Human rights and the case of China

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China is one of the “hard cases” in philosophical discussions about the universality of human rights. Apart from the common, and more general arguments of cultural relativity, intellectuals and scholars argue that there are additional reasons why Chinese tradition and culture is incompatible with human rights. There are two that I want to discuss here.

The first argument states that Chinese ethics is in tension with the entire idea of law and litigation. As Confucius, who is still the main source of normativity in much of the Chinese self-interpretation, says:

*In hearing litigation, I am no different from any other man. But if you insist on a difference, it is, perhaps, that I try to get the parties not to resort to litigation in the first place.*

This has been interpreted by most contemporary Confucians as implying that in the ideal Chinese society, there is no such thing as litigation. Indeed, in the ideal Chinese society it is *rites*, not *rights*, which govern social relationships and interactions. Rites are the ‘culture-specific norms, the contingent, ever-changing values of a particular society’3: the moral fabric that keeps society together. These rites possess an *internal* normativity: one acts in accordance with rites, so is the idea, because he thinks that rites articulate the requirements of proper behaviour. In other words: one acts in accordance with rites, because he thinks that’s the right thing to do. Law or litigation on the other hand are thought to function in a different way: rather than having internal normativity, they are said to have a merely *external* one. When a person’s behaviour is determined by law rather than rites, thus when one acts in a certain way because the law requires it, he does not do so because he thinks that this is right but because he does not want to be punished. And the Confucian suspicion is that introducing an elaborate legal system will effectively impede upon morality: the suspicion is that law will replace rite, that people’s actions will be determined by the self-interested motive of avoiding punishment rather than doing the right thing because it is the right thing, and ultimately that law and litigation will destroy social relationships and the harmony of society.

The first argument against the entire idea of human rights is thus based on the Confucian claim that law infringes upon morality. There are good reasons to be skeptical about this argument. Even if we accept that there is a basic tension between law and morality, then it remains unclear why we should assume that law has a tendency of *replacing* morality: is it not more plausible that law functions as a mechanism that people can fall back on in the case that speaking to each other as

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1 Confucian Analects *(Lunyu)*, 12:13, trans. Lau
“reasonable people” or mediation fails? And also, even if law has indeed a tendency to force morality back from societal practices, we could wonder how harmful this harm actually is in relation to alternatives. If we remember China’s Cultural Revolution of fifty years back, would it really have been such a bad thing had people followed laws explicating that it is not allowed to kill or torture – even if they refrained from such atrocities mainly out of fear to be punished? The concern that human rights infringe upon morality does not seem a very good reason to reject human rights altogether; especially in an increasingly globalizing world. However, this is not a reason to dismiss the relevance of the concern – which will become clear in discussing the second main reason put forward by those arguing against human rights for China.

The second, and related concern also has to do with the fear for possible infringements upon societal harmony. In this version, however, it is not the idea of law or litigation that is seen as detrimental but the concept of individual rights. Individual rights, so the argument goes, presuppose an understanding of individuality that is in a normative sense alien to Chinese culture – that is, the Western notion of individuality is neither explicitly nor implicitly present in China, and should be resisted on moral grounds. What the argument challenges, is the implications of conceiving of individuals as free and equal. Arguably, China’s normative understanding of the human being does not include a reference to freedom or autonomy, but rather sees human beings as constituted by the social relations in which they stand with others. As Henry Rosemont states:

\[T\]here can be no me in isolation, to be considered abstractly: I am the totality of [social] roles I live in relation to specific others. I do not play or perform these roles; I am these roles. When they all have been specified I have been defined uniquely, fully, and altogether, with no remainder with which to piece together a free, autonomous self.\(^4\)

And in a parallel way, China’s normative understanding of the human being arguably does not include reference to equality, but rather holds that social inequality is a precondition for a harmonious society. As Xunzi, also one of the ancient Confucians, stresses:

The ancient kings made the system of [rites] and rightness in order to differentiate the levels between the noble and the base, to mark distinctions between the old and the young, and to discriminate between the wise and the dumb, and between the able and the unable. They let everyone do what was appropriate according to ability and rewarded them commensurate for their work. This is the philosophy of harmonious community.\(^5\)

In other words, Chinese tradition and culture arguably has a normative conception of the human being as constituted by social roles and the aforementioned rites – which create the inequality that is prerequisite to harmonious society.


Consequently, the fear is that institutionalizing individual rights will infringe upon the harmonious society. Individual rights, it is thought, by imposing upon Chinese society and culture a conception of the human being as essentially free, are thought to generate individuals who are ‘self-interested claimers’\(^6\): the concept of individual rights makes people into human beings who are primarily concerned with claiming this, that, and the next thing, in a way that is “unburdened by” any social ties or commitments. Indeed, the concern seems to be that the notion of freedom that is propagated by the concept of individual rights makes human beings into anti-social individualists, who are allowed or even encouraged by law to neglect or even defy their social responsibilities.

In a parallel sense it is thought that individual rights, by imposing upon Chinese society a conception of human beings as essentially equals, citizens are made into a homogeneous mob. Endorsing the equality of individuals arguably makes that they consider their socially differentiated roles as daughter or son, as employee or employer, as scholar or as president as playing no constitutive role in who they are. If human beings are essentially equals, then they are not essentially differentiated. And since ‘harmony presupposes adequate differentiation’\(^7\), societal harmony is undermined.

So the conclusion is that the concept of individual rights, and the notions of freedom and equality that spawn it, is thus considered as something that is – and should remain – alien to China. Indeed, Roger Ames goes so far as to say:

\[\text{Western universalism has a history of being hegemonic and humiliating. And given the communal commitments of the indigenous Chinese notion of the person, the values aspired to by [individual rights] are not only not perceived as an ideal, they are a pathology.}^8\]

However, there are again good reasons for skepticism here. In line with the questions concerning the first argument, we could wonder whether individual rights indeed produce such self-absorbed individualists, and whether equality necessarily implies homogeneity. And even if that is so – which as far as I’m concerned is a very Big If – then is this any worse than the alternative? China is living the alternative now, and increasingly so, as may perhaps be best illustrated by some passages from the confidential internal communiqué that was widely circulated among CPC members in 2013. Members and leaders must:

\[\text{Forcefully resist influential and harmful false tides of thoughts, help people distinguish between truth and falsehood, and solidify their understanding... We must not permit the dissemination of opinions that oppose the Party’s theory or political line, the publication of views contrary to decisions that represent the central leadership’s views, or the spread of political rumors that defame the image of the Party of the nation... [and] We must reinforce our management of all types and levels of propaganda on the cultural front,}\]

\(^6\) Lee Seung-hwan 1996, ‘Liberal rights and/or Confucian virtues?’, Philosophy East and West (46:3), 367
\(^7\) Li Chenyang 2014, ‘Confucian Harmony: a philosophical analysis’, in: Dao Companion to Classical Confucian Philosophy, Dordrecht: Springer, 382
\(^8\) Roger Ames 1997, ‘Continuing the Conversation on Chinese Human Rights’, Ethics and International Affairs (11), 200
perfect and carry out related administrative systems, and allow absolutely no opportunity or outlets for incorrect thinking or viewpoints to spread.9

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But having said this, should we conclude that China’s arguments against human rights – at least the ones I mentioned here – are foundationless and should be disregarded altogether?

No. Although these often-heard arguments against human rights do not convincingly tackle the idea that there are certain things that every human being equally has a right to, or as Sem de Maagt has put it: although these do not tackle the idea that all agents have an equal right to whatever are the necessary preconditions of agency, they may articulate plausible and urgent worries about what from the Chinese perspective is associated with human rights. As was emphasized in the above, most of these worries have to do with anticipated infringements upon societal harmony: the notion of human rights is apparently associated with various other developments that from the Chinese viewpoint are in tension with their utopian images of a healthy society. These associations concern a so-called “rights inflation”: fears about transforming into a society wherein citizens sue each other when spilling their coffee or tripping on the neighbour’s lawn, instead of lending a helping hand. They express dystopias wherein people interpret their equal right to freedom as the right to neglect their parents, to disrespect one’s fellow citizens – as the right to forsake their moral duties. So perhaps in short we could say that the Chinese reluctance to embrace human rights has to do with a worry that an excessive focus on rights as the nexus of moral- and political relations, effectively leads to erosion of the duties that – on paper – are assumed to correspond to those rights. And if one looks for instance at the refugee crisis that Europe is faced with, and to similar ideas regarding the building of walls on US soil, there seems to be a point to this.

To conclude. What does the case of China teach us with regard to human rights? First of all, it does not provide sufficient grounds to hold that human rights lack universal validity, that these are merely a culturally contingent expression of “Western values” or the like. But it does show, secondly, that we should be weary of simply assuming that human rights stand in a strictly positive relation to morality: if there is a point to the Chinese worries, then it challenges the arguable corresponsivity between rights and duties. And this is at least an important question to ask: can we expect that a community of rights-bearers, on the level of socio-political practice, is also a community of duty-bearers, or is there something to the phenomenology of understanding oneself as a rights-bearer that is in tension with seeing oneself as the bearer of duties?

If we desire an open dialogue with China on the topic of human rights, these issues deserve much more attention than they receive now. And this is not simply a case of “educating China”, but precisely also one of putting our own house in order.

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