditions are extremely common in any comparative discussion of ancient texts, it only becomes a real issue when, say, something is said to be desirable or right because Confucius says so. Further, academic articles are not exercises in pure, abstract philosophy and there are occasions when certain practices that might seem to be formal logical fallacies are actually strong rhetorical strategies. So, an appeal to tradition can be useful because, if it can be proven that a particular group believes a particular thing, it matters in terms of practical moral philosophy and cannot be summarily discounted. However, if this appeal is under- or unjustified, the article may instead actually suffer from an essentialist conceptualization of a tradition or culture. There will be two types of article discussed here: a) ones where problematic logical fallacies so profoundly undermined the strength of the argument as to minimize its impact, and b) ones that contain notable logical fallacies, but the argument still remains tenable.

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<sup>122</sup> Onuma, 113-115

#### 2.2.4.i(a) – *Profound Logical Fallacies*

The most problematic article under study in terms of logic is Ihara’s “Are Individual Rights Necessary?” Internally, the examples<sup>123</sup> are perfectly reasonable in their contexts, but the overall logic is so tortuous as to undermine the entire treatment. The entire article is built on a straw man and fails to account for or properly defend against the possibility that life is not a game, performance or series of rituals.<sup>124</sup> That a classical Confucian might see some correlation to these examples is the article’s entire rhetorical structure – examples are explicitly constructed to “prove” the argument. The jargon and grammar of specific activities are juxtaposed with complex moral philosophies, setting up false analogies. It then takes these constructed correlations as indicative of broader interpretations, but particular correlations do not say anything about the broader tradition leading to a fallacy of composition. The article attempts to account

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<sup>123</sup> To summarize, in basketball there are rules and procedures and if one gets, say, fouled they can argue for a penalty to be imposed. They would not, however, say that their ‘rights’ have been violated and demand justice. In ballet, everyone has a role to play and a responsibility to be prepared for that role. If they are not prepared or fail to perform properly, the other dancers cannot say that their rights have been violated by that failure to act appropriately. At a funeral, everyone is expected to act within certain parameters that are come to through social construction. If someone deviates, again, other members of the ceremony may be upset but they would not claim that their rights have been violated.

<sup>124</sup> Certainly there is a ‘teamwork’ aspect to Confucian social society, but basketball is not Confucianism and the awkwardness of a basketball player claiming his/her rights were ‘violated’ is semantic and not intrinsic. Basketball rules are not discussed that way, but that does not mean they can never be discussed that way – it would be awkward but not necessarily conceptually improper. Further, a basketball game is set to a limited time, with limited people and within established rules that everyone who participates has ostensibly agreed to. This cannot be said of people who are simple here, born into this world, without some normative ontological position about the nature and purpose of being first presumed. Finally, unlike in basketball, when one is fouled against in real life, they could pay with their lives, be imprisoned without reason, forced into re-education camps, have their children taken away, etc. The consequences for rules-violations in these example are not severe enough to be proffered as an appropriate analogue for the ‘rights’ debate.

for this,<sup>125</sup> but since the examples are singularly matched to particular aspects of an essentialized Confucian social ideal, the entire article is left begging the question.

Thomas Berry's article relies on a fallacy of composition. The treatment of Western philosophy in regards to individualism jumps from the Bible and early Christian thought, through William of Ockham, Hobbes and Burke and declares such an investigation of Western individualism "extensive"<sup>126</sup>. It also amounts to an appeal to authority: because some important figures in Western thought at some time said things that are individualistic, Western thought is fundamentally individualist.

Sangjin Han also bases his article on the logical fallacies of composition. The particular practices and philosophical orientation of the movement under discussion is seen as representative and somehow true of all of Confucianism. It also slips into the historian's fallacy: the movement is engaged in such a way that one could presume that the actions it undertook were done so solely to make an argument for communitarian human rights in East Asia at a later date. However, the argument is stated to be unconcerned with the being rigorous: "my argument is selective and normative. In other words, the paper is concerned more with communitarian than liberal approaches to human rights, but with specific focus and orientation."<sup>127</sup>

#### 2.2.4.i(b) – Notable Logical Fallacies

Kim Sungmoon's article hinges on a genetic fallacy as it presumes that striving to be Confucian *junzi* and Lockean ideal gentlemen remains the practical goal of modern Chinese and liberals. That East Asians live in a society that has in its origins Confucian

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<sup>125</sup> "[I]t is difficult to abstract serious examples from our own competitive and individualistic social framework"<sup>125</sup> because "many people are inclined to conceptualize all important human relationships in terms of rights." Ihara 2004, 20

<sup>126</sup> Berry, 41-43

<sup>127</sup> Han, 121

values, and Western democracies owe much to Lockean philosophy does not in itself mean that any particular practice they prescribed is performed in lived, actual reality today (never mind the question of if it ever was in the first place).

David B. Wong's argument is built on a fallacy of composition because regardless if a particular text within the Confucian tradition (in this case, the *Zidao*) might contain a 'germ' of correlation to 'rights', this does not necessarily mean anything for the rest of the Confucian tradition. Henry Rosemont Jr. (1998) is based fundamentally on a false dichotomy – a society can either be characterized and defined by the excesses of individualism, or it can adopt an idealized Confucianism and save itself. Finally, both Fred Dallmayr and Onuma Yasuaki make arguments to moderation. The presumption that a compromise position down the middle of each tradition or society is automatically the best approach is valorised but stronger evidence is required to prove it.

#### 2.2.5 – *What We Have Said*

In the four broad criteria, the most common issue seems to be one of rigour: Twenty-three of the twenty-eight articles contain some or all of the issues of context or scope. The most frequent of these is essentialism, but failing to properly situate the study in a contemporary context is also quite common. Next, twenty-two of the twenty-eight have issues of perspective, mainly in the arena of direct advocacy. While any article is fundamentally arguing for a particular point, in the case of these twenty-two, advocacy for some particular political or other goal is the primary or overarching purpose. Then, fourteen of the twenty-eight contain methodological issues. These often come together and take the form of unjustified and unsituated comparative philosophy or articles that perpetuate and rely on Orientalist conceptions of the "other". Finally, eight of the twenty-



eight contain logical fallacies problematic enough that they undermine the effectiveness of the arguments put forward. Only one of the twenty-eight articles contained no overt issue.

Fundamentally, then, it can be said that academic articles regarding Confucianism and human rights theory suffer from systematic flaws of rigour and methodology and are often more interested in advocating political positions than they are in sound, thoughtful analysis. Summarily it can be said that most writers on Confucianism have latched on, in one form or another, to the dichotomy of East Asia and/or Confucianism as fundamentally communitarian in contrast to a Western individualism. This informs the type of human rights theory that is brought into the discussion. Some go so far as to suppose an 'Asian Values' regime as a normative Asian standpoint and respond to that. As such, much of the research and arguments are based on essentialist presumptions that are not always properly investigated, problematized or qualified. Otherwise, there seems to be a tendency toward writing *against* or *in spite of* such a regime and as such the arguments are still preoccupied with it. It becomes through this a false dichotomy: in essence, these articles either become arms for those Asian Values proponents or they inadvertently normalize civil-political rights and liberal democracy *as* human rights generally without qualification or critique, as the apparent lesser of two evils. All is not lost, however. All but one of the articles provides some useful context or potentially profitable argument and observation, no matter how minor, that contribute to the discussion overall.

### Chapter 3 – The Good Things We Have Said

#### 3.1 –Useful Ideas and Observations

##### *3.1.1 – Overview*

This chapter will discuss the potentially useful ideas and observations that remain now that the comprehensive analysis has identified the issues with the discipline. This study is based primarily off of two basic assumptions: the intertwining of China and the West, and the ever-growing need to have meaningful communication. The former fact underlies the urgency of the latter, and Western scholars possess the skills and have a certain responsibility to facilitate that communication. While the previous section has shown the many problematic elements of Western approaches, essentially every voice in this conversation has something meaningful to contribute toward the conversation between China and the West.

The West needs to figure out new ways to understand China as it is, as the previous methods seem misguided or ineffectual. There is a broader, intercivilizational conversation that is currently underway about the future of Chinese society and it would be to everyone's benefit to have some fair minded Western voices at the table. This chapter will explore the ways in which current scholarship has attempted to improve on itself. First, it takes note of the helpful cautions and observations that Western scholars have suggested should be borne in mind before wading into the discussion. Then, new interpretive frameworks that need to or have been developed to situate the discussion will be addressed. Finally, new methodologies that have been developed to dig into Chinese thought and intentions will be unpacked. Through this, the fruits of Western discourse

on human rights and the Chinese Confucian intellectual tradition will be explored to point towards potential next steps in the on going conversation.

### *3.1.2 – Helpful Observations and Useful Intellectual Frameworks*

This section will outline two types of useful contributions the articles make to the overall conversation: i) those helpful reminders, observations and interpretations that call for scholars to pause and think about the interpretations they are giving, and ii) those useful intellectual framing devices that help keep the scholarship within boundaries that promote on going, meaningful discussion.

#### *3.1.2.i – Helpful Observations*

Many articles give reminders for how the discourse should proceed. Berry calls for both the West and China to look at each other more seriously in spite of their differences.<sup>128</sup> Henkin provides a useful guide to the basic development of human rights theory in comparison to general Confucian values<sup>129</sup> and Donnelley supplements this by giving a useful philosophical discussion of the difference between rights and duties.

Wejen Chang argues that, philosophically speaking, the intentions of human rights and Confucianism toward making a world based off of mutual respect are compatible.<sup>130</sup> This idea of conceptual compatibility in spite of practical differences is a potentially strong antidote for normative universalist claims regarding human rights.

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<sup>128</sup> The article discusses the different paths the West and China took to individualism and communitarianism respectively, and closes with an exhortation that “while these patterns of society-individual interactions will possibly remain identifying features of Chinese and Western traditions, these traditions may in the future find it helpful to take greater cognizance of each other.” Berry, 54  
<sup>129</sup> “Human rights are individual rights, dedicated to individual dignity. ... For Confucianism, the individual found dignity not in self-expression but in fulfilling the will of Heaven, not in individualism but in membership in family, clan, community; not in equality but in mutual respect within an hierarchical order”, Henkin, 311-12. This may have been the assertion in theory, but nothing is given in the way of practical or actual proof.

<sup>130</sup> “Thus although the Confucians did not talk about ‘human rights,’ they maintained that people should treat each other as fellow human beings and help one another to live a good, human way of live. This idea is clearly compatible with the concept of ‘human rights.’” Chang, 133

Ihara's overall purpose is to demonstrate that one need not have the language of rights to have a functional equivalent. This means that it is not proper to dismiss different social and moral conceptions of justice or what is right simply because it does not share Western language.<sup>131</sup>

Amartya Sen provides a useful summary and situation of the 'Asian values' argument that developed out of the 1993 World Conference on Human Rights in Vienna. Inoue Tatsuo follows on this, providing useful context for the 'Asian Values' argument promoted by many governments in East Asia. In doing so, it demonstrates how Asian regimes use the very East/West dichotomy they denounce in other contexts in order to support their claim of a sort of Asian uniqueness. This is done through a critical denunciation of the "abuses" of Western rights language in the formulation of 'Asian Values',<sup>132</sup> in order to philosophically justify a separate approach to rights.<sup>133</sup> While the fact that this occurs is not surprising, this article strongly critiques this conceptualization by making it out to be a conscious strategy designed to frustrate Western attempts at intervention.

Tan Sor-hoon (2010a) offers a potentially novel way to reinterpret the Classics and the figure of Confucius and then (2010b) gives the reminder that this is all part of a larger world discussion by drawing attention to the fact that there is a "wide and growing

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<sup>131</sup> While "it is not difficult to see why many claim that traditional moral systems such as Confucianism are impractical ... not being practical in the modern world is far from being morally unacceptable" and should not be dismissed out of hand as such. Ihara 2004, 28

<sup>132</sup> "The apologia of Asian values that looks to the Western vocabulary of political morality for 'trump' cards to play against the Western demand for human rights implementation and distorts their meaning in a manner convenient to its purposes." Inoue, 30

<sup>133</sup> Beyond repurposing the language of rights, those involved in promoting the Asian values discourse "assert Asian cultural uniqueness, based on the old dualism of Asia as the Orient and Euro-American countries as the Occident. This dualism enables Asian values advocates to make charges of cultural imperialism in response to Western human rights concerns." Inoue, 37

range of literature on the relationship between Confucianism and democracy”.<sup>134</sup> Ching goes further in situating the discussion by bringing it between China and democracy. It accomplishes this by demonstrating that it is through the logical correlation of ‘the people’ in the philosophical sense with the government that the government can act authoritatively without being inconsistent with the Chinese constitution or espoused values. It is important, therefore, to recognize that the conflation of the Chinese government with ‘the people’ means that the voice and will of the actual people – in the physical, individual form – may not actually be heard or presented in current discourse. This article also does well in discussing the role of law in Chinese history as a potential foundation for the implementation of rights.

Jeremy T. Paltiel continues this push by strongly situating his article in contemporary Chinese political thought and discourse. It offers a useful discussion of the philosophical and political developments that led from an Imperial system to a Marxist one.<sup>135</sup> It also discusses how the Confucian tradition alongside Western political concepts are being re-engaged in contemporary Chinese intellectual circles since the Cultural Revolution is long over and the dust from Tiananmen Square has settled.<sup>136</sup>

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<sup>134</sup> Tan 2010b, 103

<sup>135</sup> It treats the development of what is termed “antitraditional views” (Paltiel, 270) within China from the end of the Imperial age, through Maoism and the Cultural Revolution and into the late 90s. It characterizes the intellectual climate that has dominated China as one that “is at great pains to assert its authority domestically, and claim its sovereignty internationally.” (271) This is combined with belief in “‘modernization’ and progress” and leads to a political position where “official spokespersons for the Chinese government insist on the significance of the ‘right to development’ as a basic human right”.<sup>135</sup> This relativistic approach stems historically from the imperialist and orientalist incursions of Western powers stemming from the 19th century that has evolved from the “Self Strengthening Movement off the 1860s ... as a way of insulating ‘Chinese values’ from the reluctant necessity to adopt Western technology” into Deng Xiaoping’s more recent “formula of ‘socialism with Chinese characteristics’.” (272)

<sup>136</sup> Confucianism was long derided in China: “During the radical totalitarian iconoclasm of the Cultural Revolution there was direct, officially sanctioned, anti-traditionalism. This culminated in the vandalism of ‘smash the four olds’ (old habits, old thinking, old culture, old tradition) at the outset of the Cultural Revolution. Later on, in 1973-195, another campaign directly targeted Confucianism”

This willingness to engage is said to come from a desire to have actual freedom of expression and thought<sup>137</sup> and the desire for domestic authority and international legitimacy.<sup>138</sup> While it is unclear if China has abandoned its focus on legitimizing itself, in the decade since this article was composed there has been some definite steps toward economic liberalism in China and the rise (at least in intellectual circles) of the New-Confucianism movement in China and abroad, making these words somewhat prescient.

Elstein, though, gives caution about attempts to shoehorn democracy in to China or Confucianism because attempts to present classical Confucianism as conducive to democracy are problematic. The idea that Confucianism can produce democracy must not be done at the cost of co-opting an ancient tradition and unpacking a version of it that is not present today.<sup>139</sup> The article also attempts to subvert the issue of fishing for compatibility within ancient traditions, as though it is only through finding democracy in classical Confucianism that studying it is useful at all.<sup>140</sup> The article further calls for the recognition that there are no easy definitions of “Confucianism”, “democracy” or certainly “Confucian democracy”.<sup>141</sup> The article is thus arguing that it cannot see if

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and it was during this time that “positive expressions toward Confucianism or traditional culture became serious crimes” (Paltiel, 276).

<sup>137</sup> “So long as Chinese intellectuals and the Chinese generally have yet to acquire the legal guarantees and the political power consistent with their ideals of the human personality, they will continue to search for Western models.” Paltiel, 289

<sup>138</sup> This search is being conducted alongside the “desire to achieve authority domestically and legitimacy internationally” and as such, it is “only when the contest for authority and legitimacy has yielded to a search for meaning will greater effort possibly be put into restoring Confucianism as a living tradition from which to draw universal values.” Paltiel, 289

<sup>139</sup> “If any tradition is to remain relevant, it must apply to life as we live it today and not just life two thousand years ago.” Elstein, 1

<sup>140</sup> “Perhaps we need to put aside the question of whether Confucian thought is democratic before that contribution can be appreciated. Confucian thought surely need not fit modern conceptions of democracy to be relevant.” Elstein, 2

<sup>141</sup> Indeed, if one takes democracy for example, “some writers understood democracy as elected representative government, and some as certain rights or values that people should be committed to”, while “some reject liberalism ... while others explicitly reject voting based on universal suffrage”

democracy works with Confucianism if we cannot even come to an agreement on what democracy means. Or, for that matter, that Confucianism means. “If we stop trying to make Confucianism fit into preconceived categories, we might better see what it has to offer contemporary political debate.”<sup>142</sup>

Fan extends this conversation about the appropriateness of attaching Western concepts into Chinese traditions. At issue is presuming certain moral imperatives – universalism, individualism and so on – are useful when discussing Chinese traditions regarding familial bonds and obligations. Filial piety cannot just be presumed to be the morally questionable ‘favouritism’ that is rejected by universalists and could be useful for establishing human flourishing.<sup>143</sup> The point itself is instructive: what seems to be a universal norm cannot be utilized as a blanket justification for denouncing or demonizing the social constructs of the other. There may very well be internally consistent, *moral* rationales for the manner in which the system is oriented that will not be recognized on only a superficial viewing – and the mere fact that some cultural and social structures defy the supposed universalism should cause some questioning of whether those norms are in fact universal.

Han Sangjin’s chapter powerfully outlines the shortcomings of a human rights regime that is overtly defined by negative liberty as neglecting whole other aspects of human existence and being<sup>144</sup> as this makes civil-political rights the *only* rights worth

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– the result being that Democracy as a philosophy of government can be made to fit any form of government if it is stretched enough. Elstein, 2, 4

<sup>142</sup> Elsein, David. 15

<sup>143</sup> This approach “fails to appreciate that Confucianism acknowledges good reasons for rejecting an anonymous universalist account of morality as a system of independently valid norms” because “Confucians affirm a way of life as a whole, within which living up to the claims of virtue consanguinism is essential for human flourishing.” Fan, 22

<sup>144</sup> “Consider that, in a liberal discourse, the primary function of rights is to protect individuals against the community. Community is here presupposed to be antithetical to individual liberties.

defending because they are freedoms-from. This leaves out the possibility of defending a rights regime based off of positive liberty and artificially limits the conversation.<sup>145</sup>

Henry Rosemont Jr. (1998), by contrast, demonstrates the many ways that Confucian values can be used to supplement or at least critique Western presumptions. It questions the West's tendency to see Western philosophy as normative and as a result frames intellectual encounters with Asian philosophy with the intent of seeing if it can fit into Western ideas, a profoundly difficult task.<sup>146</sup> In addition to these philosophical differences are the political ones, namely the strong American commitment to civil-political rights based on a radical individualism. His later article (2004) gives a defence of comparative philosophy and its role in contributing to dialogue,<sup>147</sup> but only so long as these dialogues are genuine.<sup>148</sup> The article also stresses that any discussion of rights and democracy is necessarily a Western one and, in the case of discussions with 'the Orient', is an English one and this is not as strongly recognized as might be necessary to foster this dialogue. The analytic component of the article pits what is termed first-generation rights (civil-political) against second-generation rights (social-economic), one based on

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The question of how to nurture a good community is rarely seen as relevant to advancing the quality of individual rights." Han, 129

<sup>145</sup> As a result, "one risks deflecting attention away from the fact that these liberties are also means of 'enablement' or 'empowerment' for persons to function as flourishing members of a polity or community" not just 'freedom's from' "concerned with protecting the privacy of radically autonomous, isolated, self-interested, ahistorical and acultural selves, but rather they positively empower a person's involvement in a flourishing community and are thus compatible with, for example, communitarian traditions of moral and political thought." Han, 129

<sup>146</sup> "Even if it were possible, which I doubt, to reach consensus on a subtheory of economic rights for extant individual human beings within the context of civil and political rights, I doubt even more than the argument support that subtheory could be made to square with arguments for the rights of human groups, animals, trees, the natural environment, later generations, and so forth." Rosemont, 1998. 59

<sup>147</sup> "The ultimate goal of these dialogues being to increase the probability that the over six billion human citizens of the global community will live more peaceable with one another in the twenty-first century than they did in the twentieth." Rosemont, 2004. 49

<sup>148</sup> "It is essential that the dialogues be genuine dialogue, with give and take, and with all sides being willing to entertain seriously the possibility that their own moral and political theories might not capture the essence of what it is to be a human being." Rosemont, 2004. 49



individuality and one based on community. The discussion is a philosophical and conceptual one, cautioning against idealizing democracy<sup>149</sup> by pointing to its built-in logical problems,<sup>150</sup> and pointing to the false dichotomy in human rights discussion that presumes one to be either individual or social alone.<sup>151</sup>

### 3.1.2.ii – Useful Intellectual Frameworks

Many articles provide useful intellectual frameworks for engaging the debate. They help organize approaches and methods by demonstrating potential outcomes to look for while engaging the tradition. For instance, Fred Dallmayr calls for East and West to come together for intellectual exchange through mutual concession.<sup>152</sup> While his article only specifies what the East might concede, the call for give and take is something that might form the backbone of the discussion.

Charles Taylor calls for an unforced consensus between Eastern and Western traditions to produce human flourishing. It is based on the idea that Western traditions are just one (or some) among many and as a result there is a need for honest, open

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<sup>149</sup> Because democracy as a pure concept is an ideal that has not actually been realized anywhere “all ostensible democracies are flawed, and consequently must be evaluated along a continuum more or less” and, by extension, the different factors on the continuum might place the United States far to one side in terms of civil-political rights but far to the other in terms of social-economic. (Rosemont, 2004. 54)

<sup>150</sup> The basis for this is not necessarily a practical failure of democracy, but instead a logical one that is often neglected by theorists: “from the mere premise of being an autonomous individual, no conclusion can follow that I have a right to employment. ... Put another way, jobs, adequate housing, schools, health care, and so on do not fall from the sky. They are human creations, and no one has been able to show how I can demand that other human beings create these goods for me without their surrendering some significant portion of their first generation rights”. Rosemont, 2004. 58

<sup>151</sup> So, “if we believe we are fundamentally first and foremost autonomous individuals, then our basic moral obligation in the political realm will be to (passively) respect the first-generation rights of all others. If we are first and foremost comembers of a community, on the other hand, our moral obligations to (actively) respect the second-generation rights of all others will be binding – as it would be for Confucians.” Rosemont, 2004. 59

<sup>152</sup> “To facilitate this exchange, some concessions need to be made on both sides. On the side of Asian or Confucian thought, a helpful concession would be the modification of the traditional five relationships ... through the additional of a further, more impersonal relation: that between citizen and citizen in a shared public sphere and under a common rule of law.” Dallmayr, 207

discourse if there is to be anything approaching consensus. Such a consensus, he contends, must necessarily be unforced and arrived at by mutual agreement and through mutual respect. Logically, of course, this sets up the opposite form of consensus – forced – and this in an altogether unhelpful strategy.

Chad Hansen calls for a respectful engagement of others' ethics that does not devolve into comparativism and essentialism<sup>153</sup> and is sure to look at the actual lived tradition as it stands in the present. The main concern in the comparativist attempts at adjudication is that, often, they are coming from backgrounds as professional Western ethicists and may have particular ideas of what constitutes 'morality' and 'ethics' that might not technically fit, say, Confucianism.<sup>154</sup> Attempts to engage in Asian traditions, by more often looking to historical traditions and texts, are failing to actually engage with any lived form of Asian morality.<sup>155</sup> Indeed, there could be differences wide enough to presume no systematic morality exists in Asia at all.<sup>156</sup> In effect, comparative ethicists and philosophers often fail to look at the actual intellectual traditions found in Asia to understand them on their own terms and these easily leads to value judgements about the culture in general. A better approach would be to first see if the community is moral

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<sup>153</sup> "Comparativists may inform traditions about each other and thus stimulate moral discourse but may not otherwise 'guide' or adjudicate the shape of the final synthesis." Hansen, 72

<sup>154</sup> Indeed, "it should count against a metaethical theory that its conception of morality entails that only Western Europe has morality", Hansen, 74. Comparative philosophy is such a particular form of intellectual inquiry and engaging with Asian traditions often fails to recognize that "the moral communities that make up Asia lack the kind of philosophical coherence required for comparative philosophy to treat them as one." Hansen, 83.

<sup>155</sup> These "ancient conceptual issues ... are simply irrelevant, historical curiosities. Given the contemporary complexity of the Chinese moral community, these anachronistic considerations are distractions from the real issue." Hansen, 86-87

<sup>156</sup> This issue is not one of degrees as the differences could be in the fundamental underlying structures of the systems altogether: "some differences between two cultures' beliefs could rule out comparative morality" or "lead us to conclude that one culture has no concept of morality at all. We should not say they have a different morality. They have a difference kind of normative structure". A community could conceivably survive without a defined, systematic metaethics and morality, but "might survive with reasonable harmony with a social *dao* combining etiquette, law, and positive or conventional mores." Hansen, 74

within itself and on its own terms<sup>157</sup> while remembering not to essentialize that community.<sup>158</sup> There are always on going discussions about what is moral or right and these should also be kept in mind, as, indeed “[t]here were Chinese on both ends of the guns in Tiananmen Square.”<sup>159</sup> These are the sorts of discussions that need to take place if actual informed, critical and respectful cross-cultural discussion is to occur.

Sumner Twiss calls for “pragmatic moral grounds” for rights that stems from the caution that alternative paths to human rights, such as ones not based on economic and social liberalism as a first step, should not be ignored on principle. A “pragmatic moral grounds” for rights would allow a tradition to justify its own involvement in human rights in a way that may be a good strategy for overcoming accusations of paternalism and colonialism,<sup>160</sup> whilst reflecting the pragmatic nature in which rights were first formulated.<sup>161</sup> Deemphasizing a particular order or chronology of rights implementation

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<sup>157</sup> Indeed “The Western advocate of individual liberty is not irrational in continuing to adopt the result of her ‘reflective moral equilibrium’ merely on being told that Confucian moral sensibilities are different. A Chinese conservative, on similar grounds, may correctly dismiss the appeal to ‘international moral standards’ in favor of the sincere application of his existing norms of reason. Both continue to address the question of what is objectively right for everyone and both approach it with the best information and norms of reasoning available.” Hansen, 79

<sup>158</sup> “Direct appeals to allegedly dominant Chinese attitudes have no normative relevance. Rather than seeking in Chinese thought for sort-cut answers to contemporary Western controversies, comparativists should focus on tracing the background assumptions and higher norms of warrant that underlie all sides of Chinese ethical debates.” Hansen, 94

<sup>159</sup> Hansen, 89

<sup>160</sup> Away from cultural imperialism, it can be asserted that “no one cultural tradition is the sole source of human rights concerns” then different iterations of these concerns describe a rights framework characterized by “the expression of a set of important overlapping moral expectations to which different cultures hold themselves and others accountable.” Twiss, 31. This means, too, that even within the apparently monolithic artifice of Western civil-political rights there is the potential for internally different justifications beyond simply ‘negative liberty’ and the ‘freedoms from’. Instead, “these liberties are also understood as ‘enablers’ or ‘empowerments’ for persons to function as flourishing members of a polity or community where they try to convince others of their ideas about the best way to live together in their society.” Twiss, 33

<sup>161</sup> This would be a more pragmatic solution and as such, according to this article, would follow in the tradition of how documents like the Universal Declaration of Human Rights was drafted: it “was reached through a pragmatic process of negotiation between representatives of different nations and cultural traditions. While it may be true that Western representatives had the upper hand in this process, the simple fact remains that pragmatic negotiation between differing views about the

may be one way to bring reluctant parties on board in their own way and for their own purposes.<sup>162</sup>

Tu Weiming (1998) calls for an ecumenical approach to the different conceptions of morality and human rights. Such an approach is necessary because of the West's colonial history in China that leaves them reluctant to embrace Western liberalism regardless of how well it could be used to create the conditions for the flourishing it desires.<sup>163</sup> Ecumenicism, it would seem, could allow all sides to save face and work out some sort of compromise position.<sup>164</sup> Given the West's dominance of the discourse,<sup>165</sup> it will need to adopt some humility and self-criticism before it can go around telling people what to do and, more importantly, must do so if there is to be any productive discussion

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subject-matter was the process of choice, not theorizing about matters of moral knowledge, political philosophy, or even jurisprudence." Twiss, 30

<sup>162</sup> Deemphasising the primacy of rights like liberty versus the state "while such a contention may be applicable in some cases, it is not true for all, and it may not be necessarily true for any, pending clarification of the social ideals of the traditions in question." Twiss, 34. The justification of human rights, then, is necessarily a two-level one that looks at philosophical as well as pragmatic concerns regarding what is seen as right by different communities to forge some mutually agreeable consensus.

<sup>163</sup> As strong as that desire may be, it is superseded by the desire to maintain sovereignty and control over its culture. This cannot be done, it would seem, while openly embracing the philosophy of those who in the past oppressed and in the more recent past roundly and constantly condemned and vilified them. Moreover, it cannot be done if the potentially positive benefits are couched in the extreme individualism with all the potentially devastating social consequences that come with it.

<sup>164</sup> The West, for its part, would necessarily need to compromise before it enters into such discussion, for "our willingness to learn from significantly different conceptualizations of the rights discourse and the respond openly and responsibly to criticisms of deficiency in our own human rights records must serve as a precondition for our determination to share our experiences with the rest of the world .... An inquiry on global ethic, with this attitude in mind, is relevant to and crucial for human rights discourse on the international scene toward the next century." Tu, 1998. 305

<sup>165</sup> The discussion on rights is dominated with "the relationship between the individual and the state" and the result of this is that "all other forms of human-relatedness, including the basic dyadic relationships of the family, are relegated to the background." Tu 1998, 300. This is, of course, in contradistinction to those discussions that value the family and other social relationships and has led to a certain moral failure in the West: "the incongruity between what we do as responsible and responsive member of the family and as a rights-bearing and self-interested political animals" leads to "our willingness to tolerate preposterous inequality, greedy self-interest, and aggressive egoism [, and this has] greatly poisoned the good well of progress, reason and individualism." Tu, 1998. 301

going forward. The West is pitted against a Confucian humanism<sup>166</sup> that provides a counter narrative and potentially complementary solution.

Joseph Chan also presents a consensus-based, “ecumenical” approach to human rights that “encourages different cultures to justify human rights in their own terms and perspectives, in that hope that an ‘overlapping consensus’ on the norms of human rights may emerge from self-searching exercises as well as common dialogue.”<sup>167</sup> An ecumenical approach is deemed to be more fruitful in promoting human rights, though it is cautioned that by looking too relativistically and deeply into many traditions, the differences rather than the similarities may become more apparent. In order for a discussion between Confucianism and human rights theory to occur in any meaningful way, it must be assessed “to what extent does Confucian thought constitute a lively cultural tradition in China today” and a call is made to distinguish between a philosophical Confucian system and a cultural one that is embodied by Chinese people.<sup>168</sup> While at the time of the article Confucianism was not yet in that position, since communism had been discredited globally and the Chinese only paid “lip service” to it, “China is in a moral and ideological crisis, and Confucianism as a cultural perspective seems most natural to fill the vacuum.”<sup>169</sup> This, combined with a rising sense of Chinese nationalism, means that an emerging, confident China may prefer an indigenous tradition to a foreign one as it renegotiates its philosophical outlook and ideals. That much of this process has indeed happened in the decade since this article was written, time has proven

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<sup>166</sup> Confucian Humanism is based on a “perception of human self-development, based upon the dignity of the person, in terms of a series of concentric circles: self, family, community, society, nation, world, and cosmos.” Tu, 1998. 302

<sup>167</sup> Chan, 212

<sup>168</sup> Chan, 213

<sup>169</sup> Chan, 213

this early interest profitable. The article offers a helpful summary of a potential Confucian perspective on human rights that is broad enough to account for general Confucian trends without being so broad as to transform Confucianism into Western liberal human rights.<sup>170</sup>

Onuma Yasuaki's article calls for an "intercivilizational" approach to human rights as the means to produce human flourishing<sup>171</sup> based on meaningful dialogue that comes about after the various 'civilizations' involved recognize their fallibility and limits. For this article, human rights are a means, not an end. Western nations often fail to hold a mirror up to themselves when discussing human rights and dismiss criticisms when levelled against them.<sup>172</sup> This is particularly true among the general citizens of the West.<sup>173</sup> So, even though human rights are the best means and ought to be adopted, they

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<sup>170</sup> "1. There are rights that protect important interests in *ren* or humanity. 2. Such protections should be seen as a fallback apparatus: Rights are important when virtues fail to obtain or personal relationships break down. 3. Human rights should not be inflated, that is, they should not be considered constitutive of valuable personal relationships or necessary for the display of virtue and they should not be intended to offer protection for debased acts as well as good ones. 4. Rights instruments should be the last means to resolve conflict." Chan, 233-234

<sup>171</sup> The article effectively summarizes its entire argument in one statement: "it is important to emphasize that the intercivilizational approach characterizes human rights as a means – an extremely important means – of realizing the spiritual and material well-being of humanity. It does not regard them as the end. Accordingly, it is critical of the absolutism or fetishism of human rights sometimes seen in human rights activists, and even in academics. Human rights should only be appreciated as long as their merits outweigh their demerits. As things stand now, there is no better alternative for promoting the spiritual and material well-being of humanity, which is why I think human rights should be universally adopted. The usefulness and flaws of human rights must be constantly scrutinized, however, and their role must be complemented and substituted whenever necessary." Onuma, 123

<sup>172</sup> A major criticism given by East Asians is "that contemporary Western societies, especially the United States, are suffering from various social diseases such as crime, drugs, and the degradation of family and community ethics. They argue that these diseases may well be a consequence of excessive legalism and individual-centrism. These are major components of the idea of human rights." Onuma, 107

<sup>173</sup> While there have been some attempts at higher conceptual levels to accept this criticism, "it is still strong among the masses, and even among intellectuals in non-Western societies, because of a persistent image of 'the undeveloped, rights-oriented and individualist West' versus 'the underdeveloped, non-legalistic and collectivist non-West.'" Onuma, 107

should not be adopted uncritically and there should always be an eye toward revision and reinvention.

David Wong attempts to make a call for a rights regime that allows for difference in conceptions of the common good that hybridizes pluralistic and universalistic philosophical conceptions.<sup>174</sup> Rights are seen as either broadly liberal-individual or communitarian, but in spite of their potentially different moral claims, human nature dictates that they are both fundamentally concerned with the common good.<sup>175</sup> Both sides “need a conception of community that is not based on an unattainable ideal of a shared vision of the common good” but rather one that “must accept significant diversity and disagreement and must maintain community in spite of the disagreement”<sup>176</sup>, or, seemingly, pluralistic democracy if only as a mechanism for conflict resolution.<sup>177</sup>

### *3.1.3 – Novel Methodologies*

A few of the articles create or import novel methodologies to approach the topic of human rights and the Chinese intellectual tradition. Unlike the frameworks presented in the previous section that guide the conversation, these give particular strategies for

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<sup>174</sup> “I will argue for a pluralism that accepts both rights-centered and Confucian moralities, and in that respect I am with the contextualists and postmodernists. On the other hand, I also will argue that there are universal constraints on morality rooted in the human condition and human nature, and that these constraints push Confucianism and rights-centered moralities closer together through the recognition of the interdependence of rights and community.” Wong, David B., 32

<sup>175</sup> The claim, then, is that “human nature and the human condition place common constraints on what could count as an adequate morality” and this is what provides for the fact that regardless of the “significant moral differences”, “not only do the two types of morality endorse democratic rights for different reasons, the scope of rights endorsed and their relative immunity to beings overridden by other considerations may differ significantly.” Wong, David B., 40. In order to accomplish this, the article delineates between the different grounds for moralities based on either ‘rights-centered’ or ‘community-centered’ foundations. The former provide rights that “constitute constraints or limits on the extent that individual personal interests may be sacrificed for the sake of public or collective goods” (Wong, David B., 33) while the latter provides for rights that are “conceived as enabling persons to make justified claims against others whose duty it is to fulfil them.” Wong, David B., 34

<sup>176</sup> Wong, David B., 45

<sup>177</sup> The article cautions that “if democratic virtues are needed here, it is not so much the ability to insist on one’s rights, but the creative ability to negotiate, to give and to take, to create solutions that fully satisfy neither side in a conflict but that allow both sides to ‘save face’.” Wong, David B., 45

how one would actually perform a study and are therefore particularly important to highlight.

Bai Tongdong, when discussing something else altogether, borrows the methodology of “abstract translation” from the study of physics. While differences in traditions are acknowledged, “it does not mean that we cannot use the reasoning on the one side to shed light on the reasoning on the other”.<sup>178</sup> Here “we can de-contextualize arguments from the one side, and re-contextualize them on the other, making these arguments internal to the latter philosophy.”<sup>179</sup> This practice is common in physics when abstract concepts are borrowed and integrated into other fields. “Of course, the abstract translation in philosophy is less rigorous than in physics, and whether it works depends on whether it works.”<sup>180</sup> This is potentially helpful because it means that one can take the constituent philosophical concepts of one tradition and compare them to the other removed from the cultural baggage. This is close to comparative philosophy, excepting that it is performed by an intellectual tradition for itself – Western theorists can take concepts from Asian thought and graft it into Western rhetoric and analysis. Bai himself demonstrates the major caution to his approach – it only works when it works – and as such it is not necessarily a broad, meaningful methodological tool for all those in the field, but it may offer a useful method for those engaging in work that is fundamentally comparative.

Charles Taylor’s discussion of a Rawlsian unforced consensus to promote human flourishing based on human dignity presents a methodology that seeks to separate the ‘what’ from the ‘why’ and bypass philosophical, legal or other practical and potentially

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<sup>178</sup> Bai, 9

<sup>179</sup> Bai, 10

<sup>180</sup> Bai,10



impractical differences that stand as a current logjam, blocking in the way of human rights. ‘Why’ one culture or another wants to support human flourishing, in whatever capacity they feel that to mean, is more important than the ‘what’ issue of hammering out practical philosophically congenial solutions beforehand. That is to say that if we first can demonstrate, by looking at a culture or tradition as it is lived, that people share similar values about human dignity or human flourishing, we have managed to cover most of the ground to bringing divergent worldviews together. By focusing on this unforced consensus, the approach helps undermine difficult to counter, unified objections<sup>181</sup> to human rights that are based on systematic liberal philosophies that are presented as normative.<sup>182</sup> This minimizes initial conflict and allows the discussion to be abstracted so that brinkmanship is kept to a minimum while practical issues can be dealt with once the unforced consensus, in whatever form it takes,<sup>183</sup> is reached.<sup>184</sup> What remains unclear is *why* some culture would adapt to certain “norms” if they did not already believe in them and how that persuasion will take place without force of some kind. The article does not account for this specific criticism, but it does recognize that “some attempt at deeper understanding must follow or the gains in agreement will remain fragile” and this “continued coexistence in a broad consensus that continually generates

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<sup>181</sup> “When people protest against the Western rights model, they seem to have this whole package in their sights” it is a package made up of “a set of legal forms by which immunities and liberties are inscribed as rights” and “a philosophy of the person and society, attributing great importance to the individual and making significant matters turn on his or her power of consent.” Taylor, 128

<sup>182</sup> This helps “show the potential advantage of distinguishing the elements and loosening the connection between a legal culture of rights enforcement and the philosophical conceptions of human life that originally nourished it.” Taylor, 129

<sup>183</sup> The consensus could take several forms: “one model for what the path to world consensus might look like ... a convergence on certain norms from out of very different philosophical and spiritual backgrounds. The consensus at first doesn’t need to be based on any deep mutual understanding of these respective backgrounds. Each may seem strange to the other, even though both recognize and value the practical agreement attained.” Taylor, 137

<sup>184</sup> “The goal will be to try to imagine ways in which the conflict might be resolved and the essential norms involved in human rights claim preserved, and this through some modification either of legal forms or of philosophy.” Taylor, 129

particular disagreements, which have in turn to be negotiated to renewed consensus, is impossible without mutual respect.”<sup>185</sup>

Wu Kuang-ming<sup>186</sup> proposes a novel interpretive and comparative strategy that has agents on both sides of a debate go “through” the other side while maintaining their own integrity. This requires that one side not simply study the other as an object, but study it on its own terms and in its own cultural language and context, before emerging informed and potentially changed.<sup>187</sup> The argument is that simple and actually ends up subverting essentialism and relativism in combination with globalization. Because the suggestion is novel and potentially quite useful, and owing to its unconventional presentation, a more detailed discussion of the argument and its salient points will be presented.

The method is argued though a process that moves from “way one”, wherein “individuality enables intercultural to operate” and leads to “way two” where “intercultural consolidates individuality.”<sup>188</sup> The modern world is defined by globalization. Globalization is not, though, the homogenizing of peoples,<sup>189</sup> but the bringing of “others” together<sup>190</sup> to enrich each other, change each other, but ultimately remain “other”.<sup>191</sup> The

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<sup>185</sup> Taylor, 137, 138

<sup>186</sup> Wu Kuang-ming. “Let Chinese Thinking be Chinese, not Western’: Sine Que Non to Globalization”

<sup>187</sup> Wu, 193

<sup>188</sup> Wu, 194

<sup>189</sup> To the contention that globalization means that individuality melts away and that insisting on individuality belongs to another time, “this objection forgets that globalization is not a melting pot but rather consists of interactions among cultures” so that, in essence, “globalization *is* participation of distinct particular localities, without which globalization vanishes.” Wu, 194

<sup>190</sup> ‘Othering’ is actually the only real method in which globalization can take place, for “Otherness confirms the individuality of the self in interaction, and individuality as otherness enables intercultural globalization.” Wu, 194. Basically without a sense of individual self (be it discretely one person or culturally), there can be no actual intercultural dialogue and the presupposition of a ‘self’ creates an ‘other’ in the eyes of other ‘selves’.

<sup>191</sup> Indeed, “Globalization needs *each* culture to be itself to inter-enrich, never dominated by any culture, Chinese or Western; global inter-culture *requires* that Chinese thinking be Chinese, not Western, and that Western thinking be Western, not Chinese.”<sup>191</sup> While this is tautological, such

first step in this process is justifying “*why* letting Chinese thinking be Chinese is required of globalization.”<sup>192</sup> For this, the article brings in an abstract “Mrs. Tu” – “a Taiwanese, saying ‘makarano’ for MacDonalds, asking ‘You go? I no go,’ and saying, ‘I hear no’ to mean ‘I don’t understand’” – she is one who “talks Taiwanese in English and cannot claim to be speaking in English, though she can be exotically parsed by English-speakers.”<sup>193</sup> Western Sinologists are all Mrs. Tu,<sup>194</sup> parsing her text into English and are therefore “busy doing Western philosophy with Chinese data”,<sup>195</sup> not letting Chinese thought be Chinese in its own syntax, logical structures and so on. When Chinese scholars attempt to discuss Chinese thinking in Western philosophical terms it is welcomed by Sinologists, but by such mediation that “the West is no longer invited to Chinese thinking as *Chinese*.”<sup>196</sup> China has no Western philosophy, it has Chinese philosophy.<sup>197</sup> let it be Chinese, not Western.

Without understanding this issue of parsing, we run into many practical obstacles where the very meanings of apparently universal concepts are called into question.<sup>198</sup> To overcome this, a serious engagement of what cultures think is necessary, for just as “[m]eaning depends on culture, so *appreciation* of individual cultures is absolute sine qua

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tautology is necessary as “the bone structure of thinking, which will restore China and then the West to intercultural and globalization.” Wu, 194

<sup>192</sup> Wu, 194

<sup>193</sup> Wu, 196

<sup>194</sup> Sinologists “select and stuff China’s ‘random bits’ into Western syntax-frame, logical, epistemological, and cosmological, extrapolating from those bits to answer Western questions of truth, ethics, political metaphysics, etc.” Wu, 196

<sup>195</sup> Wu, 196

<sup>196</sup> Wu, 197

<sup>197</sup> Wu, 197

<sup>198</sup> “The so-called ‘international court’ dispensing world justice and human rights is a senseless mockery unless radical differences in the very *meanings* of justice and individual rights are appreciated. Unless intercultural adjustment is painstakingly undergone, accusing people of other cultures of injustice, violation of individual dignity, crime against humanity, etc., invites only disbelief. We must listen even to Hitler to avoid perpetuating his cultural tyranny.” Wu, 198

non to meaningful globalization.”<sup>199</sup> Rather than attempting to blanket all cultures and meanings under ‘monolithic universals’, “‘Otherness’ and ‘difference’ must be mobilized as a critical dynamo to individuality-in-mutuality if we are to push cultural togetherness forward. Only sensitized friendship is equal to this difficult task of togetherness, intercultural, and intersubjective.”<sup>200</sup>

After this attempt to justify the necessity of such an orientation, the discussion moves to that of methodology and how it might be attained. So Chinese thinking must be Chinese, in Chinese, not English. This means that English will have to be more sensitive to the Chinese idiom in its expression<sup>201</sup> and go through Chinese utilizing Western rigour that does not fall under the enslavement of Western logicism.<sup>202</sup> Sinology tends to get stuck at logicism in part of the process of studying China. This comes as part of a process that starts in each culture. First, (step 1/1 and 1/2) China studies itself and the West studies itself. Then, the West attempts to study China using Western conceptions and China does likewise (2/1 and 2/2). The call in this article is for the movement to and through steps 3/1 into 3/2. This is where “we first, 3/1, pass *through* the fire of the West’s logicism, to use it to clearly understand and express Chinese sense-milieu, and then, 3/2, pass through China to perceptively understand and express the West’s sense-Gestalt and genius.”<sup>203</sup> The article stresses that this is to be seen as a movement from 3/1 to 3/2 and not to get stuck at any point: “*Now* we focus on 3/1 so as *later* to enter 3/2, or

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<sup>199</sup> Wu, 198

<sup>200</sup> Wu, 200

<sup>201</sup> “We must discern China’s thinking-pattern as distinct from the West’s, and the perceptive discernment can be cultivated by going through the fire of the West’s logical clarity but, mind you, by going *through* it, not staying in it. We must sensitively empathise with cultural *differences*, and use Western clarity to discern and express them.” Wu, 200

<sup>202</sup> “*Staying* in Western logicism traps us in the West’s cultural universalism; going *through* logicism enables us clearly to discern the *distinct* China and then perceive the West.” Wu, 200

<sup>203</sup> Wu, 201

3/2 follows 3/1.”<sup>204</sup> The point, then, is to understand China as it is Chinese by using Western logic *and then* to use this understanding of China to help understand the West in Chinese terms: each side understands the other in its own terms *and* in the terms of the other.

A glimpse of what might be seen when this is done is provided: Chinese thought is aphoristic not didactic<sup>205</sup>; stressing platitudes and jolting one into contemplation of the “wonders of common life”; provocative in content; communicated through contradiction; affirm through denial; remains elusively alive; and argues through story using all these strategies.<sup>206</sup> This form of non-arguing argumentation and roundabout style of discussion is certainly not the method favoured in Western analytic philosophy and is therefore not always recognized by Sinologists. If it is recognized, Western fixation on its own rhetorical strategies can hamper understanding and decide Chinese thought to be infantile in comparison. But, “infantile is not puerile”<sup>207</sup> – there may be much to uncover by looking at Chinese thought in its own language and context. In order to actually progress in a world defined by inter-cultural inter-penetrating factors, and in order to forge some meaningful lines of communication, perhaps Western academics need to adopt this strategy.<sup>208</sup>

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<sup>204</sup> Wu, 201

<sup>205</sup> Wu, 202

<sup>206</sup> Wu, 203

<sup>207</sup> Wu, 207

<sup>208</sup> “The West today must thus extend one more step toward intercultural globalization. The time is overdue for us all to apply the West’s transversal rationality to cultural *interversality* of Western rationality with Chinese reason. East must be East, and West, West, before the twain can – must – meet in bosom-friendship of global inter-versality.” Wu, 206

### 3.2 – The Good Things We Have Said

The articles analysed in this study contain many flaws, but also offer helpful observation, useful intellectual frameworks, and some novel methodologies. This demonstrates that the discipline is vibrant and has something useful to offer. The various observations and cautions about the history, interpretation and current orientation of Confucianism in China and East Asia set the scholarship on stable path. There is an understanding of the topic and a willingness and ability to engage it meaningfully.

The suggestions of what to keep in mind when reading Confucian texts and engaging in an intercivilizational conversation with China remind scholars to treat their traditions respectfully and provide goals for future scholarship. Seeking mutual concession and calling for respectful engagement shows a level of humility that many of the other voices in this area lack. Finding novel, pragmatic solutions to previously intractable differences takes scholarship away from high-minded normative rhetoric. Focusing on the presumed goal of all people – human flourishing – but allowing for different approaches and interpretations to get there recognizes the political reality of multiple, different civilizations and ensures everyone has a seat at the table. Both these and the observations above have been integrated into this study and form some of its rhetorical underpinnings.

Finally, the new methodologies presented to overcome the current roadblocks offer a potentially fruitful way forward in the discussion between Western human rights theory and the Chinese intellectual tradition. Charles Taylor's method of connecting the traditions around topics where they agree first and working in the order from easiest to hardest nimbly sidesteps current problems. If the focus can be on 'why' now, we can

deal with ‘what’ once there is mutual commitment to the basic principles at issue. Bai Tongdong’s *Abstract Translation* allows scholars to internalize methodologies and concepts that are outside of the intellectual tradition they are based in. This positions the new generation that adopts this approach to be able to navigate our globalized, interconnected world. Indeed this is what Wu Kuang-ming’s methodology of reading ‘through’ each other is trying to do: recognize the fluid, fractured nature of contemporary society and allow scholars to be able to engage those other to them while also remaining themselves.

If scholars keep these admonitions in mind and seriously attempt to engage with Chinese civilization and its intellectual traditions using methods that recognize the messy complexity of our intellectual and cultural world, we may be one step closer to opening up and maintaining effective lines of communication. The following section will attempt to put this new methodology into practice by bringing representatives from either side of the divide into conversation with each other and as themselves.

## Chapter 4: New Conversations

### 4.1 – Preparing to Speak

#### *4.1.1 – Setting the Stage*

It has been shown throughout this study that there are many problematic approaches, perspectives and goals brought into the conversation between Western human rights theory and the Chinese Confucian intellectual tradition by academics. It has also been shown that in spite of these issues, academics remain a fruitful source of interpretive strategies and methodologies that might help reframe the discourse into something more helpful and open.

In the previous chapter, some more productive goals were identified to help frame this discussion. Abandoning an imperialist, Western-normative approach to rights and China, and without trying explicitly to advocate for China to adopt this or that conception of rights, this section will operate under the intention of promoting mutual understanding and meaningful dialogue in the interests of human flourishing. Onuma's "intercivilizational" approach of fostering mutual understanding to plant the seeds for human flourishing is a good framework to start with. Human rights as such and as located in the Western liberal tradition need not be seen as the end in itself if instead the goal is moved to the promotion of human flourishing. Chan's ecumenical approach requires cultures to justify for themselves whether or not rights are the best vehicle for flourishing. This approach can be combined with Taylor's "unforced consensus" to produce human flourishing, while recalling that Twiss' "pragmatic moral grounds" demonstrated that rights as such are not the only way to create a just society. This new orientation is much more sensitive to the lived reality of the various civilizations on earth.



#### 4.1.2 – *Finding Our Voice*

Navigating the intersection between both traditions will be tricky. First, it will require a sensitive understanding of the different traditions and peoples involved, their histories, goals and motivations. Second, to foster a deeper understanding of these traditions, new methodologies will be required for engaging the subject. These two basic needs situate academics to take the lead in this new conversation. The first need requires academics to recommit to occupying a normatively disinterested position in the discourse as opposed to other actors in this area (or, at least, a position only interested in the abstract goals outlined in the previous paragraph). The second need requires that academics utilize the analytic ability and skills they already possess to unpack the traditions and languages involved. To facilitate this, they can employ novel and useful methodologies.

For the study that follows, Wu Kuang-ming's methodology discussed in §3.1.2 will be employed. This methodology will be performed by bringing Tu Weiming as a Chinese Confucian into conversation with John Rawls as a Western liberal philosopher. Rawls will pitch his theory by Tu using the logic of Western liberalism and respond to Tu's Confucianism, on co-equal terms. This means keeping at the forefront the understanding that, fundamentally, Western liberalism is different than Confucianism: the people, attitudes and conceptions are distinctly their own, perhaps similar and perhaps akin, but distinct. This conversation is interested in step 3/1 and 3/2 of Wu's methodology<sup>209</sup>: passing through Western logic and modes of thinking that give precise

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<sup>209</sup> Step 1/1 and 1/2, where China and the West study themselves, has been going on for centuries. Step 2/1, where the West studies China using Western conceptions, has been dealt with throughout this study. It is by definition "othering" as it serves to compartmentalize Chinese thought into categories and systems that are fundamentally Western. John Rawls utilizes the liberal lens through

understanding of Chinese thinking (3/1), but then not stopping before the conversation comes back to “vivify” China, bringing it as “a friend deepening the West” (3/2).<sup>210</sup> It is important to stress that this is not a comparative analysis – rather, it is the bringing together into conversation two important political theorists on coequal terms to perform this inter-enriching.

The conversation that is current underway as demonstrated through the comprehensive analysis shows that the current discussion is framed in terms of human rights as civil-political rights against Confucianism. As the attempt is made to build off of what has been said, it seems a necessary starting point for new conversation. The hope for this conversation between Rawls and Tu is that Western human rights scholarship, as defined by liberal, civil-political human rights, will obtain a deeper understanding of Tu’s Confucianism in liberal terms and in turn be enriched by Confucianism. At the very least it intends to demonstrate that there is utility in engaging each other as coequal: we can learn more about the other and ourselves. As this study comes from a Western perspective with only moderate depth of understanding in either Western liberal political theory or the Chinese intellectual tradition, this is as far as this experiment can be brought. It will take Chinese theorists, Confucians and Western political philosophers with more depth of experience and understanding to perform this discussion to get truly important results. But, by consciously employing a methodology that encourages mutual

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which China (and indeed all others) are engaged. For step 2/2, where China studies the West on Chinese terms, this is fundamentally by Chinese for Chinese (and thus, written in Chinese), so there is no good point of direct access that can be brought into this discussion in English. However, as will be seen presently, Tu straddles both worlds and has been engaging issues of modernity globalization in both Chinese and English for decades. His is the best approximation that can be produced for this study.

<sup>210</sup> Kuang-ming, 202. With 3/1 Chinese thought is enriched by being put into sharp relief. With 3/2 this relief – and its apparent alienness to Western thought – is brought back to the West to enrich Western thought.

understanding, Western theorists can at least be confident in the future of the discourse and cautiously optimistic that some measure of reciprocity might now be forthcoming. While there is way no ensure that such reciprocity happens, by adopting this attitude and approach, it would no longer be valid to outright condemn Western attempts to engage the Chinese intellectual tradition on the various grounds listed in Chapter 1. This is precisely the sort of inter-understanding that is a necessary precondition for Taylor's unforced consensus as it actively seeks to place both sides of the conversation on equal footing and allow them to engage in their own terms without coercion.

#### 4.2 – The Participants

This exercise brings John Rawls and Tu Weiming into conversation with each other. Rawls and Tu are singularly important voices in their respective fields and represent, in many ways, step 2/1 and 2/2 in Wu's methodology.<sup>211</sup> The mere fact that they have not been brought into meaningful conversation before demonstrates the myopic state of the exchange of ideas between West and East. Before the conversation can be had, however, the participants need to be introduced in order to lay out how this study is characterizing and embodying them.

##### 4.2.1 – *John Rawls as Western Liberal*

John Rawls is one of the most influential voices in modern liberal political philosophy. With a career lasting over 30 years, his writings are comprehensive and precise, attempting no less than to reorganize the basic structure of rights theory and the idea of justice. From his *A Theory of Justice's* "Veil of Ignorance" and "Justice as Fairness", to *Political Liberalism's* construction of "reasonable" universal principles of justice, to *The Law of Peoples'* systematic attempt to reconcile liberal principles into a

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<sup>211</sup> See the footnote 207

complicated world stage, Rawls literally wrote the book on one of the more dominant forms of liberal political philosophy. Given his role as a public intellectual and codifier of liberal political philosophy – and his worldview and conception of “rights” underlies much of the conversation of human rights theory in the Chinese context – he represents an appropriate voice to bring into conversation with the Chinese Confucian philosophical tradition.

Rawls’ most well-known study, *A Theory of Justice*, revolutionized Western political philosophy through its famous “veil of ignorance” thought experiment that tried to reformulate the very basis of liberty and rights to an “original position”. Here, in order to create a fair and reasonable conception of justice, he attempted to “nullify effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage.”<sup>212</sup> This requires placing people behind a “veil of ignorance” where they are unaware of their social station, age, gender, class, economic, race, ability, and historical location.<sup>213</sup> As well, they are placed so that they “do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations.”<sup>214</sup> This puts rational persons into an “original position” from which they can decide the fairest and more appropriate rules by which to structure society. This simple thought experiment profoundly changed the approach of liberal rights theorists. It follows from this construction that it is obviously in everyone’s best interest to structure society in a way that maximizes freedom, liberty and equality. Before this, rights were declared to be

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<sup>212</sup> Rawls, John. *A Theory of Justice: Revised Edition*. Cambridge, Mass.: The Belknap Press of Harvard University Press, 1999. 118

<sup>213</sup> Rawls 1999, 118.

<sup>214</sup> Rawls 1999, 118.

good on moral grounds – an ethically problematic position. Now there was a seemingly comprehensive, objective and above all *fair* way to go about justifying rights. Liberal theorists adopted this rubric and convinced state-level actors like the United States to effectively adopt this rhetoric in their foreign policy.

There have been some serious criticisms to this approach both from within Western political theory,<sup>215</sup> but also from religious minority groups within the West and non-Western society in general. The basic presumption that every person ought to be defined by their individualism before going behind the veil presumes that individualism is the basic component of society and is said to belie a Western conception of the human person. In essence, the attempt to provide a “fair” society has built into its structure the seeds to growing liberal rights and liberties. Rawls was aware of these criticisms and attempted to clarify his construction and give it a practical expression in an international context through his *The Law of Peoples*. Because of Rawls’ vast contribution to political philosophy, it is necessary for this study to pick some version of Rawls to talk through. It will be through *The Law of Peoples* that Rawls will be brought into conversation with Tu Weiming.

#### 4.2.1.i – *Law of Peoples*

With *The Law of Peoples*,<sup>216</sup> Rawls for the first time attempted to systematically expand his political liberalism into the international context. Conversations about liberalism and rights are almost exclusively internal to the West. Whenever they do venture out to discuss some place like Asia, it is with the problematic issues and agendas that have been outlined in Chapter 2. Rawls abandons some of his normative zeal for this

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<sup>215</sup> See, most notably, Nozick’s *Anarchy, State, and Utopia*

<sup>216</sup> Rawls, John. *The Law of Peoples: With ‘The Idea of Public Reason Revisited’*. Cambridge: Harvard UP, 1999.

treatment, arguing instead for a ‘realistic utopia’ comprised of a Society of Peoples that mutually agree to abide by a Law of Peoples. The Society of People is made up of ‘reasonable liberal peoples’ and ‘decent peoples’, with all others being unable to agree to the Law of Peoples necessary for inclusion into the Society. What defines ‘reasonable liberal peoples’ and ‘decent peoples’ is outlined before the book moves on to discuss the ‘outlaw states’ and other bad actors, alongside philosophical and pragmatic concerns that Western liberals might have with his conception. To properly read Tu Weiming, we need to provide definitions for Rawls’ argument as a sort of terms of reference for the conversation.

#### *4.2.1.i(a) – Terms of Reference*

This section will present summaries of the main positions in the *Law of Peoples* to set the stage properly. By Rawls’ conception, it is through a Society of Peoples that The Law of Peoples is established. This is necessary because reasonable liberal democracies on their own foster peace and stability, but this is not enough in a world where nonliberal peoples exist. A Society of Peoples is made up of two types of well-ordered people (reasonable liberal peoples and decent people) and codifies a Law of Peoples that everyone can agree to. Because of these two types of people, there are two rubrics designed for entering into the Society of Peoples and together they comprise the first and second parts of Ideal Theory. All other peoples and societies are placed under a Nonideal Theory, where either a duty to assist is present, or the appropriate circumstances for sanctions and direct intervention exist. Rawls’ fundamental concession when bringing his theory to the international stage is to aim for a realistic utopia that includes some nonliberal but decent peoples alongside Western reasonable liberal democratic peoples.

Below are some of the key motivations and concepts Rawls outlines in *The Law of Peoples* which will provide some context to many of the things Rawls says during the conversation.

The overall goal of the book: “Our hope for the future of our society rests on the belief that the nature of the social world allows reasonably just constitutional democratic societies existing as members of the Society of Peoples. In such a social world peace and justice would be achieved between liberal and decent peoples both and home and abroad. The idea of this society is realistically utopian in that it depicts an achievable social world that combines political right and justice for all liberal and decent people in a Society of Peoples.”<sup>217</sup>

The overall motivation: “Two main ideas motivate the Law of Peoples. One is that the great evils of human history ... follow from political injustice, with its own cruelties and callousness. ... The Other main idea, obviously connected to the first, is that, once the gravest forms of political injustice are eliminated by following just (or at least decent) social political and establishing just (or at least decent) basic institutions, these great evils will eventually disappear.”<sup>218</sup>

The intended audience of the book are Western liberals: “it is important that the Law of the Peoples is developed within political liberalism and is an extension of the liberal conception of justice for a domestic regime to a Society of Peoples”<sup>219</sup>. The development of foreign policy with this rubric, then, is necessarily for liberal society. This means that it is liberal society that extends the invitation to decent people to join the Society of peoples. “The Law of Peoples holds that decent nonliberal points of view

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<sup>217</sup> Rawls 1999, 6

<sup>218</sup> Rawls 1999, 6-7

<sup>219</sup> Rawls 1999, 9

exist, and that the question of how far nonliberal peoples are to be tolerated is an essential question of liberal foreign policy.”<sup>220</sup> However, “Liberal peoples must try to encourage decent people and not frustrate their vitality by coercively insisting that all societies must be liberal. Moreover, if a liberal constitutional democracy is, in fact, superior to other forms of society ... liberal people should have confidence in their convictions and suppose that a decent society, when offered due respect by liberal peoples, may be more likely, over time, to recognize the advantages of liberal institutions and take steps toward becoming more liberal on its own.”<sup>221</sup>

The Law of Peoples: “a particular political conception of right and justice that applies to the principles and norms of international law and practice.”<sup>222</sup> There are eight principles to the Law of Peoples<sup>223</sup> that all ‘reasonable liberal peoples’ and ‘decent people’ would be able to agree to. These principles include the requirement to honour human rights, and in order to accommodate decent people a set of mandatory, urgent human rights is presented instead.<sup>224</sup> It is seen as being only appropriate liberal people to protect and preserve human rights in general as such rights are based on their tradition.<sup>225</sup>

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<sup>220</sup> Rawls 1999, 10

<sup>221</sup> Rawls 1999, 61

<sup>222</sup> Rawls 1999, 3

<sup>223</sup> The general principles are as follow: “1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples. 2. Peoples are to observe treaties and undertakings. 3. Peoples are equal and are parties to the agreements that bind them. 4. Peoples are to observe a duty of non-intervention. 5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense. 6. Peoples are to honor human rights. 7. People are to observe certain specified restrictions in conduct of war. 8. People have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.” Rawls 1999, 37.

<sup>224</sup> Rawls 1999. “Human rights in the Law of Peoples, by contrast, express a special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide. The violation of this class of rights is equally condemned by both reasonable liberal peoples and decent hierarchical peoples.” (79)

<sup>225</sup> Rawls 1999, 79



The Society of Peoples: “peoples who follow the ideals and principles of the Law of Peoples in their mutual relations. These peoples have their own internal governments, which may be constitutional liberal democracies or non-liberal but decent governments.”<sup>226</sup>

Realistic Utopia: What is reached when a Society of Peoples is established. To reach this, there must first be reasonable pluralism. “In the Society of Peoples, the parallel to reasonable pluralism is the diversity among reasonable peoples with their different cultures and traditions of thought, both religious and non-religious. Even when two or more peoples have liberal constitutional regimes, their conceptions of constitutionalism may diverge and express different variations of liberalism. A (reasonable) Law of Peoples must be acceptable to reasonable peoples who are this diverse; and it must be fair between them and effective in shaping the larger schemes of their cooperation.”<sup>227</sup> It is based off of two parallel sets of six conditions: one for liberal peoples<sup>228</sup>, one for decent peoples.<sup>229</sup> So long as decent people meet certain

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<sup>226</sup> Rawls 1999, 3

<sup>227</sup> Rawls 1999, 11-12

<sup>228</sup> Rawls 1999. For liberal peoples: First, having a realistic justice that provides stability for the “right reasons” and is workable in reality (13). Second, “that it use political (moral) ideals, principles, and concepts to specify a reasonable and just society.” (14) They must be principles, uncoerced and something that reasonable people would agree to – and these principles are substantive, not just procedural. Third, “the category of the political must contain within itself all the essential elements for a political conception of justice.” (15) Fourth, “Because of the fact of reasonable pluralism, constitutional democracy must have political and social institutions that effectively lead its citizens to acquire the appropriate sense of justice as they grow up and take part in society. They will then be able to understand the principles and ideals of the political conception, to interpret and apply them to cases at hand, and they will normally be moved to act from them as circumstances require. This leads to stability for the right reasons.” (15) Fifth, “Because religious, philosophical, or moral unity is neither possible nor necessary for social unity, if social stability is not merely a *modus vivendi*, it must be rooted in a reasonable political conception of right and justice affirmed by an overlapping consensus of comprehensive doctrines.” (16) Sixth, “the political conception will be strengthened if it contains a reasonable idea of toleration within itself, for that will show the reasonableness of toleration by public reason.” (p16)

<sup>229</sup> Rawls 1999. For decent peoples First: “The reasonably just Society of well-ordered Peoples is *realistic* in the same ways as a liberal or decent domestic society.” (17) It is also realistic in another way: “it is workable and may be applied to ongoing cooperative political arrangements and relations

requirements, they should not be left out on principle because this disrespects decent people.<sup>230</sup> There are also specific concessions given for decent people to account for ways in which they do not correspond directly to the versions of suffrage, tolerance, and equality performed by reasonable liberal people.<sup>231</sup> However, “one should allow ... a space between the fully unreasonable and fully reasonable. The latter requires full and equal liberty of conscience, and the former denies it entirely. Traditional doctrines that

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between people.” (17) Second: “A reasonably just Law of Peoples is *utopian* in that it uses political (moral) ideals, principles, and concepts to specify the reasonably / right and just political and social arrangements for the Society of Peoples.” (17-18) Third: “all essential elements for a political conception of justice be contained within the category of the political.” (18) Fourth: “The degree to which a reasonably just, effective institutional process enables members of different well-ordered societies to develop a sense of justice and support their government in honoring the Law of Peoples may differ from one society to another in the wider Society of Peoples.” (18) Fifth: “The unity of a reasonable Society of Peoples does not require religious unity. The Law of Peoples provides a content of public reason for the Society of Peoples parallel to the principles of justice in democratic society.” (18) Sixth: “The effect of extending a liberal conception of justice in the Society of Peoples, which encompasses many more religious and other comprehensive doctrines than any single peoples, makes it inevitable that, if member peoples employ public reason in their dealings with one another, toleration must follow.” (19)

<sup>230</sup> Rawls, 1999. “This lack of respect may wound the self-respect of decent nonliberal peoples as peoples, as well as their individual members, and may lead to great bitterness and resentment.” (61) There can be no progress when there is resentment. Including decent nonliberal peoples in the Society of Peoples at best encourages change and at worse has no effect. Continuing to disrespect them has serious consequences: “The due respect they ask for is due respect consistent with the equality of peoples.” (62)

<sup>231</sup> Rawls 1999. First: How can we justify groups instead of individuals having representation? In a well-ordered decent hierarchical society, “persons belong first to estates, corporations, and associations – that is, groups. Since these groups represent the rational interests of their members, some persons will take part in publically representing those interests in the consultation process, but they do so as members of associations, corporations, and estates, and not as individuals.” (73) Second: These are questions regarding religious toleration. “Although in decent hierarchical societies a state religion may, on some questions, be the ultimate authority within society and may control government policy on certain important matters, that authority is not ... extended politically to relations with other societies. Further, a decent hierarchical society’s (comprehensive) religious or philosophical doctrines must not be fully unreasonable. ... Although an established religion may have various privileges, it is essential to the society’s being decent that no religion be persecuted, or denied civic and social conditions permitting its practice in peace and without fear.” (74) Third: How to deal with long-oppressed groups like women. “One step is to ensure that their claims are appropriately taken into account may be to arrange that a majority of the members of the bodies representing the (previously) oppressed be chosen from among those whose rights have been violated. As we have seen, one condition of a decent hierarchical society is that its legal system and social order do not violate human rights. The procedure of consultation must be arranged to stop all such violations.” (75)

allow a measure of liberty of conscience but do not allow it fully are view that I believe lie in that space and are not fully unreasonable.”<sup>232</sup>

**Ideal Theory:** The rubric that underlies well-ordered peoples’ membership in the Society of Peoples. There are two parts, one for reasonable liberal people, and one for decent people.

**Nonideal Theory:** The rationale for why some peoples are not afforded membership in the Society of Peoples, and why force or coercive measures may be justified against them.

**Reasonable Liberal Peoples:** Reasonable liberal peoples are liberal constitutional democracies. They share three basic features: “a reasonably just constitutional democratic government that serves their fundamental interests; citizens united by ... ‘common sympathies’; and finally a moral nature. The first is institutional, the second is cultural, and the third requires a firm attachment to a political (moral) conception of right and justice.”<sup>233</sup>

**Decent Peoples:** The decent people are structured into a decent consultation hierarchy and are thus decent hierarchical peoples.<sup>234</sup> Decent peoples can also follow reinterpreted conceptions of human rights and the nature of the person.<sup>235</sup> So, “provided

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<sup>232</sup> Rawls 1999, 74-75

<sup>233</sup> Rawls 1999, 23-24. Rawls goes on to further define these three features: in the first case, “the government is effectively under their political and electoral control, and that it answers to and protects their fundamental interests as specified in a written or unwritten constitution and in its interpretation.” (24) For the second, “within a reasonably just liberal (or decent) polity it is possible ... to satisfy the reasonable cultural interests and needs of groups with diverse ethnic and national backgrounds.” (25) For the third, people “are both reasonable and rational, and their rational conduct, as organized and expressed in their elections and votes, and the laws and policies of the government, is similarly constrained by their sense of what is reasonable.” (25)

<sup>234</sup> Rawls 1999, 4

<sup>235</sup> Rawls 1999. Decent people can reasonably follow reinterpreted human rights: “Among the human rights are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as

a nonliberal society's basic institutions meet certain specified conditions of political right and justice and lead its people to honor a reasonable and just law for the Society of Peoples, a liberal people is to tolerate and accept that society. ... I call societies that satisfy these conditions *decent* peoples."<sup>236</sup> There may very well be another type of decent people and if they come forward they too should be included in the Society of Peoples.

Well-ordered Peoples: The combination of reasonable liberal peoples and decent peoples. Well-ordered peoples – and not states – form the basis of the Society of Peoples.<sup>237</sup>

Decent Consultation Hierarchy: If decent consultation takes place among a people, this lays the basis for a decent hierarchical society. "In political decisions a decent consultation hierarchy allows an opportunity for different voices to be heard – not, to be sure, in a way allowed by democratic institutions, but appropriately in view of the religious and philosophical values of the society as expressed in its idea of the common good."<sup>238</sup> These persons, through their associations in society, should be able "to express political dissent, and the government has a obligation to take a group's dissent seriously and to give a conscientious reply."<sup>239</sup> Such a people will also have a 'common good' idea

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expressed by the rules of natural justice (that is, similar cases be treated similarly). Human rights, as thus understood, cannot be rejected as peculiarly liberal or special to the Western traditions. They are not politically parochial." (65) Further: "A decent hierarchical society's conception of the person, as implied by the second criterion, does not require acceptance of the liberal idea that persons are citizens first and have equal basic rights as equal citizens. Rather, it views persons as responsible and cooperating members of their respective groups. Hence, persons can recognize, understand, and act in accordance with their moral duties and obligations as members of these groups." (66)

<sup>236</sup> Rawls 1999, 59-60

<sup>237</sup> "This account of the Law of Peoples conceives liberal democratic peoples (and decent people) as the actors in the Society of Peoples", Rawls 1999, 23

<sup>238</sup> Rawls 1999, 72.

<sup>239</sup> Rawls 1999, 72

of justice<sup>240</sup> that they follow and enforce. With all of these conditions met, there can no longer be reasonable objections to allowing decent people to join the Society of Peoples.<sup>241</sup>

**Outlaw States:** States that refuse to abide by the Law of Peoples altogether – waging war and otherwise entering into noncompliance with a general world order.<sup>242</sup> They can be rightfully targeted by sanctions and even force if necessary.<sup>243</sup>

**Peoples Burdened by Unfavourable Conditions:** They are not aggressive, but “lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources need to be well-ordered.”<sup>244</sup> For well-ordered societies, there is a duty to assist such peoples.

**Benevolent Absolutist:** These are peoples that “honor human rights; but, because their members are denied a meaningful role in making political decisions, they are not well-ordered”.<sup>245</sup>

These terms of reference raise some questions that should be held in mind during the conversation and these questions will be woven into its framework. Where do China and Confucian people fit in the Society of Peoples? Are Confucian People Well-ordered?

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<sup>240</sup> Rawls 1999. “It can be defined by “distinguishing it from the common aim of a people (if they have one) and, second, by insisting that the legal system of a decent hierarchical peoples must contain a decent consultation hierarchy. That is, the basic structure of the society must include a family of representative bodies whose role in the hierarchy is to take part in an established procedure of consultation and to look after what the people’s common good idea of justice regards as important interests of all members of the people.” (71) “Although all persons in a decent hierarchical society are not regarded as free and equal citizens ... they are seen as decent and rational and as capable of moral learning as recognized by their society.” (71)

<sup>241</sup> Rawls 1999. “A decent hierarchical people meets moral and legal requirements sufficient to override the political reasons we might have for imposing sanctions on, or forcibly intervening with, its peoples and their institutions and culture” and “decent hierarchical peoples do have certain institutional features that deserve respect, even if their institutions as a whole are not sufficiently reasonable from the point of view of political liberalism or liberalism generally.” (p83-84)

<sup>242</sup> Rawls 1999, 5

<sup>243</sup> Rawls 1999, 90

<sup>244</sup> Rawls 1999, 106

<sup>245</sup> Rawls 1999, 4. Rawls does not provide much more context than this.

Are they decent? Does Confucian or Chinese hierarchy constitute ‘decent consultation’ hierarchy? If not, what are they: Outlaw, burdened by unfavourable conditions, or Benevolent Absolutism? Can whatever sort of people Confucians are be extrapolated to China more generally?

Can Confucian people agree to the eight principles of the Law of Peoples to allow them access to the Society of Peoples? Can Chinese? Does Confucian structure meet the standards of the special class of urgent human rights? Does Confucianism offer any critiques of ‘realistic utopia’ or any of the principles on which the Law of Peoples resides?

#### *4.2.2 – Tu Weiming as Chinese Confucian*

Tu Weiming was born in Mainland China and educated in both Chinese and American universities. He has written prolifically in English and Chinese for almost 40 years, is stationed in the West, and discusses concepts familiar to Western political philosophers, human rights theorists and liberals. As a result, “Tu can be said to be very much Chinese as well as American and this allows him to adopt in his writings either of these viewpoints.”<sup>246</sup> He has made his career through attempting to adapt and translate Confucian philosophy and social values into the modern, pluralistic age.<sup>247</sup> All of this makes him the ultimate low-hanging fruit for engaging Confucian or Chinese thought from a Western perspective. In spite of this, he is generally not all that well-known in

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<sup>246</sup> Weber, Ralph. “Confucianism in a Pluralistic World: The Political Philosophy of Tu Wei-ming.” Diss. St. Gallen, 2007. Weber, 10

<sup>247</sup> In sum, Tu’s writings, perhaps to a larger degree than those of earlier Confucians, acknowledge and deal with the conditions of irreducible plurality; a condition which I claim is central to the academic field of political philosophy today.” Weber, 11

Western political philosophy circles,<sup>248</sup> and there seems to be only one full-length treatment of Tu as a political philosopher<sup>249</sup> – Ralph Weber’s unpublished 2007 dissertation.<sup>250</sup> And according to Weber, “Tu has not yet been read as a political philosopher”<sup>251</sup> by Western audiences.

Part of Tu’s relative obscurity is because he has spent his career more as an educator and commentator<sup>252</sup> than a systematic political theorist – and much of his political theory takes on the air of normative moral philosophy. His monographs deal with abstract particulars of Neo-Confucian philosophy and the works he has edited shepherd other theorists’ discussions of Confucianism and the West. Most of his direct commentary on political theory as such is either available only in Chinese, or is given scattershot, one idea or topic at a time, across dozens of book chapters and journal articles. Further, his main theory of Confucianism – Confucian Humanism – has been developed through his involvement with the New Confucian movement. In his role as a proponent of New Confucian, his tone often takes on the air of an “‘evangelizer’ or

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<sup>248</sup> There has been a sustained interest in Tu’s philosophy in Mainland China since the 1980s and the domestic interest in New Confucianism. In fact, there have been at least three Chinese dissertations on Tu published since 2000, two of which have been published in “prestigious presses.” Weber,<sup>22</sup>

<sup>249</sup> “In English, the anthropologist Clifford Geertz has been the first to comment on one of Tu’s articles in 1981.” This was followed by a gap of over a decade as only since the 1990s as Tu been “the subject of several articles and book reviews; none of these publications, however, appears to be part of a more comprehensive research project.” Weber, 23

<sup>250</sup> Weber’s dissertation is primarily engaged in situating Tu Weiming as a political philosopher on Confucianism. He also attempts to read Tu’s thought in its own context, which in some ways telegraph’s this present conversation. However, his aim is to inform and present, not bring anyone into conversation with each other. Nonetheless, his review of Tu’s thought is comprehensive and authoritative – what follows here is only a small taste.

<sup>251</sup> Weber, 36

<sup>252</sup> “Tu is a university professor, involved in teaching and research, who has been working in academic institutions throughout his career. ... In this professional capacity, he actively participates each year in a host of academic events such as conferences, seminars, and workshops; serves as a member of editorial boards of prestigious journals ...; holds positions at the advisory board of the Institute of Chinese Literature and Philosophy at the Academia Sinica as well as at the board of directors of the International Confucian Association in Beijing; and is a fellow of the American Academy of Arts and Sciences. ... [H]e is a prolific author of scholarly articles and has edited a series of volumes.” Weber, 16

‘missionary’ of Confucianism”,<sup>253</sup> which can make his theory sound more like moral philosophy than an abstract political philosophy in the Western sense. Indeed, sometimes “it is difficult to discern whether he is addressing the reader in his capacity as a propagator of Confucianism or in his capacity as an academic specialist of Confucianism.”<sup>254</sup> Whether Tu is an academic researcher or activist is something that he is unconcerned with, for “his reading of Confucianism [does] not distinguish between the two capacities.”<sup>255</sup>

Tu’s straddling between academia and advocacy can be seen as problematic for many of the reasons that have been outlined throughout this study. The more theological aspects of his philosophy, however, can be interpreted as representing one particular manner in which Confucians and Chinese intellectuals have long spoke of social and societal issues. The division between moral philosophy and political philosophy is far more pronounced in modern Western philosophy, largely as a result of the post-Enlightenment division of labour between religion and state as objects of study. Confucian philosophy has long conflated these two: *junzi* were concerned with the moral character of individuals and society simultaneously. In light of this, Tu is best recognized as a modern, Confucian public intellectual, “that is, a scholar of Confucianism and a Confucian activist.”<sup>256</sup> Indeed, since public intellectuals (or, indeed, political philosophers in general) do not necessarily concern themselves with objectivity, it is contended that Tu offers the perfect conversation partner for Rawls: Rawls presents his

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<sup>253</sup> Weber, 16. Further, Tu “is certainly interested in actively promoting Confucian values.” He is “a sort of ‘Confucian activist,’ he wishes his writings to be persuasive and influential”. Weber, 15

<sup>254</sup> Weber, 16

<sup>255</sup> Weber, 17

<sup>256</sup> Weber, 17



political theory in normative terms, but in the particular voice of a Western public intellectual.

#### *4.2.2.i – A Confucian Worldview*

Although Tu has been a prolific author and he has tried to outline a political philosophy called “Confucian Humanism”, he has focused mostly on authoring articles on particular topics rather than presenting a systematic philosophy in one place. As such there is no commensurate text to *The Law of Peoples* that can be brought into a conversation. The alternative, then, is to present a handful of representative articles that deal with Confucian Humanism in one way or another. To narrow the focus, the conversation will necessarily flow from works that are already oriented toward some recognizable Western concept – it is Tu’s works with an external focus, rather than an internal, Chinese focus, that will be discussed. The discussion will be drawn from “Cultural China: The Periphery as the Centre”, “Beyond Enlightenment Mentality”, “The Global Significance of Local Knowledge” and “Implications of the Rise of Confucian East Asia” as these articles are roughly contemporaneous with the *Law of Peoples* and represent a broad cross-section of Tu’s thought.

Rawls will be engaging with a collection of Tu’s ideas and arguments but this is not necessarily problematic. Recall the methodological orientation of this conversation: Rawls will be reading Tu as a Western liberal, but in order to understand Tu on his own terms, and to provide context and challenge his liberal worldview. Like any good conversation it should be expected that it would meander from topic to topic, digging deeper into the partner’s worldview. And, like any good conversation, the hope is that it will foster many more. The next step is to move the conversation farther away from

familiarity until finally Tu is being engaged entirely in his own terms regarding his Chinese works written for a Chinese audience. Of course, this is well beyond the parameters of our current conversation.

### 4.3 –John Rawls and Tu Weiming in Conversation

All of these considerations bring us to the conversation between John Rawls and Tu Weiming. The structure is reminiscent of a Platonic dialogue: positions are argued back and forth from competing worldviews, attempting to deduce meaning and draw conclusions. There may be more systematic or precise ways to bring these two political philosophies into contact with each other, but the conversational tone seems most appropriate if the aim of engendering mutual understanding. Further, emphasizing systematic precision over understanding is precisely what Wu Kuang-ming has tried to caution scholarship about.

#### *4.3.1 – The Impact of the West on China*

TU Weiming: Before we can get into any discussion of your Law of Peoples or the relationship between Chinese society and the world, we need to address the on going impact of colonialism. “For China, Chinese people, and Chinese culture, the image of the twentieth century is an atrocious collective experience of destructiveness and violence” with stable periods far apart.<sup>257</sup>

Many “believe that Chineseness is incongruous with the modernizing process”<sup>258</sup> because modernity was built on the back of colonialism justified

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<sup>257</sup> Tu 2005, 146

<sup>258</sup> Tu 2005, 150

by the so-called Enlightenment. From a Chinese perspective, the Enlightenment is “exemplified by the rise of the modern West as a series of colonial and imperial powers” with a “Faustian drive not only to explore and to know but also to conquer and to subdue”.<sup>259</sup> From the Opium Wars, leading to the Boxer Rebellion and the fall of the Qing, to the May Fourth Movement and the Chinese Civil War, Western impact and influence has never been far from the centre of Chinese society, nor a particularly positive experience. “China’s semicolonial status severely damaged her spiritual life and her ability to tap indigenous symbolic resources” and the shifting internal political struggle between the Nationalist and Communist parties has left “a sense of cynicism among their members”, especially among the intellectual community.<sup>260</sup> How can this general feeling and an understandable distrust of Western conduct be reconciled with the Society of Peoples?

John RAWLS: The Society of Peoples is built from the recognition that there have been “great evils” throughout human history that “follow from political injustice”.<sup>261</sup> One of these injustices can be seen to be the conduct of colonial Westerners as they sought to expand throughout the world, effectively taking on the role of what I would now characterize as outlaw states. The Law of Peoples was explicitly designed to address some of these grievances – the first general principle is that “Peoples are free and independent, and their freedom and independence are to be respected by other peoples.”<sup>262</sup> So long

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<sup>259</sup> Tu 1996, 64

<sup>260</sup> Tu 2005, 146

<sup>261</sup> Rawls 1999, 6

<sup>262</sup> Rawls 1999, 37

as the Chinese state acts as a decent people, there would no longer be any justification for intervention and meddling. As for the internal struggles, this is an expression of a not yet well-ordered Peoples – the interests of the state does not come first in the Society of Peoples, the peoples’ interests do.<sup>263</sup> The Chinese state will have to become decently consultative to ensure that its people are not succumbing to cynicism.

TU: Perhaps, but this assumes that the Chinese people will agree to the Law of Peoples and try to conform themselves into your definition of “decency”.

There is an alternative, distinctly *Confucian* modernism that presents a coherent social vision<sup>264</sup> that I would like to introduce to frame our discussion. First, government is necessarily involved in the market place as a “positive force for social stability”.<sup>265</sup> Second, it goes beyond establishing a simple rule of law because while the rule of law “may provide the minimum condition for social stability, but only the cultivation of virtue through practice of rites can create the cultural space for human flourishing.”<sup>266</sup> Third, it takes the family as the primary social unit, not the individual, and places its dyadic components into conversation with the other families in society. This “principle of reciprocity in human interactions defines all forms of human relatedness in the family.”<sup>267</sup> Fourth, a civil society that mediates between cultural and social institutions is created by the interplay between family and state. “The image of the family as a microcosm of the state and

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<sup>263</sup> Rawls 1999, 23

<sup>264</sup> The following discussion is summary of the extensive list Tu presents in Tu 2000, 205-206.

<sup>265</sup> Tu 2000, 205

<sup>266</sup> Tu 2000, 205

<sup>267</sup> Tu 2000, 206

the ideal of the state as an enlargement of the family indicate that family stability is vitally important for the body politic”.<sup>268</sup> Fifth, an educational system that educates the whole person to teach them of their role in family and society. And sixth, the orientation of the modern Confucian People is toward self-cultivation. This produces a “society that cherishes virtue-centred political leadership” alongside the communally realized human interactions. I think that a Confucian People organized around these principles responds to Western modernity in a distinctly Confucian manner.

RAWLS: This conception of a modern Confucian People is quite comprehensive. However, parts of it go well beyond the basic Law of Peoples. Because you laid out for me your basic principles, I wish to do the same. The basic orientation of the law of peoples has eight components. “1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples. 2. Peoples are to observe treaties and undertakings. 3. Peoples are equal and are parties to the agreements that bind them. 4. Peoples are to observe a duty of non-intervention. 5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense. 6. Peoples are to honor human rights. 7. People are to observe certain specified restrictions in conduct of war. 8. People have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.”<sup>269</sup> We need to explore many of these components before the Confucian People can join the Society of

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<sup>268</sup> Tu 2000, 206

<sup>269</sup> Rawls 1999, 37

Peoples, though there are many elements to your Confucian modernity that seem to correspond.

TU: I can see how that might be the case, but I am still reluctant to engage directly on the Law of Peoples while the issue of modernity is still on the table. I have some of questions about the changing nature of East Asian society in the face of modernity as Chinese intellectuals conceive them. These would have to be addressed before any commitment to a Law of Peoples can be entertained. First: does modernity “suggest the necessity, indeed, the desirability of a total iconoclastic attack on traditional Chinese culture and its attendant comprehensive Westernization as a precondition for China’s modernization?”<sup>270</sup>

RAWLS: Only those parts of traditional Chinese culture that violate the general principles of Law of Peoples may need to be, in your terms, attacked. If traditional Chinese culture, for example, does not believe in observing treaties, or in honouring human rights, or following certain limitation in the conduct of war, they would be violating parts 2, 6, and 7 of the Law of Peoples and would then be denied access to the Society of Peoples.

TU: Concepts like “human rights” are entrenched in Western liberal philosophy and even some nominally democratic countries have difficulty fully realizing them. Indeed, “Confucian Humanism raises fundamental questions about virtually all the conceptual apparatuses informing our studies: liberties, equality, human rights, private interests, instrumental rationality,

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<sup>270</sup> Tu 2005, 150.

and due process of law.”<sup>271</sup> Does this preclude the Chinese People from taking a place in the Society of Peoples?

RAWLS: While these principles include the need for respecting human rights, for the purposes of an international Society of People it can be said that only urgent human rights need to be protected. These are “freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide.”<sup>272</sup> It is important to understand that the Society of Peoples is made of Peoples, not persons or states. As human rights as such have been codified and defined by Western liberalism in terms of the individual, it seems only appropriate that it only falls to those peoples to fully respect and implement all of them.

TU: That seems a bit problematic for Western Liberalism – how can a liberal people reasonably believe in human rights but not their universality? Is entering into the Law of Peoples just another way to get Asian countries to adopt liberal values?

RAWLS: It is certainly not my intention to force any values onto a culture. While I do believe that a reasonable, rights-based liberal society is good, I think “one should allow ... a space between the fully unreasonable and fully reasonable. The latter requires full and equal liberty of conscience, and the former denies it entirely. Traditional doctrines that allow a measure of liberty of conscience but do not allow it fully are view that I believe lie in that space

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<sup>271</sup> Tu 1996, 59

<sup>272</sup> Rawls 1999, 79

and are not fully unreasonable.”<sup>273</sup> So long as a Chinese People allow for urgent human rights and have a decent consultative hierarchical structure, then they can rightfully access the Society of Peoples.

TU: This seems to presume that rights and the people that believe in them are on a continuum with one side being clearly favoured. While clearly lived Chinese society is not as concerned with rights as are Western liberal societies, there are many positive aspects of Chinese or Confucian societies that seem missing in the West. “Socially, do family cohesion, low crime rates, respect for education, and a high percentage of savings relative to that of other industrial societies indicate an ethos different from the individual-centered ‘habits of the heart’? Or do they simply reflect an earlier stage of modern transformation, which will lead eventually to the anomie and alienation experienced in the West?”<sup>274</sup> Would we have to abandon those things we find good? That is, if the Chinese are to move across this continuum, will they inevitably confront the same social malaise that seems to dominate the West?

RAWLS: Nothing would have to be abandoned – the Law of the Peoples is the minimum guideline for entrance in the Society of Peoples. Internally, a People is free to organize and express themselves autonomously. I would contend, however, that part of the alienation that has been present in the West comes from the current unequal, exploitive setup of society. The current systems in some place are not sufficiently just or equitable even in the West,

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<sup>273</sup> Rawls 1999, 74-75

<sup>274</sup> Tu 2005, 150



and this leads to a sense of social dislocation. This is why my theory on the veil of ignorance is so important – it allows for a fairer society based on broadly equitable conceptions of justice. I think if more Peoples moved toward implementing the Law of Peoples and joining the Society of Peoples, the social ills that concern you would disappear.

TU: One of the main exports of Western society has been democracy. I would argue that democracy is being performed in some parts of East Asian society in a uniquely Asian manner. It is possible we are “witnessing a process of democratization based more on consensus formation than on adversarial relationships, giving a wholly new shade of meaning to the concept of participatory democracy” in East Asia. How can we be sure that Western society recognizes it?

RAWLS: This is precisely why there are two groups of Peoples in the Society of Peoples – reasonable liberal peoples and decent peoples. If there is a decent consultative process in place in an Asian society – even if it is not ‘democracy’ as such – it may still very well meet the criteria for entrance.

TU: There of course remains the possibility that, given the pressures put on the East to democratize, when those countries do implement democracy we are actually “observing the continuous presence of the hierarchical authoritarian control of political elite operating under the guise of majority rule”.<sup>275</sup> How can we trust that any movement toward the Society of People is not just being performed by clever regimes that have figured out how to curry favour with the West?

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<sup>275</sup> Tu 2005, 150

RAWLS: This is why it is so important to talk about the Society of Peoples in terms of the Peoples that form it, not the nation-states that they reside in. The Society of Peoples attempts to eliminate those rogue state actors that would attempt to pull off such a ruse. It is far more difficult for a whole People to maintain that illusion.

#### *4.3.2 The Chinese as a People*

TU Weiming: If a People are not defined by the nation-state they reside in, how do we determine membership? Many Chinese live abroad but consider themselves to be Chinese – how are they accounted for? “Does citizenship of a Chinese national state guarantee one’s Chineseness?” Or, “is it necessary to become a full participating citizen of one’s adopted country?”<sup>276</sup> Are the Chinese People only those persons that live in China proper? Do those diaspora Chinese living in America or elsewhere have to become part of the American People or some other People?

John RAWLS: This may very well be so and it complicates matters significantly. The conception of Peoples allows for a reasonable pluralism within liberal democratic peoples, allowing for “a plurality of conflicting reasonable comprehensive doctrines, both religious and nonreligious (secular), [and] is the result of the culture of its free institutions.”<sup>277</sup> The profound differences between particular persons within a society are dealt with by this pluralism. What you are saying here, though, is that it is

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<sup>276</sup> Tu 2005, 167

<sup>277</sup> Rawls 1999, 124

probable that Chinese people – as defined by their self-perceived ethnic or cultural homogeneity – would want to consider themselves a People independent of their physical location. However, in “the absence of a world-state, there *must* be boundaries of some kind, which when viewed in isolation will seem arbitrary, and depend to some degree on historical circumstances.”<sup>278</sup> Boundaries are what allow for the Society of Peoples and eliminates the need for intervention and war. They are a “representative and effective agent of a people as they take responsibility for their territory and its environmental integrity, as well as for the size of their population.”<sup>279</sup>

TU: This may be problematic. The Chinese are not defined by any particular country or boundary. Instead, it seems to me that “traditional features of the human condition – ethnicity, mother tongue, ancestral home, gender, class, and religious faith – all seem to be relevant in understanding the lifeworlds of societies”.<sup>280</sup> This seems to point toward a Chinese People independent of any physical location. They are looking inward at Chinese culture and traditions to find meaning in the modern world. In fact, Mainland Chinese intellectuals have long been prevented from looking inward by “wholesale Westernization and anti-Confucianism” that promoted Western, Leninist-Marxist values before traditional ones.<sup>281</sup> However, since Tiananmen and the shaking of the CCP, “Chinese intellectuals worldwide [have] adopted a truly new, communal, critical self-consciousness” and from this “a search for

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<sup>278</sup> Rawls 1999, 39

<sup>279</sup> Rawls 1999, 38-39

<sup>280</sup> Tu 2005, 151

<sup>281</sup> Tu 2005, 163

cultural roots and a commitment to a form of depoliticized humanism became a strong voice in the discourse on cultural China.”<sup>282</sup> What is clear as well is that in countries dominated by Chinese culture – Singapore, Taiwan, Hong Kong and South Korea – and even among the millions of diaspora Chinese, Confucian social structure and values are still very much in force. It would seem that the search for what makes the Chinese Chinese is still a work in progress and to deny a Chinese people their self-determination based off of the particular arrangement of nation-states today would be unfair.

RAWLS: It would also be unfair to not allow any Chinese persons access because of the relative lack of progress of their brethren around the world. The Society of Peoples allows for two basic types of peoples in their ranks: reasonable liberal peoples or decent peoples. If any particular Chinese People were in these two groups, they would be afforded access. For those countries that are already dominated by Chinese or Confucian culture like Singapore, Taiwan, Hong Kong and South Korea, they could easily manoeuvre to enter into the Society of Peoples individually and be able to cooperatively ensure each other’s autonomy. For the Chinese living in diaspora, their untethered and precarious location is a result of migration that comes about as consequence of disordered society. “[Immigration] would disappear in the Society of liberal and decent Peoples” as it would end “religious and ethnic persecution, political oppression, things like famine/starvation, and population pressures brought about largely by the subjugation of women.”<sup>283</sup>

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<sup>282</sup> Tu 2005, 164

<sup>283</sup> Rawls 1999, 9

“The problem of immigration is not, then, simply left aside, but is eliminated as a serious problem in a realistic utopia.”<sup>284</sup> Diaspora Chinese who wish to return to China would be able to go and join their brethren. Those Chinese who wish to remain in their new home would, in effect, be choosing to stay in that particular place and would therefore become part of that People.

TU: The elimination of immigration altogether seems a bit problematic and it is at least possible for there to be groups that are very much two Peoples simultaneously – indeed, this is precisely how they have viewed themselves for generations. I don’t think the Society of Peoples accounts for the possibility of multiple identities. On a state level, perhaps a broad uniform People can make sense, but you have constructed this Society of Peoples with individuals in mind – and it is clear to me through the experience of the Chinese that there are many who hold multiple identities. I do take your point, however, about how those Confucian Peoples in certain locations can easily shift over. Aside from this, we are still left with the particular issue of determining how to locate the People of Mainland China. As the heart of the broader Chinese People, it has a long, continuous history and its own particular worldview when it comes to the very idea of a nation-state, civilization or people. It also contains 1/6 of the world’s population – it seems like any Society of Peoples no matter how it is conceived would be incomplete with China as a member regardless of its current political landscape.

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<sup>284</sup> Rawls 1999, 9

RAWLS: It is indeed necessary to bring Mainland China into the Society of Peoples – a realistic utopia depends on effectively all Peoples being members. There are a couple types of peoples that cannot be afforded access to the Society of Peoples and it would be hoped that this would only constitute a small fraction of the human population. The next step, it would seem, is to figure out what type of People Mainland Chinese are: reasonable liberal people, decent people, or something else. Reasonable liberal people share three basic features: “a reasonably just constitutional democratic government that serves their fundamental interests; citizens united by ... ‘common sympathies’; and finally a moral nature. The first is institutional, the second is cultural, and the third requires a firm attachment to a political (moral) conception of right and justice.”<sup>285</sup> Decent peoples have a common good sense of justice, have a constitutional state but are otherwise hierarchical people - defined by the interests of the group not by any individual person’s interests. So depending on the particular orientation of Chinese people wherever they are, they might fall into multiple categories.

TU: At first glance it seems likely that Chinese People in general might fall into that second category. Certainly in the case of diaspora or non-Mainland Chinese where liberalism has been a bit more pervasive. But the political-social structure that “mainland China eventually will become remains an

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<sup>285</sup> Rawls 1999, 23-24. Rawls goes on to further define these three features: in the first case, “the government is effectively under their political and electoral control, and that it answers to and protects their fundamental interests as specified in a written or unwritten constitution and in its interpretation.” (24) For the second, “within a reasonably just liberal (or decent) polity it is possible ... to satisfy the reasonable cultural interests and needs of groups with diverse ethnic and national backgrounds.” (25) For the third, people “are both reasonable and rational, and their rational conduct, as organized and expressed in their elections and votes, and the laws and policies of the government, is similarly constrained by their sense of what is reasonable.” (25)

overriding concern for all intellectuals in cultural China. She may try to become a mercantilist state with a vengeance; she may be mired in her inertia and inefficiency for years to come; or she may modernize according to a new holistic humanist vision.”<sup>286</sup> And it may very well be that where Mainland China goes, so will the general trend of the Chinese People.

RAWLS: If it turns out to be the first example you provide, the Chinese People might very well be considered an outlaw state. It will of course depend on their willingness to go to war or use other forms of force to get their way – it wouldn’t be acceptable under the Law of the Peoples to interfere with other states in a mercantile, colonial manner. Remember that even if that is how the West itself forged its path to modernity, it was also in response to these sorts of practices that the Law of Peoples was codified in the first place. If it is the second example, then it might be a People that are burdened by unfavourable conditions. However, this category is meant to designate a small, dysfunctional state without the traditional and human resources to become well ordered; I would argue that a Chinese People would have the resources to bring about favourable conditions. If it were because their political elite lacks the will or desire to bring about more favourable conditions, then China would almost certainly be considered an outlaw state and be denied entry into the Society of Peoples. Finally, depending on the orientation of the third possibility and what form your “holistic humanism” takes, they may be under Benevolent Absolutism. If persons in the society

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<sup>286</sup> Tu 2005, 166

are safe, secure and respected, but given no voice in the functioning of their society, then they are not decent peoples.

TU: It seems clear that the forces of history has made it untenable to maintain a strictly mercantile position – it requires spheres of influence and other colonial attributes that would be, at the very least, morally untenable for the Chinese Peoples as victims of colonialism to undertake. It would also be practicably impossible to exert on such mercantilism on a wide scale without some form of intervention taking place. In the second case, it does not seem tenable to leave 1/6 the population of earth in a dysfunctional, burdened state. Whatever else can be said about the Chinese government, it has been actively attempting to address some of the more economically and socially dysfunctional aspects of their society through education campaigns and the heavy investment of capital. It is therefore not the case that the political elite in China lack the will to foster development. With your final observation, I do not agree with it. There seems to be a fundamental flaw: it prioritizes democracy again. The idea that if a people is safe, secure and respected – but have no political voice – they are not decent peoples would be problematic not only to many Chinese, but to other peoples throughout the world. How are they not decent?

RAWLS: Being decent requires some access to the political process.

Without this, there is no way to determine if the actual will of the people is being reflected or respected by their representatives. Remember: the Society of Peoples is for Peoples, not states. There must be some way to for these



People to be expressing their own will. While I certainly believe that rights without democracy are limited rights, decent, well-ordered people are structured into a decent consultation hierarchy and are thus decent hierarchical peoples.<sup>287</sup> You have said that the Chinese might be decent peoples based on my characterization earlier.<sup>288</sup> Does your Confucian People constitute a decent consultation hierarchy? It may be if such a system “allows an opportunity for different voices to be heard – not, to be sure, in a way allowed by democratic institutions, but appropriately in view of the religious and philosophical values of the society as expressed in its idea of the common good.”<sup>289</sup> These persons, through their associations in society, should be able “to express political dissent, and the government has a obligation to take a group’s dissent seriously and to give a conscientious reply.”<sup>290</sup> Such a people will also have a ‘common good’ idea of justice<sup>291</sup> that they follow and enforce. With all of these conditions met, there can no longer be reasonable objections to allowing decent people to join the Society of Peoples.<sup>292</sup>

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<sup>287</sup> Rawls 1999, 4

<sup>288</sup> Above: Decent peoples have a common good sense of justice, have a constitutional stat but are otherwise hierarchical people - defined by the interests of the group not by any individual person’s interests.

<sup>289</sup> Rawls 1999, 72.

<sup>290</sup> Rawls 1999, 72

<sup>291</sup> Rawls 1999. “It can be defined by “distinguishing it from the common aim of a people (if they have one) and, second, by insisting that the legal system of a decent hierarchical peoples must contain a decent consultation hierarchy. That is, the basic structure of the society must include a family of representative bodies whose role in the hierarchy is to take part in an established procedure of consultation and to look after what the people’s common good idea of justice regards as important interests of all members of the people.” (71) “Although all persons in a decent hierarchical society are not regarded as free and equal citizens ... they are seen as decent and rational and as capable of moral learning as recognized by their society.” (71)

<sup>292</sup> Rawls 1999. “A decent hierarchical people meets moral and legal requirements sufficient to override the political reasons we might have for imposing sanctions on, or forcibly intervening with, its peoples and their institutions and culture” and “decent hierarchical peoples do have certain

TU: I think that a Confucian People can be seen as being consultative especially if we consider that “democracy as a form of life is more than the electoral culture”.<sup>293</sup> I feel that there is a mutual collaboration and respect between the various actors in a Confucian society, perhaps more so than in the West. “Collaboration between officialdom and the business community is common in East Asian societies. Actually, a defining characteristic of the East Asian political economy is the constant interplay between what are designated in the West as the public and private domains.”<sup>294</sup> There are of course Confucian societies that have adopted some form of democracy, and these “East Asian manifestations of the democratic idea strongly suggest that democratization as an evolving practice is compatible with bureaucratic meritocracy, educational elitism, and particularistic networking.”<sup>295</sup> Whether people have the right to vote does not mean they are completely removed from the decision making process proper. A Confucian Chinese People might base themselves on “Confucian Humanism”: a “new humanism with profound ethical-religious implications for the spiritual self-definition of humanity, the sanctity of earth, and a form of religiousness based on immanent transcendence”.<sup>296</sup>

RAWLS: Your discussion situates the Confucian People as being concerned primarily with “ethical-religious” implications and spiritualism. This places

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institutional features that deserve respect, even if their institutions as a whole are not sufficiently reasonable from the point of view of political liberalism or liberalism generally.” (p83-84)

<sup>293</sup> Tu 2000, 210

<sup>294</sup> Tu 2000, 210

<sup>295</sup> Tu 2000, 210-211

<sup>296</sup> Tu 2005, 166

the duties of the individual toward themselves and it seems that it would still too easily produce an authoritarian state. How can we be certain the society has reasonably accountable governments and systems based on a common good rule of law?

TU: Your concerns stem from requiring Confucian Humanism to adopt a liberal, post-Enlightenment conception of the individual or society. In Confucian Humanism, society is built from persons engaging in self-cultivation through “embodied knowing”: “the self transforms and harmonizes its emotions so that the inner disposition of the heart-mind can establish a sympathetic resonance with an ever-expanding network of interconnectedness enabling the self to form one body with Heaven, Earth and the Myriad things.”<sup>297</sup> Through this, Confucian Peoples combine their individualism with all those around them to produce a harmonious society along the lines of the East Asian modernity I spoke of earlier. If society is reasonably harmonious and modern and has some form of consultation built into it, does it meet the requirements for entrance in the Society of Peoples?

RAWLS: I think for a society to be reasonable and decent, it needs to recognize “duties and obligations as fitting with their common good idea of justice and do not see their duties and obligations as mere commands imposed by force. They have the capacity for moral learning and know the difference between right and wrong as understood in their society. [And] their system of law specifies a decent scheme of political and social cooperation.”<sup>298</sup> Can

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<sup>297</sup> Tu 2001, 26

<sup>298</sup> Tu 1999, 66

your society be harmonious without being authoritarian? Are duties and obligations based off of the common good?

TU: I think it is oriented toward the common good. “The feeling of belonging” that is the goal of this Humanism requires individuals to begin to “transcend egoism, nepotism, parochialism, ethnocentrism, and anthropocentrism.”<sup>299</sup> This is clearly an obligation oriented toward the common good. Confucian social structure enforces obligation and duty only through the coercion of the sense of shame instilled in those who do not orient themselves toward the common good. The obligation toward the common good “evokes feelings of awe, responsibility, commitment, and humility” in Confucian Peoples<sup>300</sup> but does not get implemented by force or coercion. This would run counter to the second feature of the Confucian modernity I spoke of earlier. I would argue, then, that “Confucian humanism so conceived has the potential for becoming a source of inspiration for human flourishing in the twenty-first century”<sup>301</sup> – is not working toward human flourishing the goal of the Society of Peoples?

Rawls: It is. And this is why it is important that Peoples that join the Society of Peoples are either reasonable liberal peoples or decent peoples that agree to adhere to the Law of Peoples. We are attempting no less than the establishment of utopia – reasonable utopia, mind you, but utopia nonetheless.

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<sup>299</sup> Tu 2001, 26

<sup>300</sup> Tu 2001, 27

<sup>301</sup> Tu 2001, 27

### 4.3.3 – Confucian China in the Society of Peoples

TU: I would see a Confucian People as being decent – they have reasonably decent consultation, they have an internally consistent sense of the common good, and they believe ultimately in the betterment of the human condition.

RAWLS: The one important factor that seems to be missing is the rule of law and a functioning judiciary. Part of verifying whether a people is decently consultative is if there is “a sincere and not unreasonable belief on the part of judges and other officials who administer the legal system that the law is indeed guided by a common good sense of justice.”<sup>302</sup> Indeed, “judges and other officials must be shown in their good faith and willingness to defend publically society’s injunctions as justified by law. The courts serve as a forum for this defense.”<sup>303</sup> It seems difficult to have a decent people when the self-same subsection of individuals conceive, promulgate, and administer the law.

TU: I would contend that this is simply the East Asian way of ordering a society. I do not believe that dictating the particular order and institutions within a people is an effective way to make it well ordered or decent. If people are held to account by their relationships to each other, as was discussed in part two of my view of Confucian modernity, must they have a codified series of laws and an independent judiciary as well? It is entirely consistent that there be broad principles in place mediated on a local level that guide how people ought to get along, rather than an adversarial system of

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<sup>302</sup> Rawls 1999, 66

<sup>303</sup> Rawls 1999, 67

justice and laws. Requiring that there be a specific organ of the state in the form a judiciary seems very much based in the liberal Western tradition and makes a People fundamentally required to take on the trappings of a State – something you have said the Society of Peoples is not meant for.

RAWLS: By my characterization of the Law of Peoples, it is still necessary to have something like a judiciary. Without it, we might not see the right to dissent being practiced. Without the courts as a “forum of defense” we can never know if everyone in the society agrees with the decisions being made on their behalf.

TU: This makes it seem like the judiciary is for other Peoples to look into each other and ensure that the Law of Peoples is being enforced. As Chinese are already cautious regarding Western ideas in case they form a new wave of imperialism, this is problematic. If your true goal were human flourishing, the conception would not be so narrow. Forcing Asian or Confucian Peoples to adopt one particular institution of Western liberalism simply to allow our intentions and motivations to be better seen by the West is not a useful way to bring about a Society of peoples.

RAWLS: The Society of Peoples is meant to foster respect. It is the very reason why the parameters of inclusion were broadened to include decent people. Not including them disrespects decent peoples. “This lack of respect may wound the self-respect of decent nonliberal peoples as peoples, as well as their individual members, and may lead to great bitterness and

resentment.”<sup>304</sup> There can be no progress when there is resentment. Including decent nonliberal peoples in the Society of Peoples at best encourages change and at worse has no effect. Continuing to disrespect them has serious consequences: “[t]he due respect they ask for is due respect consistent with the equality of peoples”<sup>305</sup> and this equality of peoples should be safeguarded by all well-ordered peoples. We are concerned, above all, with a well-ordered Society of Peoples. A realistic utopia needs to account for the world as it is and how it might reasonably be made to be. When I talk about decent peoples, it is usually within the framework of a ‘decent hierarchical people’. I envisioned this type of decent people is based on an example called “Kazanistan”<sup>306</sup>, an idealized Islamic society. It is of course possible “that there may be other decent peoples whose basic structure does not fit my description of a consultation hierarchy, but who are worthy of membership in a Society of Peoples.”<sup>307</sup> It may very well be that a Confucian People is precisely that.

TU: Confucian People also consider respect for other peoples to be important – and especially given the historical context of the West’s interaction with China and East Asia, it is encouraging to hear such self-awareness coming from a Western Liberal position. I think that I have made the case that the Confucian People constitutes another form of decent people. I think we can bring our principles of Confucian modernity into cohesion with the principles

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<sup>304</sup> Rawls 1999, 61

<sup>305</sup> Rawls 1999, 62

<sup>306</sup> Rawls 1999, 75-78

<sup>307</sup> Rawls 1999, 63

of the Law of Peoples. “While the rise of Confucian East Asia signals that modernization may take on diverse cultural forms, it does not indicate that Western modernism is being eroded by, let alone replaced with, an East Asian Alternative.”<sup>308</sup> We believe in promoting human flourishing. We are not militarily aggressive. We believe in a stable, well-ordered society. We can and should be afforded access to the Society of Peoples, and on our own terms as a People. “The task ahead is for the expansion of a global civilizational dialogue as a prerequisite for a peaceful world order. The perceived clash of civilizations makes the dialogue imperative.”<sup>309</sup>

RAWLS: “Any hope we have of reaching a realistic utopia rests on there being reasonable liberal constitutional (and decent) regimes sufficiently established and effective to yield a viable Society of Peoples.”<sup>310</sup> It seems reasonable to allow a Confucian People, so organized, membership within a Society of Peoples.

#### 4.3.4 – *Dénouement*

By staging this conversation between Tu Weiming and John Rawls, the hope was to provide a deeper understanding between China, Confucianism and liberal political theory insofar as it underlies and informs human rights theory. The first thing of note is that there do seem to be reasonable grounds to admit a Confucian People into the Society of Peoples even if they do not fully embrace liberalism and the particular values of civil-political human rights theory. This on some level is required by Rawls’ insistence on the

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<sup>308</sup> Tu 2000, 209

<sup>309</sup> Tu 2000, 209

<sup>310</sup> Rawls 1999, 29-30



need for respect to foster any progress at all – so long as China and Confucianism are not completely unreasonable, there is room for some allowances. That there is a Confucian Modernism that predicts and responds to many of the concerns of liberal peoples demonstrates that there are other forms of society that need to be seriously considered in world politics. By Rawls' own conception, there is not a strict requirement for rights, or especially any particular form of rights and equality, and this allows for China to be considered a reasonable society. This is a helpful corrective to those liberals and human rights theorists who approach China with a normative zeal.

The second interesting development is the apparent limitations in the Law of Peoples brought out by Tu. First, there seems to be a fundamental incompatibility between the idea of a society being culturally bound but not politically bound. The solution of ending immigration to remove pockets of immigrants is problematic because it fails to account for the possibility of dual and multiple identities – something common to immigrant communities around the world. Issues like this make it difficult to determine precisely where the different civilizations are located in an intercivilizational dialogue. Second, in spite of Rawls' protestations to the contrary, the Law of Peoples is still fundamentally a Western theory written for a Western audience. It is difficult but not impossible to graft Confucianism or China on to it – but it should be much easier. China is one of the dominant cultures on earth and holds 1/6 the world's population. If one of the most important Western liberal thinkers, on responding directly to adapting liberalism to the world stage, had not been able to find a way to incorporate China in an international organizational theory, these points to a potentially severe limitation in liberal theory. Given the philosophical roots of contemporary human right theory in

liberalism, this is an important obstacle to keep in mind. Finally, there is still much left in the Law of Peoples that seems more geared toward a state than a People. This underlies the problem with multiple identities above: Peoples are bound geographically and within the political jurisdictions in which they reside, while other factors are secondary. This call for Peoples of States is further undermined by the fact that an independent judiciary seems to be required, even though such an institution is necessarily an organ of the State. One portion of a people cannot be elevated into a position where they adjudicate over another with any sort of independence absent a state. Without a State, the judiciary is simply one group that can tell others what to do and this is reminiscent of an authoritarian society. In a democratic society, there are arguably mechanisms to ensure the judiciary is appointed by the people as such, but it is difficult to see how this would be the case for a People absent a state. In a Confucian society, where disputes are resolved on a more localized level, it could be argued that those empowered to resolve disputes are much closer to the people involved and chosen from among them in what might be seen as a more directly democratic manner. The Confucian Humanist idea of interpersonal accountability seems on many levels to be responding to the Chinese as a People, but the insistence on a judiciary and rule of law confounds this

What can be seen from this conversation is that there is still much to do if normative, ideological baggage can be left at the door when the Western human rights and liberal tradition engages the Chinese Confucian intellectual tradition. The very fact that the reasonable concerns expressed from a non-Western perspective can call into question some seemingly reasonable expectations within Rawls' conception of the

Society of Peoples means that there is far more need for intercultural dialogue. This conversation also demonstrates the many ways in which both sides can come together and foster mutual understanding that leaves aside presumptions about other cultures. It lays out a form of conversation and communication that Western scholars and those engaging China can perform and potentially bypass or minimize the on going issues with this scholarship.

### Conclusion

Given globalization and the rising economic and social impact of an ascendant Chinese state, it seems now more than ever that we need to come to a meaningful understanding of Chinese civilization. Historically, we have not been particularly good at viewing China on its own terms. As we have seen, the legacy of the colonial era is still felt acutely in East Asia and we often continue to engage the culture and tradition as “other” to ourselves for our own edification. When we do look at China as it is, it is nearly always in terms of its current government and then only so we can try to impose Western political and social values. The problematic ways we have viewed and engaged China has hampered our ability to understand China as it is in lived reality and we have barely started to have an actual, intercivilizational conversation between Western and Chinese civilization. If we cannot even begin to understand each other as we are, it seems rather impossible that we would be able to broker solutions to our shared problems and forge a peaceful world.

In this study, I set out to analyse and explore how scholars have engaged the Chinese Confucian intellectual tradition through human rights theory. We performed a comprehensive analysis to get a handle on what the discourse looks like and where it might go next. On the whole, Western scholars have employed problematic methodologies, brought in unhelpful perspectives, and failed to employ basic rigour when approaching Confucianism from the perspective of human rights theory. It is clear that human rights theory is generally only conceived of in first-generation, civil-political terms and this led to the recognition that Western scholars are basically talking to themselves. And since they have not engaged the Chinese intellectual tradition

respectfully and with an eye toward mutual understanding, it is implausible that any of their Chinese intellectuals are listening to what we have to say. Why would anyone want to sit and listen to a lecture about what they are doing wrong and how they ought to structure their society? If we are truly interested in having an intercivilizational conversation and to have some influence on the direction that China as a state, a people and as a civilization might take, or if we are interested in making this world a better, fairer and freer place, this is surely not the way to go about it.

But all was not lost: through our comprehensive analysis, we found many potentially useful ideas and observations that can help us in our future attempts to frame the discussion. Many of the current voices in the study were attempting to employ these ideas and frameworks but failed for one reason or another. A few voices recognized the problematic nature of our approach to the Chinese intellectual tradition and attempted to provide corrective methodologies and courses of action. All of the good ideas, frameworks and methodologies were taken away from their problematic contexts and assessed on their own merits. There are indeed many good things we are saying about how to engage Chinese civilization and by redoubling our efforts to apply them, we can hold up our side of a good-faith conversation between friends.

The conversation we had with John Rawls and Tu Weiming tried to do just this by subverting the problematic manner in which the West has approached China and directly engaging the ideas of prominent political theorists on either side of the divide. A new methodology was attempted to “read through” Chinese thought from the perspective of liberalism in order to achieve a “sensitive understanding”. This was practiced by performing both sides of the conversation as honestly as possible and in their own words.

This conversation, by engaging both traditions as coequal, has produced a deeper understanding of Confucian society in both Western liberal *and* Confucian terms, all while offering some perspective and critique of liberal perceptions of international political organization.

Whatever this study has produced, we have tried to offer a fairer conceptualization than was evident in many of the studies covered within the comprehensive analysis. When it comes to the intersection of Western human rights theory and the Chinese Confucian intellectual tradition, it seems safe to push for a more nuanced perspective than has previously been employed. This study has attempted to present one such push, but this is not to say the work ends here. Both the Western human rights tradition and the Chinese intellectual traditions are vast and deep – far deeper than this study and this conversation have expressed. Many more of these conversations need to take place before any real understanding is developed. There are many other streams within Chinese civilization that need to be assessed before we can really understand China on its own terms. There are also other important Western voices and theories that need to be brought into the conversation. Whether the conversation performed here was successful is not for me to judge. Certainly there are others who could perform these conversations better and more comprehensively than this study did. Given the state of our world today and the many competing voices, cultures and truth-claims within it, it is imperative that they do so.

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| Author           | Article   | Problem:<br>Methodology  | Problem:<br>Rigour  | Problem:<br>Perspective  | Problem:<br>Logic  | Strengths and<br>Contributions   |
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| Bai<br>Tongdong  | What to do in an Unjust State: On Confucius' and Socrates's Views on Political Duty | <i>Comparative Philosophy</i> : The paper presents a Confucian reading of Socrates' refusal to leave Athens. It is basically comparative philosophy – seeing how Confucius would react. It does not, however, address much beyond this and fails to situate itself within the broader conversation.        | <i>Narrow Scope</i> : The paper bookends its comparative philosophical discussions with exhortations toward political duty in the face of an unjust state. The relationship of the comparison with the broader discussion is neglected substantially and the inferences one can draw from the paper about proper action in the present are not supported.   | <i>Advocacy</i> : The broad subtext of the paper is about what the morally upright person ought to do in the face of tyranny and an unjust state. Statements such as “one has to admit that, sometimes, the shining example of heroic death might serve a better political function than nurturing a local community, teaching and studying the classics” (15) seem overtly political. |  | “Abstract Translation” proposed, through which we can de-contextualize arguments from the one side, and re-contextualize them on the other, making these arguments internal to the latter philosophy”, a practice common in physics when abstract concepts are borrowed and integrated into other fields. “Of course, the abstract translation in philosophy is less rigorous than in physics, and whether it works depends on whether it works.” (9-10) Bai himself demonstrates the major caution to his approach – it only works when it works – and as such it is not necessarily a broad, meaningful methodological tool for all those in the field, but it may offer a useful method for those engaging in work that is fundamentally comparative. |
| Berry,<br>Thomas | Individualism and Holism in Chinese Tradition: The Religious Cultural Context       | <i>Orientalism</i> : This paper is fundamentally presenting and comparing essentialized versions of China and the West that fall in the classic “individualistic” versus “communitarian” structure. Without critical depth of analysis, this serves to do little more than reinforce existing stereotypes. | <i>Essentialism</i> : The chapter sets out to delineate the thought in the West that led to individualism and the thought in China that led to communitarianism. Its approach, however, paints a picture of both the Western and Chinese traditions that are teleological and culturally based: China would always place community/social relations primary, while the West would always place individuals first. The consequence of these origins are on contemporary China and the West are discussed with the declaration that “[s]o far China has kept in a single functional | The paper also holds Confucian philosophy as a corrective to longstanding issues in Western philosophy, apparently in spite of hundreds of years of Western attempts to do the same: “I will try to show how Confucius could solve these apparent contradictions” (1).   | <i>Fallacy of Composition &amp; Appeals to Authority</i> : When discussing the Western roots of Individualism the argument is limited and rests on the contention that because some important people at some times said things that are individualistic, Western thought is fundamentally individualist. | Whatever the particulars of the study presented, the paper’s stated goal is to ensure that when different cultures are studying each other, they are aware of each other’s differences: “while these patterns of society-individual interactions will possibly remain identifying features of Chinese and Western traditions, these traditions may in the future find it helpful to take greater cognizance of each other:” (54) This is important to  |

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|        |         |                         | <p>vision what in the West has been divided: the primordial integrity of the university, the existential order of historical time, and the future order of harmonious presence of the heavenly, the earthly, and the human to each other" while "the West differentiates these and places them in extreme tension with each other." (54) Such an analysis homogenizes and essentializes the West and China into an immutable form and, somehow, fails to account for the fact that China has had some very startling and drastic changes in perspective and existential outlook over the past several decades.</p> <p><i>Lack of Context:</i> On the Western side it jumps from the Bible and early Christian thought, through William of Ockham, Hobbes and Burke and declares such an investigation of Western individualism "extensive" (41-43). Certainly the call here is not for every article on every topic to have a complete history of philosophy present within it, but the glaring omission of early Greek thought or anything more contemporary than Edmund Burke is problematic.</p> <p>On the Chinese side, discussion is limited to interpretations of the Five Classics with the most contemporary voice belonging to the Japanese Neo-Confucian Nakae Tōju from the 17<sup>th</sup> century. A comparative discussion of Chinese communitarianism and Western Individualism is also a contemporary one and leaving out any voices from the past several centuries is problematic.</p> |                         |                   | <p>keep in mind.</p>           |

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| Chan, Joseph | A Confucian Perspective on Human Rights in Contemporary China | <i>Comparative Philosophy:</i> The basic method of the paper is to try and demonstrate some areas within Confucianism where support for human rights can be found. Only Mencius' community and social relationships are pitted against human rights philosophy so there is a general lack of perspective. This is in spite of the paper's specific calls for situating a study within the contemporary context. | <i>Essentialism:</i> By only pitting Mencian Confucianism against human rights philosophy, the paper is providing an essentialized version of Confucianism for the sake of comparison. While the summary of a potential Confucian perspective on human rights the paper provides is interesting and perhaps informative, it is derived from an extremely narrow set of source materials and attempts to draw too broad conclusions from them. | <i>Advocacy:</i> The vision of Confucianism presented throughout this study is |                   | Argues for a "Ecumenical Approach" to human rights that "encourages different cultures to justify human rights in their own terms and perspectives, in that hope that an 'overlapping consensus' on the norms of human rights may emerge from self-searching exercises as well as common dialogue." (212) In addition, awareness of the actual lived context of the object of study is emphasized. In order for a discussion between Confucianism and human rights theory to occur in any meaningful way, it must be assessed "to what extent does Confucian thought constitute a lively cultural tradition in China today" and a call is made to distinguish between a philosophical Confucian system and a cultural one that is embodied by Chinese people. (215) Provides a potentially useful summary of a potential Confucian perspective on human rights (233-234). The formulation provided is helpful because it is broad enough to account for general Confucian trends without just reducing it to Western liberal human rights. The essentialism here is less egregious than other articles. |
| Chang, Weien | The Confucian Theory of Norms and Human Rights                |   | <i>Lack of Context:</i> The discussion of Confucian thought and its practical   | <i>Advocacy:</i> The vision of Confucianism presented throughout this study is |                   | Conceptual compatibility allows for traditions to be different in practice and not  |

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|        |         |                         | <p>reality relies on an essentialized and idealized version of the tradition. It also ignores the lived reality of Confucian society and white washes over times when it was not as harmonious as might be desired. When it is recognized that there were decidedly un-Confucian breakdowns in the performance of the ideal relationships in practice is it basically stated that because this was not what Confucius envisaged, it is not relevant to the discussion: "if parties may follow different rules in their interaction, the relationship can become unbalanced and unfair – giving one party more of the benefits and the other more of the burdens. In fact, a system of norms supporting this kind of relationship between the authorities on the one hand and the common people on the other was developed later in china. <i>This was not the system of Confucius's time, however, and certainly not the system he wished to help build.</i>" (120, emphasis mine) As the argument being made requires Confucianism to become a stepping stone to a better society, this important context must be addressed.</p> | <p>noticeably idealized as it takes assertions from classical texts as a substitute for any lived reality: "This idea of love of all human beings was accepted by all Confucians as central to the concept of humanity" and underline the inter-relationships between them. (118)<br/><i>Subjectivity:</i> The desire to bridge the gap and bring Confucians and Westerners together is overwhelming in the article. The argument also depends on the ability to grant an idealized Confucian morality and liberal human rights together that is utopian conception, though little thought is given to practical considerations. "people can first learn the Confucian norms and becomes compassionate and respectful toward one another and then be assured that they have certain 'rights' which they can, when necessary, assert and defend. People would then have the benefits of both approaches but the problems of neither." (134) The immediate issue with this assertion, however, is that there is no accounting for how or why one would want to take up a tradition other than their own. In effect, this is merely an intellectual exercise that relies on a certain vision of humankind that sees them as</p> |                   | <p>necessarily mutually exclusive. The particular arguments of this article and how effectively they are made aside, the idea of establishing a conceptual compatibility is a potentially strong antidote for normative universalist claims regarding human rights, though any implementation of a solution that is purely conceptual is difficult in practice.</p> |

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| Cheng,<br>Chung-yiing | Transforming Confucian<br>Virtues into Human<br>Rights |                         |                    | <p>simply waiting around for there to be a 'better way' and they would change to allow for it if only it were presented.</p> <p><i>Advocacy:</i> The basic position of this paper is that China ought to adopt human rights – by revolution if necessary – and the discussion in the article is attempting to demonstrate just how that can be done. This is because “the need to protest or even fight against an oppressive rule is obvious” such “oppressive conditions may call for awakening the implicit consciousness of rights as individual claims for virtuous actions on the parts of individuals, in order to defend the community against the selfish interests of a rule.” (149-150) By grafting human rights and democratic language onto classical texts a</p> <p>“transformation of Confucian virtues into ‘rights’ and ‘the cultivation of virtues by individual-in-community should lead to an awakening of duty consciousness in an individual to the community and the public, which in turn should call forth an awareness of the individual’s legitimate potential for participating in public affairs’.” (151) While it is a tautological truth that when virtues become rights they would be rights, that</p> |                   |                                |

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| Ching, Julia | Human Rights: A Valid Chinese Concept? | <i>Comparative Philosophy</i> : The article compares Han Feizi, Xunzi and Legalists to Hobbes and Locke without much attempt to contextualize or determine why/how these perspectives ought to be taken as normative. The discussion about contemporary China jumps to the Chinese constitution, but little rationale for how ancient Legalists inform this shift is provided. | <i>Essentialism</i> : The article's the basis of discussing contemporary China is based off of an extremely narrow reading of one text that is then used to define China. A comparison of the "first paragraph from the preface to the White Paper on Human Rights issues by the government of the People's Republic of China in November 1991" (67), human rights theory | Confucian virtues ought to become rights and, by extension, Confucian morality recast as further support for democracy (in the case above) and rights in general, is a matter of further opinion.<br><i>Advocacy</i> : The article is fundamentally an argument for human rights as a valid Chinese concept in contradistinction to Chinese Marxist authoritarianism. The basic claim is that classical Confucianism supports the idea of human rights, but the arbitrary enforcement and modification of laws and expectations at the hands of the Chinese government – even contrary to their own constitution – makes such human rights technically impossible and elusive: "if obstacles remain to the observance of human rights in China, they are due not to any incompatibility of these concepts or practices with Confucian tradition, but to the misuse of political power in defense of entrenched repressive regimes." (79-80) Because this article is baldly calling for reforms to Chinese systems and appealing to Confucianism as somehow a truer representation of Chinese culture, the article is more advocative than academic. |                   | This article emphasizes the fact that "the people" as embodied by the Chinese state is not necessarily representative of the actual people living in China. It is important to keep these distinctions in mind when discussing any culture. However, the article uses this to argue that it is singularly the Chinese State and CCP that prevents human rights in China and not Chinese culture, Confucianism or the Chinese people. |



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| Dallmayr,<br>Fred | Confucianism and the<br>Public Sphere: Five<br>Relationships plus One? | <i>Comparative Philosophy</i> : This article sets up the development of the main philosophical positions of Western philosophy and Confucianism. It does this to demonstrate points of comparison and contrast, but does little to situate it in present.  | <i>Essentialism, Lack of Context and Scope</i> : Besides this clear normalization of Western social constructs, Confucianism is essentialized: while six and a half pages is devoted to tracing Western philosophy from Aristotle to Arendt, Confucianism is apparently something that can be covered in three and defined fundamentally and primarily by Confucius through the Analects and Tu Weiming's interpretation of the tradition. In either case, no justification is given for why the particular figures are given (or, in the case of Confucius, why only him is given) leading to a severe lack of context and scope. | <i>Advocacy</i> : Alongside the Orientalism, the article places Western social structures and historical development as normative and correcting. The paper calls for both sides to come together in intellectual exchange and mutually concede positions. The Chinese are asked to adopt Western liberalism, but what the West should concede in return is never mentioned. But the main issue here is that in the conceptual outline of Confucianism that the article provides, the five relationships are the primary and be-all of Confucian thought. Asked for them to just change it to become liberal democracy is more than a minor concession. And, it basically completely fails to consider the fact that Chinese culture specifically and East Asian culture in general might have more to its social structure than just the five relationships (the Emperor is long deposed). | <i>Appeal to Moderation</i> : The final conclusion calls for some sort of mutual reconciliation, though this is never fleshed out in full. As the argument assumes that a compromise position is automatically the correct solution without much evidence, it is fundamentally an appeal to moderation. | The article is calling for East and West to come together for intellectual exchange through mutual concession: "To facilitate this exchange, some concessions need to be made on both sides. On the side of Asian or Confucian thought, a helpful concession would be the modification of the traditional five relationships ... through the additional of a further, more impersonal relation: that between citizen and citizen in a shared public sphere and under a common rule of law." (207) Mutual exchange and growth may be a useful call, but for the reasons explained in the perspective section, the call is perhaps not being made in good faith. |
|                   |  | Comparative results of historical and social change: "It is precisely due to the unleashing of market forces that modern societies, Confucian or otherwise, require the counterweight of a public sphere able to contain or regulate these forces through a common rule of law" and "the fact that all Asian societies have been refashioned on the model of the Western nation-state ... means that traditional segmental or holistic |  |   |   |  |

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| Donnelley,<br>Jack | Human Rights and Asian Values: A Defence of “Western Universalism” | arrangements have been replaced by the pyramidal structures prevalent in Western politics.” (208)<br><br><i>Orientalism</i> : China and Asian Values are ‘othered’ extensively in this article and the ‘progress’ that the West has made regarding rights is seen to be necessary and proper for Asia and China to adopt, even if this pushes out of the way. | <i>Essentialism</i> : The West is defined by believing and supporting ‘rights’ while China and East Asia believes in ‘duty’, alongside many regressive anti-enlightenment social and philosophical structures. As essentialized, utopian view of the West is pitted against a deviant ‘other’ and liberal rights are given explicit priority because whenever Asian or Eastern values conflict with human rights, they must be given up: “where traditional practices conflict irreconcilably with internationally recognized human rights, traditional practices usually must give way – just as traditional Western practices such as racial and gender discrimination and the persecution of religious deviants have been required to give way.” (83) The West holds enlightenment in its hands and the rest of the world needs to catch up. | <i>Advocacy</i> : This article is a basic example of a non-specialist advocate entering into a discussion with little research. It declares Western liberalism as the only proper intellectual framework for the development and sustenance of human rights because that is how the Declaration of Human Rights was conceived and it is how already agrees in should be: “I take this understanding of human rights as given, not because I endorse it (although I do) but because it is the standard sense of ‘human rights’ in contemporary international discussions.” (62) That this is the dominant position in the West is certainly true, but this does not mean it is everywhere. The very fact that there are Asian criticisms should cause some pause and assuming that these criticisms are invalid because they do not agree with the apparent ‘mainstream’ is fundamentally a matter of ideology. Further, the article states that “Human rights, as specified in the Universal Declaration and Covenants, represent the international community’s best effort to define the social and political |                   | The article provides a useful discussion of the differences between rights and duties and how understanding these different interpretations can help foster discussion. Although the article uses these perspectives to essentialize the West and China as following one or the other, the basic caution is still important. |

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| Elstein,<br>David | Why Early Confucianism cannot Generate Democracy | <i>Comparative Philosophy</i> : The article is trying to demonstrate why classical Confucianism cannot generate democracy by looking only to early Confucian thought. Little attention is given to why this may or may not be an appropriate comparative framework. The comparison provided is meant to demonstrate a specific point about compatibility and the evidence provided is clearly cherry-picked to prove that point. That there are many articles that demonstrate that democracy <i>is</i> possible in Confucian thought, this is the sort of comparative philosophy that is the most problematic. | <i>Lack of Context and Narrow Scope</i> : The overall discussion is limited to a strictly classical Confucianism “Neo-Confucian thought is outside the scope of this article” (7). It also presents a vision of democracy that would not be recognizable to most democratic countries today. Because of this, the article can at best only state that a form of Confucianism that is no longer extant in any practical way may or may not be compatible with a theoretical conception of democracy that, itself, may not be recognized by self-proclaimed democrats in the world today. The article’s conclusions – that “the thought of the Analects and Mengzi contains significant obstacles to democratic or republican ideals” – are not | parameters of our common humanity. Within these limits, all is possible. Outside of them, little should be allowed.” (87) That these covenants also call for social and economic rights to work, welfare and healthcare – decidedly less liberal values than this article espouses – demonstrates the partisan nature of this article’s orientation because many of the rights in these documents would support the rights put forward by Asian values advocates. |                   | Promoting the idea that Confucianism can produce democracy must not be done at the cost of co-opting an ancient tradition that is not really present in the future, for “if any tradition is to remain relevant, it must apply to life as we live it today and not just life two thousand years ago.” (1) The article also attempts to subvert this issue of fishing for compatibility within ancient traditions, as though it is only through finding democracy in classical Confucianism the study is useful at all: “perhaps we need to put aside the question of whether Confucian thought is democratic before that contribution can be appreciated. Confucian thought surely need not fit modern conceptions of |

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| Fan Ruiping | Why Confucian Morality is not Modern Western Morality |                         | <p>helpful one way or another because there is no real ability for them to be extended beyond the purely theoretical. This is especially problematic because it is this article that earlier made the case for putting aside these issues when discussing early Confucian thought.</p>   | <p><i>Advocacy:</i> The purpose of the article is to demonstrate why China ought to be adopting Confucian family values. the article claims that “China will need to restore a notion of the family within a Confucian appreciation of virtue in order to combat corruption” because the corruption in contemporary China comes from that very “pernicious favoritism” (25) that would be seen as morally corrupt</p> |                   | <p>democracy to be relevant.” (2) The article further calls for the recognition that there are no easy definitions of “Confucianism”, “democracy” or certainly “Confucian democracy” (2, 4). These are all important points to consider.</p> <p>The article’s final call is that “if we stop trying to make Confucianism fit into preconceived categories, we might better see what it has to offer contemporary political debate” (15) This is a useful corrective to the attempts by many authors to simply discuss Confucianism devoid of contemporary context. However, as noted previously, since this article is specifically engaged in that sort of comparative philosophy that perpetuates the issue identified and fails to do anything but walk this same methodological path, the argument is severely undermined.</p> <p>The main rhetorical strategy of the article is useful, regardless of the narrow scope. The point is instructive: what seems to be a universal norm cannot be utilized as a blanket justification for denouncing or demonizing the social constructs of the other. There may very well be internally consistent moral rationales for the manner in which the system is oriented</p> |
|             |   |                         | <p><i>Narrow Scope and Lack of Context:</i> The article is dealing specifically with whether filial piety should be seen as a virtue, not as a vice. The discussion is linked back to the broader context, but the extremely specific topic makes that link tenuous and ill supported.</p> <p>Essentialism: The discussion is used to frame universalist/individualist distaste for hierarchy versus</p> |   |                   |  |

| Author       | Article                       | Problem:<br>Methodology | Problem:<br>Rigour  | Problem:<br>Perspective  | Problem:<br>Logic   | Strengths and<br>Contributions   |
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| Han, Sangjin | Confucianism and Human Rights |                         | <p>Chinese traditional family values. An essentialized view of Chinese traditional values is argued through the discussion of filial piety as though this – and only this – is the defining characteristic of Chinese society and thought.</p>  | <p>by the universalist standard. Further, laws should be instituted to prevent and “punish those who support a court case against a close family member” as this will foster a return to traditional Confucian family values (25). So while this article is in favour of competent and responsible comparative studies and against essentialism, such meaningful calls for rigor are undermined by the strident calls for a particular political and philosophical system to be implemented regardless of any potentially valid criticisms.</p>  | <p><i>Fallacy of Composition/Hasty Generalization/Historian’s Fallacy:</i> By only studying the particular case in the 1980s in South Korea and attempting to make a broad claim about how all human rights models should be changed, these fallacies are present. Indeed, the movement is discussed so that one would presume that the movement did what it did solely to make an argument for communitarian human rights.</p> | <p>In spite of the issues detailed, the chapter also outlines quite powerfully the shortcomings of a human rights regime that is overly defined by negative liberty as neglecting whole other aspects of human existence and being. “Consider that, in a liberal discourse, the primary function of rights is to protect individuals against the community. Community is here presupposed to be antithetical to individual liberties. The question of how to nurture a good community is rarely seen as relevant to advancing the quality of individual rights.” (129) This makes civil-political rights the only rights worth defending, and thus all human rights are defined by</p> |
|              |                               |                         | <p><i>Rigour:</i> The chapter represents an overall lack of rigour in that it takes a particular case study, idealizes it, and makes broad claims about the entire human rights debate from it. The very narrow scope of the research evidence is used to essentialize all communitarian movements as being only interested in communitarian human rights. The paper provides little context to justify its broad claims.</p> | <p><i>Advocacy:</i> This chapter forcefully argues in defence of communitarian human rights over all other forms. It does this by taking a case study – the Kwangju democratic self-rule of 1980 in South Korea – and using it as proof for much broader claims, not just politically, but also socially and geographically. The stated aim of the chapter makes this clear: “my argument is selective and normative. In other words, the paper is concerned more with communitarian than liberal approaches to human rights, but with specific focus and orientation.” (121) It is also based on “the premise that as human beings we are entitled to both individual</p> |   |  |

| Author          | Article  | Problem:<br>Methodology | Problem:<br>Rigour   | Problem:<br>Perspective  | Problem:<br>Logic | Strengths and<br>Contributions   |
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| Hansen,<br>Chad | The Normative Impact of<br>Comparative Ethics:<br>Human Rights |                         | <p><i>Narrow Scope:</i> The paper's main discussion is only on the theoretical and while this is potentially necessary, by offering no specific examples and without demonstrating even a potential next step for practical philosophy the article feels abbreviated. The narrow focus is on the meta-ethical and meta-philosophical issues surrounding the definition of moral philosophy. While it offers profitable and cautionary advice for engaging the discussion, it does not really offer any practical direction beyond. This is not automatically a</p> | <p>and collective self-determination. The latter is no less important than the former since individual sovereignty can be best sustained in a flourishing community" (131), though precisely why this is so is never really argued for, just asserted.</p> |                   | <p>negative liberty – the freedom from something. The consequence of this is that "one risks deflecting attention away from the fact that these liberties are also means of 'enablement' or 'empowerment' for persons to function as flourishing members of a polity or community" not just 'freedom's from' 'concerned with protecting the privacy of radically autonomous, isolated, self-interested, ahistorical and acultural selves, but rather they positively empower a person's involvement in a flourishing community and are thus compatible with, for example, communitarian traditions of moral and political thought." (129)</p> <p>The chapter attempts to design a course for engaging others' ethics respectfully while subverting the common issues with comparative philosophy and essentialism: "Comparativists may in form traditions about each other and thus stimulate moral discourse but may not otherwise 'guide' or adjudicate the shape of the final synthesis." (72) The main concern in the comparativist's attempts at adjudication is that, often, they are coming from backgrounds as professional Western ethicists and may have particular ideas of what constitutes 'morality' and 'ethics' that might not technically fit, say, Confucianism. Attempts to engage in Asian traditions, by more often looking to historical</p> |

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| Henkin,<br>Louis | Epilogue: Confucianism,<br>Human Rights, and<br>'Cultural Relativism' |                         | <p>problem, though, as these are the sorts of discussions that need to take place if actual informed, critical and respectful cross-cultural discussion is to occur.</p> | <p><i>Essentialism:</i> Possible due to its nature as an epilogue, chapter is summary in nature and this makes it generally complicit in essentializing information and traditions in an extremely optimistic and almost naïve manner:<br/>"Confucian teachings, we have learned, encouraged civility, and inspired humane concern and mutual respect.</p> | <p><i>Advocacy:</i> When the discussion shifts to contemporary applications of human rights, it declares that "the human rights idea is not monolithic, imperialist" and that "with the imperial tradition vanished, and with it the quest for benign, wise, humane monarchy, societies committed to Confucian values need not find</p> | <p>traditions and texts, are failing to actually engage with any lived form of Asian morality. These "ancient conceptual issues... are simply irrelevant, historical curiosities. Given the contemporary complexity of the Chinese moral community, these anachronistic considerations are distractions from the real issue." (86-86) In effect, comparative ethicists and philosophers are failing to look at the actual intellectual traditions found in Asia to understand them on their own terms and these easily leads to value judgements about the culture in general. The final call of the article is again one of moderation and critical restraint: "Direct appeals to allegedly dominant Chinese attitudes have no normative relevance. Rather than seeking in Chinese thought for sort-cut answers to contemporary Western controversies, comparativists should focus on tracing the background assumptions and higher norms of warrant that underlie all sides of Chinese ethical debates." (94) This is a point that perhaps should be more thoroughly discussed and publicized in the area of comparative studies.</p> <p>The chapter in general is a good guide to the basic development of human rights theory in comparison to general Confucian values, but the summary it provides is at times overly simplistic or essentialist.</p> |

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| Ihara, Craig | Are Individual Rights Necessary? |                         | <p>The enlightened emperor, and loyal, incorruptible official committed to Confucian values, practiced virtue and behaved justly, and set examples of justice and virtue for the people." (310) That all Confucian officials were incorruptible or even committed to Confucian values (many were in fact Buddhists or self-interested, to say the least) is an impossible position to defend and even more so when discussing the various emperors of Imperial China. There is also a failure here to recognize the difference between theory and ideals on the one hand, and practical reality on the other. This also says nothing of contemporary China, East Asia or even Confucian practice.</p> | <p>democratic theory and representative government ungenerally "no intrinsic tension between Confucianism and human rights." (313) This is an about face from the earlier characterization of the traditions as disparate and seems to be motivated by a political hope or perspective.</p> | <p><i>Fallacy of Composition among others:</i> The analogies discussed in this article are problematic. The basketball, baller and funeral practice analogies seem specifically designed to make the language of rights awkward, begging the question about intelligibility of language. The claims made in the article are perfectly reasonable in their contexts but overall the article fails to account for or properly defend against the possibility that life is not a) a game, b) a performance or c) a series of rituals. That a classical Confucian might see some correlation is, of course, the article's entire point. But, correlation does mean</p> | <p>The overall purpose is to demonstrate that one need not have the language of rights to have a functional equivalent. The assertion that is being argued against is that a culture necessarily must have rights language to have rights and in this respect the article offers a useful corrective. It is not proper, therefore, to dismiss different social and moral conceptions of justice or what is right simply because it does not share Western language. Indeed, while "it is not difficult to see why many</p> |
|              |                                  |                         | <p><i>Lack of Context, Essentialism:</i> The article is based off of making analogies to demonstrate how ridiculous some rights-claims are. Basketball, ballet and funeral practices are used as substitutes for people and society demanding and violating each other's rights. The logical issues are addressed in the appropriate column, however the simplistic nature of the analogies do not acknowledge the lived reality of actual consequences of real conflict. The article attempts to account for this by admitting "It is difficult to abstract serious examples from our own competitive and individualistic</p>  |   |  |  |



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| Inoue<br>Tatsue | Liberal Democracy and<br>Asian Orientalism | <i>Orientalism</i> : This paper is comparing liberal democracy and 'Asian Values' in order to determine the potential for compatibility. It is arguing that the only Asian Values that is proper is one that is essentially and uniformly compatible with Western liberalism. This argument | social framework" (19) because "many people are inclined to conceptualize all important human relationships in terms of rights." (20) "Asian families" would not have this issue, apparently. Westerners are incapable of abstract thought outside of rights so these facile examples are provided instead. This defence of a lack of stronger or more realistic examples is seemingly based in racial, Orientalist or essentialist views of thought and society. The discussion of Confucian society is also extremely anachronistically: "In many societies, including China, it is thought that the ruler must perform certain ceremonies during the spring of the year to ensure a good harvest. This performance is not regarded as an act of supererogation on the part of the ruler, but as an essential part of the responsibilities of that position." (20) It would be difficult to picture Hu Jintao performing these ceremonies today and so it remains unclear how a discussion of these sorts of Confucian practices are relevant. The argument here is very limited at its conception and requires Confucian social ideals to be real and practices in reality when they simply are not. | <i>Advocacy</i> : The article sets out to describe and compare liberal democracy and 'Asian Values' to offer the latter as a compliment and corrective to the former: "I think that their perspective is fundamentally compatible with the aforementioned core values of liberal democracy. They | similarly' or exactness and this is a fallacy of composition. Certainly there is a 'teamwork' aspect to Confucian social society, but basketball is not Confucian social society and the awkwardness of a basketball player claiming his/her rights were 'violated' is semantic and not intrinsic. Basketball rules are not discussed that way, but that does not mean they can never be discussed that way – it would be awkward but not necessarily conceptually improper. Further, a basketball game is set to a limited time, with limited people and within established rules that everyone who participates has ostensibly agreed to. This cannot be said of people who are simple here, born into this world, without some normative ontological position about the nature and purpose of being first presumed. | claim that traditional moral systems such as Confucianism are impractical ... not being practical in the modern world is far from being morally unacceptable" (28) and should not be dismissed out of had as such. The article makes a useful argument for the potential that 'rights' as such are irrelevant, but the lack of rigour leaves the overall argument unconvincing. |
|                 |  |   |   |  |  | The paper attempts to demonstrate that 'Asian Values' do not represent all the values of all the peoples in Asia. This is an important perspective to keep in mind. It takes a stance against orientalism/Occidentalism by trying to make sure that the loud voices in the  |

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| Kim Sungmoon | Self-Transformation and Civil Society: Lockean vs. Confucian" | requires and internalization of Western values into Asian and is thus an internalization of Orientalism. | <i>Lack of Context:</i> The main issue, though, is that the article fundamentally lacks scope and context in its comparison. The abstract places the article's intention at debunking that "contemporary Confucianists" claim of "Western liberalism as pitting the individual against society" (383). Through discussing Locke's philosophy in | are endeavoring to tap Asian cultural resources to develop some distinctive variants of liberal democracy that could appeal to Asian people's sensitivities and imagination." (28) This seems to require so broad an interpretation of 'liberal democracy' that it may not actually be present in practice in the world. Whatever the interpretation of liberalism the article forwards, it is declared to be compatible with Asian values: "there are points of contact between Asian voices and liberal democracy – not simply that there are some Asian voices sympathetic to liberal democracy, but that the latter can give us intellectual and institutional resources that we need in order to accommodate the internal diversity and conflict among Asian voices and to resolve the problems raised by them." (29) The clear intention here is to offer Asian values up to liberalism as a potential corrective – and vice versa. | <i>Genetic Fallacy:</i> There are certain presumptions made about Western and East Asian society – that Westerners are all Lockean gentlemen and that East Asians are all <i>junzi</i> , or trying to be. That East Asians live in a society that has its origins in Confucian values | The comparative philosophy is done ably – the article is clearly well versed in both traditions and is able to discuss in some detail the nuance on either side. If this were then linked more carefully to the broader conversation, or if a justification for the |
|              |   |  |   |   |   | discussion that are perpetuating these perspectives from both sides do not hi-jack the debate. This article is therefore an example of non-orientalist essentialism.  |

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| Onuma Yasuaki | Toward an Intercivilizational Approach to Human Rights | chosen specifically to compare to Confucius except for the fact that it works well for the argument. The strength of the comparison seems to have more to do with the texts that were chosen to be studied, and the broader context is neglected. | comparison to Confucian, "this essay shows that liberalism and Confucianism aim to reconstruct a society freed from antisocial passions entailing a vicious politics of resentment" (383). While the analysis itself is quite well-done, there is little attempt to link it to a broader context and the extremely narrow scope is never justified.<br><i>Essentialism</i> : Confucius is read and depicted in a narrow and essentialized form that fits the rhetorical strategy of the article. He is portrayed as some sort of proto-liberal because of similarities to Lockean philosophy, despite huge cultural gaps: "Confucius was not so much interested in the state (and Machiavellism) as in a viable civil society. In this respect, Confucius is much closer to liberalism, although he did not champion the values of freedom, equality, and right, nor was he preoccupied with non-intervention of government in private life" [391, emphasis mine]. The claim that Confucius was a proto-liberal because Locke was interested in civil society too is problematic. Especially given that this is stated regardless of his lack of concern for almost every other classic liberal value and concern. | discussion as such. The article declares that "East Asians must ask whether liberalism, even its best, is resonant with their moral sensibility and their ideal of the family in constructing their own civil society or civil societies in the unique post-Confucian social contexts" (399), but it is never made explicitly clear why they must. | does not mean that it is currently a Confucian society. That the roots of both social traditions include ideas like the ideal gentleman and <i>junzi</i> does not necessarily mean that this is lived reality today.                              | texts/figures chosen was made more clearly, this would represent a strong demonstration of reasonable comparative philosophy.  |
|               |  |   |  | <i>Advocacy</i> : This paper is attempting to push for reform to the way human rights are talked about and has a clear axe to grind with NGOs that deal with human rights. By attempting to deal with the issue so stridently, it is possible that it will minimize the contributions of any side of the issue that is                             | <i>Argument to Moderation</i> : A slight example in that it is presumed that a compromise position down the middle of each tradition or society is automatically the best approach. It may be, but stronger evidence may be required to prove it. | "Intercivilizational Approach" to human rights that tries to ensure all parties are discussing the issues as equals. Meaningful dialogue comes about after the various "civilizations" involved recognize their fallibility and limits. Western nations often fail to hold a mirror up to themselves when discussing human rights and dismiss criticisms when levelled against them. A major criticism given by East Asians is |

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|        |         |                         | <p>not adopting the intercivilizational approach explicitly. The discussion provides a useful, if sometimes forceful, critique of the manner in which the discussion about human rights is conducted. The actual contents of the article, however, do not necessarily defend or strictly reflect this discussion. Many assertions are made surrounding the bias of certain NGOs and the hubris of Western civilization in its dealings with others, but beyond such theoretical discussing there is less concrete discussion founded in providing realistic next steps. So, when NGOs and other human rights organizations are discussed at length in terms of their varying methodology, intentions and motivations, it is unclear if this is where the article thinks the next steps should be taken. As stated earlier, however, such organizations are explicitly advocacy groups, so while one might criticize an organization for only being interesting in one sort of right, if they are an institution that is constituted with the sole purpose of investigating that right there should be no surprise when they do. The overall call, though, for increased rigour, self-criticism and open discourse is, of course, well</p> | <p>“that contemporary Western societies, especially the United States, are suffering from various social diseases such as crime, drugs, and the degradation of family and community ethics. They argue that these diseases may well be a consequence of excessive legalism and individual-centrism. These are major components of the idea of human rights.” (107) So long as Western countries attempt to export individualist and legalistic forms of human rights without responding to criticisms such as these, it should be no surprise that they attempt at exportation are met with strong resistance. It also holds that human rights should be taken as a means, not an end, and dialogue should come from this perspective. The end is human flourishing, whatever that looks like: “it is important to emphasize that the intercivilizational approach characterizes human rights as a means – an extremely important means – of realizing the spiritual and material well-being of humanity. It does not regard them as the end. Accordingly, it is critical of the absolutism or fetishism of human rights sometimes seen in human rights activists, and even in academics. Human rights should only be appreciated as long as their merits outweigh their demerits. As things stand now, there is no better alternative for promoting the spiritual and material well-being of humanity, which is why I think human rights should be universally adopted. The usefulness and flaws of human rights must be constantly scrutinized, however, and their role must be complemented and</p> |                   |                                |

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| <p>Pattel,<br/>Jeremy T.</p> | <p>Confucianism Contested:<br/>Human Rights and the<br/>Chinese Tradition in<br/>Contemporary Chinese<br/>Political Discourse</p> |                         |                    | <p>taken and a rubric for moving forward that might provide for fruitful developments.</p> <p><i>Advocacy:</i> The main drawback to the article is that it contends that China ought to engage Confucianism in a different way in order to bring about human rights. In doing so, it works from the presumption that human rights are normative and universal and is offering a new study of Confucianism as a path for Chinese intellectuals to make it to a form of human rights that might be palatable to Chinese sensibilities. So, the need to re-engage is not framed out of deference or respect for the tradition or the Chinese self-understanding and actualization, but as a pragmatic and necessary step toward limiting the influence of 'incorrect' social theories like Marxism. The article overall provides a deep, critical analysis of the current Chinese political context. However, it is fundamentally only interested in understanding this context in order to more easily inject human rights into the mix.</p> |                   | <p>substituted whenever necessary." (123) So, even though human rights is the best means and ought to be adopted, it should not be adopted uncritically and there should always be an eye toward revising it as necessary and abandoning it when it no longer works.</p> <p>The article delivers a useful discussion of the philosophical and political developments that led from an Imperial system to a Marxist one. It also discusses how the Confucian tradition is being re-engaged in contemporary Chinese intellectual circles now that the Cultural Revolution is long over. It is important to remember there remains a strong Chinese intellectual resistance to full-scale adoption of Western values of any stripe lest whatever it is that gives China its Chinese-ness be lost. This reluctance, however, has not prevented Chinese thinkers from investigating outside ideas and concepts and the issues of liberalist, capitalism and others of the kind have been long under discussion in China. The article's problematic presumptions about the necessity for Western liberal values within China may blunt the overall dispassionate analysis of Chinese political history, but over this article remains a useful guide to the potential motivations and other</p> |

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| Rosemont, Henry Jr. | Human Rights: A Bill of Wonders | <p><i>Orientalism</i>: The article spends the bulk of its time talking about American political issues and uses the Confucian discussion to inform that conversation. It seems to be using this discussion as an excuse to talk about internal political issues and as a result treats Confucian philosophy as an object.</p> | <p><i>Rigour</i>: This article demonstrates an overall lack in rigour in that it does not discuss a broader context; is extremely specific to American political issues and essentializes Asian and Confucian values to make its argument. the orientation of this article is against Western (and specifically American) excesses in all their political and intellectual forms and China is only brought into the overall fold of the discussion in the last two pages. There, all of the issues brought forth before are contrasted to the ideal Confucian society, "wherein rights-talk was not spoken, and within which I am not a free, autonomous individual. I am a son, husband, father, grandfather, neighbor, colleague, student, teacher, citizen, friend. I have a very large number of relationship obligations ... and my individuality, if anyone wishes to keep the concept, will come from the specific actions I take in meeting my relational responsibilities.... If Confucian persons aren't free, autonomous individuals, they aren't dull, faceless automatons either." (63-64) This is clearly cast as the better choice but academic rigour is very much lacking. No textual or other evidence for this conception of Confucian society being realistic is provided and all of Confucianism is dealt with in little more than two paragraphs.</p> | <p><i>Advocacy</i>: The issues detailed in rigour are used rather baldly to call for political change in America by adopting Confucian values. It is advocacy in the purest sense, built on an article that lacks context and essentializes the purported object of study.</p> | <p><i>False Dichotomy</i>: The basic thrust of the article is that society can either be defined by the excess of individualism, or it can adopt an idealized Confucianism and save itself. These are situated as the only two options when there are clearly more political and social structures that are stable even in the world today.</p> | <p>The article provides a useful commentary on the gulf that separates Western and Confucian conceptions of rights. It calls into the view the West's tendency to see Western philosophy as normative and as a result frames intellectual encounters with Asian philosophy with the intent of seeing if it can fit into Western ideas. The difficulty of bridging this gulf is extremely complicated: "even if it were possible, which I doubt, to reach consensus on a subtheory of economic rights for extant individual human beings within the context of civil and political rights, I doubt even more than the argument support that subtheory could be made to square with arguments for the rights of human groups, animals, trees, the natural environment, later generations, and so forth." (59) In addition to these philosophical differences are the political ones, namely the strong American commitment to civil-political rights based on a radical individualism.</p> |

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| Rosemont, Henry Jr. | Whose Democracy? Which Rights? | <i>Orientalism</i> : The discussion of Confucian philosophy and values is done in order to demonstrate the failings of American political doctrines. Asia is being othered. | <i>Essentialism</i> : The perspective of Asian and Confucian social values is very limited and superficial. The West is also reduced down to what specifically ails America and there is no attempt to recognize or identify anything within Western traditions that might offer a critique. | <i>Advocacy</i> : The cautions and comments provided in the article are meaningful, useful and potentially profitable frameworks in which to move forward in any cross-cultural discussion. However, the article is also stridently suspicious of Western liberal democracy, conflating the |                   | The article starts with a reminder of the potentially useful aspects of comparative philosophy and its role in contributing to inter-cultural dialogue: "the ultimate goal of these dialogues being to increase the probability that the over six billion human citizens of the global community will live more peaceable with one another in the twenty-first century than they did in the twentieth." (49) The article cautions, though that "it is essential that the dialogues be genuine dialogue, with give and take, and with all sides being willing to entertain seriously the possibility that their own moral and political theories might not capture the essence of what it is to be a human being." (49) The article also stresses that any discussion of rights and democracy is necessarily a Western one and, in the case of discussions with 'the Orient', is an English one and this is not as strongly recognized as might be necessary to foster this dialogue. |

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| Sen,<br>Amartya | Human Rights and Asian Values | <i>Comparative Philosophy</i> : The broader discussion is on contemporary East Asia, but the evidence provided to support the claims made are undermined by inconsistent and scattershot evidence. It does this even after emphasizing that Asia cannot be essentialized into one or two particular traditions or speakers. Confucius, for example, is not “a democrat, or a great champion of freedom and political dissent, but there is reason enough to | <i>Essentialism</i> : The article is specifically against the essentialization of Asian culture and the discussion of “Asian Values” is meant to demonstrate that there are many claims to truth and heterogeneity should be emphasized. However, as demonstrated in the previous column, Asian though is summarized through Confucius, Ashoka | <i>Advocacy</i> : The purpose of the article seems to be to undermine the Asian Values argument by demonstrating its weaknesses. However, its claim that Asian Values rhetoric put forward by Asian countries is questionable because it is based on a particular interpretation of the traditions in their countries that allows for it limits the agency of Asians to talk about themselves, unless they do so in a way that supports rights and freedom. This, of course,   |                   | This article provides a useful, if dated, summary and situation of the “Asian Values” argument. Aside from the specific details of the argument, what is really of interest is that some Asian thinkers and states have put forward a coherent argument that goes in the face of the universality of human rights and this cannot simply be ignored. The article’s basic |
|                 |                               |   |  | challenge U.S. ideology at its moral, political, and metaphysical roots, both for the sake of its citizens and for the sake of the rest of the world, whose people share the burden of having to live with the untoward consequences of U.S. foreign policies defended by reference to that ideology.” (68) Beyond this condemnation is the discussion of Confucianism presenting that tradition as a moderating and potentially corrective force against American hegemony. Ultimately the article concludes as such: “the wrongness lie in the belief that we – or any single culture – are already in full possession of those values, and there feel justified, backed by superior economic and military threats, in foisting those values on everyone else. Classical Confucianism proffers an alternative.” (68) |                   |  |



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| Tan Sor-hoon | Authoritative Master Kong | question the monolithic authoritarian image of him that is presented by the contemporary advocates of Asian values." (18) The evidence for this is a quote from the <i>Annales</i> (14.3) where he apparently calls for acting boldly in the face of a corrupt state. From here, the argument lurches into India and the apparent egalitarian tradition established by Ashoka in the third century BCE. Then it discusses Akbar of the Moghuls and his apparent acceptance of religious and civil freedom. The point here is that while the article states that heterogeneity in Asia means that no clear voice can be discussed, it then goes on to pick from wildly different places and times around Asia to demonstrate some support for rights in some manner: "The point of discussing all this is to indicate the presence of conscious theorizing about tolerance and freedom in substantial and important parts of Asian tradition." (27) <i>Orientalism</i> : The article argues that "the so-called Asian values that are invoked to justify authoritarianism are not especially Asian in any significant sense" (30), even though they are being advocated by Asians in Asian countries. The article sets itself out to be the arbiter of what a "true" Asian philosophy would look like and robs agency for the purposes of advocacy. | and Akbar.<br><br><i>Lack of Context</i> : The argument about re-interpreting Confucianism is based off of a potential reading of the tradition and is not an interpretation that has been adhered to in any | requires rights and freedoms to be normatively correct and universal before any discussion of whether they actually are can take place. It begs the question, then, by asking how Asian countries can use their traditions to support wrong-headed political philosophies when they could also (and more correctly) be used to support rights and freedoms. In fact, even if Asian values are formulated by Asians through their own interpretation of their cultural and intellectual traditions, "the so-called Asian values that are invoked to justify authoritarianism are not especially Asian in any significant sense." (30) Such a value judgment requires democracy and freedom to be normative. As a result, then, it is incumbent on observers to remember that "The people whose rights are being disputed are Asians ... [and] the rights of the Asians can scarcely be compromised on those grounds. The case for liberty and political rights turns ultimately on their basic importance and on their instrumental role." (30) | <i>Advocacy</i> : This article is effectively an exercise in apologetics, pitting Confucianism as a corrective for the social ills of East Asian society. The fact that the analysis is conducted explicitly to go about "Rescuing Confucianism from authoritarian | summary is that, unlike in the earlier conception of rights as universal as put forward by the likes of Thomas Paine, "A new class of argument has emerged that denies the universal importance of these freedoms. The most prominent of these contentions is the claim that Asian values do not give freedom the same importance as it is accorded in the West. Given this difference in value systems, the argument runs, Asia must be faithful to its own political priorities." (9) Regional diversity is therefore demonstrated to some as being more important than universalism in conceptualizing rights discourse.<br><br>An interesting argument is made for understanding Confucius as advocating authoritativeness rather than authoritarianism and could potentially allow for reinterpretations of classic |

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| Tan Sor-hoon | Confucianism and Democracy | <i>Comparative Philosophy:</i> The main focus of the discussion is comparing the Analects with John Dewey's version of democracy, apparently only because it helps make the argument for a Confucian democracy: "the | <i>Narrow Scope:</i> The discussion is limited to the Analects and John Dewey for the stated reasons of space and not relevance, as discussed in the previous | practise" (147) and does this by reinterpreting the tradition. Critical attention is not paid to these problematic uses of the tradition, but are rather simply swept under the rug without critical discussion. This undermines the effect of any reasonable or plausible position in the article because it is couched in such advocative language. Indeed at times this advocacy becomes overtly political: "Authoritarian practice could be avoided by only, inter alia, de-centralizing power to ensure that no individual, no one group, has a monopoly of unlimited power; putting in place institutional constraints on political power; establishing official institutions of oversight as well as nurturing civil society organizations with the capacity to scrutinize and hold governments accountable for their actions; encouraging and enabling ordinary citizens to take an interest in politics, to be willing and able to hold their governments accountable and to remove bad governments without bloodshed and chaos. In other words, rescuing Confucianism from authoritarianism in practice requires democratization of Confucianism." (148) What started as a philosophical discussion turned into an overtly political, advocative statement for political reform in Confucian countries. | <i>Advocacy:</i> The entire discussion is actually put forward to advocate for Confucian democracy that can be accomplished through reinterpreting the Confucian tradition: "[the article] then | The article attempts to situate itself in contemporary issues by discussing "the wide and growing range of literature on the relationship between Confucianism and democracy" (103), an approach which would |
|              |                            |  | Confucian society historically. This makes the conception more of a thought experiment that does not adequately deal with the lived context.                  | practice" (147) and does this by reinterpreting the tradition. Critical attention is not paid to these problematic uses of the tradition, but are rather simply swept under the rug without critical discussion. This undermines the effect of any reasonable or plausible position in the article because it is couched in such advocative language. Indeed at times this advocacy becomes overtly political: "Authoritarian practice could be avoided by only, inter alia, de-centralizing power to ensure that no individual, no one group, has a monopoly of unlimited power; putting in place institutional constraints on political power; establishing official institutions of oversight as well as nurturing civil society organizations with the capacity to scrutinize and hold governments accountable for their actions; encouraging and enabling ordinary citizens to take an interest in politics, to be willing and able to hold their governments accountable and to remove bad governments without bloodshed and chaos. In other words, rescuing Confucianism from authoritarianism in practice requires democratization of Confucianism." (148) What started as a philosophical discussion turned into an overtly political, advocative statement for political reform in Confucian countries. |   | texts in light of new theories. The difficulty will be doing this without explicitly trying to make the text say what we want it to say, a trap this article falls into.                                     |

| Author             | Article  | Problem:<br>Methodology   | Problem:<br>Rigour   | Problem:<br>Perspective   | Problem:<br>Logic | Strengths and<br>Contributions  |
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| Taylor,<br>Charles | Conditions for an<br>Unforced Consensus on<br>Human Rights | reconciliation of Confucianism and democracy. I shall attempt in this chapter will focus on what I consider to be the most important of these texts, the Analects." (106) Further, democracy is a complicated philosophical issue, but "the limited space of this chapter does not allow an extensive exploration of the pros and cons of various conceptions" and so "I shall merely set out the basic outline of John Dewey's conception, which will be adopted for my purpose here." (106) No rationale is given for why these texts are seen as the most important in the context of contemporary Confucian thought and practice or indeed Western political theory. As a result, the chapter is effectively pitting a particularistic form of democracy against an extremely limited form of Confucianism and using this analysis to draw broad conclusions about what contemporary East Asians and Confucians ought to be structuring their political thought around. | column.<br><br><i>Essentialism</i> : The discussion takes pieces of information from all over Asian traditions to make its assertions. For instance, Theravada Thai Buddhism is used in a discussion about East Asian Buddhism, with principles like <i>nibbana</i> and the like being compared in their Theravada forms to Western conceptions of rights. Then, | advocates a Confucian democracy by reconstructing, in the sense of a transformative understanding that renders past meanings relevant to the future, some key aspects of Confucianism." (103) The issue here is not whether or not such a transformation ought to be done or not, but the fact that this ostensibly academic discussion of Confucian thought and democratic theory is being conducted primarily to foster social and political change. <i>Subjectivity</i> : The article clearly wants to promote specific changes in Asian societies and uses this article as a platform: "This attempt describes what is possible and desirable rather than any actual Confucian community. It offers an idea of Confucian democracy that would hopefully guide the actions of those who would like to be both Confucian and democratic; the greater achievement would be to persuade others that a democratic Confucianism is the best option for Confucians in the modern world, and that a Confucian democracy is more satisfactory than other kinds of democracy in some ways, at least for societies that value their Confucian legacy." (118) |                   | Unforced Consensus. This article provides an interesting and potentially useful goal for the discourse on human rights philosophy in the world – an unforced consensus on human rights based on the principle of human flourishing. Fundamentally the idea is that the discussion about human rights should not be conducted based on philosophical, legal or other practical and potentially impractical differences, but on |

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| Tu Weiming | Epilogue: Human Rights as a Confucian Moral Discourse | specialist not doing their homework before wading into the discourse, although the article does provide some important and potentially useful observations in spite of this. | Lee Kwon Yew's conception of Asian values is discussed in terms of Singapore's human rights record. While Taylor is by no means an expert in his field, any attempt to link things like specifically Thai Buddhism to some broad generalization about "Asia" is surprisingly essentialist and this undermines the practical discussion that is provided. Further, the discussion is steered into the issue of Shar'ah which, with the exception of Western China, is not really an issue in East Asia as such. In essence, this article is comparing human rights to "Asia" and generally Asian thought and this is a basic failure in rigour, context and methodology. | <i>Advocacy:</i> While the article's call is for an ecumenicism that is predicated on self-criticism and awareness, this call is buried within advocative and almost utopian language regarding the saving power of Confucian Humanism. Some of this positioning is demonstrated in the |                   | separating the 'what' from the 'why' issues and focusing on that which can be shared. Why one culture or another wants to support human flourishing, in whatever capacity they feel that to mean, is more important than the 'what' issue of hammering out practical philosophically congenial solutions beforehand. Since Western traditions are just one (or some) among many and as a result there is a need for honest, open discourse if there is to be anything approaching consensus. Such a consensus, he contends, must necessarily be unforced and come to by mutual agreement and through mutual respect. This means that, primarily, Western traditions need to get over themselves and understand themselves better because they start to criticize other cultures' values. While such an assertion may seem a bit optimistic or even naive, the alternative of attempting to establish a <i>forced</i> consensus is intensely problematic and would undermine human rights by definition in doing so. Because society is faced with the need to come to some sort of understanding, a strategy will have to be developed to come to this.<br><br>Ecumenical approach to the different conceptions of morality and human rights. This approach might allow all sides to save face when sitting down at the table and allow a compromise solution of some kind to be worked out.<br><br>The article also discusses Confucian Humanism - an |

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| Twiss,<br>Sumner B. | A Constructive<br>Framework for<br>Discussing Confucianism<br>and Human Rights |                         | and has led to a certain moral failure in the West: "the incongruity between what we do as responsible and responsive member of the family and as a rights-bearing and self-interested political animals" leads to "our willingness to tolerate preposterous inequality, greedy self-interest, and aggressive egoism [, and this has] greatly poisoned the good will of progress, reason and individualism." (30 1) This is pitted against a "Confucian humanism" that provides a "perception of human self-development, based upon the dignity of the person, in terms of a series of concentric circles: self, family, community, society, nation, world, and cosmos." The ecumenical approach is seen to be able to solve apparent incongruities because this "Confucianism humanism" offers a corrective to the more egregious failings of individualism. | previous column. This is problematic, as is the fact that the evidence provided to justify the Confucian humanism championed here rests on creative and entirely new interpretations of the tradition. This is not to say that such interpretation ought not happen, but rather that the academic credibility of the argument is undermined by the useful suggestions being couched in such sociological language. As the article is calling for both social change and the re-reading of a tradition in a way that will bring it about, it is quite advocative and offers the subjective opinion of the author. | Advocacy: The article works on the presumption that all traditions could and would want to find a way of sitting at the table and supporting human rights. The article is fundamentally engaging in advocacy in that it champions Confucian ethics and praxis. So while the comparative components seems far more grounded in | Discussion based on 'pragmatic moral grounds'. A useful caution put forward by this article is that alternative paths to human rights, such as ones not based on economic and social liberalism as a first step, should not be ignored on principle. Allowing a tradition to justify its own involvement in human rights |

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| Wong, David | Rights and Community in Confucianism | <i>Orientalism</i> : The way in which the article discusses the topic requires an essentialized view of China. There is a lack of communitarian tendencies in democracy as to why it has failed to convince the | <i>Narrow Scope and Lack of Context</i> : The entire context in the article is that of a Confucian China that neglects current political realities and current conceptions of 'good' that may or may not dominate in China. To this end, the article effectively essentializes Confucianism as | reality than is common and care is taken not to essentialize either tradition given the space and this helps to strengthen the overall thesis, there remains one fundamental concern. While it is true that some traditions may be able to support human rights on their own terms, it is not necessarily clear that they would justify that they ought to. So while this article opens the door for alternate approaches to supporting human rights, it takes the fact that everyone would want human rights for granted. Establishing true human rights regimes is clearly not the aim of some societies and governments, otherwise such a movement toward self-justification would probably already be underway. The normative claim that is found in the implicit call for all societies to get to human rights by whatever means necessary makes it clear that this article holds human rights to be the only acceptable end-goal for society. | <i>Fallacy of Composition</i> : By attempting to demonstrate without reservation that certain texts supports rights, the article assumes that one piece equals the whole. Even if texts like the Zidao might maybe have some | Calls for a rights regime that is based in true pluralism and allows different conceptions of what the common good actually looks like: "I will argue for a pluralism that accepts both rights-centered and |
|             |                                      |   |  | <p>may be a good strategy for overcoming accusations of paternalism and colonialism. This would be the more pragmatic solution and would allow far more people to the table than if it is deemed necessary to limit discussion to language that is by definition indistinguishable from Western liberalism.</p>   |  |   |

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| Wu Kuang-<br>ming | 'Let Chinese Thinking be Chinese, not Western':<br>Sine Que None to Globalization | Chinese to adopt it: "A common problem for both the Chinese and American democratic traditions, I suggest, is that they have not possessed enough community" and as a result "adequate moral traditions need both community and rights" (41). Of course, this issue here is that the article is effectively presenting Confucian/Asian communitarian values as a corrective to the issues of Western liberal democracy, something which is both essentialistic but perpetuating the Orientalist tendency to be more concerned with how 'the other' affects 'our' traditions. | communitarianism and draws the support for his positions from texts like the <i>Zidao of Xunzi</i> (312-230 BCE), hardly contemporary. Further, despite the disclosure that (of course) such a text does not support 'rights' per se, does not mean there is no such support no matter how informed: "I do not mean to suggest that one finds in Chinese classical tradition anything like a full-blown argument for a right to free speech. What a do mean to suggest is that we do have the germ of an argument in the idea that the common good is sustained by recognition of a duty to speak." (36)<br><i>Essentialism</i> : "The reasons for why China has not adopted democracy as outlined in the next column as stated to boil down to its lack of communitarianism – in essentialist and orientalist view discussed in the previous column | William de Bary and arguing that because of its failure to "realize its ideal of education for all people which would infuse a unified national consciousness" and "a failure to mobilize people as a politically active body, capable of supporting its initiatives and proposed reforms." (41) Chinese communitarianism is offered bluntly as a corrective for the failings of democracy and as the reason for why China is not democratic already. If "adequate moral traditions need both community and rights" (41), Western democracy can learn a lot from China and vice versa. | correlation, this does not necessarily mean anything for the rest of the tradition. | Confucian moralities.... On the other hand, I also will argue that there are universal constraints on morality rooted in the human condition and human nature, and that these constraints push Confucianism and rights-centered moralities closer together through the recognition of the interdependence of rights and community." (32)   |
|                   |   |  |  | <i>Advocacy</i> : "This paper is fundamentally an advocacy piece as it is attempting to suggest an entirely new way for different cultures to talk to each other. It is not, however, placing one tradition as better, more normal or a corrective of the other. Rather, it is merely advocating for its own analytical structure, regardless of its practicality in reality.  |   | This article proposes nothing less than an entirely new interpretive and comparative strategy that has agents on either side of a debate go "through" the other side while maintaining its own integrity. This requires that one side not simply study the other as an object, but study it on its own terms and in its own cultural language and context, before emerging informed and potentially changed. This approach subverts essentialism, orientalism and globalism by co-opting them in a new rhetorical strategy. The melting-pot of globalization tends in practice to move toward Western conceptions of government and justice – government as adversarial and justice as fairness – because no real alternatives are seen as counting, even if these |

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| TOTALS: | 28      | 15                      | 22                 | 22                      | 8                 | 27<br><i>(198)</i>             |

ideals are less than perfect in practice. (197) That these are normative has been questioned many times before, but the consequences of failing to recognize the very possibility of legitimacy of alternate forms has practical consequences: "the so-called 'international court' dispensing world justice and human rights is a senseless mockery unless radical differences in the very meanings of justice and individual rights are appreciated. Unless intercultural adjustment is painstakingly undergone, accusing people of other cultures of injustice, violation of individual dignity, crime against humanity, etc., invites only disbelief. We must listen even to Hitler to avoid perpetuating his cultural tyranny." (198) The forced imposition of individual rights is tyrannical if, in imposing them, the actual beliefs of those individuals is callously disregarded. To this end, what cultures think needs to be seriously engaged, for "Meaning depends on culture, so appreciation of individual cultures is absolute sine qua non to meaningful globalization." (198)