On Human Rights and Traditional Culture

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FICHL Policy Brief Series No. 50 (2016)

1. There is No Country in the World that has the Historic Tradition of Respecting Human Rights

1.1. Very Serious Crimes were Long Accepted by Different Legal Systems

Before entering the modern era, there was no country or region in the world (from the East, West, South or North) that had the history and traditional culture of respecting human rights. For example, in the contemporary international community enslavement and torture have been publicly recognized as among the most serious of crimes. Crimes against humanity, as stipulated in Article 7 of the 1998 Rome Statute of the International Criminal Court, include the two crimes of enslavement and torture. However, for long periods of time throughout the history of many countries, enslavement and torture have been seen as legitimate and ethically-correct systems.

1.2. Females have been Subjected to Discrimination for Long Periods of Time

Many countries throughout the world have a long-lasting history and cultural tradition of discriminating against women, who make up half the world's population. Some of the most influential religions in the world also include this kind of tradition. For example, the gods and prophets in monotheistic religions have all been men, and the major gods in polytheistic religions have also primarily been men. In fact, all sorts of discrimination against women have continued all the way up until modern times. Even within some of the main Western nations, the women's right to vote was not affirmed until after the turn of the twentieth century.

1.3. The Duties of the Individual have been the Focus of Traditional Cultures

Historically, the major religions and traditional cultures throughout the world have been centred on (religious or ethical) duties. There has been a focus on the individual's ethical discipline and moral principles, not on their individual rights. In ancient Judaism, Christianity, Islam and other ancient Eastern religions and traditional cultures, the concept of one's rights, which is the concept of rights in relation to society as a whole, has never existed.[1] In the same way, Chinese history does not have the concept of human rights, nor does it have the concept of individual rights. The word "rights" (*quan li*) in Chinese history solely means "power" (*quan shi*) and "material wealth" (*huo cai*).[2]

2. Human Rights are Shared Values in Modern Human Society

2.1. Western Countries did not have the Concept of Human Rights Before Modern Times

Modern philosophy and legal studies often treat individualism and liberalism as the theoretical foundation of human rights. However, before modern times, the Western countries did not have the concept of individualism, nor did they have the concept of liberalism. In the history of philosophical thinking, the seventeenth century English philosopher Thomas Hobbes could be considered the father of individualism. Another philosopher from seventeenth century England, John Locke, could be seen as the father of liberalism. At the same time, Locke and the Dutch philosopher Baruch Spinoza were the earliest philosophers to systematically define the theory of natural rights.

2.2. International Recognition of Human Rights is Relatively Recent

Even though a number of Western countries had already established a declaration of human rights or a bill of rights by the end of the eighteenth century, the idea that all people within these countries enjoyed human rights at this time was an illusion. All the way up until the period before the Second World War, these Western countries had not actually acknowledged the universality of human rights, and in

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[1] Louis Henkin, *The Age of Rights*, Columbia University Press, New York, 1990, pp.183-184.

[2] *The Origin of Words*, Commercial Press, Beijing, 1993, p. 892.

fact had maintained for a long period of time white privileges, male privileges, and the privileges of the wealthy.

In traditional Western-dominated international law that had been in practice for a long period of time prior to the Second World War, even if a state were to treat its own people like animals, this matter would not become an issue that would be dealt with by international law. It is just as Hersch Lauterpacht once said that, before the United Nations Charter was established, international law had never recognized the basic rights of the individual.[3]

2.3. The Reasons Why Human Rights have Received Attention by the International Community after the Second World War

What is the reason behind this historical phenomenon after the Second World War in which human rights suddenly received wide-ranging attention? One of the primary reasons was the self-reflection that took place throughout the international community over the horrors of the War. This was especially true when it came to Germany where the Nazis carried out a disastrous mass-killing of 6 million Jews in the Holocaust.

Another reason why human rights received widespread attention from the international community after the Second World War is that the protection of human rights is inseparable from the maintenance of peace.

2.4. Human Dignity Serves as the Foundation of Modern-Day Human Rights

The international laws protecting human rights that formed after the Second World War are not built upon the foundations of any specific religious culture or philosophical theory. This foundation is one of human dignity and value. It is worth noting, however, that the human dignity that serves as the foundation of modern human rights is not the same as the 'human dignity' that has been found historically in a number of traditional cultures.

For example, during China's Han Dynasty over two millennia ago, the Confucian scholar DONG Zhongshu (179–104 BC) said that of "all of the creations of the heavens and earth, none surpass that of man".[4] But the "human dignity" expressed in the idea of "the importance of individuals" (*ren wei gui*) is primarily a comparison between man and all that makes up the world. It has nothing to do with the respect for the rights of humans.

Other traditional cultures of the pre-modern times, such as Islam and those in traditional Africa, have all included some concept of "human dignity". However, there is no direct connection in these cultures to respect for human rights.[5] Even the 'human dignity' concept expressed in Florence in 1468 by the philosopher Pico Della Mirandola is primarily limited to the discussion of how humans, who are creations with the freedom to decide, may shape and perfect themselves.[6] This does not involve a discussion of the rights of humans or the relationships between the individual and the state even if Mirandola himself suffered from heavy-handed state power.

The dignity of man, which serves as the foundation of modern human rights, is the result of the self-reflection that human society has undergone after the unmentionably horrible historical disasters that has happened in recent history. This emphasizes the importance of treating all people as people should be treated: every person should be treated equally in a humanitarian way that fits with modern civilization.

2.5. Human Rights are Shared Values of Human Society, Not Only Western Values

While the concept of human rights first appeared in the West, it should not be simply regarded as a 'Western value'. The system of international human rights treaties formulated after the Second World War represents the deep self-reflection of the Western countries towards the slave trade, colonialism and racism that had previously been maintained for long periods of time. The facts of history tell us that the respect and protection of human rights is the result of the long and hard work and suffering of the peoples throughout the world. This is the product of the deep self-reflection that modern human society has undergone in response to the violence and atrocities that it (including the Western nations) has committed.

In fact, the wide recognition of universal human rights throughout the international community is something that came about in the 1990's, after the Cold War had come to an end. So we can see that, although the concept of human rights first appeared in the Western countries, the concept has never been the 'sole property' of the Western countries. It has in fact become the common values of modern-day human society.

3. Human Rights and Traditional Culture

The 'traditional culture' mentioned in this brief primarily refers to the combination of a number of different spiritual systems of thought, including philosophy, faith, morals and ethics, behavioural norms, customs and habits, social systems as well as literature and art that is either spiritual or secular. Such systems have had long-lasting dominant influence (oftentimes exceeding one thousand years) on the countries, regions and individual nations of the world.

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[3] Hersch Lauterpacht (editor), *Oppenheim's International Law*, Vol. 1, Part 2, David McKay Company Inc., New York, 1955, 8th Edition, p. 736.

[4] "The Relationship Between Heaven and Man" (人副天數) in DONG Zhongshu, *Luxuriant Dew of the Spring and Autumn Annals* (春秋繁露), Vol. 13, Ch. 56.

[5] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd Edition, Cornell University Press, Ithaca and London, 2003, pp. 72-79.

[6] Pico Della Mirandola, *Oration on the Dignity of Man*, translated by FAN Honggu, Peking University Press, Beijing, 2010, pp. 25, 32.

3.1. Time Issue When Comparing Traditional Culture and Human Rights

A number of the religions and traditional cultures that have had widespread influence throughout the world are products of pre-modern times, the majority of which have histories of over a thousand years or even a few thousand years, such as what have become known as the three great religions of the world: Christianity, Islam and Buddhism. These ancient religions or traditional cultures will certainly carry that historical stamp, which primarily teach people to focus on and pursue the happiness of 'the opposite shore', 'the next life' or 'future generations'.

Philosopher Hannah Arendt has pointed out that in "the Christian doctrine, all people are equal before the Lord. Discussions of the origins of modern political equality will often reference this as a supportive argument. However, this does not necessarily mean that man is equal in the secular world. Not only is this not the case, but on the contrary, it emphasizes that man is only seen as equal after becoming a citizen of the Kingdom of Heaven (Civitas)".[7]

All in all, the modern concepts of human rights, rule of law and democracy are not intrinsic to these ancient religions and traditional cultures that have had such a great impact on the world. There is a time-lapse issue that makes it difficult to compare the traditional cultures of pre-modern times with modern-day human rights concepts.

3.2. Regarding the Thinking of Confucius and Mencius

There are now some scholars in China who believe that Confucius' thought includes theories of human rights. The primary argument that these scholars reference is the spirit of "benevolence and love" (*ren'ai*) advocated by Confucius. However, when answering his pupil's inquiry as to the meaning of "benevolence" (*ren*), Confucius first said "self-restraint and the restoration of rites are benevolence" (*ke ji fu li wei ren*).[8] Confucius lived in the turbulent times of the Spring and Autumn Period, during which the ancient rites and etiquette were thrown into disorder. The ideal society that Confucius dreamt of was one in which the social order was able to return to that of the Western Zhou Period (between 1046 BC and 771 BC). Western Zhou was a patriarchal feudal society with a monarchical system that was strictly regimented, with clear distinction between the nobles and common folk. So, when Confucius said that "benevolence is to love others" (*ren zhe ai ren*), he was not referring to all people, but to an order that differentiated between social rank.

Mencius, who was the successor of Confucius' thought, proposed the idea that the "people are the most important, the nation comes after the people, and the monarch is the least important" (*min wei gui, sheji cizhi, jun wei qing*).[9] Mencius' 'people-centred theory' is fundamentally different from modern democratic theory. According to the 'people-centred theory', the people can only be the 'object' but not the 'subject' of national politics. However, according to democratic theory, the basic principle is government by the people and the people have the right to participate in government.[10]

3.3. Confucianism Should Not be Established as the 'School of Officialdom' (*Guan Xue*) for Modern Nations

Since the Qin Dynasty, China's central political institutions for two millennia were the absolute power of the emperor and the official-rank-oriented standard (*guan benwei*). After the rulers of the Han Dynasty decided to afford "sole respect to the Confucius school of thought, and dispose of the other 100 schools of thought", Confucianism was raised to the status of a national ideology. History has proven that once Confucius' thought has been exploited by the rulers and is hailed as the official ideology, this will only lead to restriction of social progress and constraint of the people's thinking.

3.4. Human Rights and Traditional Culture are Compatible

Humanitarianism is one of the moral foundations of human rights. While the major religions and traditional cultures throughout the world do not have the concept of human rights, they do have humane factors such as the respect and sympathy for others. Take for example the spirit of universal love found in Christianity's 'love thy neighbour' standard, the principle in Islam of 'treating others with kindness', and the respect for life found in Buddhism's 'equality among the four social classes'. So, such a religious spirit is compatible and can co-exist with the modern concept of human rights. In the same way, China's traditional culture, such as the spirit of benevolence and love as well as the attitude of forgiveness found in Confucianism, is compatible with the modern concept of human rights.

3.5. Human Rights Concepts and Traditional Culture Cannot Replace One Another

While human rights concepts are compatible with all different sorts of religions and traditional cultures, they are not to replace one another. This is primarily because of the following reasons. First, when it comes to time length, the major religions and traditional cultures of the world came about centuries ago and they enjoy over one thousand years of history. Human rights concepts, on the other

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7   Hannah Arendt, *Karl Marx and the Tradition of Western Political Thought,* translated by SUN Chuanzhao, Jiangsu People's Publishing, Nanjing, 2008, p. 35.

8   "YAN Yuan" (顏淵) in *The Analects of Confucius* (論語), Vol. 12, Ch. 1.

9   "Jin Xin", Part Two (盡心・下), in *Mencius,* Ch. 7B.

10   XIAO Gongquan, *The History of Chinese Political Thought,* Volume 1, Liaoning Education Press, Shenyang, 1998, p. 87. Princeton University Press printed the English translation of the first volume in 1979.

hand, are the product of modern civilization.

Second, when it comes to content, none of the major religions and traditional cultures that came about in pre-modern times contains modern concepts such as those of human rights, the rule of law and democracy.

Third, when it comes to the populations of the world, the followers of the major religions that have had the most wide-ranging influence on the world only account for a portion of the world's total population. The concept of human rights, however, is both universal and also transcendent, and the followers of any religion or traditional culture can accept and affirm such a concept.

3.6. Two Tendencies Worthy of Our Caution

There are two tendencies that are worthy of our caution when it comes to the relationship between human rights and each of the different traditional cultures.

The first tendency is to over-exaggerate the differences between the world's main traditional cultures (or civilizations). For example, in 1993, the American political scientist Samuel Huntington stated that with the Cold War having come to an end, the fundamental source of world conflict would be the major differences between the religious cultures of the world. He proposed his 'clash of civilizations theory'.[11] In response to this, Nobel laureate in economic sciences, Amartya Sen, criticized this method of classification proposed by Huntington, stating that it only treated people as the members of a certain civilization, and ignored other classification standards. He suggested the classification will only fuel opposition, conflict and violence.[12]

The second tendency is to use a regional culture to resist the concept of universal human rights. Starting in the 1990s, the ideas of 'Asian values' or 'cultural relativism' have appeared in a number of East Asian and Southeast Asian countries. These ideological trends have provided legitimation bases for some of the authoritarian political systems in Asia.[13] Currently, it is only the Asian region, of all regions in the world, that has not yet established regional human rights protection mechanisms. This shows

that there are no so-called 'Asian values'.

Since the 1990s, there has been a 'national learning craze' (*guoxue re*) in China with the revival of Confucianism, but the historian Yu Yingshi believes that the "Confucius classics can only be put to use in one's own personal life. In public life, we must respect democracy, liberty and human rights, which are the most basic things that the entire world has accepted".[14] Therefore, when it comes to 'public life', it is in my view not appropriate to use Confucius' thought to replace the concepts of human rights, the rule of law and democracy.

4. Concluding Remarks

The respect for the human rights of all people is a relatively recent historical phenomenon. In countries and regions where the traditional culture is primarily based on religion, the process of modernization is often accompanied by the secularization and separation of politics from religion when it comes to local political and legal systems as well as public life.

The core of Chinese traditional culture is Confucianism, which is not a religious culture, and because of this, the advancement of China's modernization will depend on whether or not modern values and concepts such as science, democracy, human rights as well as the rule of law are able to be completely accepted in political and public life.

Since the Second World War, international law, with its protection of human rights through treaties and customs, has already superseded the traditional cultures of any particular nation or region. It has a transcendence and universality which is cross-regional as well as cross-cultural. It has already become the common standard of all civilized nations in the fulfilment of human rights.

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[11]   Samuel P. Huntington, "The Clash of Civilizations?", in *Foreign Affairs*, Vol. 72, No. 3, pp. 22, 25.

[12]   Amartya Sen, *Identity and Violence: The Illusion of Destiny,* translated by LI Fenghua, China Renmin University Press, Beijing, 2009, pp. 9–10, 17, 36.

[13]   Amartya Sen, *Development as Freedom*, Oxford University Press, 1999, p. 231.

[14]   PENG Guoxiang (ed.), *Questions of Thought: Collection of Interviews with Yu Yingshi*, Peking University Press, Beijing, 2013, p. 115.