Human Rights in Chinese History and Chinese Philosophy

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General Remarks

Human rights seem characterized by the following conditions: (1) human rights are proclaimed or declared in a bill or declaration in the process of revolution or as a result of violent struggle against political suppression or dictatorial rule; (2) human rights include a group of freedoms-to and freedoms-from which are basic or essential for a free-acting and free-thinking individual; (3) human rights are claimed against, and are forced upon the recognition of, a political authority by representatives of the people and are requests to be secured or provided by such a political authority.

Though these basic conditions may not exhaustively describe any given declaration of rights, they embody the main aspects (genetical, contentual, and sanctional) of formal announcements of human rights such as Magna Carta (1215), the Petition of Right (1628), the Bill of Rights (1689), the Act of Settlement (1701), the Virginia Bill of Rights (1776), the Declaration of Independence (1776), the Declaration of Human Rights and Civic Rights (1789), the Emancipation Proclamation (1893), and the Universal Declaration of Human Rights (1948). Each of these declarations clearly records a triumph over absolute power or dictatorship. Each marks an awakening of political consciousness of the intrinsic worth of individual dignity and the extreme desperation of man when deprived of his rights. Further, each of these declarations of human rights presupposes a preceding background of philosophical doctrines which makes its phrasing and articulation possible, and which at the same time provides its justification.

In light of this brief statement concerning the existence and history of human rights in the West, one may raise many questions regarding the existence of human rights in Chinese history and Chinese society. Are there comparable declarations of human
rights in the long history of China? How does dynastic change affect the human rights of the people? Are human rights articulated in philosophy and other intellectual opinions in China? How did different classes in Chinese society develop consciousness of human rights? What are the philosophical and political positions of these different classes concerning human rights? In what way can Chinese people in their institutions and behavior be said to reflect a consciousness of human rights? Specifically, how did Chinese social and political philosophy accommodate questions of human rights? Are there different human rights for different classes of people? On different occasions? What are the principles governing such differences? Are there conflicts among these different groups? How are such conflicts resolved? In this paper I shall not be able to answer all these questions, but will instead address myself to the task of describing the political and social reality and interpreting it philosophically so as to give the questions a proper context. In many cases the answers to some of these questions are obvious; in other cases one has to draw his own conclusions. One statement can be made at the outset: there is never in traditional Chinese history any explicit declaration of human rights in the sense in which there are declarations of human rights in Western history.

The formation of ancient Chinese society before the first millenium B.C. and its gradual evolution into a state are the starting point for understanding the specific status of human rights in Chinese history, because it is from these sources and developments that later the political consciousness and political systems arose which subtly yet powerfully dominated Chinese society for the next three millennia. In the antiquity of the Shang and early Chou periods (Shang: 1560?–1066? B.C.; Chou: 1066–771 B.C.), China had already formed a state on the basis of the consolidation of large tribes under a ruling clan. The king and his diviners (who were needed for counsel, foretelling, and rationalization) formed the ruling class; their subjects included slaves acquired through wars of conquest. Whereas slaves definitely had no freedom and were as a rule forced to engage in labor and production, the ruled subjects in general were individuals who labored but were not necessarily enslaved. So far as these subjects are concerned, there is little evidence that they did not enjoy a large measure of freedom and rights as a collective entity referred to as min or shu-min (people).

In the absence of details, we may mention three important facts
about the nature of human rights in ancient China.

(1) The term *min* or *shu-min* is a collective term referring to the totality of the ruled people who labor and reclaim land but are not necessarily slaves. The king and his assistants, while ruling their *min* and being supported by them, are enjoined not to suppress them. That the king should be benevolent to his people is considered a virtue (*te*) which the king should preserve in order to hold his rule. Indeed the ancestors of the Shang rulers urge: "Do not treat the people (*min*) cruelly."

(2) That the virtue of the rulers is to protect the people is reinforced by ancestral worship and the worship of Heaven (*t'ien*) or the Heavenly Ruler or High Lord (*Ti*). It was suggested that Heaven or *Ti* has a special regard for all people because they are born from Heaven. It is said in the *Book of Poetry*, "Heaven gives life to all people, things exist, and there are regularities." In a religious sense therefore, 'people' can have a claim to an important place in the world.

(3) In the *Grand Norm of Shang Shu* it is suggested that the people have a say in deciding matters of state by means of interpreting results of divination: "If you [the King] have great doubt, consult your mind, consult your minister, consult your subjects ['the people'], consult your diviners." Of course, 'the people' (subjects) may not include the servants working in the fields.

The clan-dominated and family-centered society of the Shang became even more stratified by class and status distinctions in the Chou Kingdom. The political power of Chou was founded on a complicated feudal structure initiated by the founders of Chou. The land under the son of Heaven" (*t'ien tzu* of Chou) was divided among the royal lords, each of which in turn has his own fief deputies or ministers. The orderly hierarchy of feudal rule in Chou seems to have led to a sharp class separation between the ruling class and the ruled, of which the lowest class is still the *people*. Since the land belonged to each fief and was cultivated by rankless subjects, in that sense the land need not be said to have been privately owned. The cultivating serf belonged to each fief and lacked any economic basis to develop ideas about *rights* or *freedoms*. They relied on the ruler or the ruling class to protect and preserve them. That they were to be both protected and controlled is clearly reflected in the following two important developments:

(a) Before Chou took over the rule from Shang, the Chou people believed that the Shang ancestors were favored by the High Lord
(Ti) and thus had received the Mandate of Heaven (t’ien-míng) for their rule. But after the Chou established its rule, it regarded itself as having received the Mandate. The Chou people realized that the Mandate of Heaven did not stay permanently; it could be lost or changed, and the reason why a kingdom might lose its mandate of rule was loss of virtue (te). Te is not the will of God but the ability to hold on to the rule by following the advice of one’s ancestor’s. Thus they realized that “the good and bad fortunes are not decided by man; whether Heaven bestows calamity or blessings depends on one’s virtue.” “What spirits rely on (for their judgments) are te.” “Spirits of God do not simply love men; it is man’s virtue on which their favor depends.” “The ruling Heaven does not have relatives; it is only te which is its assistant.”

This means that the rulers must do everything in their power to illustrate te in order to maintain their rule (i.e., the Mandate of Heaven).

As they realize that the rule ultimately depends upon the support of the people (min), it becomes obvious that the te of the rulers consists in treating people in such a way that they naturally rally to support the ruler, and that the Mandate of Heaven can be reduced to the Mandate of People. The Chou statesman thus came finally to the consciousness that people as a whole are the mainstay for political rule and must be respected rather than exploited: “Heaven sees through the seeing of people; Heaven hears through the hearing of people.” “What people desire, Heaven must listen to it.” This of course does not imply that certain rights of the people (or human rights for the class of min) are recognized or instituted by the people themselves, or that they are officially proclaimed or observed by the rulers. No attempt was made to spell out clearly what was best for the people, in fact, until Confucius and Mencius.

Furthermore, knowledge of the way to show te was considered a matter of moral wisdom derived from history and practical prudence derived from experience. The doctrine of te was not instituted as a guarantee against the abuse of absolutism on the part of the ruler. On the other hand, we need not underestimate the moral force of the doctrine of te in Chinese political consciousness. In the Spring and Autumn periods (722-481 B.C.), it became so prevalent and influential that the idea of the sanction of political rule by Heaven or God was rendered obsolete. It was said that “people are the master of gods,” and that “if a state is to
prosper, (the King) listens to people; if a state is to perish, (the King) listens to God.” In Chou Li, a later work in the Warring States period (403-221 B.C.), it was required that the King consult people on matters relating to the survival of the state, matters related to the moving of the capital, and matters related to the institution of a ruler.

The collective right of people as a group to be well-treated by their ruler and the collective right of people to be able to participate in the maintenance of political rule are thus established as a moral principle and a social necessity for any political rule. This, of course, might have led to the development of a full doctrine of human rights under more propitious circumstances.

(b) Because of the stability of the Chou rule, based on its feudal structure, the distinctions between the ruling class and the ruled class were increasingly accepted as a social datum. In order to maintain the orderly distinction between these two classes, and in order to make the hierarchy of ranks among the ruling class function according to definite and yet morally sanctionable norms, there was introduced on the one hand, the rule of proprieties (li), a system of norms intended to govern the conduct of the ruling dukes, ministers, and landowners; and, on the other hand, the rule by the code of punishment (hsing), intended to govern the conduct of the rankless subjects (hsiao-jen).

Li was perhaps derived from the sacrificial rites that took place in the temples at important state functions such as funerals or the start of expeditions. The chief nature of li is that it is considered a mark of moral distinction as well as a mark of rank. Li was taught as part of the ordinary course of education and expected to be embodied in one’s social life and mores or social decorum. Thus its function was to advance a higher order of moral autonomy and cultural harmony, besides preserving the order of feudal organization.

Li is based on the principle of reciprocity, and constitutes the set of guaranteed correct ways of conduct in a feudal social order. In this sense it is hierarchical and has both positive and temporal significance. It is perhaps also intended to function as a means of embodying te in concrete life situations so that the order of rule and its sanction can be maintained.

Whereas li is the self-restraining power imposed on the ruling class by themselves, the people are governed, on the whole, by a code of punishment (hsing). Three main things can be said about
hsing: First, *hsing* is to govern the class of subjects, but not to apply to those possessing the rule, just as *li* is not to apply to the subjects; thus, Confucianists would say: "*Li* does not go down to the commoners, and *hsing* does not go up to the ruling ministers." It is also said that, "The rulers follow *te*; the ruled subjects follow the code of punishment." Thus, *hsing* is exclusively a code for the subjects. Second, *hsing* as a code of punishment is not positive in encouraging certain conduct, but is only negative in preventing certain conduct from happening, possibly to prevent conduct opposed to the rule. In a way, the subjects are left quite free and by themselves to do what they can, in so far as they do not break the code of punishment. Any positive rights, so far as the people are concerned, are not secured by law, but by the *te* of ruler, which is a matter of personal wisdom rather than a matter of institution.

Finally, *hsing* seems to have been developed out of the early treatment of captured slaves in conquering wars. It is the conquerors' morality toward the conquered, not toward peers or equals. It therefore implies a certain contrast between the master-morality and the slave-morality. *Li* is the master-morality devised by the self-governing class of rulers, and *hsing* is the slave-morality as imposed by the rulers on their slaves so that they should not interfere with either the rule or the rulers. Whereas *li* represented a kind of political consciousness of the rulers about their rights to rule, to own, and to demand respect from each other, *hsing* implies no political awakening to rights or obligations on the part of the ruled subjects themselves. It seems that the very distinction between *li* and *hsing* made by the rulers and the imposition of *hsing* on the ruled tend to suppress the political consciousness of the ruled subjects regarding their rights or obligations to themselves or to each other. It was not until the feudal order broke down and rank disintegrated because of population growth and political centralization of power in local states that the ruled subjects gradually became politically conscious of their rights by claiming moral equality with rulers in the cultivation of virtue. This was the time when all classical schools of philosophy came to prosper.

Population growth and the gradual dilution of blood ties through the ramifications of family relations from the tenth century to the seventh century led to the dissipation of both the political authority of the Chou and the controlling power of the feudal lords. The feudal rulers of the states were under pressure to expand their land to accommodate this growth of the population,
and therefore wars between the states took place in disregard of *li*. The more weakened the Chou authority, the more rapid the breakdown of the ruling hierarchy and the more concentrated the power of the state rulers and their ministers who were close to him. Each state functioned as a unit or nucleus for expansion of land and for consolidation of new social forces which took over the old hierarchy.

The formation of independent military states which paid lip-service to the Chou Kingdom at the same time caused the decline of the old aristocracy, as well as the breakdown of the boundaries of ranks, especially between the feudal ministers (*ta-fu*) and the ruled subjects. Social mobility quickened because the state rulers wanted talented help to expand their powers and land. In addition, the increasing tempo of manufacturing and commercial progress served to expedite the disintegration of feudal structure and the formation of new political entities. Iron was beginning to be used in the early period of the Spring and Autumn. Methods of production had improved, and commodities were becoming more refined. The commercial class was on the rise, and there was need for a new mode of life. Thus the breakdown of the old order, based on farming on fixed land, took place.\(^\text{19}\) The growth of the commercial class led to the ready purchase of land, which inevitably presupposed the feudal recognition of private ownership of land. The public land ownership of the feudal hierarchy finally was abandoned.

The coming of the commercial class and the establishment of private ownership of land provide a basis for the breakdown of the distinction between the aristocratic ruling class and the ruled subject class. Perhaps this could be better described as the emancipation of the owned subjects of the feudal order so that they could search for wealth and employment through their talent in the courts of state rulers who aspired to greater political power. This meant that education of the talented was needed and new ideas for guiding change were welcome, and it explains why the social atmosphere and social forces in the Spring-Autumn period were conducive to the blossoming of a "Hundred Schools" of thought and to the flourishing intellectual life in the succeeding period of Warring States.

Against this general description and explanation of the social transition, I wish to point out that the development of philosophical schools indicated the arrival of political consciousness reacting in various ways to the reality of social change.
The very existence of these schools already symbolized an emancipation from the past and implies an affirmation of the rights of the lower class to make demands and participate in the universal change.

Among all the schools of thought which responded to social change in the period of 600-200 B.C., Confucianism is the most distinguished and most influential for later history. Confucius (551-479 B.C.) himself searched for a new order and a new outlook on life for the necessary transformation of the society. One cannot deny that Confucius, alarmed by the rapid disintegration of the feudal hierarchy, wished to preserve the basic values of the ancient order. But on the other hand, Confucius answers this crisis by proposing a moral universalization of the ancient aristocratic values for all people, without presupposing distinctions among feudal ranks. In this regard he is quite novel and revolutionary. He tries to apply the system of li to all men and wished to institute an order continuous with the past, but without its debilities (which were created by social factors perhaps not quite intelligible to Confucius). Where Confucius fails in his inability to see that the present social change had not yet come to its destined end and had not yet exhausted its momentum, and therefore had not brought itself to a state where the old form could be shed and a new form established.

The first important contribution which Confucius makes toward the realization of general human rights is his moral universalization of li among all men. Li is to define basic human relations independently of ranks and status. The basic relationships are those between father and son, between elder and younger brother, between a ruler and subject, and between friends. These four relations, and the relation between husband and wife, explicitly added by later Confucianists in Li Chi, form the basis of the human world. Confucius sees these relationships as universal among all men, considering it both the duty and the right of a man to cultivate these relationships to perfection. The result of such cultivation was called te (virtue), according to which men would be able to enjoy a harmony, an orderly community, and a prosperity which would fulfill both human nature and the norms of society. All norms which form the content of li govern all humanity. Because men are normally equal and have a common human nature, they are thus capable of achieving the same perfection in virtue. In this sense, if there are
any human rights, they are implicitly affirmed in the Confucian affirmation of the moral worth of men.

The morally cultivated person is called a "superior man" (chun-tzu) and the morally uncultivated person is called a "small man" (hsiao-jen). Man is equal in his capability to become a superior man or to remain a small man. The ideal of the superior man seems to suggest that the fundamental rights of man are to be recognized in order to make it possible for a man to fulfill such an ideal. The political system must guarantee that all men under it be capable of becoming superior men and be treated morally equally. This may be considered an affirmation of human rights through a moral philosophy of man.

A second contribution made by Confucius toward the realization of human rights is his doctrine of jen' (love, benevolence): Every man can cultivate his nature so as to love all men and to embrace them with benevolence. The very motto "Do not do to others what you do not want others to do to you," which gives a definition of jen, clearly suggests that Confucius not only holds that men must be treated equally, but that the superior man must treat them equally in order to perfect himself: "In order to perfect oneself, one must perfect others; in order to establish oneself, one has to establish others." This humanistic approach to man, independent of rank and status, could already lead to a formulation of human rights in the sense of a philosophical recognition of the worth of man and his potentiality. That Confucius does not actually come to this is perhaps due to his belief that government by a superior man would bring such well-being and order to people that there would not have to be any struggle for human rights. This leads to the third point of his philosophy.

Confucius conceives the purpose of government as consisting in preserving and multiplying the people, nourishing and enriching their material lives, and edifying and educating them. He has high regard for the people and believes that a virtuous ruler should rule by making titles correctly correspond to virtues, so that people would know how to order themselves. One may say that orderly survival, good living and good education were conceived by Confucius as the fundamental rights of the people which were to be guaranteed by the ruler.

This ideal of government for the people was elaborated even further by Mencius (371-289 B.C.), a later proponent of Confucian principles. Mencius lays out a relatively detailed blueprint for a
welfare state in which people are guaranteed material comforts, land ownership, medical help, and education. These are considered essentials that a good government must provide. The ground for such recognized rights of people again is that man's nature is good. In virtue of having a good nature and also in virtue of being human, people are not to be treated as "beasts or birds" (a point which Confucius also had made), but must be given encouragement and nourishment to develop their potential. The success or failure of a ruler depends on the extent to which he can bring this about. That he can bring this about is again due to the fact that he is originally good and shares with people the same nature and can apply himself to secure these essentials for the people. This also leads to the most important and unique point Mencius made, which also follows as the ultimate effect of his doctrine, namely, that people are the most important element in a state, the government the next most important, and the ruler the least. If a ruler fails to provide the essentials, the people have the right to remove him and to substitute someone who can.

At this point one can see that the Confucian philosophy advocates the ultimacy of people's rights to fulfilment. These rights are founded in one's nature, and are thus considered inalienable and necessary. Mencius's suggestion of the revolutionary right to remove a ruler who harms the interests of the people strongly reminds one of similar statements in the American Declaration of Independence.

At the time of Mencius the Confucianists, perhaps even Mencius himself, following suggestions by Confucius, conceived of ancient government before the establishment of the hereditary dynasties since the Hsia (2183-1752 B.C.) as founded on the rule of the sage. The sage ruler would retire and appoint a wise successor endorsed by the people. Apparently there was no theory as to how the sage ruler was to be endorsed or selected. Unlike the right to remove a bad tyrant by revolution, the right to institute a ruler by election is not spelled out, perhaps not even carefully considered in Chinese history.

Thus, one does not want to say that Mencius's or Confucius's theory of government, with its inherent guarantee of the right to livelihood for the people, is necessarily one of democracy. The people themselves have not through their own actions and words affirmed their rights. The rights of the people must be recognized and cherished by the conscientious rulers themselves, if recognized
at all. This, perhaps, was the reason why human rights in the humanistic tradition of Confucianism remained only partially developed and waited to be eventually guaranteed by a sage ruler with his jen or te.

Neither Confucius nor Mencius is able to propose how the rights of the people are to be actually provided. Realizing this weakness in their philosophies and rejecting Confucian humanism because of it, the Legalists finally came to advocate a different theory. The people are not to be guaranteed their well-being in the areas of moral living and education, but should be organized for the purpose of fulfilling the goals of the state or the ruler. The very advocacy of law (fa) instead of li as a universal measure for the strengthening of control and unification of China carries with it a recognition of the equality of all people including the rulers themselves. However, it provides no rights for the people as a whole. In Legalist philosophy, human rights are severely curtailed and sacrificed for the external purpose of the state or ruler. The people are downgraded and governed as if they are always on the verge of lapsing into evil ways. This theory is obviously based on the view that human nature is bad and selfish and that the strength of law is absolutely superior to virtue. The people as a whole are still considered a constituent of the state, but there is no provision for their rights. One might say that the Legalists represent the setback of the Confucian ideal of government, which develops from the interests of both ruler and the people.

The Legalists finally succeeded in effecting the unification of China through the First Emperor of the Ch’in (221-207 B.C.) while Confucius failed to carry any influence with any ruler of his time. A ruler could immediately grasp the point of view of the Legalists, which went hand in hand with his own point of view. However, the people of the time, even though freed from the ancient feudal hierarchy, could not understand Confucianism although it was intended to be a universal philosophy. This was because the people were still dominated by ancient customs and could not see the humanist view as advancing their interests. The profit-seeking rulers of the time, however, could see the point of view of merchants or men of talent and eloquence. Unfortunately, when Confucianism finally became adopted as a ruling ideology in 136 B.C., it again was used and adopted from the rulers’ point of view. The people had somehow failed to organize themselves in a search for a new form of governmental succession.
Among the other schools of thought in the same period, two others are worth noting. The Mohists advocate the doctrine of universal love as a means for assuring mutual benefit among all men and among all states. Mo Tzu clearly recognized the rights of people as a whole to live in a peaceful and orderly society. A useful citizen works toward social unity. His sanction is that Heaven wills good for all men and it is only correct to follow the will of Heaven. The significance of Mohism lies in its essentially working-class message: the inherent rights of all men to live in a righteous and productive society.

Finally, as Taoists such as Lao Tzu (between sixth and fourth century B.C.) and Chang Tzu (399-295 B.C.), advocate that man should not be dominated by government at all, and that it is best to do away with government and rulers and their regulations—best because it is the way of things as they are. The philosophy of Tao (the Way) clearly presupposes that man has the primordial right to live according to Tao, because in a natural state man can be happy before government is artificially introduced. An epigram from Chang Tzu says: "When the sun rises I go to work; when the sun sets I go to rest; I dig a well to drink and I plough the land to eat. What does the power of the ruler have to do with me?" In the pre-government era the natural man lives in accordance with nature and lives happily. This seems to suggest that among all the rights a man may have, the most basic and essential right is to be free from interference from outside agencies such as governments. When the right to be free from interference is guaranteed, as it should be in virtue of the original Way, one has all the things he should have.

Against this Taoist background all the human rights one may cite are relevant and meaningful only when governments become necessary and pose a threat to individual existence, for only then are such rights useful for the advancement of individual interests.

Human Rights: From Tradition to Modernity

After the unification by the first Emperor of Ch’in in 221 B.C., China underwent two millenia of political, social, and economic changes which were only superficially marked by the rise and decline of dynasties. Political and economic measures and institutions which may be said to reflect a growing consciousness of human rights do evolve. For example, the harshly cruel punishments of antiquity are gradually abandoned from the turn of
the Han period. But the dominating consideration in any political reform is still the people's collective rights to well-being as recognized by enlightened rulers and their intellectual Confucian gentry-class bureaucrats or by independent-minded Confucian or Buddhist scholars. Land ownership and taxation are major areas of concern. Thoughtful and benevolent rulers and ministers always take some steps to redistribute land or limit the size of land one can own, or to lighten the tax or labor demands on the general peasantry. In this sense, the strong concern for the well-being of the people (primarily the general peasantry) by a benevolent ruler or minister presupposes the belief that people as individuals do not have the absolute right to own land, and that land belongs to the state and must be shared to prevent exclusive and absolute possession. This prevents or at least discourages the assumption of ownership of land as a basis for a conception of individual human rights.

Between the establishment of the Ch’in Empire of the third century B.C. to the end of the Ch’ing (Manchu) Empire of the ninth century, several factors seem to prevent an ultimate awakening of a sense of individual human rights:

Although there are many dynastic changes throughout the long history of China, each change leads to the establishment of a despotic rule conceived in a framework (perhaps ultimately a Confucian one) in which a ruler’s concern for the well-being of the people is seen as stemming from a benevolence on his part. The motivation for the numerous peasant uprisings is precisely to protest against a malicious tyrant who ignores the well-being of people, and to secure one who would be benevolent. Thus the successful uprisings eventually reaffirm the Confucian view of the ruler and his duties toward people. They settle into the same old form of despotic rule without instituting any apparatus to represent consciously and permanently the standing interests of the people. This tendency to revert to the same form of government, together with the gradual erosion of governmental duties toward people, in turn leads to another protest from the masses and another avowal by a new dynasty, of the ruler’s duties toward the people. Thus, the dynastic cycle is founded: grass roots uprisings generated by a consciousness of the interests of people ending with the affirmation of the duties of the ruler. This is clearly illustrated in the establishment of the Han and Ming dynasties.

But there were also many unsuccessful peasant uprisings which seem to pervert the initially people-oriented movements into ruler-
oriented ones. This is a remarkable fact, for which two reasons can perhaps be given.

Chinese society is mainly based upon agriculture and sustained by a massive peasantry who from ancient times have adopted a passive attitude toward political authority. All the peasantry wanted was noninterference and nonsuppression, as amply indicated in the Song of Chuang Tzu. Besides, they had been subject to despotism and became accustomed to it as if it were the only form of political rule. On the rational side, as opposed to the institutional side, the Confucianism after Han had been taken up by the rulers as a means for theoretically justifying the rule and its accompanying bureaucracy. Peasantry educated under this ideology certainly found it difficult to formulate any other rationale for its critique or its repudiation. Not only was the mentality of the peasantry not conditioned to seek alternatives in representing their interests in times of crisis; the peasants also felt that they could rise to advantageous positions within the system through avenues voluntarily opened for them by the bureaucracy and the ruler. The recommendation system since the Han and the civil examination system since the Sui Dynasty hypnotized people into believing that advancement by steps was always available to them in a well-maintained despotic system; they passively accepted their misfortune in not being able to avoid suffering and poverty and blamed it on their individual inabilities to move from mass peasantry to scholar-gentry and to the bureaucratic ruling class.

Another factor which perhaps prevented human rights from being effectively asserted by the mass of people had to do with the constant invasions by barbarian border tribes. The existence of border tensions added a critical note of solidarity to the people’s sense of cultural and historical identity, while the urgency of the situation enhanced the ruler’s freedom of action. The stress on historical and cultural continuity and identity seemed to inhibit the growth of the desire for the idea of human rights even when people or scholars came to appreciate them. When the invading barbarians succeeded in overrunning the native rule, as in the Yuan and early Manchu periods, the people’s situation became so much worse that there could not be any talk of human rights as such.

Even though the main course of Chinese history maintained its form of despotic rule as accompanied by consciousness of the ruler’s interest and a ruler’s perspective on the importance of the welfare of the people (peasants), it is not to be denied that there
were frequent protestations to the contrary on the part of many conscientious Confucianists. This was particularly true in the time after Ming fell to the Manchus. In the philosophical and historical writings of Huang Tsung-hsi (1619-1695) and Wang Fu-chih (1619-1692) one can find strong views rejecting despotic rule and strong views cherishing the rights of people as a whole. Whether these views still centered on the collective rights of people rather than the rights of individuals is open to controversy, but the strength and determination with which such views were held left no doubt that there was a ferment in favor of new forms of government. After Western powers made their encroachments on the old society (which quickly revealed its weaknesses), and small industry in the eighteenth century matured to the extent that the economic autonomy of the populace could be foreseen, and finally after the last monarchy refused to take quick and effective measures to redress social ills, the scholars and people in the large cities gradually came to see that a total revolution toward a different form of political rule was the only solution. This explains the origin of the Chinese Revolution in 1911, one of the goals of which was to maintain the rights of people from the people's own point of view by establishing a political form (democracy) which could prevent the loss of this consciousness. Revolution in this sense had not yet taken place in China whose mentality had been rooted in the ruler-oriented Confucian ideology. It is this revolution which led to the proclamation of the 1945 Constitution of the Republic of China in which articles regarding human rights, comparable to those in the original Bill of Human Rights, were fully articulated.

A final point has to be made regarding the importance of the development and growth of small industry and commerce in the eighteenth and nineteenth centuries. The conditions which made this development possible may signify a gradual shift from the peasant mentality to one of initiative, open-mindedness, and a new sensibility concerning social forms. It seems that even in the absence of the calamity-loaded impact of the West, the Chinese masses might have gradually come to some consciousness of human rights in a manner resembling the development of British democracy. In this fashion democracy and the affirmation of human rights might have been slowly achieved without a massive and traumatic revolutionary movement. Regarding this possibility and its merits neither history nor speculation can make a definitive judgement.
The Chinese Model of Human Rights: A Conclusion

I have attempted to show two views of the concept of human rights: (1) how human rights in a broad sense, that is, concerning the interests of people as a whole, were conceived and practiced in Chinese history and philosophy; and (2) how human rights in the narrow and more Western sense of explicit and specific rights for the individual man were actually lacking in the historical experience and, perhaps, even political consciousness of China. I do not imply any value judgments of this unique situation. A long history and a very highly developed culture in China should give its own rationale. No conclusions can be drawn until one fully understands the reasons as well as the causes, the merits as well as the detriments, of a system lacking the Western sense of individual human rights while encouraging the formation and sustenance of human rights in a broad general sense. We can even consider human rights in the Chinese context as a singular entity. This seems to suggest a Chinese model of human rights opposed to the Western model as found in the bills of rights listed in the introductory section of this paper.

I wish to formulate the following characteristics of the Chinese model. These would be human rights as abstracted from the actual rights which Chinese people on a large scale enjoyed in their long history and which Chinese philosophers in general, and Confucian thinkers in particular, recognize and sanction:

(1) Human rights are relational as opposed to substantive. In the Confucian code of social ethics man is defined by a system of relationships to others. It is through relationships that one develops oneself. There is no essence of man which in itself contains absolute or particular principles of virtue and disregards to whom and at what time moral demands are made. The requirement of reciprocity of Confucian ethics in the Great Learning illustrates the relational value of human rights in the Chinese context. The Confucian notion of *li* (rules of propriety) also manifests the relational nature of human rights in the Chinese context. Even though man shares with other men the intrinsic potentiality for goodness (*jen*), *jen* is not a human right per se. On the ground of *jen*, one should not make a claim of rights for oneself but must accept others as a condition of the development of oneself. The ultimate right in the substantial sense is the right of self-cultivation and self-perfection. Relationships with others are governed by *li*.
based on the recognition of relatives and their worthiness, not on claims to rights.

(2) Human rights are particularistic as opposed to universalistic. As there is no explicit statement of the universal rights of man in Chinese traditional law or government, what pertains to one’s interest and what justifies one’s action in terms of righteousness is decided on the basis of particularistic considerations of context, relationship, and time; of consequences as well as precedents. This has been made partially clear above. Here what is to be stressed is the particularistic way of applying or judging one’s right in contexts, relationships, and time. Often the appeal is made to human feelings and the total good or the good of the whole. Human rights become significant and compelling only when the total good and the human feelings in the particular context, and not necessarily a logical rationale, are observed.

(3) Human rights are collective as opposed to individual. This is perhaps the most outstanding and most dominating feature of human rights in the Chinese context. From antiquity to the present, human rights are basically rights of the people as a whole rather than rights of man as an individual. The term ‘man’ refers to man in the sense of people as a singular entity rather than as individuals. Even though the individual may not be totally dismissed from the political consciousness of Chinese philosophy, the concept is not as central as is that of the people as a whole. It is through the affirmation of the human rights of a group that the members of the group naturally benefit. In the case of the affirmation of individual human rights, there is always an implicit assumption that rights must be relinquished under certain circumstances for the interests of the total group. The collective nature of human rights as a principle of Chinese social ethics is well illustrated in the protection of people as a whole by the ruler and in the preservation of the family as a goal for individual living. I doubt that this concept of human nature has ever really changed even in today’s Chinese society.

(4) Finally, human rights are to be recognized by the authority, not to be claimed by or for oneself. This is again typical of Confucian political theory as well as practice. No one individual can claim his human rights as a reason for protest against the status quo. However, one can revolt against the status quo by claiming that the authority is not acting with that justice which would have prevented such protest or revolt. Basically, Chinese individuals are self-effacing, but this is not to say that they do not en-
joy or need human rights. These are assumed to be rationally and normally required of and provided by a good social system or a good system of rule. When these rights are perceived to be lacking, there is risk of social disorder. Order and harmony mean implicit mutual recognition of parties and groups existing in a relationship. It is not a conscious and constant balance of power as guaranteed by the judiciary supervision of standing courts. It was not until modern times, slightly before the 1911 Revolution, and conspicuously in the 1919 May Fourth Movement, that Chinese individuals began to claim, and allow others to claim, human rights for themselves and to enjoy the recognition of these rights by the government.

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NOTES

1. It is often claimed that there were slaves attached to the lords and rulers in the Shang time, but there is disagreement on this point, as there is about the exact percentage of the population who were slaves, how they were treated, and how they were used in peacetime production and in war. For discussions of these points, see Kuo mo-jo, Chung-Kuo ku-tai she-hui yen-chiu (The Study of Ancient Chinese Society), Peking, 1964; and Lu Cheng-yu, Yin-Chou Shih-tai te Chung-kuo she-hui (Chinese Society in the Yin-Chou Period), Peking, 1962.
2. See Shang Shu (Book of Documents), Pan-ken.
3. See Shih Ching (Book of Poetry), Ta-ya.
5. Cf. Shu Ching, Ta-ya.
6. The inscriptions of Mao Kung Ting say, "[King] Wen and [King] Wu are greatly illustrious. The Imperial Heaven substantiates their virtue in order to match the Chou ancestors and enable its kings to receive the great mandate."
7. See Shang Shu, Hsien-yu-i-te.
8. See Tso Chuan, Duke Hsi, fifth year.
9. Ibid.
10. Ibid.; quoted from Shang Shu, Tsia-chung-chih-ming.
11. Chou Shu, Tai-shih; see Shang Shu, Tai-shih.
12. See Tso Chuan, Duke Hsiang, thirty-first year; quoted from Tsi-shih, first part.
13. In the Shih Ching, however, there are many songs which indicate the people's desire for a happy life of abundance and peace, as well as for freedom from war and heavy taxation.
14. See Tso Chuan, Duke Hsi, nineteenth year; statement by Sung Ssu-ma Tzu and Sui Chi-liang.
The well-field system (*ching-t’ien chih*) and its economy had been introduced as the basic mode of production, (a practice which he initiated) designed to serve both the public and the private sector. This system could not accommodate the growing population because it was based on a predesignated area of land which was overpopulated by the seventh century B.C.

Confucius projected the ideal forms of government and society into a golden age of the past (a practice which he initiated). Since the society at present is regarded as in degeneration and decline from the ideal past, men should awaken to a moral responsibility for restoration of this ideal. Each man should have the ability to do so, since it is assumed that the ideal had been already realized in the past.

This is called the doctrine of the rectification of names (*cheng-ming*). See *Lun Yu*, Tzu-lu.

This is a point which Confucius has also made. See *Lun Yu*, Wei-tzu.

See *Mencius*, Liang-hui-wang, 2. Mencius says: “To harm benevolence is called banditry; to harm righteousness is called cruelty. A man of banditry and cruelty is called a lone person. I have heard about killing a lone person Chou [the last king of Shang]; I have not heard about killing a king.”

*Chang Tzu*, Yang-wang. This epigram is generally referred to as “Song of Hitting the Soil” (*Chi-yang ko*).

Amnesty is sometimes declared for similar reasons.


**GLOSSARY**

| a | 商 |
| b | 周 |
| c | 民 |
| d | 民 |
| e | 德 |
| f | 天 |