

Fifth Plenary Assembly: Workshop Discussion Guide**A SUBJECT OF DIGNITY AND RIGHTS:
THE EMERGING INDIVIDUAL IN ASIA**

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I. RESPECT OF THE HUMAN PERSON: HUMAN RIGHTS

by
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The Emergence of the Person

One basic characteristic of our present historical period is the heightened awareness that man has of himself as person, with freedom and dignity, in possession of rights which he holds by virtue of his being man, and the awareness as well that all are equal, all belonging to one humanity, one family of mankind.

One occasion when this emergent consciousness manifested itself was at the signing of the International Declaration of Human Rights on December 10, 1948, a momentous event in the history of man, marking a high point in the growth of the consciousness and conscience of humanity.

To be sure, there were deep disagreements among the signatories of the Declaration. The nations identified with capitalism insisted more on the civil and political rights of the individual person, under the inspiration of the American and French Declarations of the 18th century and the whole liberal movement starting way back in the 16th century. On the other hand, the nations identified with socialism pushed for social and economic rights born of the struggle against the excesses of the early stages of capitalism in the 19th and early 20th centuries.

Notwithstanding the theoretical and ideological differences among the representative signatories, such a practical consensus arrived at among the nations of the world represented not only a mere contingent confluence of political expediencies and pragmatic interests. The very act of signing the agreement by representatives of the different sovereign nations signified the acceptance by these nations of principles and rules

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whose origins reside outside their powers, principles and rules, which virtually they admitted to be normative for their actions and structures.

And notwithstanding the fact that signatory states have subsequently violated provisions of the Declaration, the denunciation of such violations on the international level, and the fact that violator-nations have felt it necessary to pay at least lip-service to human rights even in the violation of it, indicate that the Declaration does signify a stage in the development of the moral conscience of humanity.

Moral conscience essentially means practical reason — what St. Thomas called *synderesis* — an awareness that man has of a deep, natural inclination within himself orienting him in some general, vague way toward some final, obligatory end, an end however which at the same time constitutes the very fulfillment of his being as man. Hence, to do good and avoid evil means to do that which is truly fitting for man, not to do that which would go against his very nature.

A more experiential description of moral conscience would manifest a certain fundamental openness and freedom constituting man's very existence, an openness however which is oriented to and claimed by an experienced unconditional demand for what is true, what is good, what is right and just. It is this constitutive relation of man to the horizon of the true, the good, the right and the just, which establishes him as a moral conscience, hence as moral subject, as person, endowed with a "self," with the capacity for initiative, self-determination and responsibility for his actions.

Within the Community, Before the State

As person then, man has dignity. He deserves respect. He must be treated accordingly as personal subject, not as thing or mere object. In other words, he has certain rights, certain moral powers owing to his very being as man, hence human rights. These rights, moreover, impose on the others moral duties or obligations. And reciprocally, every man has duties to the other, who also is man like himself, with dignity and rights. Every man then is the equal of every other man. Every man deserves respect. Every man signifies the seat of human rights as well as duties vis-à-vis every other man.

The individual human person, however, is not only the equal of every other person. Of his very nature he is related to other persons. He is born, develops and attains to the status and awareness of himself as person only in the bosom of the community of persons, within the shared communal life of intercommunication, interaction, and communal action. Structurally, the true that man is openness to is intersubjective, in

principle communicable and capable of validation by anyone. And the good and the right and the just toward which he is oriented is essentially universal and incumbent upon all. Man then is a personal being who of his very nature is related to other personal beings. Man of his very nature is both personal and social. He has rights and duties within the context of the community of persons.

It must be noted however that the community of persons is distinct from the State, the political organization of the community. Precisely, human rights and duties derive from the personal and social nature of man, prior to and independently of the powers and prerogatives of the State. They establish limits to what the State may claim as its proper domain and competence.

More specifically, what are these basic rights emanating from the very nature and dignity of man? As agreed upon by consensus of the nations of the world, they are: the right to life, to bodily integrity, and to the means necessary for the development of life — food, clothing, shelter, medical care, social security, rest and leisure; the right to freedom of expression, education and culture; the right to freedom of thought, conscience and religion, and the right to practice one's religion individually or in community; the right to choose a state of life, to found a family and to enjoy the conditions necessary for family life; the right to property and work, to a just wage and adequate working conditions; the right of assembly and association; the right to freedom of movement; the right to nationality and residence; the right to participate in the decision on vital communal issues and in the determination of the political system of the people to which one belongs.

Human rights, however, do not constitute a closed system, since man's nature and dignity on which they are based consists essentially of general profound structures and tendencies — inclination toward the true and the good, relation to fellow human beings, both as individual persons and as community, immersion in the physical world constituting man in his embodied existence. These structures and tendencies leave a large part of indetermination, to be determined in concrete human existence within the community, the culture, and the possibilities of the historical situation.

Furthermore, man, as moral conscience, develops individually and socially, in time and in history, as he acts and struggles through life in view of the true and the good, as individual, as member of his community, and as member of the human race. Hence, it is to be noted that the 1948 Declaration emerges from various historical increments: the individual rights arising from the liberal ideas of the 16th to the 18th centuries in protest against the abuses of absolute monarchy; the social and economic

rights born of the struggle against the excesses of the early stages of industrial capitalism; and the non-discrimination rights in condemnation of the crimes against humanity of Nazism.

A Special Moment in Our History

There lies precisely the significance of the 1948 Declaration of Human Rights. It signifies not so much a stage of development of the individual moral consciences of a group of individual thinkers and moralists but the historical progress of the moral conscience of humanity itself acting together as one.

From ancient times, individual thinkers had spoken of the unity of mankind and the universality of morality. But the event of the Declaration represents a historical moment when men, in a political act — hence acting not merely as individuals but as spokesmen of the different countries of the world — came together as one humanity to affirm and to acknowledge as normative for their organizations and actions the principle of the dignity of man and his human rights, rights that belong to man by the very fact of his being man, and therefore inalienable and universal, common to all.

The very sense of the Declaration requires, of course, that eventually appropriate bodies must be established for the guarantee of its effective implementation — international courts and political agencies for carrying out the decisions of such tribunals. The very notion of rights implies protection and guarantee by a legal system. In this sense, the Declaration at present does not have the force of law. Individual nations have thus far maintained the principle of sovereignty of the individual state with regard to the implementation of the provisions of the Declaration.

Nonetheless, since the signing of the agreement, the Declaration of Human Rights has been established as a kind of norm and ideal, and not merely as an ideal proposed by some individual thinker or moralist, but one already recognized by the nations of the world and is therefore even now at work in their very consciences and actions. In this sense, human history has developed to that point where humanity has become conscious of itself as such, as one humanity, and has started to act accordingly in the light and perspective of this consciousness.

Thus, the Declaration proclaims itself to be “a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and in-

national, to secure their universal and effective recognition and observance.”

The Declaration of Human Rights then remains to be concretized and developed in the situation, starting from the prevailing level of consciousness of the particular nation or community. For the actual level of consciousness varies from people to people according to the prevailing traditions and customs and culture in general. Furthermore, as will be seen, one people might have a more pronounced sense of this or that dimension of man compared to another people, such as a keener sense of respect for human life perhaps for one people, a stronger disposition toward communal bonds and social responsibilities for another people, a deeper feeling for the sacred and the transcendent still for another. In this light, the concrete program of promoting the dignity of man and his rights would vary from one communal situation to another.

Now that the Declaration has been proclaimed and acknowledged by the nations of the world, it does not mean however that henceforth there shall but be serene and inexorable progress toward fuller and fuller implementation and practice. The Declaration has been acknowledged and established as norm and ideal. It remains however to be a fragile ideal, with constant risk of its being betrayed and trampled upon, due to the perennial fact of human weakness, apathy, and sheer bad will. And this fact of fundamental human weakness, whereby man seems to be fractured and divided within himself, leading him to go against his own self and his very ideals, prompts us to go further in our inquiry regarding the ground of human dignity and human rights.

The Ultimate Ground of Human Rights: Man Redeemed and Renewed

It is possible to maintain a doctrine of human rights based purely on rational grounds, a philosophy of man and his world, without any explicit recourse to religion or revelation. Such a manner of proceeding, however, would remain incomplete. For, in practice, the human ideal remains unattainable, when man is left completely to his own resources. And the human ideal itself remains insufficiently grounded insofar as human reason in the end cannot be its own ultimate ground.

The basis of all human rights is the dignity of man. And ultimately, in the light of Christian faith, this dignity flows from the principle that man is created to the image and likeness of God, redeemed and renewed in Christ, and called to an elevated state of participation in divine life.

Indeed, as has been said, revelation reveals not only God to man but also man to himself. Hence, by the Old Testament, we know man's dignity. He is created in God's image. He is called upon to subdue the earth.

Coming from One Source and Creator, all men belong to one family of humanity. On the other hand, by the New Testament, we know that man is not only created in God's image but is a new creature. Redeemed and renewed in Christ, he is endowed with grace, by which he has the power to overcome his broken state of sin, and by which he is called as person and as community of persons to participate in the inner life and love of the Holy Trinity.

Christ then, the Word, the Second Person of the Trinity, is the true source of humanism. By his Incarnation and by his total act of solidarity with man's human condition through his passion and death, he is the Second Adam, the perfect source and model of what is man, his dignity and his rights.

Given man's divine source, his renewed state and destination, he is therefore of incommensurable worth. Herein lies the ultimate ground of human dignity and of human rights.

Human Rights: A Service of God

It would follow that there is a fundamental demand toward the full realization of the humanity of man. The promotion of man and his human rights becomes a matter of ultimate concern and must be part of the service to God. It must be central to the ministry of the Church and, by virtue of the royal priesthood of the baptized, it is a task incumbent on every Christian.

As was brought out in the 1974 Declaration of the Roman Synod, there is an "intimate connection which exists between evangelization and total liberation." And subsequently, in 1977, the International Theological Commission spoke of "the profound unity which links the divine history of salvation wrought by Jesus Christ to the efforts deployed in favor of the good of men and their rights."

On this matter, we must avoid both a dualistic position and that of simple identity. On one hand, the locus of God's action is concrete human history. The aspirations and struggles of man here and now for truth, for justice, for emancipation and freedom are serious affairs, pregnant with ultimate and eschatological meaning. And yet, the final end and goal of all history is itself transhistorical, going beyond all earthly possibilities. In the light of Christian faith, we must believe that in the end this earth and all history shall be abolished, giving way to a "new earth," and "city of God."

In any case, it remains that the promotion and defense of human

rights is a demand of the Gospel. As said in the message of Paul VI in union with the Fathers of the Roman Synod of 1974 on "Human Rights and Reconciliation":

Human dignity is rooted in the image and reflection of God in each of us. It is this which makes all persons essentially equal. The integral development of persons makes more clear the divine image of them. In our time the Church has grown more deeply aware of this truth; hence she believes firmly that the promotion of Human Rights is required by the Gospel and is central to her ministry.

But if man is created in the image and likeness of God and called to divine life, he is also weakened and broken by sin. This makes the mission of integral human development and the promotion of human rights a long, difficult struggle, full of obstacles, rejections, frustrations. It will require of the Christian what might be called a spirituality of combat, marked by courage, patience, and hope.

It goes without saying that man cannot do it by himself, either as individual, as community, or even as one historical humanity. Man needs divine grace, but which even now has been granted him through Christ. By grace he has been called to the new vocation of participation in divine life. By grace he has been endowed with the power to conquer the brokenness wrought by sin and the freedom by which to attain the new life to which he is called.

Recommendations

1. We must remember that the promotion and defense of human rights is the very demand of the Gospel and should be central to the ministry of the Church. This has been a consistent position in the social teachings of the Popes of the 20th century.

2. The culture, the traditions and customs of a people are in the principle the repository of practical wisdom. In general, the cultural ethos and manners are the modes by which a people, with its natural practical reason and wisdom, delineates for itself the way of being human. This is not to say that everything in a given culture conforms to what is truly human. There may be deviations and outright violations of the dignity of man among the cultural institutions and traditions, since man as we have seen has been weakened by sin. The Church then, particularly in a non-Western culture, must exercise discernment in this regard. Certain cultural forms and ways could very well be authentic ways of living out the human spirit, in conformity to man's nature and dignity and human rights, though perhaps seeming strange and unfamiliar in the eyes of

someone brought up in another culture and *mores*. On the other hand, they could very well be real degradations or perversions of human dignity.

3. As pointed out above, the concrete program of promotion of human rights would vary from community to community depending upon the existing level of moral consciousness of the community and its specific cultural peculiarities and deficiencies. Hence, in a community with an entrenched maldistribution of wealth and income, what would be important is the stress on economic justice, rights of labor, rights of the poor to life, to food, clothing, housing, health care. For other places, the proper stress could be on such issues as freedom of speech and political dissent, legal institutions such as *habeas corpus* and due process of law, the rights of minorities, the right to religious liberty, the right to family life, the position of the woman in society and culture, the place of the child and of the old and aged.

4. Harmony and order. Since human rights flow from the very nature and dignity of man, as personal and social being, such rights are in principle in harmony with one another and follow a certain hierarchical order, some being more fundamental than others. Any conflicts arising from the implementation and application of rights must in the end be resolved by the general principle: That which as a whole is in respect of the nature and dignity of man as personal and social being.

Undue insistence on certain rights could result in reality in the violation of more fundamental rights. To wit, undue prosecution of the individual right of property could in effect be the perpetuation of an endemic unjust system violative of the basic right to life and those things necessary for the support of life.

A utopian advocacy of rights oblivious of the capacities of a given society and the demands of common good could lead to chaos and even the destruction of the existing society which is always imperfect but which perhaps may be providing the level and quality of human life possible for the capacities of a given community in a given time.

In some communities, the deprivation of civil and political rights has been justified on the ground that the provisions for social and economic rights are more basic and primordial. But experience has shown that such arrangements have only resulted in undue political and economic rights for a small powerful elite at the expense of the majority, who ends up with neither political nor economic rights.

5. New Rights. As was pointed out above, human rights do not form

a closed system. New historical developments bring out a better understanding of man or aspects of man, from which would emerge new rights. An example is the ecological and environmental question, a topic which was not covered in the 1948 Declaration, but which certainly cannot be ignored today. With our knowledge today of the intimate linkages and bonds between man and physical nature, it is established that it is a violation of human life and dignity to exploit the earth in a manner that would destroy its ecological balance, deplete its non-renewable resources, pollute its atmosphere, water, and soil.

Furthermore, regarding this question, it would not be accurate to say that ecological and environmental concerns are luxuries that Third World countries cannot afford. If indeed the physical life of man is tied up closely with physical nature, then matters of ecology and environment are intrinsically linked with the right to life and bodily integrity.

One point that perhaps should be brought out regarding the matter is that the disproportionate access to resources by small powerful elites within some countries and by a small group of dominant countries on the international plane has resulted in tremendous waste, the depletion of non-renewable resources and pollution both in First and Third World countries.

6. In the promotion and defense of human rights, we must remember that God distributes charismatic and prophetic gifts as the Spirit wills. Hence, these gifts may be found anywhere within the Church and perhaps even outside the visible Church. We must always be open then to the witness of others even when we ourselves feel we have the prophetic role to speak out. And due to the prejudices of social classes, the blind-spots of those in positions of power and influence, the constant temptations of selfishness and pride in everyone, we must be ever critical of ourselves before going about to condemn and to propose the reform of people and institutions.

As said in the message of Paul VI together with the Fathers of the Synod of 1974 on "Human Rights and Reconciliation":

From her own experience the Church knows that her ministry of fostering Human Rights in the world requires continued scrutiny and purification of her own life, her laws, institutions, and policies. The Synod of 1971 declared that 'anyone who ventures to speak to people about justice must first be just in their eyes.' Awareness of our limitations, faults and failures in justice helps us understand better the failings of other institutions and individuals. In the Church, as in other institutions and groups, purification is needed in

internal practices and procedures, and in relationships with social structures and systems whose violations of human rights deserve censure.

II. HUMAN RIGHTS IN THE CHINESE TRADITION*

A Case History

by

Michael C. Masson

Historians agree: Chinese tradition has been silent about "human rights." The problem before us then is to show how to interpret that "silence."

As in many other instances of "missing elements" in Chinese history, several questions may be asked:

1. Why did China not develop the notion of human rights?
2. Does that "non-development" constitute a permanent feature of Chinese society? Does China in the 20th century need human rights?
3. If she does, does Chinese tradition stand as an obstacle to developing a concept of human rights in China now? Or can Chinese tradition play a positive role in such a development?
4. Is there anything like a characteristically Chinese version of human rights' doctrine?

As a whole, the question of human rights is part and parcel of the much larger problem of "Chinese tradition and modernity." One of our tasks, in fact, will be to identify how the human rights' issue interlocks with many other elements within that larger problem.

One should add that there is no one answer to the question of Chinese tradition and modernity. We find several answers, each one with its own logics and passions.

Among the many protagonists in the debate, I have selected *three representative thinkers*. The first one, Yin Haiguang, is a radical exponent of anti-confucian liberal views; the two others, Liang Shuming and Tang Jyunyi, are confucian thinkers. In a concluding section, I will try to identify a few important issues about the debate.

Chinese Tradition Against Human Rights: Yin Haiguang

Like the Pyramids in Egypt, the Great Wall is a symbol of "slavery and death," and as such it epitomizes Chinese culture as a whole. So spoke Yin Haiguang (1919-1969), a disciple of B. Russell, F.A. Hayek and K.

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Popper, who preached human rights to his philosophy students at Taiwan National University, in the 1950s and the early 1960s. Heir to the first generation of Chinese liberalism, Yin stated that modernity is universal, and that it is the will to achieve “democracy, freedom, science, truth.” He added that there can be no freedom wherever human rights are ignored. Thus standing for modern and universal values, Yin took to task all totalitarianisms, confucianist as well as communist.¹

Yin’s thought had an obvious context: anti-communist “Free China,” in post-1949 Taiwan. But what are the philosophical foundations of anti-communism? Yin answered: the doctrine of inalienable human rights. The Peking regime, like all communist regimes and despite its “serve the People” slogans, denies man his “essence” by ignoring the imperative of human rights.

But Yin did not say merely that the human rights doctrine is the philosophical foundation of anti-communism; he added that it is the only one, meaning that there could be *no alliance between human rights and “Chinese culture”* against communism.

Why did Yin reject any alliance with Chinese culture? I think we can identify three major causes.

First cause: Chinese culturalists are ready to sacrifice human rights. In Yin’s Taiwan, human rights did not fare too well either. They had been entered in the Constitution, but in practice they could not protect individuals against arbitrary arrests or expeditive trials. Yin could also mention diffuse pressures put, for instance, on youth who knew that a Youth Corps membership card was the best entry visa into the University. Yin commented that those violations of human rights were taken lightly by the “advocates of Chinese culture” who believed that, since communism was ransacking Chinese culture on the Mainland, anti-communism had to be the one priority ... in the name of Chinese culture. They called it an “emergency situation.” To those culturalists, Yin objected that “human rights are inalienable,” that “no circumstances, no reason, allow us to ignore them,” because doing so is simply “to mutilate man ...”

Second cause: Chinese culturalists are unable solve China’s problems. More was at stake than anti-communism. As he saw it, human rights were the conditions sine-qua-non for the Chinese to articulate the problems of contemporary China in terms which would be true, universal and modern. In the 1930s and the 1940s Chinese intellectuals had wasted their energy in a useless “cultural” debate between conservatives and progressives, between Chinese culture and Western “isms.” The real issues were never identified, and eventually the marxists stepped in and stole the show.

After 1949, Taiwan inherited the intellectual shallowness of the preceding decades: "many brains do not work any longer," "intellectuals are afraid to think," else they try, in vain, "the refurbish confucian philosophy with Kantian or Hegelian categories." In Yin's eyes, the only way out of that intellectual predicament was to forget altogether about Chinese culture and a "Chinese" pattern of modernity. Rather, he would enlist human rights together with sciences, logics, democracy, in his quest for truth — in an all-out crusade against the culturalists.

Third cause: Chinese culture has been the enemy of human rights. Lastly, what has Chinese culture been through history? A culture which, like many others, never produced democracy nor mentioned human rights? Yes, but worse. Yin's main contention was that Chinese culture was exactly what British ambassadors discovered in the early 19th century: ethnocentric, isolationist, mentally immobile, conformist, proud ... — a syndrome of false values based on authoritarianism, nothing else.

In his diatribe against the Chinese culture, Yin made it clear that he did not simplistically identify freedom with democracy. He knew that, since democracy is not a value per se, but only a political system, a nation may have a democratic regime, but no freedom. Consequently, his main target was not the autocratic regime of Imperial China; he even conceded that during certain periods Chinese did enjoy freedom to a certain extent. His main target was the culturalists' pet idea that confucianism had been a liberalizing factor in the course of Chinese history. For 2000 years, Yin protested, confucianism was rather the powerholding and power-hungry ideology of China; all opponents have been silenced. (Moreover, heterodox doctrines, like taoism or buddhism, for all their liberal potentialities, remained essentially escapist in nature, and as such were unable to inspire a true and lasting struggle for freedom.)

Thought-binding confucianism was still alive. Of course, since the late 1910s, Chinese have learnt that the world "offers things much more interesting than confucianism," but the poison of authoritarianism was still at work around Yin. In that context, "human rights" meant first of all the right to think for oneself, and with the rest of the world, away from confucianism with its sages and ignorant old men. Yin was aware that the politico-social conditions which made possible the development of liberal ideas in the West were not present yet in China. However, he needed human rights for an intellectual purpose. With J.S Mill, he would assert that freedom of expression is the foundation of all liberties, because (as Yin put it), "maybe our own beliefs are false, maybe our own truths are wrong."

Thus, Yin's views can be summarized in two statements: 1. "whether

human rights are guaranteed or not is the central issue in any anti-communist policy;" 2. Chinese culture is the number one enemy of human rights and modern universal values.

Yet, Yin could not be fully satisfied with those two statements, because he was at pains to explain how — from which existing values — human rights could eventually be born in China. He was aware of the primacy of culture over politics, and acknowledged that the content of culture, "basic moral ideals and values held in common," are the main factors which allow or not a nation to adopt liberalism; whether that nation has or not a democratic regime is not determinant. Yin first thought that in modern science he had found the basic set of values he needed in order to construct modern culture in China. But later on, in the mid-1960s, he discovered that science, like democracy, was unable to produce moral ideals and values. By then, reading Max Weber and Talcott Parsons, he came to take seriously the role played by "traditions" in the transmission of ideals and values. However "irrational" or "pre-scientific," those traditions could still help. But, before his untimely death in 1969, Yin did not have time to make explicit how the moral values found in confucianism could help him implant human rights in Chinese soil.³

To say the least, Yin had a biased knowledge of Chinese tradition and history. Yet, he was more than a frustrated and angry intellectual in revolt against traditional culture. His intellectual violence was a moral passion — the moral passion of a man born in 1919, and who never met a confucian who could stand up to his questions. In those circumstances, human rights happened to be the only "truth" which could meet Yin's demands. "Human rights" gave him the right to think against a tradition which, seemingly, had nothing to offer his generation.

Confucian View I: Liang Shuming's Dilemma

Liang Shuming (1893-) is now an old gentleman. He lives in Peking where he is one of those dutifully respected "non-communist personalities." His name appears on various committees, including one in charge of revising the Constitution.

Many still think that Liang's views were important. An activist among confucianists, he spent most of his life trying to devise a confucian doctrine of modernization. In 1972, he went to the countryside, and became the most important figure in the Rural Reconstruction Movement of the 1930s. Later on, he played a key role in the Democratic League, China's Third Party in the 1940s. Lastly, in 1953, Liang was silenced by Mao Zedong after he had asked embarrassing questions on the economic lot of peasants in Communist China.⁴

Liang related China's present backwardness to her past culture. As he saw it, Chinese culture resists Western explanations, including marxism. China lacked democracy; she did not have notions like freedom or human rights; she did not have social classes; she was never really a State; she had no national army; she never developed modern science; in China, religion never played the important role it had in the West ... All those missing elements in Chinese history are not of one kind, and Liang made it clear that each one of them was to be studied on its own merits. However, they interlocked, and all composed, in Liang's eyes, the peculiar profile of Chinese history down to the present crisis.

Human rights? Liang wrote:

The notion of human rights and liberty is lacking in China indeed. Moreover, those notions, once introduced in China, did not evoke public interest; reformers did not see them as an urgent issue and the revolutionaries themselves complained that Chinese had too much freedom in the past. Such reactions show that what China lacked was not actual liberties, but a clear accept of "freedom." One could say that China stood halfway between freedom and no-freedom. They never had freedom for good, but they never were really without freedom.⁵

From the above quotation, many would be tempted to conclude that China had the substance of freedom, but did not take the pain to express that substance in legal terms. In brief, what China needs now would be only a matter of adding the "human rights" terminology to traditional language. But Liang objected that the very absence of the notion of rights pointed to a cultural system radically different from the Western model.

The fact is, Liang explained, that human right appeared in the West amidst *socio-political conditions* which were never present in China. Western society, in the Middle Ages, was essentially made of "organizations;" individuals would belong to a guild, to a city, to a kingdom. The "organization model" meant tensions and conflicts; in fact, European history has progressed through conflicts between cities and feudal lords, among social classes, religions, and nations, until the law-centered culture of modern times eventually emerged. In contrast the Chinese society was never split into mutual antagonistic organizations, and the Western notion of law is meaningless to the Chinese mind. In fact, the first Chinese interpreters of Western political philosophy around the turn of this century were at pains to emphasize that "the notion of rights is the main and somehow the only element in European political thought;" they could hardly believe that in the West "even relationships among members of the same family" might be defined by "rights." Liang also emphasized that in

the Western debate on liberalism vs. communism, the main point is to decide whether the "individual" or "society" is the more important. Such a question, he concluded, has no meaning in Chinese traditional terms.

Liang did not limit himself to socio-historical explanations. In his confucian eyes, social and cultural forms originate in human consciousness. Behind the "Chinese model" and the "Western model," he found *philosophical choices* of confucianism and Christianity respectively. The latter introduced the notion of a society no longer structured along family lines, but around both parafamilial organizations and individuals. On the contrary, Confucius took the intrafamilial pattern of relationships as the model of all social relationships. The result was Chinese society: web of complex, hierarchical relationships, defined by reciprocal obligations.

Because of those two initial philosophical options, medieval society in China was *different* from the one in the West. In the West, the Church, for one, intruded excessively in the lives and thoughts of individuals. Human rights were born when Western man stood against that excessive regimentation of his individual life, as well as against the ascetic, otherworldly stance of medieval Christianity. But, during the same period, no organization was controlling the life and the minds of the Chinese, and no confucian philosopher ever doubted the positive value of this world. There was seemingly no need to proclaim freedom and rights in the confucian society of China. In that context, Liang spoke of the cultural or rational "precocity" of China.

And yet, Liang knew it: China's "precocity" was the *hidden cause* of her deepest ills. Confucius taught China that society should be a manifestation of universal moral reason, but the Chinese model failed in the long run. In contrast, the irrational West, through conflicts and struggles, learned from its mistakes and progressively developed political institutions and doctrines which do approximate to the demands of universal moral reason (the doctrine of human rights is one example). Meanwhile, China in her belief that conflicts should be avoided, created nothing but a utopia of reason. "Chinese Reason" did not progress; it remained an "infantile reason," in Hegel's words; in the end, China found herself trapped in her vision of an ideal society.

For instance, the Chinese sensed very early that individuals should be regarded essentially as the subjects of ethical obligations towards others, not of rights. But Chinese education, emphasizing as it did the point that "others are more important than I," has processed for centuries what Liang's contemporary Zhang Dongsun called "*dependent beings*." Liang agreed with Zhang: in China, "the individual person does not live for itself, but for others; it has no importance of its own"; it has "got lost

in a society where ethical relations are everything." How then is freedom possible at all, if there are no individuals to begin with? The "most serious lacuna in Chinese culture" is the fact that "the individual person is an unknown entity." A Chinese had no opportunity to speak in his own name; even given that opportunity, he would not do it, because "his own feelings and wishes" have been repressed too long. On this point, Liang the confucian acknowledged that Chinese culture had made many anonymous victims in the course of history.⁶

How then did Liang see China's *future*? He was perplexed. What kept China backward was not "feudalism," but basically the confucian value system with its doctrine of mutual moral obligations. That system was rooted in human reason; it could not be rejected, but certainly should be "revised."

Liang's own plan was to "organize" China's rural society. That "organizing" could not magically happen simply through importing Western models of "organizations" which were unfit for China's conditions. It was necessary to devise Chinese ways of "organizing" a society which had been shaped on confucian principles.

An instance of the dilemmas Liang then found himself in was the issue of *democratic institutions*. Here again, he saw that Western-style political parties did not fit into China, and had failed. Moreover, he criticized the "rule of the majority" as immoral, since an abstract numerical majority could rule over a minority of enlightened virtuous persons. In that perspective, Liang was looking for a mode of government "by the people" which would allow the confucian emphasis on the prerogatives of a moral elite. In the end, he opted for a one-party political system, that is to say, a system in which the majority would "willingly obey" a charismatic moral leader.

Human rights were part of Liang's dilemma. Although he had perceived their significance, they were not on his priority list. As he saw it, the goal of culture was not to guarantee rights, but essentially to make possible the actualization of moral values in necessary socio-economic reforms. In Liang's writings, human rights are more often than not one symptom among others of the Chinese illness.

One should add that, in the 1930s and 1940s, Liang thought that no central government, nationalist or otherwise, could succeed in China. In the social chaos of that time, no political legitimacy was possible. In that context, there was little hope for human rights in the near future indeed.

Confucian View II: Tang Junyi's Confucian Reconstruction

Tang Junyi (1909-1978) was one of the founders of New Asia College, Hong Kong, where he taught philosophy for some 25 years.

One of Tang's key ideas was that a "reconstructed" confucianism could play a vital role in the modernization of China, and of the other nations in Asia as well. As it stood, the traditional language of confucianism was out of touch with the modern world; what was needed was an *aggiornamento*, relating confucian values to science, democracy, human rights, so that the confucian message could be heard and understood in a world of modern techniques and ideologies.⁷

Central to Tang's "reconstruction" was the question: "What genuine values are lacking in Chinese tradition?" Tang amplified this question by asking:

1. What are the deficiencies of Chinese culture? If there is none, why then the present chaos and crisis?
2. For the last hundred years, China has borrowed extensively from the West; were all those borrowings necessary? What are in fact the genuine values of the West?
3. Is it necessary for China to borrow those genuine values from the West? For what reasons precisely?
4. Was it necessary to wreck traditional culture first in order to borrow? What could be an ideal pattern of cultural borrowing?⁸

Those questions, Tang added, have divided the Chinese mind for a century. As it happened, Chinese intellectuals proved to be unable to meet the challenges they presented, and ended up taking refuge in communism.

Human rights are one element in Tang's reconstruction program. A sketchy outline of his main argument would run as follows: the notion of "natural individual rights" expresses a biased view of human freedom, as compared with the basic insights found in Confucius' philosophy. Admittedly, Confucius never mentioned human rights, but his is a doctrine which could supplement the philosophical inadequacies of the human rights' notion. This thesis is simple enough. In fact, Tang's writings have sometimes — in Thomas Metzger's words — the "cheerfulness of a kind of metaphysical Y.M.C.A."⁹ Yet, the question whether Confucius and his 2,500 years of thoughts may rescue modern man from his plight should not be dismissed as futile, and Tang was best equipped to answer it.

The notion of natural individual rights is inadequate, Tang explained,

because it related to a abstract individual, one who would be cut off from all his social and cultural ties. This typical Western, individualist approach obscures two facts essential in Tang's eyes: 1. Rights should refer only to "liberties which can enrich society and culture;" rights cannot refer to mere political liberties, but primarily to "cultural values"; 2. Rights "do not belong to the individual himself," for they are essentially "society-given." The statement that "every individual is endowed with such and such a right" can mean only that individuals enjoy those rights in a given society. ("Individual rights" not guaranteed by society would be "no rights.")¹⁰

Tang's main concern was to relate human rights to what he called "inner freedom of the individual," the freedom to "actualize values and ideals in the realm of culture and of the mind." Ultimately, that inner freedom is the only "natural" right of man, the only one which is inscribed in his Heaven-conferred moral nature. That freedom, and no less, can justify and guarantee the various individual rights and liberties.

The next question is then: *Which philosophy can safeguard man's freedom?*

Like Liang Shuming, Tang emphasized that the notion of human rights appeared in the West as a *reaction* against the culture of medieval Christendom. It was a reaction, and it was onesided, overstressing individual conscience, scientific reason, laws of nature. That one-sidedness is apparent in the concept of freedom developed by theoreticians like Locke, Bentham or J.S. Mill: "they acknowledged the importance of freedom and human rights, but they missed humanist values and meaning;" in fact, they did not perceive that "moral law" alone can justify human rights. Then came Kant and Hegel who first uncovered the essence of freedom. Whereas English philosophy remained mainly a plea for political rights, German philosophers took freedom itself as the central object of their discourse. Kant discovered that the essential freedom is freedom to actualize moral and cultural values; Fichte and Hegel explored the significance of the State and of culture as objective exponents of man's inner moral freedom.

Summarized in a few lines, the whole argument may sound like textbook generalities, but in fact it is *autobiographical*. Actually the young Tang did discover the ultimate significance of Confucian philosophy through his discovery of German thought. Not only did Confucius teach that each individual person is endowed with a transcendent, universal moral nature, he also stressed that man was a creator of cultural forms. Reading maybe a bit too much of Kant and Hegel into Confucius' own text, Tang depicted a Confucius who had been open to all the cultural

values mankind had in store.

As a whole, Tang's views on human rights and confucianism may then be summarized in a few statements:

1. "In Confucius' thought, one does not find the modern, Western notion of human rights and liberties. China never had constitutions restricting the power of kings or governments and guaranteeing human rights."
2. Those missing elements represent a negative feature of traditional China: "we must state the value of the Western notion of human rights; we must acknowledge that, in given circumstances, justice cannot be actualized without collective struggles for human rights."
3. The notion of human rights was not developed in China because social conditions there made it unnecessary.
4. There is no contradiction between confucian doctrine and the notion of individual liberties. In fact, Confucius and confucianism after him may constitute "the ultimate guarantee of the Western theories of human rights."
5. Confucius' doctrine was a liberalizing factor in his days, and was instrumental in accelerating the demise of feudalism in China.
6. Confucianism today is the enemy of totalitarianisms.

Clearly enough, Tang's optimism was likely to be both praised and criticized. His disciples praised him for having restored their faith and confidence in Chinese tradition, while some of his colleagues would wonder whether he was not begging the question. At any rate, what is clearly missing here is attention to socio-economic factors that we found at the center of Liang Shuming's dilemma.

Moreover, an important feature of the human rights' doctrine nowadays has been its international and intercultural function. As a confucian visitor to the United States a few years ago put it: "In China, we never had racial problems similar to the ones in the United States. All those who came to China were assimilated into Chinese culture." This is the point: was Tang aware that no culture has the best answer for everybody else?

Comments

Together Yin, Liang and Tang give us what I consider to be a fair idea of the main themes recurring in the debate on human rights and Chinese culture. Yet, the above summaries of their views leave unanswered several basic questions. The following is an attempt at clarifying at least three such questions.

1. *The Confucianization of Law*

What role did confucianism play in Chinese history: a repressive one (Yin Haiguang), an enlightened one (Tang Junyi), or an ambivalent one as described by Liang Shuming? To a certain extent those conflicting interpretations reflect the ambiguous alliance confucianism came to develop with Chinese law.

China had laws indeed, but Chinese society was not legally oriented. In fact, scholars agree that China's view of the law seems to have "no real parallel in any other civilization." That specificity of Chinese law is essential to our question of human rights.

That China was not legally oriented can be illustrated by the fact that we do not find there the idea of a "God-given" law, as we do in ancient Mesopotamia or Israel. In China, law was anything but divine. In fact, in what is probably the oldest account available of the origin of written law in China, we read that law was invented not by a sage-king of old, nor even by a Chinese, but by barbarians — the Miao. What is "uniquely Chinese" is the consistent insistence upon the moral and social dangers involved in the promulgation of legal norms.¹¹

Yet, despite that abhorrence for laws, they came to China anyway. The Chinese Empire was created in the 3rd century B.C. by law-minded rulers, who were implementing the platform of the anti-confucian group known as the "legists." In the eyes of the latter, the country could be ruled and kept in order only through strict punitive laws. Thus, law was conceived as the means toward total political control by the State. The legists' platform runs directly against the confucian view that only through personal virtue and education could the ruler win the hearts of the people.

In less than twenty years (226-206 B.C.) the legists lost power; confucianism took over. But the legists' law had come to stay. Confucianism became the orthodoxy of the State, but that State had been devised on non-confucian legists' principles. Confucianists did not create a brand new confucian state: they contented themselves with "confucianizing" the existing legal codes.

That "confucianization of law" remained an essential feature of Chinese political culture. It was a compromise. As one expert put it: "the later confucianists used political and legal power to enforce their rules of behavior, but they still sought to enforce the latter by morality and education."¹² Once confucianized, laws were meant to protect morality, nothing else, spelling out punishment against immoral actions.

The crux of the matter lies here, in the injection of morality into penal laws. One could argue that as a result, in more than one aspect, the Chinese law was more human than, say, the English law in the same period. But one has to consider the other side of the coin. Because of the confucian concern for properly ordained hierarchical relationships, the law: 1. considered not individuals with equal rights, but given status in the kinship group or in society; 2. buttressed the authority of fathers against children, of husbands against wives, or elders against juniors. It was a "system of legalized inequality," insisting as it did upon "the sanctity of rank, privilege, seniority."¹³ In that context, Yin Haiguang and other liberals are justified in their criticisms. However democratic in inspiration confucianism could be, historical confucianists have been a decidedly undemocratic force during the more than 2,000 years they have governed China with their "confucianized law."

2. *Universality vs. Cultural Diversity*

Much of the debate on human rights revolves around the question whether those rights are universal values or values for the West only. Can we claim that "human rights" are universal values without falling into cultural imperialism, without imposing Western cultural values on cultures which are entitled to have their own value systems?

Here, Yin, Liang and Tang may help us to reassess what we mean by "cultural systems" and "universal values." On the one hand, the three of them take very seriously the inner logics within Chinese culture; each one in his own way emphasizes that China did not have "human rights" because China's cultural model is radically different from the Western one. But, on the other hand, they all acknowledge that the Western doctrine of human rights is not culture-bound, that it has a universal justification and can no longer be ignored in China. Thus, the question does not bear on the "universality" of human rights, but on the role those rights should play in the construction of modern culture in China now.

First, it should be clear that there is no longer a waterproof entity which may be called "Chinese culture." The self-sufficient system of values of the past does not stand any longer. Instead, we find a host of traditional values which still function, but on untraditional terms, together with many new, imported, "modern values" or "isms." In those circumstances, one can no longer refer to a Chinese culture "which does not need human rights," because the Chinese culture "which does not need" is gone. Presently, part of being Chinese is to keep asking: What do we need that we did not have in our own past?

Yet, what Yin, Liang or Tang understand by "universality" is dif-

ferent from what we may find in many a Western mind. Yin, Liang and Tang acknowledged that human rights should play a role in China, but that role would be different from the one they play in the West. Chinese would have to react to the universal message within the Western values, and to spell it out in a new cultural language in China. Yin Haiguang, of course, proclaimed that only universal values were true; yet, in his belief that human rights would be the corner-stone of modern culture in China, he was instilling into those rights a moral pathos of his own.

3. *Human Rights in Mainland China: "Cultural Continuity?"*

A third and last question deals with the human rights' situation in Mainland China. However we look at it, the record is grim. But how do we interpret it? May that lack of human rights in Mainland China be explained, not to say "justified," by the fact that those rights were unknown in the traditional culture too? Are we entitled here to speak of "cultural continuity"?

As I see it, the "cultural continuity" explanation overlooks the communists' determination to wipe out the old "feudal culture" and to replace it with a brand new culture. One should also take seriously the communists' thesis on human rights: they are "bourgeois tricks." When the Peking regime in the 1950s decided to improve the lot of women and youth, groups which were at the bottom of the hierarchy in traditional China, they did it in the name of "social rights." To put it briefly, the anti-human rights' stand in Mainland China is a policy based on communist principles; it cannot be identified as a legacy of the past.

Yet, we cannot fully describe the human rights' situation in China without referring to traditional culture. For instance, as it has been pointed out by Donald J. Munro, human rights are "at home" in Russia, but not in China. Not only do Russian intellectuals refer to them against their government; the latter also "focus attention on the fundamental rights of citizens," in official texts like the 1962 Program of the Communist Party of the Soviet Union. On the contrary, Chinese would be more likely to criticize officials in terms of "mass line," and we have never heard of a Chinese Solzhenitsyn. Altogether, human rights are not in China a central issue likely to polarize protest. And one explanation is to be found in traditional culture.

And yet the absence of human rights in Chinese tradition does not explain much. Like Yin, Liang or Tang, many Chinese would be also likely to recognize the universal significance of the Western-born human rights' doctrine, *if they were allowed to think by themselves*. After all, one of the clandestine journals published in China in recent years was called

Human Rights; whereas another, *The People's Tribune*, serialized Amnesty International's 1978 *Report* on China. In that perspective, I would prefer to say: the Peking government, in the pursuit of its own political goals, capitalizes on what our three authors, each one in his own way, describe as the cultural disease of contemporary China, — a syndrome of irrational attitudes. According to Yin, Liang and Tang, Chinese intellectuals opted for marxism because they were unable to think by themselves. The rejection of human rights by Chinese communists appears to be largely the irrational reaction of people who are still little able to understand, and relate to, the world at large, with its ethical complexities.

Footnotes:

1. In this article, I refer mainly to Yin Haiguang, *Zhongguo wenhua di zhangwang* (Perspectives on Chinese Culture), Taipei, 1965, and *Yin Haiguang zhenglun ji* (Political Essays by Yin Haiguang), Lu Cang, ed., Hong Kong, 1975, a collection of Yin's articles on current affairs.
2. Among those intellectuals "refurbishing confucian philosophy" with German concepts, Yin had especially in mind Tang Junyi, who is introduced later in this article.
3. On Yin's later years, see Chen Guying, *Yin Haiguang zuihou di huayu* (Yin Haiguang's last words), 1971, and *Yin Haiguang xiansheng jinianji* (Yin Haiguang: in memoriam), 1971.
4. On Liang, see G. Alitto, *The Last Confucian: Liang Shu-ming and the Chinese Dilemma of Modernity*, Berkeley: University of California Press, 1979.
5. Liang, *Zhongguo wenhua yaoyi* (The Essentials of Chinese Culture), 1949, p. 254.
6. Liang, *ibid.*, p. 260.
7. Tang Junyi, "The Reconstruction of Confucianism and the Modernization of Asian Countries," in: *Report of the International Conference on the Problem of Modernization in Asia*, Seoul, 1965.
8. Tang, *Zhongguo wenhua zhi jingshen jiazhi* (The Value of the Spirit of Chinese Culture), 1953, pp. 346-347.
9. Thomas A. Metzger, *Escape from Predicament — Neo-Confucianism and China's Evolving Political Culture*, New York: Columbia University Press, 1977, p. 37.
10. Tang, *Renwen jingshen zhi chongjian* (The Reconstruction of Humanistic Spirit), Taipei, 1955, especially pp. 323-381.
11. Quotations from D. Bodde & Cl. Morris, *Law in Imperial China*, Cambridge, Mass.: Harvard University Press, 1967, pp. 8-17.
12. Ch'ü T'ung-tsu, *Law and Society in Traditional China*, Paris and The Hague: Mouton & Co., 1961, p. 279.
13. Bodde & Morris, p. 43.

III. INITIAL QUESTIONS FOR DISCUSSION

1. Is there a concept of human rights which is universally valid for all cultures.
2. Does the Church in Asia have a responsibility of "advocacy" vis-à-vis the promotion of human rights in general, and not only of religious freedom in particular?
3. What is the pastoral responsibility of the Church in Asia with regard to the United Nations' several Declarations and Covenants about the different areas of human rights?
4. Would it be pastorally valuable for all the Bishops' Conferences of Asia to have a "Human Rights Sunday" on the second Sunday in December (as does the Korean Conference), with a suitable liturgical expression within the Sunday Liturgy?