

Human Rights and Chinese Thought

A Cross-Cultural Inquiry

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Introduction

IN JUNE OF 1993, His Excellency Mr. Liu Huaqiu, head of the Chinese delegation, made the following statement in the course of his remarks to the United Nations World Conference on Human Rights in Vienna:

The concept of human rights is a product of historical development. It is closely associated with specific social, political, and economic conditions and the specific history, culture, and values of a particular country. Different historical development stages have different human rights requirements. Countries at different development stages or with different historical traditions and cultural backgrounds also have different understanding and practice of human rights. Thus, one should not and cannot think of the human rights standard and model of certain countries as the only proper ones and demand all countries to comply with them. [Liu Huaqiu 1995, p. 214]

This statement contains two claims: first, that countries can have different concepts of human rights, and second, that we ought not demand that countries comply with human rights concepts different from their own. The principal goal of this book is to assess these two claims.

It is important that we know what to make of these two claims, for reasons that range from the immediate and practical to the broadly theoretical. Assessment of the two claims should influence activists and international lawyers, both within China and without. It should shape the activities of organizations that seek to transcend national boundaries, like the United Nations; if Liu is correct, the hope for global moral consensus expressed by the Universal Declaration of Human Rights may seem naive or even imperialist. Especially since the end of the cold war,

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China has come to occupy a distinctive place in Western self-identities. Western media pay so much attention to China in part because it is seen as presenting an alternative, or a competitor, to ourselves.¹ Assessing Liu's claims will thus also tell us something about how to understand ourselves. Are we in the West better, or just different? Or is the matter more complicated than this simple dichotomy admits?

Of course it is more complicated. I will challenge the very notion that we can talk about "China's concept" of human rights: In the first place, people rather than countries have concepts; in the second, people often diverge in their uses of concepts, even people who are citizens of a single country. Rather than reject Liu's ideas out of hand, I will recast his claims in more careful terms. I will ask what concepts are, how they are related to communities, and how we use them to communicate. Instead of a stark choice between "different" and "better," I will develop a nuanced account of moral pluralism that recognizes the variety of ways in which we can be different from one another, the different perspectives from which we can claim to be better, and the dynamic nature of our moralities. When situated in the concrete context of debates over human rights, these abstract issues take on an immediacy that makes clear their importance not just to philosophers but also to students of cross-cultural issues quite generally.

Assessing Liu's claims will also take me rather deeply into the history of Chinese philosophy. While a common caricature portrays Chinese thought as static, I believe that all philosophical discourses are both non-monolithic and dynamic: People disagree and debate, and things change. This perspective enables me to see how certain strands of the Confucian tradition paved the way for rights discourse in China; throughout its history, in fact, Chinese rights discourse should be understood as an ongoing creative achievement, rather than a reaction to or misunderstanding of Western ideas and institutions. Only by looking at key moments in this history can we decide what to make of claims about the distinctiveness of Chinese concepts of human rights.

In the end, I do more than just assess Liu's twin claims. I am not a disinterested spectator in these matters; none of us are. I seek to act on my conclusions by engaging with contemporary Chinese rights theorists. Human rights discourses both East and West are dynamic and contested processes. By making more explicit both similarities and differences, and by judging which concepts to embrace based on the best standards I can

¹ See [Madsen 1995] for an enlightening account of U.S. views of China, and of ourselves.

Recent History

find, I aim to cooperate in the development of a broader, transnational consensus.

Some of these matters, both philosophical and sinological, may seem rather distant from the issue of contemporary human rights practice. I firmly believe in their interconnection and have tried to write a book that makes these relationships clear. Many philosophers have studied little about China; many sinologists have had little contact with philosophy. I have not assumed my audience to be learned in either field, therefore, but have written about philosophy and about China in ways that should be accessible to educated readers who know little about either.

This chapter's goal is to help orient these various readers in three different ways. I begin with a historical sketch that clarifies the scope of Chinese rights discourse. I then turn to a discussion of themes from recent scholarship related to human rights in China. I am building on what I take to be the strengths of current research by other scholars, and reacting to what I see as the weaknesses; this review thus explains why the book takes the precise shape that it does. The last part of this Introduction summarizes the rest of the book and gives an initial formulation of my conclusions.

1.1 RECENT HISTORY

The word “*quanli*,”² which has come to be the standard Chinese translation for “rights,” was first used in that sense in the mid-1860s, when the missionary W. A. P. Martin employed it in his translation of Henry Wheaton’s *Elements of International Law*. “*Quanli*” and related terms were used thereafter by missionaries, and gradually by Chinese intellectuals, to mean a range of things related to “rights,” though I will argue in later chapters that the correspondence between *quanli* and rights is quite loose, especially in the early years of what I will nonetheless call “Chinese rights discourse.” Both theoretical investigation and practical advocacy of *quanli* picked up pace at the beginning of the twentieth century. Throughout its first three decades, rights and human rights (*renquan*) were frequent topics in moral and political essays, various

² I use double quotes when I refer to a word rather than the concept expressed by that word. I italicize romanized words or concepts. “*Quanli*” is pronounced “chwan-lee.” Chinese characters corresponding to all romanized words can be found in the Glossary.

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rights were articulated in the earliest Chinese constitutions, and still more rights were claimed by intellectuals frustrated with one or another aspect of their government's policies.³

Writings on rights continued only sporadically after the early 1930s, thanks first to nearly twenty years of warfare, and then to a communist ideology that was not particularly friendly to rights-talk.⁴ The past two decades, however, have been crowded with theoretical discussion and practical action both for and against human rights in China. The winter of 1978–9 witnessed the Democracy Wall movement in China, in which activists like Wei Jingsheng argued for the importance of human rights. That movement lasted for about six months before its central participants were arrested.⁵ From the 1970s on, human rights played a significant role in United States foreign policy rhetoric, first focusing on the Soviet Union and then on China. In the United Nations, renewed attention was paid to the Universal Declaration of Human Rights, originally adopted in 1948, and to the two international covenants, promulgated in the late 1960s, that fleshed out its details.

In 1989 another popular movement advocating democracy and human rights arose in China, this time centering on Tiananmen Square. The brutal suppression of this movement led to sharp international condemnation of China. Partly in response, the Chinese government issued its first white paper on human rights.⁶ This document rebutted various criticisms of China and argued against international meddling with the internal affairs of sovereign countries; nonetheless, it represented a new beginning for the discussion of human rights within China. Whereas many of the writings on human rights produced in China throughout the 1990s adhered very closely to the positions outlined in the white paper, some Chinese academics pushed considerably further, engaging in substantive debate with the theories of their more doctrinaire Chinese colleagues and also the theories of Western scholars.⁷

Another trend of the 1990s took shape during international meetings leading up to the 1993 United Nations World Conference on Human

³ For translations of key articles in Chinese rights discourse from this period to the present, see [Angle & Svensson 2001].

⁴ For detailed discussion of the rights-related discussions that did continue in this period, see [Svensson 1996, ch. 8].

⁵ See [Seymour 1980] for discussion and translation of key documents.

⁶ See [Information Council 1991].

⁷ [Baehr et al. 1996] contains translations of a number of excellent recent papers. [Kent 1999, ch. 5] and [Weatherley 1999, ch. 6] contain helpful discussions of this period.

Current Approaches: Insights and Limitations

Rights. Leaders of some Asian nations, perhaps feeling a new confidence and sense of autonomy, argued that the United Nations' understanding of human rights was based too rigidly on the foundation of the Western liberal tradition. They called for more flexibility in the interpretation of human rights so that room could be found for what have come to be called "Asian values."⁸ While the notion that all Asians share some particular set of values has been widely and justly criticized, and the motives of some of these Asian leaders (in calling for greater deference to authority, for instance) questioned, some scholars both East and West have urged that we do need to reconsider how human rights mesh with, or are interpreted within, different cultural traditions.⁹

Conflicts surrounding human rights and China seem unlikely to disappear soon. On the positive side, there is continuing dialogue of various sorts. China continues to participate in international discussions of human rights and recently signed the International Covenant on Civil and Political Rights.¹⁰ Academic discussion of rights and human rights within China also continues, both in international conferences and in publications. On the other hand, China continues to act in ways that appear to contravene most understandings of human rights, a recent example (as of this writing) being its suppression of the Falun Gong religious movement. As a result, China continues to be criticized by Chinese dissidents abroad, by human rights non-governmental organizations like Amnesty International, and by Western governments. I hope that the work of scholars like myself can contribute to better understanding and improved dialogue, and in the end to a greater consensus on the meaning and content of human rights.

1.2 CURRENT APPROACHES: INSIGHTS AND LIMITATIONS

I now want to look more closely at a series of approaches to human rights that can be discerned in recent scholarship on the subject. I have two goals in this section: first, to try to make clear some of my intellectual debts; second, to show why I think this book is needed.

⁸ For primary documents and scholarly analysis, see [Tang 1995].

⁹ See [de Bary 1998, ch. 1] and several of the essays collected in [Bauer & Bell 1999] for astute discussion of the notion of Asian values. [Dowdle 2001] offers a sympathetic reading of the central document of Asian values advocates, the Bangkok Declaration.

¹⁰ [Kent 1999] is a detailed study of China's participation in the international human rights dialogue.

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1.2.1 Pluralism

A central issue in this book is to clarify the sense in which we can say that moralities are plural. It is widely accepted that the norms by which people regulate their lives differ, but it is hotly disputed whether more than one of these moralities can be legitimate or true or equally valid. One author whom I have found particularly helpful on these matters is Alasdair MacIntyre, who has written widely on moral traditions and on the difficulties of comparing such traditions. Two of his main claims are particularly relevant to my concerns. First, he argues that the conceptual differences between competing moral traditions can be so great that the traditions are rendered “incommensurable,” which basically means that words from the moral language of one culture cannot be translated into words of another culture’s moral language. MacIntyre’s second claim is that genuine moral traditions can, at least sometimes, be compared and assessed through a process of comparative internal criticism. It is possible for adherents of one perspective to learn a second perspective from the inside, as a second first language, and then to see that this other perspective can solve problems or answer questions that their original perspective cannot.¹¹

I have learned a great deal from MacIntyre about the importance of traditions, communities, and local standards of rationality in making up a full-fledged morality. Each of these will be discussed below as I develop my own account of what is involved in moral pluralism and what we can do about it. MacIntyre’s specific account of these matters, though, is problematic, for two major reasons. First, I find his notion of incommensurability to be too blunt an instrument for dealing with the complexity and ambiguity of real cross-cultural moral conflicts. It is very difficult to refine incommensurability into a precise notion; even when this is done, it remains questionable whether the requirements for such a dramatic conceptual gulf are ever really fulfilled.¹² I prefer to think of incommensurability as the limiting case of conceptual differences, and to see all the interesting cases as falling somewhere short of this extreme.

¹¹ Each of these claims is made in more than one place, but for the first, see especially [MacIntyre 1991], and for the second [MacIntyre 1988].

¹² Fulfilled, that is, by real people speaking natural languages; it is easy to show that artificial languages can be incommensurable.

The second problem I have with MacIntyre's account is that his theoretical understanding of traditions is too static. As I will elaborate below, even when his historical studies reveal important dynamism, his theoretical account has no real role for the dynamic, mutually influencing nature of traditions, and yet it is in such dynamism, I believe, that the real opportunities for community formation and consensus-building lie. MacIntyre's stress on internal criticism – on seeing the strengths and weaknesses of other traditions from the inside – is important, but we are never comparing two unchanging entities.

The other theorist whose views I want to mention here is Richard Rorty. To say that Rorty is a pluralist is not to say that he believes in no one set of values. Rorty is deeply committed to liberal values, but he sees these values as his through the contingencies of history rather than through the necessities of Reason. Rorty writes that

moral philosophy takes the form of an answer to the question "Who are 'we', how did we come to be what we are, and what might we become?" rather than an answer to the question "What rules should dictate my actions?" In other words, moral philosophy takes the form of historical narration and utopian speculation rather than a search for general principles. [1989, p. 60]

As will become apparent below, I am sympathetic to Rorty's emphasis on seeing moralities as historically grounded, contingent sets of values. His stress on morality being intimately linked to self-definition (who "we" are) is also insightful. Rorty's approach has two severe limitations, however. First, his rejection of "general principles" is easily taken too far, so that one is left with nothing more to say about why one holds one's values than "they are mine." It is crucial to see that this is mistaken: We always have standards for moral judgment to which we can appeal – even if we can articulate them only imperfectly – and we usually take these standards to apply not just to us, but to everyone. Moral discussions with others can push us toward refining or generalizing both our standards and our morals in ways that Rorty seems to miss.

A second problem with Rorty's account is his implication that "we" are unanimous in our commitments and univocal in our meanings. I have already suggested that the moral discourses of communities typically are much more complex, and so we need a subtler account of the relation between communities and morality. To sum up, then, this look at MacIntyre and Rorty has suggested that a satisfactory account will have to

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allow for a continuum of conceptual differences, for dynamic and interactive moral traditions, for values and standards that push us toward a wider consensus, and for an understanding of “us” that acknowledges internal differences.

1.2.2 Universalism

Many who have written on human rights believe that human rights are universal. Here I want to canvass three reasons that have been given for this tenet.

Natural Rights. The idea of natural rights has a long history in European thought, and it also played an important role in early American political thinking. In early contexts, natural rights were widely accepted to be the result of God’s will. Today, few would accept that grounding for natural rights, however, and alternative attempts to say what rights humans have because of their “natures” are fraught with difficulties. Human nature is now understood to be quite plastic, our needs and values heavily influenced by the cultures within which we mature.¹³ Without the premises that belief in a particular understanding of God made available, contemporary accounts of natural rights can seem forced or arbitrary. Grounding human rights on a specific account of human nature, therefore, can leave the door open for others, particularly those from other cultures, to reject one’s account as parochial – or even simply as incoherent.¹⁴

This is not to say that justifying human rights as natural rights has no attraction. If the problematic link between nature and culture is either refuted or ignored, natural rights can seem firmer than any competing foundation for human rights. They are equally applicable to all humans, regardless of nationality. Natural rights can thus appear to be the best basis for criticism of the human rights practices of other groups – after all, we all are human, and if human rights accrue to us simply by virtue of our human nature, then surely they are universal.

¹³ This understanding of human nature is well-grounded in contemporary biological theory. The best contemporary correlate for human nature is the human phenotype, which results from the way human genotypes are expressed in particular environments. Since culture is part of our environments, it is thus built into our phenotypes – into our natures.

¹⁴ This point has been made by many; for a recent statement, see [Brown 1999].

International Law. A second justification for the universal application of human rights standards is the international legal consensus that has developed since World War II, as represented in United Nations documents like the Universal Declaration of Human Rights (UDHR), which was passed by the United Nations General Assembly in 1948. In addition to the UDHR and its attendant covenants, the international human rights regime is made up of numerous regional and bilateral treaties and declarations, as well as a variety of international legal institutions and their respective bodies of case law.¹⁵

Despite the real successes these documents represent, there are several reasons for thinking that international proclamations like these are not ideal bases for human rights discourse – or at the very least, that they cannot stand alone. We would be mistaken to think that because these documents have been signed by so many countries, there now exists a genuine legal or moral consensus in the world. The UDHR itself is not a legally binding document. The covenants and similar treaties are legally binding, but they have no more institutionalization, particularity, or enforceability than other aspects of international law. They can easily seem more like statements of aspirations or ideals than genuine legal documents. Partly because of this, and because signing these agreements can be seen as a route toward becoming a full-fledged participant in the developed world's trading regimes, it can be both easy and attractive for a nation to sign these agreements without really agreeing to them. As Ann Kent has recently put it, China's approach to the United Nations human rights regime appears to be "more instrumental than normative" [1999, p. 230]. Finally, we must remember that the documents' provisions always require interpretation, and this allows for a wide range of disagreement to be masked. In short, the consensus these documents represent may be more apparent than real – and to the extent it is a consensus, it is a quasi-legal, indirectly coerced consensus.

To say that the UDHR, the covenants, and so on are not ideal is certainly not to deny that they are tremendous accomplishments. Nor do I want to deny that they can and should have important roles in the future of international human rights discourse. They offer excellent starting points for discussion, especially in light of the fact that often-heard

¹⁵ The covenants are the *International Covenant on Economic, Social, and Cultural Rights* and the *International Covenant on Civil and Political Rights*, both from 1966; China is now a signatory to both. One good source of these and related documents is [Blaustein et al. 1987]; see also the web site of the United Nations High Commissioner for Human Rights: <http://www.unhchr.ch/data.htm>.

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charges about their completely Western origin are exaggerations.¹⁶ Working from these documents can help us to build a more genuine moral consensus on human rights issues.

A Changing World. Modernity has brought with it many things, among them the techniques and ideologies of control that have made the modern state possible, as well as the changes wrought upon traditional social structures by the international market economy. These same technological and economic changes have brought people around the globe closer together: We can both see one another more easily (thanks to television, movies, and the Internet) and influence one another more often (thanks to global markets, multinational corporations, and the ease of travel).

Some scholars have seen these changes as grounding universal human rights. Jack Donnelly, for instance, has argued that traditional, duty-based moral structures are no longer adequate to protect human dignity from the powerful forces of the modern state and economy; only observance of human rights can accomplish this. Since the modern state can be found in nations around the world, all nations need to respect human rights. He says this without glorifying the modern state. It may be an evil, but it is here, and the only protection against it is universal recognition of human rights [Donnelly 1989, pp. 60, 65, 199].

Mary Midgely has seized on another aspect of modernity – the way in which it has brought people closer together – to urge that we embrace our new neighbors with a broadened moral vision. She says that “the sheer increase in the number of humans, . . . the wide diffusion of information about them, and . . . the dramatic increase in our own technological power” have made possible an “immense enlargement of our moral scene” [Midgely 1999, p. 161]. Midgely believes that the widespread acceptance of human rights by peoples around the world, despite uncertainties that academics have about their meaning and scope, follows from enlargement of the moral scene: People have found talk of human rights useful for dealing with modern moral questions. She acknowledges that there remain some conceptual puzzles about rights and human rights, but encourages academics to take their lead from the public and deal constructively with these problems in ways that will not undermine our continuing abilities to speak and judge in terms of human rights [ibid., p. 173].

¹⁶ See [Twiss 1999], [Morsink 1999], and, most accessibly [Glendon 2001].

I think that Donnelly and Midgely are correct to insist that our morality fit with our times. We cannot ignore political and economic realities; nor should we close our eyes to those we can now see and influence.¹⁷ The limitation of Donnelly's approach is his insistence that the current human rights regime is the only possible, or at any rate the only practical, solution to the challenges posed by the modern state. He provides little argument for the negative side of this claim – that is, that no other system of values (and institutions) could do the job. The most he does is to express skepticism about the “political naivete” of those who promote such alternatives, or else about their motives [Donnelly 1997]. It is possible that a broad, cross-cultural consensus might reach Donnelly's conclusion, but I believe it is premature to assume that this is the only possible solution.

Midgely's point is easier to accept without qualification. The world is increasingly small, and the pressures on us (whoever “we” are) to include others within our moral compass are both real and compelling. These pressures certainly are not the only ones that globalization has brought upon us; global capitalism has at best an ambiguous relation to human rights [Santoro 2000]. Still, human rights have played important roles in the efforts of different peoples to deal with their broader moral scenes. Academics like myself cannot work in isolation from these facts. Midgely does not go as far as Donnelly and claim that the current United Nations-based understanding of human rights is the only acceptable one, but in appealing to academics to deal “constructively” with the problems they uncover, she is nonetheless asking that we keep in mind the practical effects of our work. There is always a danger that a defense of moral pluralism – even of the modest kind that I develop in Chapters 2 and 3 – can be turned into a legitimization of authoritarian politics. I am alive to that danger; in fact, I believe that my approach has the potential to strengthen, rather than weaken, the position of human rights activists in China and elsewhere.

1.2.3 Thick and Thin

The modern world has not just brought us closer together; it has also made us more aware of our differences. Although modern political and

¹⁷ Richard Rorty has written about the need to embrace “human rights culture” by broadening our vision of “us,” as well as the important role that “sentimental education” can play in this process; see [Rorty 1993]. Rorty underestimates the importance of reasoning and dialogue, but is correct to see the work of novelists and poets as also important.

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economic forces have the tendency to strip people of their distinctive identities, this process has been strenuously resisted at both theoretical and practical levels. Liberal politics has for the most part been a willing partner in this resistance to uniformity, since tolerance is one of its central values.¹⁸ Toleration of differences, however, might seem to sit uncomfortably alongside an insistence on universal human rights. Several theorists have sought to avoid this tension by positing that universal and particular values can exist simultaneously on different levels. As Michael Walzer has put it, we can share “thin” values – like human rights – very widely, while confining our “thick” values to smaller communities.¹⁹

Walzer writes that thin morality is based on a rough overlap or “reiteration” of values like “truth” and “justice.” This overlap is enough to get certain kinds of criticism and certain amounts of solidarity off the ground, but these have distinct limits; real criticism, he argues, is internal to thick, grounded-in-cultural-meanings moralities. This is not to say that a minimal, roughly overlapping morality is a bad or unreal thing: It explains the fellowship we feel with demonstrators in Beijing or in Prague. But if we listen to what they say for very long, we begin to discover the distances between us and them. Using the demonstrations from 1989 as an example, Walzer notes that “when we criticize Czech communism in ways that suggest an alternative, we move quickly beyond the minimum, knowing that some of what we say will echo positively in Prague (or in this or that part of Prague) and some, perhaps, won’t” [1994, p. 10].

We see here Walzer’s recognition of the potential for internal complexity or contestation within the community of Prague protestors: some may have built their commitments to “justice” on grounds that resonate well with our more specific critiques, while others may not have. I will have much more to say in later chapters about the importance of this sort of inner complexity. For the time being, let us also note that Walzer

¹⁸ What tolerance is, whether it is an unequivocally good thing, and how it is related to liberalism are all controversial issues on which much has been written. One particularly illuminating recent essay is [Phillips 1999]; I will discuss these issues in more detail in Chapter 3.

¹⁹ Bernard Williams has also written of “thick” and “thin” value concepts, but with a somewhat different emphasis. Compare [Williams 1985, chs. 8–9]. Walzer himself cites Clifford Geertz’s notion of “thick description” in anthropology as his inspiration; see [Walzer 1994, p. xi, fn. 1] and [Geertz 1973]. Joseph Chan applies the ideas of “thick” and “thin” to China in [Chan 2000].

does not aim at identification of a single, unchanging code of thin values. He says that thin values are embedded within thick moralities. Thin values are

liberated . . . and appear independently, in varying degrees of thinness, only in the course of a . . . social crisis or a political confrontation – as, in the Czech case, with communist tyranny. Because (most of) the rest of us have some sense of what tyranny is and why it is wrong, the words used by the demonstrators shed whatever particular meanings they may have in the Czech language; they become widely, perhaps universally accessible. [1994, p. 3]

To make this even more concrete, he says that “what they meant by the ‘Justice’ inscribed on their signs . . . was simple enough: an end to arbitrary arrests, equal and impartial law enforcement, the abolition of the privileges and prerogatives of the party elite – common, garden variety justice” [1994, p. 2].

Walzer clearly is not advocating a one-size-fits-all theory of thin, universal values. Different words and concepts, in different situations, can be understood more or less thinly and can appeal more or less widely. His goal is to explain phenomena like our feeling of solidarity with protestors like those in Prague, while insisting that full-fledged criticism must take place from within. A common variation on Walzer’s approach is to seek to identify a fixed set of thin values by uncovering all those values actually shared by everyone.²⁰ This least-common-denominator approach, though, is inadequate for at least two reasons, the second of which is a problem for Walzer as well. First, if we require universal agreement, we are likely to be confined to very vague or general notions – things like “unjustified killing is wrong.” But what exactly would justify killing? Considerable diversity surely lurks behind the facade of universality. A least-common-denominator consensus risks superficiality, which of course Walzer explicitly recognizes.

The second problem is that if the values are indeed shared by everyone, the values can have only a limited critical function: They can allow criticism of practices, but not of values themselves. Whenever there is a gap between values and actual practice, there will be room for this kind of criticism. Activists seeking to ensure that their values will be institutionalized or enforced in their societies might draw encouragement from the successes of other groups in institutionalizing such values – as

²⁰ See, for instance, Parekh’s discussion of “minimal universalism” in [Parekh 1999].

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positive models to follow or as proof that such institutionalization is possible. If we want more than this – if we want to be able to tell others that they *ought* to be committed to human rights, even when they are not – then we will need something more than a least-common-denominator approach. In fact, no version of a least-common-denominator theory, Walzer’s included, lets us criticize something that we couldn’t have criticized even without recognizing the theory’s (superficial) universalities. This is because the kind of criticism considered in this paragraph seems available even when values are not shared. Can’t I criticize you for failing to live up to your values, whether or not I share them? Exactly how to understand such a case is admittedly rather complicated, and I will take it up in detail in Chapter 3.

John Rawls has developed a framework for what he calls “the law of peoples” that takes a different approach to determining a set of thin values. Unlike the least-common-denominator idea, Rawls starts from home. He begins, that is, by asking to what set of thin values a liberal, democratic state should be committed as its norms for international law. He then demonstrates that a certain kind of “well-ordered” but non-liberal state would *also* be committed to this same set of values, which he dubs the “law of peoples.” Since his law of peoples includes the commitment to basic human rights, this leads him to conclude that “although any society must honor basic human rights, it need not be liberal” [1993, p. 43]. Rawls avoids the problems mentioned earlier for least-common-denominator understandings of thin values: The law of peoples is not universally adhered to already, so it has a wide critical function, and since it is derived from a fairly clear set of values, it should be adequately detailed.

That is not to say that I find Rawls’s account ultimately successful. The central failing of his attempt to extend the law of peoples beyond liberal regimes lies in his notion of a “well-ordered” non-liberal society, which he also calls a “hierarchical society” [1993, p. 61]. It is here that the law of peoples derives its specific critical force: Although he is not prepared to say that non-liberal societies should be liberal, he is prepared to demand that they be well-ordered in their own way. The problem is that Rawls’s understanding of what it takes for a non-liberal society to be well-ordered is extremely specific. It would be more perspicuous to say that his requirement is for non-liberal societies to be “legally well-ordered,” since the crucial part of his definition of “well-ordered” – from which all of the important conclusions follow, including that such societies will endorse basic human rights – is having a legal system that meets

certain criteria. He says that these criteria are necessary for the regime to have “legitimacy in the eyes of its own people” [1993, p. 61], but he makes no attempt to substantiate this by showing why other criteria of legitimacy are unacceptable. His conception of well-ordered, therefore, rules out any number of regimes in which order and legitimacy are established through means other than a modern legal system. Since it is far from clear that the rulers or people of China, in particular, take legitimacy to rest on the legal norms that Rawls describes, I believe that his particular version of the thick–thin distinction cannot help with our problem.

Let me summarize what I think we should learn from this discussion of thick and thin values. If we are ever to take ourselves to be justified in criticizing others’ values, as opposed to their mere failures to live up to their values, we need a substantive account of thin values. Least-common-denominator approaches cannot deliver such an account: It will have to start from our own thick values, in something like the way Rawls describes.²¹ The process of building out from thick to thin, though, can never be completed once and for all; moralities and cultures are too dynamic for that. Distinctions of thick and thin should thus be tools in our kit, rather than providing a stand-alone solution.

1.2.4 Dialogue and Transformation

Thin values can insulate us from one another – or at least insulate our fully specified selves, complete with rich conceptions of the good, from one another. By distinguishing between thick and thin, we seem to have solved the dilemma of international cooperation in a pluralistic world, suggesting that there need be no uncomfortable rubbing-up of one set of thick values against another. In many situations this kind of insulation is a good thing. Whereas one of the reasons we articulate thin values is to give us the means to criticize egregious moral violations on the part of others, another of their functions can be to keep us from getting too involved in others’ affairs. Still, such a static understanding of values is unsatisfactory. It is unrealistic, since values at both levels do change, often because of interaction with values at the other level or interaction with

²¹ Notice that at least in this respect, Walzer’s well-known criticism of Rawls for having a merely “procedural” view of morality fails to convince: The strength of Rawls’s view of law of peoples, as I see it, is precisely in the way it rests on a substantive, liberal morality [Walzer 1994, pp. 11–14].

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the thick values of another group. The static picture is also morally inferior, because dynamism can emerge from morally praiseworthy dialogue between groups, or from constructive reflection on the relation between thick and thin within one's own values. As Allan Gibbard has explained, many situations in which one deals with other groups on a thin basis are understood within one's group as second-best solutions: better than conflict, but worse than consensus and agreement [Gibbard 1990, pp. 242–3]. This is not to deny that we sometimes celebrate differences, in which case an ongoing disagreement may actually be preferred to consensus. Nor is it to deny that we can learn from others, which learning may continue over an extended period of time: To say that we want to work for consensus is very different from saying that we want to assimilate the others.²² Still, one must always be ready to review the basis on which one is settling for a second-best; in many such circumstances it makes sense to work for a better solution. In Chapter 3, I will build on Gibbard's work in order to show how these stimuli to dialogue and dynamism operate.

Before moving on, it is important that I forestall a possible misunderstanding that could arise from my talk of "consensus." I do not believe that consensus is an inevitable result of conversation, even under ideal circumstances. Neither do I believe that the possibility of consensus or agreement is presupposed when we strive to communicate with one another.²³ We start from different positions, live different lives, and may never see things the same way. Despite this, we often arrive at what I will follow Gibbard in calling "norms of accommodation": These are values to which we and you commit ourselves in order to interact with one another, despite their being more shallow, or more limited, than our respective full-fledged sets of values. Thin values are an excellent example. From within each of our perspectives, it would be better if all of us lived in accord with our richer, thicker values. This is the sense in which thin values are second-best, and the sense in which we will have

²² See [Fay 1996, pp. 241–2]: "Instead of trying to overcome differences or hardening them, interact with those who differ by means of these differences with an eye toward ongoing mutual learning and growth."

²³ These theses derive from the work of Jürgen Habermas; see, e.g., [Habermas 1985]. For helpful discussion of Habermas, see [Fay 1987, pp. 184–90]. When I spell out my understanding of concepts and communication in Chapter 2, it will become apparent that my view is in some sense the opposite of Habermas's: I explain how communication can take place despite pervasive disagreements and even differences in meanings.

reason to continue to work for consensus. I will have more to say about these matters in later chapters.

Some authors have specifically argued that dialogue, rather than criticism, should be the main mode of international human rights discourse. Bhikhu Parekh, for instance, has written: "If universal values are to enjoy widespread support and democratic validation and be free of ethnocentric biases, they should arise out of an open and uncoerced cross-cultural dialogue" [1999, p. 139]. Parekh says that this universality should "arise" out of the dialogue, rather than be discovered, because he imagines that a certain amount of transformation will take place in the process of reasoning out a body of values that all parties agree is the most "rationally defensible." In particular, Parekh insists that he is not advocating "teasing out the lowest common denominator of different cultural traditions"; instead, he imagines that through a process of collective reasoning we will arrive at "human universals" that all cultures can be shown to presuppose [ibid., p. 142].

Parekh's approach sounds very appealing, particularly the notion that the commitments of all parties to a conversation might be transformed through the process of dialogue. I will pursue this idea in subsequent chapters. As it stands, though, Parekh's proposal is open to some serious objections. First, other philosophers have argued that not only can cultures' moral values differ, but their standards of reasoning can differ as well.²⁴ This undermines the idea that a process of reasoning can be arrived at that will allow a "rationally defensible" consensus to emerge. Second, it must be admitted that Parekh's "open and uncoerced" dialogue, involving "every culture with a point of view to express," sounds a bit starry-eyed. It is perhaps revealing that while Parekh makes several proposals for human universals in the balance of his essay, he does so without the help of any cross-cultural dialogue whatsoever. Finally, Parekh seems to assume that each culture can be treated as a single unit, with a single set of values and presuppositions. To the contrary, I believe that recognition of the internal complexity of cultures and traditions must be central to a successful account of cross-cultural dialogue; these complexities can make dialogue more difficult, but they also can give us one of the keys to fruitful dialogue.

The potential rewards of recognizing internal complexity can be seen in another approach that emphasizes developing a transformative

²⁴ See [MacIntyre 1988] and [Gibbard 1990].

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dialogue. David Hall and Roger Ames have argued that a specific strand of the Western tradition – American pragmatism – is the best point of departure for “our” side in discussing human rights with the Chinese [Hall & Ames 1999]. They believe that pragmatism both is superior to other strands of the Western tradition and comes closer than other elements of Western thought to the strongest elements within the Chinese intellectual tradition. They are certainly engaged in criticism here – criticizing aspects of both Western and Chinese cultures – but they do so in the service of a dialogue which they hope will lead to stronger moral consensuses both within and between the East and the West.

Hall and Ames’s interpretation of the Confucianism is controversial, but I do not want to dwell on that here.²⁵ More relevant is criticism they have received for ignoring the impact that power relationships have on human rights dialogue: According to one critic, their efforts to show that China does have a distinctive understanding of human rights amounts to “ignoring dictators,” since the claim that China has its own notion of rights has been used by the Chinese government to justify various forms of repression [Donnelly 1997]. While it is certainly true that power relations must form a part of any complete understanding of cross-cultural dialogue or criticism, I reject the idea that scholarly work revealing and explaining moral pluralism must necessarily benefit the dictators. If, as I believe, there are kernels of truth in the assertions of the Chinese government, then ignoring these truths while redoubling the volume of our claims about universal values is illegitimate and imperialistic – exactly as our Chinese critics claim. If, on the other hand, we can develop an account of moral pluralism both in general and as it applies to human rights in China, an account that nonetheless provides firm ground for critics of repression and for those who want to develop a stronger international consensus, then the dictators will have lost an important weapon in their arsenal, and we will have lost nothing.

In sum, we might do well to look for ways that dialogue, rather than bald criticism, can lead to transformed values and perhaps to consensus. In so doing, though, we must be careful not to ignore power relations nor to forget that standards of reasoning, like moral values, may vary from culture to culture. Most important, we should try to make use of the many different voices that can enter into the multiple, overlapping, sometimes conflicting dialogues that together make up contemporary rights discourse. Activists and dissidents, politicians and bureaucrats,

²⁵ See [Martin 1990].

scholars and students, workers and CEOs: They all count. It is no simple matter to take all these voices into account, but a model of rights discourse that gives voice only to one group is clearly inadequate.

1.2.5 History and Confucianisms

Many of the approaches I have examined so far are distinctly ahistorical: They see values, thick or thin, as grounded in current realities. Other scholars have sought to look at Chinese human rights discourse in historical perspective, or to compare human rights concepts with the ideas found in traditional Confucianism. I believe that there are important insights within each of these perspectives. If one rejects the idea that there is a single (thick) morality for all humans – based on either Reason or human nature – then it is natural to think that culture and history have a great deal to do with morality. As I discussed earlier in the context of Richard Rorty's writings, moralities can be seen as the dynamic products of traditions of moral discourse in particular social and physical contexts. If it is true that moralities are dynamic, then even if we can identify a thick or thin universal morality today, its universality must be, in a certain sense, a coincidence. Its universality must be owed to the particular set of circumstances in which peoples around the globe find themselves, and to the ways in which their traditions of moral discourse have adapted to these circumstances.²⁶ If this is all true, our hypothesized universal consensus may be very fragile. We would do well to understand what has brought it about and how we might maintain it. To the extent that we have not yet achieved such a moral consensus, a historical consciousness might help us to see why this is so and might help us to see where and how such a consensus might be reached. In particular, a historical perspective may be needed to fully assess the first of Liu Huaqiu's claims, namely that China has a different concept of human rights than those of other countries. It makes sense to look at the history of rights discourse in China to see whether this is true, and if so, why. Researching this history is also helpful for two other reasons. First, we will see that the Chinese rights tradition has rich resources that thinkers today can call upon: Over the last hundred and more years, rights have been discussed and conceptualized in a variety of ways, opening up a range of "Chinese" perspectives on rights. Second, reviewing the history of

²⁶ Donnelly's theory that human rights are required by the modern state and global market economy is at least the beginning of an explanation of universalism along these lines.

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Chinese rights discourse helps us to appreciate the wisdom of seeing moral traditions as contingent and rooted in historical particularity.

The range and diversity of Chinese rights discourse have been little appreciated by contemporary scholars, nor by the wider public, both within China and without.²⁷ Even those scholars who have paid attention to this earlier rights discourse have tended to give it either brief or narrow treatment. Ann Kent, for instance, spends only seven pages of her *Between Freedom and Subsistence* on the years from 1860 to 1949 and writes so as to minimize the creative aspects of the discourse [Kent 1993, pp. 37–42]. The views of Liang Qichao (1873–1929) on rights and democracy inform an important part of Andrew Nathan’s *Chinese Democracy*, but Nathan pays little attention to Liang’s contemporaries and to later pre-communist thinkers [Nathan 1985]. In addition, the connections that have been drawn between rights discourse and native traditions have tended to be of a negative, restricting variety. Nathan believes that the two forces motivating intellectual change in early-twentieth-century China were (1) deep concern with the plight of China and (2) a sense that Western nations had better – more successful – political and moral values. Since the changes that followed from those motivations were limited by what Kent calls a “Chinese filter” [Kent 1993, p. 37], however, the Western ideas were transplanted imperfectly onto Chinese soil, and ideas like democracy and human rights did not put down deep roots.²⁸

I believe that such interpretations are of significant importance in understanding Chinese concepts of rights, but they also distort our view by leaving out an important side of the picture. It is crucial to add that the Chinese tradition has also played a positive, constructive role in motivating thinkers to develop rights (*quanli*) concepts. To see this, one needs to appreciate some of the important differences that existed within Confucianism as it developed into the tradition now called neo-Confucianism. Like all traditions, neo-Confucianism was internally diverse, with a number of adherents emphasizing the importance of

²⁷ There are signs that this neglect may be ending. Marina Svensson’s *Debating Human Rights in China*, based on her groundbreaking Ph.D. dissertation, surveys a large number of authors in impressive detail [Svensson 2002]. In addition, two collections of Chinese essays on rights from earlier in this century have appeared, one in China and one on the Internet. See [Liu Junning 1998] and <http://www.igc.apc.org/hric/educ/big5/qishi/mulu.html>. Svensson’s and my translation work, finally, should help to further open up the subject; see [Angle & Svensson 2001].

²⁸ An even more recent example of the tendencies discussed in this paragraph is [Weatherley 1999], on which see [Angle 2000].

fulfilling people's desires, as I will show in Chapter 4. Some Chinese rights thinkers in both the nineteenth and early twentieth centuries quite consciously drew on, and were motivated by, this strand of the neo-Confucian tradition. Only when we give this link to tradition its due can we begin to understand the world the way Chinese thinkers did; only then can we see them as creative and critical, rather than merely passive, reactive, and constrained.²⁹

While little work has been done on the relationship between the neo-Confucian tradition and rights discourse,³⁰ a number of scholars have argued that the values of classical Confucianism – that is, the earlier Confucian tradition dating from the fifth through third centuries B.C.E. – are compatible with, or even actively promote, human rights. One problem with much of this work is that it implies an equation of classical Confucianism with the whole of Chinese tradition and seems to assume that Chinese moral discourse is static. A recent essay, for example, argues that each and every provision of the UDHR is either positively endorsed by, or at least compatible with, classical Confucianism [Chen 1999]. So what if this is true? There are no classical Confucians alive today, nor have there been for centuries. If the question of whether Chinese culture is compatible with human rights is to be relevant, we need to look to more recent Chinese culture, in all its complexity. A second major problem with claims that a concern for rights can be found in classical Confucianism is that they interpret both Confucian texts and ideas of rights very loosely. Rights have a distinctive conceptual structure that sets them apart from other moral commitments, like duties or ideals. The humanistic ideals found in the populist chapters of the *Analects* certainly resonate with some of the ideals expressed in the more general assertions of the UDHR, but this is very different from finding “rights” in the *Analects*.³¹ There is one perspective, though, from which I see these kinds of comparisons as potentially important. To the extent that contemporary Chinese thinkers are attempting to construct a new

²⁹ Compare the similar methodological proposal put forward in [Lydia Liu 1995, pp. 26–7]. Like Liu, I applaud what Paul Cohen has called a “China-centered approach” to Chinese history: to read Chinese history from within, while neither ignoring nor overemphasizing the role of non-Chinese actors, events, and texts. See [Cohen 1984].

³⁰ The works of Wm. Theodore de Bary are the principal exception. See [1988] and especially [1998]. Ron-guey Chu also explores connections between neo-Confucian ideas and rights in [Chu 1998], and see the suggestive final chapter of [Wood 1995].

³¹ The same can be said of other classical works like the *Mencius*. For “populism” in certain chapters of the *Analects*, see [Brooks & Brooks 1998]. See also [Donnelly 1989, ch. 3] for further criticism of the idea that Confucianism contains rights claims.

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Chinese moral discourse on top of the ruins of communism, reacquaintance with the *Analects* and other classical works, together with the rediscovery of rights discourse from earlier in this century, may be very healthy.³²

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The two claims this book aims to assess are, once again: (1) Countries can have different concepts of human rights, and (2) we ought not demand that countries comply with human rights concepts different from their own. The specific way I go about assessing these claims is based upon the contemporary human rights theorizing reviewed in the previous section. This literature has rich offerings in some areas; in other areas, it is sparse or unreliable. What it means for one concept of rights to be different from another is rarely explained, nor are the many differences within nations or traditions taken into account. The resources that neo-Confucianism contributed to Chinese rights discourse are inadequately explored. With only a few recent exceptions, the history of China's actual rights discourse is neglected. All of these issues are critical for understanding whether, and in what ways, distinctive concepts of human rights can be found in China. I also need to make clear what I mean by moral pluralism, and how it relates to the idea that Chinese concepts of rights may be distinctively different from various views in the West. Finally, I have suggested earlier that dialogue and mutual openness are valuable strategies for overcoming pluralism when pluralism is found to be problematic. I would do well, then, to open up such a dialogue with contemporary Chinese rights theorists.

I will begin, in Chapter 2, by developing the ideas of Robert Brandom in order to introduce a way of thinking about what concepts are, how they depend on social norms, and how they can differ from one another. Brandom's account makes it easy to see how despite differences, we can still communicate, if we want to; his emphasis on communication as a cooperative practice meshes very nicely with the view of cross-cultural moral dialogue I develop in subsequent chapters. Brandom's work is of fundamental significance to understanding claims about conceptual difference and thus about pluralism, but its highly technical nature can

³² Joseph Chan [Chan 1999] and Randall Peerenboom [Peerenboom 1993] aim to contribute to this constructive project. For a challenging critique of this project, see [Ci 1999].

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make this difficult for non-specialists to appreciate. A central goal of this chapter is to open Brandom up to non-philosophers.

In order to assess Liu Huaqiu's second claim, I need to explore the consequences to which pluralism can lead. Chapter 3 builds on the excellent foundation provided by Allan Gibbard, laying out the issues and options facing those who encounter a group with seemingly different moral commitments. The conclusions of this chapter are relatively abstract, which means both that they are applicable well beyond the debate over China and human rights and also that we have to wait until later chapters to fill in concrete details before the considerations offered in this chapter can offer us advice on whether or not we can apply our standards of human rights to the Chinese.

I next turn to the more historical part of the book, starting with a look, in Chapter 4, at the neo-Confucian debate over legitimate desires. In these debates we find an important, though underappreciated, origin of Chinese rights discourse. This chapter tells the story of a robust strand of the neo-Confucian tradition as it develops through the sixteenth, seventeenth, and eighteenth centuries. In Chapter 5, I look at the various nineteenth-century origins of Chinese rights discourse. I focus on the early uses of terms like "*quanli*" and "*minquan*," which corresponded, at least partially, to "rights" and "people's rights." The story is complex, with missionaries, international diplomats, Japanese liberals, and Chinese scholars all playing roles. These origins, coupled with the role that neo-Confucianism plays in developments described in the following chapter, all help to make concrete the idea that moral discourses have messy, complicated, and contingent histories. Universal consensus is something that people have to work for, rather than something they can assume.

The longest essay on rights by a Chinese thinker until well into the twentieth century was "On Rights Consciousness" by Liang Qichao, written in 1902. Chapter 6 examines that essay as well as the important moral and political writings of Liang's contemporary, Liu Shipei. Both Liang and Liu explicitly draw on Western thinkers – Liang on the German legal philosopher Rudolf von Jhering, Liu on the French thinker Jean-Jacques Rousseau – and part of my goal here is to compare the roles that foreign and developing Chinese concepts of rights play in their writings. While I do not believe that Liang and Liu were simply continuing neo-Confucianism, I will argue that the interest that they and others had in rights makes much more sense when we see it in the context of neo-Confucian concerns.

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Chapter 7 is based on essays written in the three decades after those discussed in the previous chapter, and presents a series of perspectives on the dynamism of Chinese rights discourse. In order to illustrate one way in which Chinese and Western rights discourses can converge, I also consider in this chapter the views of the American philosopher John Dewey, whose ideas resonated well with those of many Chinese when Dewey traveled to China in 1919. The chapter concludes with a discussion of the range of Marxist perspectives on rights, both in abstract theory and on the ground in China.

My main goal in Chapter 8 is to discuss and then engage with the rights theories that have been developed in China in the past decade. This entails a significant detour into contemporary European and American rights theory, without which any effort at substantial engagement on my part – grounded, as I am, in contemporary European and American philosophy – would be shallow or disingenuous. The challenges I raise are not just for Chinese thinkers, though; I believe that there are genuine, weighty challenges to the ways that we think about rights implicit in the works of both contemporary Chinese theorists and their predecessors fifty years earlier. This chapter represents an early move in a dialogue that has the potential, I believe, to influence the thinking – and rights concepts – of people East and West.

I summarize my conclusions in Chapter 9. I have shown the existence in China of a distinctive discourse about rights: one with its own concepts, motivation, and trajectory. This is by no means to deny that Chinese rights discourse has been related in various ways to, and influenced at many different times by, the whole range of European and American rights discourses. I emphasize the dynamic, interactive, and internally contested nature of Chinese rights discourse, while at the same time noting the existence of recurring themes and value orientations. These continuities include a view of rights as means to valuable ends, rather than as ends in themselves; a tight relationship between rights and interests; a belief that legitimate interests can all be harmonized; and a simultaneous commitment to political and economic rights.

I therefore agree, at least to a significant degree, with Liu Huaqiu's assertion that China's rights discourse is conceptually distinctive. I am also sympathetic to part of his normative claim: We need to be careful of our grounds before demanding that others comply with our moralities. Any group that wants to deny that others can engage with their values, though, also needs an account of the basis for their denial, and I show that such reasons are difficult to produce. In the typical case –

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including the present issue over human rights – there is more than enough on which to base a dialogue. I argue that there is a great deal we can say to one another, sometimes as one nation to another, but more often as members of one sub-group to another. The more lines of engagement that can be established, the more hope there is for reaching a broader consensus. This diversity of roles and interests within all nations party to these issues must be recognized and exploited. It makes sense that the engagement I undertake in Chapter 8 is with Chinese intellectuals and scholars, for I am an intellectual and a scholar. The framework within which I make these efforts toward dialogue, though, is much broader: It will require the efforts not simply of scholars, but also of women and men from many walks of life if it is to succeed in meeting the challenge that China poses to us, and that we pose to China.