

HUMAN RIGHTS IN CHINA: EXAMINING THE HUMAN RIGHTS VALUES IN CHINESE CONFUCIAN ETHICS AND ROMAN CATHOLIC SOCIAL TEACHINGS

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Introduction

The 1948 Universal Declaration of Human Rights (UDHR) of the United Nations proclaimed a new era in the history of human rights. Since its promulgation, the human rights discourse and practice has become a world-wide ethical discourse, used to uphold human dignity and protect people from discrimination, inhuman treatment and exploitation. With its emphasis on equality and freedom, the Declaration represents the spirit of the prolific human rights instruments and the numerous treaty-based activities after the Second World War.¹ Challenging the view that relations between a sovereign state and its own citizens are merely a nation's internal affair, the Declaration highlights the universal and global nature of human rights, stating that human rights belong to all members of the human family everywhere.² Human rights are owed to all human beings by virtue of a shared humanity, without discrimination on such grounds

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¹ Among the United Nations human rights instruments, two influential human rights covenants are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, 993 U.N.T.S. 3.

² Mary Ann Glendon points out that in substance, as well as in form, "it is a declaration of interdependence— interdependence of people, nations, and rights." MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 174 (2002).

as race, color, sex, language, religion, or national origin. As such, there is basis for common concern and effective interaction to help all people realize their full humanity.

However, in spite of its good intentions, the human rights discourse, because of the claim to its universal nature, is often criticized, both by cultural critics and some Asian politicians, as being a tool for the domination of certain Western nations.³ Among the voices of scholars and critics who have real concerns about the problems of cultural imperialism and representation of the Other, one viewpoint is that the declaration attempts to universalize a particular set of ideas and impose them upon three quarters of the world's population, most of them unrepresented at the creation of UDHR.⁴ Moreover, non-Western countries have their own cultural and ethical traditions, such as Confucian ethics in China, which sustain human flourishing and build a good society. Some critics query whether the human rights discourse of the UN Declaration is the only ethical discourse that is useful for improving the living conditions of people. Even among the cultural variety of human rights discourses, there are

³ For example, among the Asian politicians, Singapore's ex-premier Lee Kuan Yew, Singapore's United Nations Ambassador Bilahari Kausikan, Malaysia's ex-premier Mahathir Mohamad, and China's ex-Deputy Foreign Minister Liu Huaqiu are some of the most vocal Asian challengers to the "hegemony" of liberal democracy and individualistic human rights. See Fareed Zakaria, *Culture is Destiny: A Conversation with Lee Kuan Yew*, FOREIGN AFFAIRS, Mar./Apr. 1994, at 113-14; Bilahari Kausikan, *Asia's Different Standard*, FOREIGN AFFAIRS, Fall 1993, at 33, 36; Michael C. Davis, *Constitutionalism and Political Culture: The Debate over Human Rights and Asian Values*, 11 HARV. HUM. RTS. J. 112 (1998). See also Inoue Tatsou, *Liberal Democracy and Asian Orientalism*, in THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS (Joanne R. Bauer & Daniel A. Bell eds., 1999).

⁴ One example of criticism is from Makau Mutua, a law professor of University of Buffalo, who points out that criticism from "Muslims, Hindus, Africans, non-Judeo-Christians, feminists, critical theorists, and other scholars of an inquiring bent of mind have exposed the Declaration's bias and exclusivity." His speech was given at the Human Rights Policy Conference, sponsored by the Belfer Center of the Kennedy School of Government, Harvard University, on November 4, 1998. These critics stress the particularities of local culture and human experiences and reject universal notions that are considered culturally insensitive, neglecting historical and cultural differences, especially in the understanding of human values; they worry that dominant social prejudices would be imposed upon people by a dominant group's understanding of human value. GLENDON, *supra* note 2, at 224.

different understandings of the human rights concept. Are these ethical systems compatible with each other? Given the widespread usage of human rights discourse from the UN Declaration at the international level, if we want to use a common human rights language, consensus has to be reached among different cultural or religious traditions and the living peoples of various countries on an equal basis.⁵ Key here is to look into common factors or values of different cultural traditions and people of different social locations.⁶ As a Chinese Christian, I am especially interested in comparing the ethical systems of Chinese cultural tradition and Roman Catholic tradition, seeking culturally appropriate discourse as to uphold human dignity and enhance human flourishing in the Chinese context.

In China, the government has employed human rights language in recent years. However, its understanding of human rights differs from that of the governments in the West, as the Chinese government argues that the West uses human rights as a tool to interfere

⁵ Some scholars argue that human rights can be regarded as a self-standing international discourse that seeks to define a minimum set of standards agreeable to all at one level. On the other hand, different ethical traditions can have their own account of what more, or what else, is needed above and beyond human rights. Any convergence at this level will be the result of learning, mutual exchange, and inspiration, acknowledging the plurality of moral values and aspirations. *See THE GLOBALIZATION OF ETHICS: RELIGIOUS AND SECULAR PERSPECTIVES 4* (William M. Sullivan & Will Kymlicka eds., 2007). Moreover, other scholars argue that religion or cultural tradition provides answers to all the “whys” of people’s lives, thus, religion contributes to the “whys” of human rights. Religion to these scholars can be defined as a “comprehensive, albeit perhaps fragmented, tradition of beliefs and practices about the meaning and appropriate living of human life.” *DOES HUMAN RIGHTS NEED GOD? 3* (Elizabeth M. Bucar & Barbra Barnett eds., 2005).

⁶ Some scholars of comparative ethics argue that conducting cross-cultural or religious comparisons can articulate the possibility of social and conceptual diversity without collapsing into either naïve universalism or pernicious relativism. They think that interpreting different religious or cultural ethics as different vocabularies for social life provides a way to think about the subtle differences of certain ideas or concepts that exist in them. Apart from seeing the similarities and differences, such comparison allows us to explain human activities that guide people’s practices, and lead them to a more complete flourishing. *See AARON STALNAKER, OVERCOMING OUR EVIL: HUMAN NATURE AND SPIRITUAL EXERCISES IN XUNZI AND AUGUSTINE 4-6* (2006); *LEE H. YEARLEY, MENCIUS AND AQUINAS: THEORIES OF VIRTUE AND CONCEPTIONS OF COURAGE 180* (1990).

in the internal affairs of other countries.⁷ On the other hand, the Chinese government has tried to revitalize Confucianism and prioritize this tradition as an important cultural tradition in recent years.⁸ Considering all these developments, and being Chinese, I think it is worth investigating whether this Chinese ethical tradition offers a culturally appropriate form of human rights that could support human rights values and how this tradition, if it could, can support Chinese people in upholding dignity and enjoying freedom.

In this paper, I will first examine social values in Chinese Confucian ethics and investigate if these values seek to protect what could be termed basic rights and freedoms of people. Such an inquiry is essential given the background of the lack of freedom of expression and conscience in contemporary China. I shall focus on examining those ideas in Confucian ethics that may contribute to upholding such freedom. Secondly, as a Roman Catholic, I will borrow from the example of Catholic social teachings, another ethical tradition, to show briefly the gradual development and acceptance of human rights discourse within the Roman Catholic tradition and the impact afterwards. I will also identify its distinctive features that differ from the Western liberal tradition. These differences can shed light on

⁷ One recent example is the reaction of the Chinese government towards the Nobel Peace Prize Committee. China responded furiously towards the Committee since it announced its decision to award the 2010 prize to Liu Xiaobo. Chinese officials have repeatedly called Liu, currently serving an 11-year sentence for “inciting subversion,” a common criminal and have declared the award a “Western plot against China.” Various spokespersons of the government state that the prize is “a flagrant provocation and interference in China’s judicial sovereignty,” and an act to “embarrass China,” representing a Western country trying to impose Western human rights standards in China. See Jaime Flor Cruz, *Why the Nobel Peace award upset China*, CNN (Dec. 9, 2010), <http://www.cnn.com/2010/WORLD/asiapcf/12/09/china.florcruz.prize/index.html>.

⁸ It is interesting to note that just one day before the Nobel Peace Prize award ceremony in Oslo, a government supported Chinese civic group, for the first time, gave out the “Confucius Peace Award,” an apparent counter to the Nobel Peace Prize. Tan Changliu, the chairman of the Confucius Peace Award prize committee said, “China is a great nation that has been influenced by the Confucian concept of peace for a long time, we want to promote world peace from an Eastern perspective.” Steven Jiang, *Winner a no-Show as China hands out its first peace prize*, CNN (Dec. 9, 2010), <http://www.cnn.com/2010/WORLD/asiapcf/12/09/china.confucius.peace/index.html>.

Confucian ethics when examining its implicit human rights values and show some commonalities between it and the Roman Catholic tradition relating to human rights concepts.

I. Human Rights Situation and Discourse in China

In China, the government does not resist human rights discourse totally, as it started publishing its own human rights report in 1991.⁹ What China has rejected is the criticism from Western countries, especially the United States, of its human rights record, which the Chinese government regards as actions by the United States that are intervening in its internal affairs. Employing human rights language to describe the situation of China in various respects, the Chinese government, in fact, wants to show its openness to dialogue with those powers which use the same language, and to defend its own human rights record as China becomes a rising power in the world.

In China's ninth report on human rights in 2009, released in September 2010,¹⁰ it is stated that the National Human Rights Action

⁹ In 1997 and 1998, the Chinese government made a commitment to sign two major United Nations international human rights covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), signaling China's acceptance of universal human rights standards. International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, 993 U.N.T.S. 3. In 2004, the National People's Congress (NPC) amended the Chinese Constitution, writing into the Constitution for the first time that, "the state respects and guarantees human rights," signaling that human rights have already become one of the fundamental principles of China's rule of law. XIANFA art. 33, §3 (2004) (China). Furthermore, in 2009, the Chinese government even promulgated and implemented its first national action plan with human rights as the theme. EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA IN THE UNITED STATES OF AMERICA, WHITE PAPER – THE PROGRESS OF HUMAN RIGHTS IN CHINA, <http://www.china-embassy.org/eng/zt/ppflg/t36621.htm>.

¹⁰ The Information Office of the State Council (China's cabinet) issued a white paper on progress in China's Human Rights in 2009 for The People's Republic of China in September 2010. See Zhao Chenyan, *Progress in China's Human Rights in 2009* (3), NEWS OF THE COMMUNIST PARTY OF CHINA (Sept. 26, 2010), <http://english.cpc.people.com.cn/66102/7150905.html>.

Plan of China (2009-2010), which applies the Constitutional principle of respecting and protecting human rights in the various fields of politics, economy, culture, social construction, among other things, has been effectively implemented. The report praises China as “one of the few countries making a turnaround in the economy, and promoting new and notable progress in China’s human rights.”¹¹ The role of Internet freedom and the country’s efforts in safeguarding citizens’ legitimate civil and political rights, as well as raising people’s living standards, were highlighted.¹² It emphasized that “[t]he full realization of human rights is an important goal for China in its efforts to build a moderately prosperous society, that is attentive to the holistic development, as well as to build a harmonious society.”¹³

In spite of this human rights rhetoric, the Chinese government’s human rights record is still criticized not only by the western

¹¹ In terms of civil and political rights, the report states that, “[i]n 2009 the Chinese government continued to regard the protection of citizens’ civil and political rights as an important part of the building of political civilization, and further strengthened democracy and the rule of law... With their right to freedom of speech on the Internet protected by the law, Chinese citizens can voice their opinions in a wide variety of ways on the Internet.” *Id.* In terms of economic rights, it stated that “[t]o cope with the international financial crisis, it adopted effective measures, with emphasis on solving problems in such fields as employment, health care, social security, and education which affect the immediate interests of the people, and achieved remarkable results.” *Id.* The report also points out that “China attaches great importance to the significant role played by international human rights instruments in the promotion and protection of human rights, and has joined 25 international conventions on human rights.” *Id.*

¹² According to section two “Citizen’s Civil and Political Rights” of the Human Rights Report 2009, by the end of 2009 the number of Chinese netizens had reached 384 million, meaning 28.9 percent of the total population had access to the Internet, higher than the world’s average level. *Id.* In the same year there were 3.23 million websites running in China and there are over a million bulletin board services (BBS) and some 220 million bloggers. *Id.* Over 66 percent of Chinese netizens frequently place postings to discuss various topics, and to fully express their opinions and represent their interests. *Id.* However, these websites, bloggers and postings are under surveillance and censorship from the Chinese government. Sensitive terms, phrases and articles are often deleted and many websites are blocked. Nevertheless, it is undeniable with the popularity of the internet and its home-grown network, Chinese citizens can get connected and disseminate messages among themselves. *Id.*

¹³ *Id.*

countries, but also by its own people and non-governmental organizations.¹⁴ This reality can be seen in recent developments and some social issues that have occurred in China.

It is true that China has experienced rapid economic growth in the past few decades. Since it joined the World Trade Organization in December 2001, it even has a two-digit growth rate every year in real terms.¹⁵ It is making great strides in material and economic progress and is considered one of the biggest economic powers in the world.¹⁶ However, the overall improvement in income and living standards does not necessarily mean that every Chinese will benefit from the economic prosperity. The income disparity between the rich and the poor, the urban and the rural becomes more and more obvious and serious. This is not only because of unbalanced development policies between the urban and the rural, and the coastal and the inland areas, but also because of corruption, incompetence and a lack of ethics among government officials.¹⁷ In the face of this situation, some intellectuals and citizens have voiced their opinions by writing articles on newspapers and websites, and submitting letters to the government, but very often their voices are suppressed. Some of them have even been arrested and put into jail. There is a lack of civil liberties and political rights, especially free-

¹⁴ For example, Hu Jia, a Chinese citizen and a human rights activist, has criticized the government's policies on AIDS and other social issues since 2001. He is the co-founder of the Beijing Aizhixing Institute of Health Education and of Loving Source, a grassroots organization dedicated to helping children from AIDS families. Due to his activities and outspokenness, he was harassed by police and finally was arrested. See AMNESTY INTERNATIONAL, HU JAILED FOR THREE AND A HALF YEARS, Apr. 4, 2008.

¹⁵ CHUN KWOK LEI & SHUIE YAO, ECONOMIC CONVERGENCE IN GREATER CHINA: MAINLAND CHINA, HONG KONG, MACAU AND TAIWAN 18 (2009).

¹⁶ Dexter Roberts, *China is No.1 (Or So Many People Believe)*, BLOOMBERG BUSINESSWEEK, June 14, 2012.

¹⁷ Kathrin Hille & Rabinovitch, *China rulers struggle with corruption culture*, FINANCIAL TIMES, Feb. 17, 2013; *30 ministerial level officials probed for corruption in China*, ZEENEWS.COM, Mar. 10, 2013 (reporting that thirty ministerial level or higher officials in China, including the former Railway Minister, have been probed for corruption and over five million criminals have been convicted over the past five years).

dom of conscience and expression, in mainland China.¹⁸

One example is the sentence of Liu Xiaobo, the 2010 Nobel Peace Prize laureate. He is a scholar and human rights activist, but also a dissident in the eyes of the Chinese government.¹⁹ His eleven-year sentence on subversion charges in 2008, resulting from his peaceful activities of writing articles that urge social and political reform and the drafting of the Charter '08, reflect the curtailing of basic civil rights in China. Another example is the sentence of activist Zhao Lianhai to two-and-a-half years in jail in November 2010 for disturbing social order because of his activities of setting up a support group and website for the parents of children who were sickened by melamine-tainted milk in 2008 and 2009.²⁰ This man, who

¹⁸ According to a 2011 human rights report on China, at least 24 Chinese journalists are jailed on ambiguous charges ranging from “inciting subversion” to “revealing state secrets.” Zhang Hong, a deputy editor with the Economic Observer newspaper, was fired after co-writing a March 1, 2010, editorial carried in 13 Chinese newspapers advocating the abolition of China’s discriminatory hukou (household registration) system. Chinese journalists also continued to face physical violence for reporting on “sensitive” topics. On April 20, 2010, 10 unidentified assailants attacked *Beijing News* reporter Yang Jie while he photographed the site of a forced eviction. See HUMAN RIGHTS WATCH, WORLD REPORT 2011: CHINA, <http://www.hrw.org/world-report-2011/china>.

¹⁹ Andrew Jacobs & Jonathan Ansfield, *Nobel Peace Prize Given to Jailed Chinese Dissident*, N.Y. TIMES (Oct. 8, 2010), http://www.nytimes.com/2010/10/09/world/09nobel.html?_r=1 (stating that before being a scholar, a human rights activist, and a dissident in the eyes of the Chinese government, Liu joined a solidarity hunger strike in response to the student movement in Beijing Tiananmen Square in 1989 and was put into jail the first time).

²⁰ Zhao started his website support group after his son became sick from drinking the tainted milk; his purpose in starting the support group was for other parents to share information on health problems and how to sue the companies involved. Infant formula contaminated with the industrial chemical melamine was blamed for killing at least six babies and sickening nearly 300,000 across China in the scandal that began in September 2008. Zhao was taken away by police in November 2009 and was jailed for a year. Zhao’s case went to trial in March 2010. Zhao was originally charged with “causing public disturbance” for leading a rally of parents who wanted compensation for Zhao Lianhai. Finally, Zhao was convicted for “disturbing social order” by a district court in Beijing. See The Associated Press, *Chinese Father Punished for Food Safety Activism*, CBS NEWS (Nov. 11, 2010, 8:29 AM), <http://www.cbsnews.com/stories/2010/11/10/world/main7042817.shtml>; CNN Wire Staff, *China sentences tainted milk activist to jail*, CNN (Nov. 10, 2010), <http://articles.cnn.com/2010-11->

tried to help organize parents to strike for the right to medical care and compensation for the victims, that is, protecting the right to health of children, was imprisoned. There are many similar cases in China, in which those who seek justice and unveil the problematic policies and practices of the government, are deprived of freedoms of conscience and expression, ending up in jail or under house arrest.²¹

In addition, religious freedom in China is still very much restricted. Many Catholic priests and bishops who are not members of the government-sponsored and recognized Catholic Patriotic Association have been arrested and detained for years, denied the right to practice their religion and forced to support the Patriotic Association.²² Some of them treated in an inhuman way, suffering both spiritual and physical torture, which is in direct conflict with China's position on religious freedom.²³

The reality that these cases unveil is in stark contrast to the

10/world/china.tainted.milk_1_tainted-milk-scandal-china-sentences-zhao-lianhai?_s=PM:WORLD.

²¹ For example, on December 23, 2011, Chen Wei was charged with "inciting subversion of state power" and sentenced to nine years for 11 articles he had written in support of democracy and political reform. On December 26, 2011, Chen Xi was sentenced to 10 years on the same charge, for 36 articles he published overseas. Ding Mao in Sichuan province, and Liang Haiyi in Guangdong province, remained in detention for their involvement in the "Jasmine" protests. See AMNESTY INTERNATIONAL, ANNUAL REPORT 2012: CHINA, <http://www.amnesty.org/en/region/china/report-2012#section-28-3>.

²² Justice & Peace Commission of the H.K. Catholic Diocese, *Reality of the Catholic Church in China*, in BIRD IN A CAGE: FREEDOM OF RELIGIOUS BELIEF IN CHINA (2009).

²³ XIANFA art. 36 (1982) (China) (stating that, "[c]itizens of the People's Republic of China enjoy freedom of religious belief. No state organ, public organization, or individual may compel citizens to believe in or not believe in, any religion, nor may they discriminate against citizens who believe in, or do not believe in any religion. The State protects normal religious activities"). See also, Ying Fuk Tsang, *An Overview And Evaluation of Church and State Relations in China During the Past 30 Years*, 28 TRIPOD 151 (Michael Sloboda trans., Winter 2008), available at http://www.hsstudyc.org/hk/en/tripod_en/en_tripod_151_03.html; Justice & Peace Commission of the H.K. Catholic Diocese, *supra* note 22 (employing various policies to regulate and control religions became a direction of the government. This is to make religions serve politics, associating religions with national security and the needs of the country. As a result, those believers who do not strictly follow the rules of the government or the communist party have to suffer).

one being depicted by the Chinese government in the human rights reports of the government, especially on the freedoms of conscience and expression.

II. Human Rights Values in Chinese Confucian Ethics

Some scholars and politicians from East Asian and Southeast Asian countries argue that Western political ideals and Western notions of rights and democracy are inapplicable to Asian political structures, and that the Confucian tradition is radically different from Western traditions. Moreover, some critics of Confucianism in the West interpret the way Confucianism conceives of a fully human life in terms of relationship to others, structured by a set of duties to them that realize the self, as “neglecting individual rights and autonomy.”²⁴ This set of relationships is frequently criticized as “patriarchal and oppressively hierarchal, reputedly stifling the self.”²⁵ It is true that there is no explicit human rights discourse in Confucian texts, but that does not exclude the possibility of similar values between Confucian ethics and human rights discourse.

In the context of China, “building a harmonious society” and “putting people first” are the main concepts of China’s socialist core value system as put forth by the Chinese government since 2006.²⁶ Many top officials acknowledge the need to learn from the past cultural and moral traditions of China. Many scholars also examine the relationship between Confucianism and the notion of a harmonious

²⁴ Kwong-Loi Shun & David B. Wong, *Introduction, in* CONFUCIAN ETHICS: A COMPARATIVE STUDY OF SELF, AUTONOMY, AND COMMUNITY 2 (Kwong-Loi Shun & David B. Wong eds., 2004).

²⁵ *Id.*

²⁶ The concept of “socialist core value system” was publicized for the first time at the Sixth Plenum of the 16th Communist Party of China (CPC) Central Committee in 2006, at which the CPC highlighted the importance of creating a “socialist harmonious society.” The Party explained the value system should consist of Marxism, socialism with Chinese characteristics, patriotism, the spirit of reform and innovation and the socialist sense of honor and disgrace. Ling Zhu ed., *Communique of the Sixth Plenum of the 16th CPC Central Committee*, GOV.CN (Oct. 11, 2006), http://english.gov.cn/2006-10/11/content_410436.htm.

society.²⁷ Thus, it is worth examining the concept of harmony and its relation to the notion of *ren* (humanity or benevolence) and the role of government in Confucianism.

In this section, I'll examine the values of human rights in the Confucian tradition, especially those related to freedom of conscience and expression, through the following concepts: the role-based relationships and the notion of *ren*; rule by virtue and the relationship between the ruler and the people; the notion of harmony and the role of the government; and moral persuasion and freedom of expression.

A. *Ren in Contextual Self and Role-Based Ethics*

In human rights theories, the concept of a free and autonomous self is significant in the sense that the human person is entitled to basic rights and certain freedoms, without the presumption of fulfilling certain duties, essential to human dignity and to human flourishing.²⁸ Every human person, regardless of his or her background, including racial and cultural differences, should enjoy the same rights to human worth and dignity.²⁹ This is to ensure that no one

²⁷ See *Xinhua Insight: Global Harmony-themed Conference Mulls Confucian Wisdom*, XINHUANET NEWS, http://news.xinhuanet.com/english/china/2012-05/22/c_131604048.htm (last visited Jan. 30, 2013). Academics at the provincial level are enthusiastic in promoting the study of the traditional Chinese philosophies, and conferences have been organized on the revival of Chinese traditional ethical thought. *Id.* One attempt is a world conference on "The Concept of Harmony in Confucianism and the Building of a Harmonious Society in China" in October 2008. *Id.*; see also, *World Confucian Conference to become Annual Event in China*, PEOPLE'S DAILY ONLINE, <http://english.people.cn/90001/90782/6273497.html> (last visited Jan. 30, 2013) (stating that the World Confucian Conference is to become an annual event "to provide a spiritual power for the modern world"). Papers of the conference can be found at <http://theory.people.com.cn/BIG5/40555/8208671.html>. Moreover, Confucian ethics have been incorporated into the curriculum for primary and secondary school students since the 1990s. See *China eyes traditional cultural education*, XINHUANET NEWS, http://news.xinhuanet.com/english/china/2012-10/12/c_123817435.htm (last visited Jan. 30, 2013).

²⁸ See G.A. Res. 217A (III), U.N. Doc A/810, at 71 (Dec. 10, 1948).

²⁹ MICHAEL FREEMAN, HUMAN RIGHTS 74-75 (2011).

will be excluded from their entitlement to basic rights. Thus, individual rights which emphasize human dignity, freedom, equality and brotherhood are very important in human rights discourse. Such emphasis seems to be in stark contrast with Confucian ethics, which is a community-based or role-based ethic that assumes mutual responsibilities. Does this difference mean that Confucian role-based ethics ignores the free self and the rights of some people, especially the vulnerable who need help and care, and that it cannot provide protection to them if they are not within the role-relationship framework? In Confucianism, it is true that a person is always situated in a social context, a self-in-relation, and that social relations signify the reciprocal obligations embodied in them. A person without social relations is a person without humanity. The self is never seen as an isolated, autonomous individual, as in the West, an individual whose essential qualities and intellectual capacities are bestowed from without and possessed solely within. In fact, the Confucian concept of a human person and the virtue of *ren* (benevolence or humaneness)³⁰ best exemplifies the concept of a fully human life in terms of relationship to others and the related set of duties to realize the self. There are two senses of *ren*: *ren* of affection and *ren* of virtue. The former stands for the tender aspect of human feelings and an altruistic concern for others. The latter signifies *ren* as a general virtue that leads one to be a morally perfect person.³¹ In this sense, human persons are capable of realizing *ren*, which means, among other things, a certain ability or disposition to care for and sympathize with others. This altruistic aspect defines a person's relationship with others.

In Confucian thought, among all the social relations, the most important ones are the *wulun* (five relations), that is, father-son, ruler-minister, husband-wife, siblings, and friends.³² Under this network

³⁰ Apart from benevolence or humaneness, some scholars translate "*ren*" as compassion, universal love, altruism, kindness, charity, magnanimity, human-heartedness, humanity, perfect virtue, goodness, and so on. See Wing-Tsit Chan, *The Evolution of Confucian Concept of Jen*, 4 PHILOSOPHY EAST AND WEST 295-319 (1955).

³¹ Chenyang Li, *The Confucian Concept of Ren and the Feminist Ethics of Care: A Comparative Study*, in CONFUCIAN POLITICAL ETHICS 177 (Daniel A. Bell ed. 2008).

³² *Mengzi, Book 3A*, in MENGZI: WITH SELECTIONS FROM TRADITIONAL

of human relations, *ren* “must be actualized in personal relationships governed by specific virtues appropriate to each particular relationship.”³³ A person of *ren* is able to master all these relationships with appropriateness. Three of the five roles are familial, thus, family is the center of one’s ever-enlarging network of social relations. The starting point of being human inevitably begins with the virtue of filial piety.³⁴ To prioritize this virtue does not amount to an incompatibility between private, internal, personal relations and public, external, social relations. But it is true that family is perceived as the key to a well-ordered state and consequently to the world at large.³⁵

According to Confucius, the virtue of *ren* must be informed and structured by *li* (ritual or propriety), that is, informed by one’s knowledge of what is appropriate and proper in a social context expressed through a shared form of ritual, a shared social expression of meanings.³⁶ The ethical attitudes behind the observance of *li* include respectfulness, attentiveness, care, and seriousness.³⁷ As the movement of self-transformation, Confucian scholar Tu Wei-Ming suggests that *li* can be understood as a process of humanization, which is manifested in four developmental stages: cultivating personal life, regulating familial relations, ordering the affairs of the state, and

COMMENTARIES 71 (Bryan W. Van Norden trans. 2008).

³³ For example, the virtue of affection must be actualized in the parent-child relation, the virtue of appropriateness in the ruler-minister relation, the virtue of differentiation in the husband-wife relation, and the virtue of promise-keeping in friendship. LI-HSIANG LISA ROSENLEE, *CONFUCIANISM AND WOMEN: A PHILOSOPHICAL INTERPRETATION* 39 (2006).

³⁴ The virtue of filial piety is applied in the father-son relationship. *Mengzi, Book 3A4.11, supra* note 32.

³⁵ *Mengzi, Book 4A, in* MENGZI: WITH SELECTIONS FROM TRADITIONAL COMMENTARIES 71 (Bryan W. Van Norden trans. 2008). “The root of the world lies in the state; the root of the state lies in the family; the root of the family lies in oneself.” *Id.*

³⁶ See David B. Wong, *Chinese Philosophy: Ethics, in* DONALD M. BORCHERT, *ENCYCLOPEDIA OF PHILOSOPHY* 194-202 (2d ed., 2006) (explaining that a serious and reverential attitude toward others underlies both the observance of the responsibilities one has in virtue of one’s social position and the observance of rules governing ceremonial behavior).

³⁷ *Id.*

bringing peace to the world.³⁸ They are not regarded as merely linear progressions. *Li* includes virtually all aspects of human culture. One must go through the process of ritualization in order to become truly human.³⁹

Although Confucianism places great emphasis on particularistic social relationships in the five relations, the teaching does not maintain that all moral duties merely arise from these social institutions or relationships.⁴⁰ Benevolence is applicable not only to close personal relationships, but to everyone. For example, a famous example from the Book of Mencius, about a child on the verge of falling into a well, illustrates the expression of *ren* in a non-institutional situation.⁴¹ For Mencius, a person with *ren* would save the child out of compassion, since he is concerned with the suffering of others, who do not necessarily have a particular relationship with him.

Tu Wei-Ming also argues that the *Zhongyong* (The Doctrine of the Mean)⁴² perceives human relationships in terms of a set of expanding concentric circles: “[w]ishing to cultivate his personal life, he must not fail to serve his parents. Wishing to serve his parents, he must not fail to know man. Wishing to know man, he must not fail to know Heaven.”⁴³ Therefore, self-cultivation is not only an isolated quest for inner spirituality, but also a continuous attempt at interpersonal communication.⁴⁴ It is an integral part of a relational self, since

³⁸ This idea is from the Confucian text DAXUE [THE GREAT LEARNING]. See WING-TSIT CHAN, A SOURCE BOOK IN CHINESE PHILOSOPHY 86-87 (1963) [hereinafter CHAN, A SOURCE BOOK IN CHINESE PHILOSOPHY] for the translated text in English.

³⁹ Tu Wei-ming, *Li as Process of Humanization*, in HUMANITY AND SELF-CULTIVATION 27-29 (1979).

⁴⁰ Joseph Chan, *A Confucian Perspective on Human Rights for Contemporary China*, in THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS 217 (Joanne R. Abuer & Daniel A. Bell eds., 1999).

⁴¹ *Mengzi, Book 2A*, in MENGZI: WITH SELECTIONS FROM TRADITIONAL COMMENTARIES 71 (Bryan W. Van Norden trans. 2008).

⁴² *Zhongyong* is another Confucian text from the early Han dynasty (206 BCE to 220 CE). See CHAN, A SOURCEBOOK IN CHINESE PHILOSOPHY, *supra* note 38, at 95-114.

⁴³ *Id.* at 105.

⁴⁴ TU WEI-MING, CENTRALITY AND COMMONALITY: AN ESSAY ON CONFUCIAN RELIGIOUSNESS 54 (1989).

the degree of one's achieved humanity is measured in terms of the success that the self has in building a balanced, harmonious network of human relations, as well as in terms of the extent to which it builds these.⁴⁵

Confucius' ideal of community, which is basically that of the family writ large, by stressing mutual love and caring between members, rather than individual rights, is not in conflict with the human rights concept of legitimate self-interest of the individual.⁴⁶ As Hong Kong scholar Joseph Chan points out, in a healthy and close relationship, parties should focus on mutual caring and love, rather than rights. However, if the relationship breaks down and nothing can save it, it would be necessary for one side to have formal and legal rights to protect the interest of either side.⁴⁷ Chan points out that "no ethics of benevolence and care would seek to diminish the needs of individual."⁴⁸ Rights are important instruments for the vulnerable to protect themselves against exploitation and harm.⁴⁹

*B. Rule by Virtue and the Relationship between the
Ruler and the People*

Human rights discourse is often expressed in legal language, in international law or national law, in order to give concrete protection to people. Law also provides objective standards that governments or individuals can follow.⁵⁰ Many of these laws are used to restrain the power of the government from infringing on the civil liberties of their people or from carrying out discriminatory social

⁴⁵ ROSENLEE, *supra* note 33, at 42.

⁴⁶ As shown above, three of the five basic human relations, stated in MENGZI book 3A4, belong to the family (father-son, husband-wife, and elder brother-younger brother), and the other two (ruled-ruled and friend-friend) are modeled after familial relationships. Mutual love and caring between family members, which are characteristics of an ideal family, do not conflict with human rights in protecting individuals. *See* Chan, *supra* note 40, at 219-220.

⁴⁷ *Id.* at 220.

⁴⁸ *Id.*

⁴⁹ *Id.* at 221.

⁵⁰ FREEMAN, *supra* note 29, at 77, 78.

policies.⁵¹ Other laws are used to encourage the government to enact local laws or policies to secure basic living standards, such as living wages or social security, so that people can lead a decent life. However, Confucian ethics is basically a virtue ethics, emphasizing rule by virtue and moral suasion. Are these two ethical discourses incompatible in upholding the goodness of the society and protection of people?

Living in the chaotic social and political situation of the sixth to fourth BCE,⁵² Confucius and Mencius, the two early masters of Confucian thought, wanted to create a prosperous society based on good government and harmonious human relations.⁵³ To achieve this they advocated a benevolent government—rule by virtue and moral example, rather than punishment or force.⁵⁴ They were concerned more about what a good ruler was and what kind of relationship should be maintained between the ruler and the people, than with

⁵¹ Among the international human rights laws, the International Covenant on Civil and Political Rights is used to protect civil liberties of people of those countries in which their governments have signed the treaty whereas the International Covenant on Economic, Social, and Cultural Rights can be used as a framework for governments to design policies related to implementation of these rights.

⁵² Chinese philosophy began in the sixth century BCE as a response to the collapse of traditional feudal society, that is, Shang and Zhou dynasties. The early Zhou kings ruled by letting feudal lords govern vassal states. As their powers grew, feudal lords fought one another and resisted the Zhou king. Dozens of small kingdoms competed with one another for imperial domination in what became known as the Warring States period (475–221 BCE). This situation lasted until the state of Qin conquered all other states into a single military, imperial empire in 221 BCE. See Kwong-loi Shun, *Chinese Philosophy: Confucianism*, in *ENCYCLOPEDIA OF PHILOSOPHY* 170-171 (Donald M. Borchert ed., 2nd ed. 2006), available at <http://0-go.galegroup.com.grace.gtu.edu:80/ps/start.do?p=GVRL&u=gradtul>.

⁵³ Confucius (sixth century BCE) and Mencius (fourth century BCE) were two among the earliest thinkers and were regarded as belonging to the same movement of thought. This movement of thought was referred to retrospectively in the Han dynasty (206 BCE to 220 CE) as *rujia* or the school of *ru*. The main ideas of their works and texts can be found in CHAN, A SOURCE BOOK IN CHINESE PHILOSOPHY, *supra* note 38.

⁵⁴ Confucius emphasizes that a good leader should be a model of personal integrity and takes good care of the people, treating them justly. See *Book 5:16*, in *CONFUCIUS: THE ANALECTS* (D.C. Lau trans. 1997).

how to prevent the ruler from abusing his power through law.⁵⁵

According to early Confucian teaching, governments should rule with virtue and employ moral suasion rather than using force or punishment.⁵⁶ For Confucians, legal punishment is not a good way to rule a society as it cannot change one's heart or soul; only rites can.⁵⁷ In fact, a genuinely virtuous life cannot be compelled by force; rather one must be motivated to enjoy that life.⁵⁸

Confucius' image of the *junzi* (a profound person or superior person) was intended as the moral ideal for all.⁵⁹ Confucius said that the ruler and/or *junzi* should be "respectful in the manner he conducted himself," "in caring for the people, he was generous; [and] in employing their services, he was just."⁶⁰ Thus, a good leader should be an example of personal integrity and selfless devotion to the people, treating the common people justly with respect and kindness, and bringing peace and security to people. Then, people would obey and respect the ruler. "Raise the straight and set them over the crooked and the common people will look up to you."⁶¹ "Rule over them with dignity and they will be reverent; treat them with kindness and they will do their utmost; raise the good and instruct those who are

⁵⁵ Wong, *supra* note 36, at 194-202.

⁵⁶ "The rule of virtue can be compared to the Pole Star which commands the homage of the multitude of stars simply by remaining in its place." *Book 2:1*, in CONFUCIUS: THE ANALECTS (D.C. Lau trans. 1997). "Guide them by edicts, keep them in line with punishments and the common people will stay out of trouble but will have no sense of shame. Guide them by virtue, keep them in line with the rites, and they will, besides having a sense of shame, reform themselves." *Book 2:3*, in CONFUCIUS: THE ANALECTS (D.C. Lau trans. 1997).

⁵⁷ Confucius said, "Guide them by edicts, keep them in line with punishments, and the common people will stay out of trouble but will have no sense of shame. Guide them by virtue, keep them in line with the rites, and they will, besides having a sense of shame, reform themselves." *Book 2:3*, in CONFUCIUS: THE ANALECTS (D.C. Lau trans. 1997); *See also* Chan, *supra* note 40, at 232.

⁵⁸ *Book 4:2*, in CONFUCIUS: THE ANALECTS (D.C. Lau trans. 1997). "The benevolent man is attracted to benevolence because he feels at home in it." *Id.*

⁵⁹ The term *junzi* appears 107 times in THE ANALECTS. There is no one definition of this term. In some cases Confucius refers *junzi* as ruler, such as in *Book 5:16*. However, in most cases, *junzi* is used to denote a morally superior person. *See* CHAN, A SOURCE BOOK IN CHINESE PHILOSOPHY, *supra* note 38, at 15-16.

⁶⁰ *Book 5:16*, in CONFUCIUS: THE ANALECTS (D.C. Lau trans. 1997).

⁶¹ *Book 2:19*, in CONFUCIUS: THE ANALECTS (D.C. Lau trans. 1997).

backward and they will be filled with enthusiasm.”⁶² This is the kind of relationship Confucius suggested should exist between the ruler and the people, with each having his own role and function, and mutual respect being a core element of their relations.

Mencius, the best-known disciple of the Confucian school, offered more specific advice on the role of the ruler, how to rule as a benevolent leader and how the ruler could secure the livelihood of his people. He said that “the people come first; the altars of the earth and grain come afterwards; the ruler comes last.”⁶³ Use of the phrase, “[t]he altars of the earth and grain” signifying the political authority of the state. He also described a benevolent government and its fruits:

If Your Majesty applies benevolent government to the people, lessens punishments, reduces taxes, and ensures that there is deep plowing and careful weeding, then the strong, in their free time, will cultivate their filiality, brotherliness, devotion, and faith. When they come home, they will serve their fathers and elder brothers. When they go out, they will serve their elders and superiors.⁶⁴

In the eyes of early Confucian masters, establishing moral ideals was the priority. For example, if the ruler did not behave properly, people would dislike him. But they did not mention anything about keeping the ruler’s power in control or balance. However, based on early Confucian thought, the seventeenth century neo-Confucian scholar Huang Zongxi (Huang Tsung-hsi) further expanded Mengzi’s idea of “the people come first” and applied it to the reality of his time.⁶⁵ In his work *Waiting for the Dawn: A Plan for the*

⁶² *Book 2:20*, in CONFUCIUS: THE ANALECTS (D.C. Lau trans. 1997).

⁶³ *Mengzi, Book 7B*, in MENGZI: WITH SELECTIONS FROM TRADITIONAL COMMENTARIES 71 (Bryan W. Van Norden trans. 2008); *See also* Julia Ching, *Human Rights: A Valid Chinese Concept?*, in CONFUCIANISM AND HUMAN RIGHTS 71-72 (Wm. Theodore De Bary & Tu Weiming eds., 1998).

⁶⁴ *Mengzi, Book 1A*, in MENGZI: WITH SELECTIONS FROM TRADITIONAL COMMENTARIES 71 (Bryan W. Van Norden trans. 2008).

⁶⁵ The idea of “people come first” is from *Book 7B:14*, in MENGZI. This idea

Prince, Huang proposed the essentials of good governance, which included controlling the power of the ruler through the rule of law, the role and quality of rulers and their ministers, and the function of education. In his exemplary work, Huang points out that it was good to have ruler, as in ancient times, who “did not think of benefit in terms of his own benefit but sought to benefit all-under-Heaven [the people],” and to have ministers who “look for welfare of the people.”⁶⁶ However, in reality, there were princes who “looked upon the world as an enormous estate to be handed on down to his descendants, for their perpetual pleasure and well-being.”⁶⁷ There were also ministers who “ignore the plight of the people.”⁶⁸ Thus, Huang argues that it is not enough to have “governance by men, not governance by law.”⁶⁹ Rather, “only if there is governance by law can there be governance by men.”⁷⁰

The main difference between Huang’s thought and the early Confucians is that Huang’s idea of governance involves the notion of the rule of law understood as functioning to safeguard the society for the sake of the people, so that people are assured the means of adequate subsistence, education, physical security, regulative rules and social institutions, and peace. True law or just law is needed as a check on political abuse by the ruler in order to ensure that the people are safeguarded, treated fairly, and that governance is shared between the prince and his ministers, allowing for input from the people.⁷¹ These features tend to support the notion of “the will of the

was further developed by Huang Tsung-Hsi. Huang Tsung-Hsi, *On the Prince*, in *WAITING FOR THE DAWN: A PLAN FOR THE PRINCE* 91-92 (Wm. Theodore De Bary trans., 1993) [hereinafter Tsung-Hsi, *On the Prince*].

⁶⁶ Tsung-Hsi, *On the Prince*, *supra* note 65; Huang Tsung-Hsi, *On Ministership*, in *WAITING FOR THE DAWN: A PLAN FOR THE PRINCE* 95 (Wm. Theodore De Bary trans., 1993) [hereinafter Tsung-Hsi, *On Ministership*].

⁶⁷ Tsung-Hsi, *On the Prince*, *supra* note 65, at 92.

⁶⁸ Tsung-Hsi, *On Ministership*, *supra* note 66, at 95.

⁶⁹ Huang Tsung-Hsi, *On Law*, in *WAITING FOR THE DAWN: A PLAN FOR THE PRINCE* 99 (Wm. Theodore De Bary trans., 1993).

⁷⁰ *Id.* (demonstrating that, “[i]f men were of the right kind, all of their intentions could be realized; and even if they were not of this kind, they could not slash deep or do widespread damage, thus harming the people [instead of benefiting them]”).

⁷¹ Sumner B. Twiss, *Confucian Values and Human Rights*, in *HUMAN RIGHTS*

people” serving as “the basis of the authority of government.”⁷² It “opens the door (again just a crack) to a functional analogue to freedom of opinion and expression.”⁷³

From the above, I affirm that although early Confucian thought begins with the notion that the ruler should rule with virtue, without mentioning control of his power, there is also an emphasis on the ruler always putting people first and treating the people with care and justice. It portrays an ideal of good government and an ideal ruler with moral integrity. Later, there is a development in this idea, stressing governance by law in order to avoid harming the people when there is a bad ruler, in the neo-Confucian thought of Huang Zongxi. This latter thought is closer to recent human rights discourse, as a kind of protection of the people that goes beyond a mere moral ideal.

C. *Notion of Harmony in Society*

In human rights discourse, civil liberties such as freedom of expression, freedom of assembly, freedom of the press, freedom of conscience and religious freedom are all important rights that should be enjoyed by everyone.⁷⁴ However, the Chinese government often highlights the idea that Chinese people emphasize harmony, or rather that a harmonious society should avoid different kinds of opinions or demonstrations which may divide the society and cause instability.⁷⁵

AND RESPONSIBILITIES IN THE WORLD RELIGIONS 287 (Joseph Runzo et al. eds., 2003).

⁷² Universal Declaration of Human Rights, art. 21, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); *See also* Twiss, *supra* note 71, at 288.

⁷³ Twiss, *supra* note 71, at 288-299.

⁷⁴ Universal Declaration of Human Rights, art. 19-20, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁷⁵ “Building a harmonious society” became the goal of China’s development when it was proposed by the Hu Jintao-Wen Jiabao Administration in the 2005 National People’s Congress and was adopted formerly in the Sixth Plenum of the sixteenth Communist Party of China Central Committee in 2006. This is in response to the inharmonic social conditions resulted from the single-minded pursuit of economic growth and achievement-based policies. Hu Jintao, *Hu Jintao’s Speech on the Text of Building a Socialist Harmonious Society*, CHINA.COM (June 26, 2005),

The underlying meaning is that people should not challenge the government policies or speak up as a dissident voice. The notion that “harmony is valuable,” taken from the teachings of Confucianism, is often employed as rhetoric to defend the Chinese government’s practice of limiting the freedoms of conscience and expression. Is the notion of harmony in Confucian thought incompatible with civil liberties in human rights? Does the relationship between the government and people stress a patriarchal and hierarchal relationship, rather than a mutually respectful relationship?

Harmony is an important goal and a signifier of good society in Confucianism, but the actual meaning is not what the Chinese government emphasizes. Chinese scholar Weibing Pi argues that there are two levels of harmony, the lower and higher levels.⁷⁶ The lower level of harmony is to release tensions and to solve conflicts. Confucius expressed his wish that there would be no litigation and that all conflicts could be settled. He wrote, “[i]n hearing litigation, I am no different from any other person. . . the difference is. . . I try to get the parties not to resort to litigation in the first place.”⁷⁷ Another level, the higher level of harmony, is to establish trust, understanding and communication among members of a society. This is to strengthen relationships and cooperation so as to uphold the unity of a society.⁷⁸

Harmony should be the basic criteria when looking at developing relationships between rulers and common people, rulers and the Gentlemen, and between countries. As Confucius said:

Among the functions of propriety the most valuable is that it establishes harmony. The excellence of the ways of ancient kings consists of this. It is the principle of all things great and small. If things go amiss, and you, understanding

available at <http://www.china.com.cn/chinese/news/899546.htm>.

⁷⁶ WEIBING PI, HE WEI GUI DE ZHENGZHI LUNLI ZHUIQIU: HE SHIYU ZHONG DE XIANQIN RUJIA ZHENGZHI LUNLI SIXIANG YANJIU [“Harmony is Valuable” as an Aim of Political Ethic: Research on the Vision of Harmony in the Political and Ethical Thought in Xianqin Confucianism] 31-32 (2007).

⁷⁷ *Book 12:13*, in CONFUCIUS: THE ANALECTS (D.C. Lau trans. 1997).

⁷⁸ PI, *supra* note 76, at 31-32.

harmony, try to achieve it without regulating it by the rules of propriety, they will still go amiss.⁷⁹

Mencius also suggested, “[h]eavenly omens are not as good as advantages of terrain. Advantages of terrain are not as good as harmony with the people.”⁸⁰ Both masters established harmony as the basic attitude for dealing with other people and the basic principle of ruling a state. It is the standard for, as well as the goal of, measuring human relationships and social order. For a state or a society in harmony, there should be a cordial and trustworthy relationship between the rulers and the ruled; each having a role. When rulers are faithful to those roles, people feel secure and peaceful, and society is in good order. As Confucius said, “[w]hat I have heard is that the head of a state or a noble family worries not about underpopulation but about uneven distribution, not about poverty but about instability. For where there is even distribution there is no such thing as poverty, where there is harmony there is no such thing as underpopulation and where there is stability there is no such thing as overturning.”⁸¹ He also pointed out, “[w]hen those above love the rites, none of the common people will dare be irreverent; when they love what is right, none of the common people will dare not to submit; when they love trustworthiness, none of the common people will dare not to speak their true words.”⁸²

If a ruler really puts into practice benevolence, treats the common people with sincerity and respect as a ruler should, then people will also trust their ruler and dare to express their opinions. According to Mencius, if a ruler is benevolent, righteous and correct, no one will fail to be benevolent, righteous, and correct. As soon as one makes the ruler correct, the state will be settled.⁸³ This is real harmony in society, with mutual respect and sincerity, with the ruler

⁷⁹ *Book 1:12*, in *CONFUCIUS: THE ANALECTS* (D.C. Lau trans. 1997).

⁸⁰ *Mengzi, Book 2B*, in *MENGZI: WITH SELECTIONS FROM TRADITIONAL COMMENTARIES 71* (Bryan W. Van Norden trans. 2008).

⁸¹ *Book 16:1*, in *CONFUCIUS: THE ANALECTS* (D.C. Lau trans. 1997).

⁸² *Book 13:4*, in *CONFUCIUS: THE ANALECTS* (D.C. Lau trans. 1997).

⁸³ *Mengzi, Book 4A*, in *MENGZI: WITH SELECTIONS FROM TRADITIONAL COMMENTARIES 71* (Bryan W. Van Norden trans. 2008).

as a moral example for people, not merely focusing on dissolving conflict within a society or creating an apparently harmonious relationship.

D. Moral Persuasion and Freedom of Expression

Based on the above viewpoints of the relationship between the ruler and the people, and the notion of harmony in society, it is evident that both Confucius and Mencius agree that social and political discussions and criticisms are necessary for a healthy political system. For example, Confucius justifies political speech in terms of its contribution to healthy politics. He says, “[i]f what a ruler says is not good and no one goes against him, then is this not almost a case of a saying ruining a state?”⁸⁴ Mencius also suggests that ministers have a duty to criticize the ruler for wrongdoing. “If the prince made serious mistakes, they [ministers] would remonstrate with him.”⁸⁵ Although neither Confucius nor Mencius were state officials, they were both active in speaking public critique of current politics and schools of thought. They saw the importance of speech in politics and culture, though they did not state explicitly that they valued free speech. Hong Kong scholar Joseph Chan suggests that Confucians would not reject freedom of expression “if it is conducive to help[ing] the society to correct wrong ethical beliefs and to prevent rulers from indulging in wrongdoing, and hence to the pursuit of *ren*.”⁸⁶ He adds that “although freedom of expression is individual[ly] oriented, its contribution to social, cultural and political activities can help promote *ren* which is definitive to the social good.”

In his treatise on *Zhongyong*, Tu Wei-Ming argues that the art of moral persuasion in a fiduciary community is the best way for a ruler to relate himself effectively to his ministers, relatives, officers, the common masses, the various artisans, strangers from far coun-

⁸⁴ *Book 13:15*, in CONFUCIUS: THE ANALECTS (D.C. Lau trans. 1997).

⁸⁵ *Mengzi, Book 5B*, in MENGZI: WITH SELECTIONS FROM TRADITIONAL COMMENTARIES 71 (Bryan W. Van Norden trans. 2008).

⁸⁶ Chan, *supra* note 40, at 229.

tries, and the feudal lords.⁸⁷ A ruler's moral persuasion can be truly effective only if it is conducted in the spirit of impartiality and reciprocity.⁸⁸ If a ruler's concern is limited only to special interest groups, his credibility and competence as a leader for the whole country will be doubted.⁸⁹ Therefore, people with different opinions should be allowed expression; the government should not suppress different views, since those same viewpoints may contribute to the common good of the society.

In Huang Zongxi's *Minyi daifang lu*, when he discusses the function of schools, the importance of education for all people, and the selection of scholar-officials for government service, his belief in freedom of expression and political participation is most obvious.⁹⁰ An important function of schools is to produce "all the instrumentalities for governing all-under-Heaven" and to provide chances for "outspoken discussion of important issues without fear of those in power."⁹¹ Protecting public discussion, collective deliberation and decision-making support processes enhance political participation and consensual government.

To conclude, from the above discussion on Confucian concepts of *ren* and role-based ethics, rule by virtue and the relationship between ruler and the people, the notion of harmony, and the concept of moral persuasion and expression of opinions by ministers and people, demonstrates that though there are no clear rights concepts in Confucian ethics, the important values of Confucian thought—caring for the other, taking care of the needs of people or putting the people first, moral integrity of a ruler, building a cordial and trustworthy relationship between the rulers and the ruled, ministers and all people having the freedom to give advice to the ruler, using moral suasion rather than punishment to rule the society—are compatible with human rights values in modern society. In fact, these are the elements

⁸⁷ WEI-MING, *supra* note 44, at 60.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Huang Tsung-Hsi, *Schools*, in WAITING FOR THE DAWN: A PLAN FOR THE PRINCE 103-107 (Wm. Theodore De Bary trans., 1993) [hereinafter Tsung-Hsi, *Schools*].

⁹¹ *Id.*; see also Twiss, *supra* note 77, at 289.

of a higher moral ideal, rather than a minimum morality of offering basic protection against abuse of power. Thus, there is the possibility and enough room within Confucian ethics to find articulations of human rights values.

III. *Human Rights Tradition in Catholic Social Teaching*

After examining the human rights values in Confucian ethics, in this section, I would like to examine the experience of the Christian tradition of the development of human rights discourse in Catholic papal social teachings⁹² and the characteristics of this discourse.⁹³ The concepts of human rights and religious freedom appeared again in the 20th century after a long period of suppression.⁹⁴ Before that, the Catholic Church was resistant to these values. However, the Se-

⁹² There is no official canon of these papal documents. Generally, ten encyclical letters published in the name of popes since *Rerum Novarum* (RN) of Leo XIII, two documents of the Second Vatican Council “Pastoral Constitution on the Church in the Modern World” and “Declaration on Religious Freedom,” and the final document of the World Synod of Bishops “Justice in the World” are included in the major documents of Catholic social teaching. CHARLES CURRAN, *CATHOLIC SOCIAL TEACHING 1891 – PRESENT: A HISTORICAL, THEOLOGICAL AND ETHICAL ANALYSIS* 7 (2002) (detailing the list of major documents of Catholic social teaching).

⁹³ Different scholars have identified different main themes and have employed different ways of analyzing the papal social teachings in general. See DONAL DORR, *OPTION FOR THE POOR: A HUNDRED YEARS OF CATHOLIC SOCIAL TEACHINGS* (2005); CURRAN, *supra* note 92; MARVIN L. KRIER MICH, *CATHOLIC SOCIAL TEACHING AND MOVEMENTS* (1998). Given the purpose of this paper, I will focus mainly on the human rights discourse in Catholic social teaching. In fact, human dignity or human rights is agreed by most scholars as one of the main principles of Catholic social teaching. *Id.*

⁹⁴ Drew Christiansen, S.J., *Commentary on Pacem in Terris (Peace on Earth)*, in *MODERN CATHOLIC SOCIAL TEACHING: COMMENTARIES & INTERPRETATIONS* 217, 234 (Kenneth R. Himes et al. eds., 2004) (detailing the early development of rights language in the Catholic thought). “[R]ights language [indeed] was not foreign to late medieval and early modern Catholic ethical and political thought.” *Id.* It was only during the period of the Enlightenment and French Revolution that rights language was not used and was totally rejected by Pope Pius IX in the *Syllabus of Errors*. *Id.*; see generally Pope Pius IX, *THE SYLLABUS* (1864), available at <http://www.ewtn.com/library/PAPALDOC/P9SYLL.HTM>.

cond Vatican Council document *Dignitatis Humanae* affirms religious freedom.⁹⁵ Various popes also employed human rights concepts in the papal social encyclicals, such as in John XXIII's social encyclical *Pacem in Terris* and in the various speeches of John Paul II, such as his addresses to the 34th and 50th General Assembly of the United Nations in 1979 and 1995 respectively.⁹⁶ This Roman Catholic experience of rediscovering rights discourse is able to shed light on the development of the rights related discourse in Confucian ethics. Differences between the rights discourse of the Catholic tradition and the secular one or that of Western countries, such as the United States, and the impact of the rights discourse in the Catholic tradition are also worth examining.

A. *Development of Human Rights Discourse*

Catholic thought in general rejected the individualism of the Enlightenment as seen in religion, philosophy, politics, and economics.⁹⁷ Ever since the seventeenth century, the Catholic Church has been in dialogue with liberalism and the Enlightenment concerning their emphasis on individual human beings and their rights. However, in the Syllabus of Errors of Pope Pius IX in 1864, a whole family of liberal doctrines, including rationalism, liberty of press, and liberty of religion, was condemned.⁹⁸ The late nineteenth and early-

⁹⁵ The Second Vatican Council affirms that "the truth cannot impose itself except by virtue of its own truth," and that religious freedom has to do with "immunity from coercion in civil society." Article 1, *Dignitatis Humanae* (Declaration on Religious Freedom), Second Vatican Council, 1965. http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

⁹⁶ Pope John Paul II, *Address to the 34th General Assembly of the United Nations* 7 (Oct. 2, 1979); ACTA APOSTOLICAE SEDIS 71 (1979), at 1147-1148; *Address to the 50th General Assembly of the United Nations* 2 (2 Oct. 2, 1995); L'OSSERVATIORE ROMANO, English edition 8 (Oct. 11, 1995). Quoted from PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH (Libreria Editrice Vaticana, 2004).

⁹⁷ R. BRUCE DOUGLASS & DAVID HOLLENBACH, CATHOLICISM AND LIBERALISM: CONTRIBUTIONS TO AMERICAN PUBLIC PHILOSOPHY (1994).

⁹⁸ The document concluded with a refusal to reach agreement with progress,

twentieth-century Scholastic revival, with its reliance on Aquinas, had also largely neglected the earlier rights language tradition.⁹⁹ In the early 1960s, most educated Catholics, and even more non-Catholics, assumed that natural law was consistent with the language of duties, but not with the language of rights.¹⁰⁰ In the twentieth century, a new dialogue adversary appeared on the scene: totalitarianism, and especially communism. Catholic thought gradually gave more importance to freedom and the rights of the person in its opposition to communism.¹⁰¹

There is an obvious shift of ethical language in Catholic social thought when we compare Leo XIII's approach at the very end of the nineteenth century in his teachings and contemporary hierarchical social teaching on the issues of freedom, equality, and participation in the life of society, as illustrated in *Pacem in Terris* (1963).¹⁰² Pope Leo XIII condemned modern liberties, including freedom of worship, freedom of speech and freedom of conscience, and taught that the only true meaning of freedom of conscience was to follow the will of God.¹⁰³ Pope Leo even stressed that natural inequalities, which bring about social inequalities, are essential for the good functioning of society.¹⁰⁴ With such a hierarchical view of an

liberalism and modern civilization. Since then, there seemed to be no space for discussing of human rights in the Roman Catholic Church. Christiansen, *supra* note 94. See generally Pope Pius IX, *supra* note 94.

⁹⁹ Catholic theology in general and moral theology in particular is very much influenced by the medieval theologian Thomas Aquinas. Aquinas is famous for its virtue approach rather than rights approach in moral theology. See THE ETHICS OF AQUINAS (Stephen J. Pope ed., 2002).

¹⁰⁰ Christiansen, *supra* note 94, at 235.

¹⁰¹ CHARLES E. CURRAN, THE CATHOLIC MORAL TRADITION TODAY: A SYNTHESIS 104 (1999).

¹⁰² Pope Leo XIII, *Rerum Novarum* (1891), http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum_en.html; Pope John XXIII, *Pacem in Terris* (1963), http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html [hereinafter Pope John XXIII, *Pacem in Terris*].

¹⁰³ Pope Leo XIII, *Libertas praestantissimum*, nos. 19-37, in THE CHURCH SPEAKS TO THE MODERN WORLD: THE SOCIAL TEACHINGS OF LEO XIII 70-79 (Etienne Gilson ed., 1954). See also CHARLES E. CURRAN, THE CATHOLIC MORAL TRADITION TODAY: A SYNTHESIS 105 (1999).

¹⁰⁴ CURRAN, *supra* note 103.

organic society, Catholic theologian Charles Curran argues, “Leo saw no need for the active participation of all citizens. Citizens are the untutored or ignorant multitude that must be led by the ruler.”¹⁰⁵ However, when we examine the ethical language in *Pacem in Terris*, there is a clear shift to human rights language. It integrates liberal ideas about rights, political freedoms and constitutional government into a distinctively Catholic moral and political framework adapted to the essential sociability of human beings.¹⁰⁶

In a similar way, we can also see development in the discourse of religious freedom in the Catholic tradition. In *Rerum Novarum*, Pope Leo was against religious freedom, as freedom of worship went against the chief and holiest human duty.¹⁰⁷ However, at the Second Vatican Council (1962-65), the Roman Catholic Church accepted the concept of religious liberty in *Dignitatis Humanae* (the Declaration on Religious Freedom) in 1965.¹⁰⁸ The basis for religious liberty is stated very distinctly in the opening paragraph:

[T]he dignity of the human person which has been impressing itself more and more deeply on the conscience of contemporary people, and a corresponding recognition of a constitutional government with limited powers. Immunity from external coercion forcing one to act in a way opposed to one’s conscience is another right.¹⁰⁹

The Declaration carefully balances the concerns for the obligation of conscience to be guided by truth, which is proclaimed by the Catholic Church, and the social obligation of society not to co-

¹⁰⁵ *Id.* at 107 (adding that Pope Leo gave more appreciation of human freedom and social participation in the early twentieth century).

¹⁰⁶ Pope John XXIII, *Pacem in Terris*, *supra* note 102.

¹⁰⁷ Pope Leo XIII, *Libertas praestantissimum*, *supra* note 103, nos. 19-37.

¹⁰⁸ *Dignitatis Humanae*, *supra* note 95.

¹⁰⁹ *Id.* at 14. See also Jeffrey Gros, *Declaration on Religious Freedom: Dignitatis Humanae*, in STEPHEN B. BEVANS & JEFFREY GROS, *EVANGELIZATION AND RELIGIOUS FREEDOM: AD GENTES, DIGNITATIS HUMANAЕ* 151, 163-75 (2009) (detailing the discussion of *Dignitatis Humanae*).

erce the individual in matters of religion.¹¹⁰ The Church became a defender of religious liberty, in stark contrast with the nineteenth century papacy that stood as the most determined opponent of religious liberty.¹¹¹ The right of religious freedom is grounded in the dignity of the person and the right is thoroughly social, belonging both to individuals and to religious communities.¹¹² The states have responsibility to protect people and groups in society in the name of public order and public peace.

Though employing rights language, the Catholic theory of human rights has some distinctive features, which are different from the Western liberal tradition, that is, a correlation of rights and duties, an attitude of cooperation and adjustment toward the implementation of rights, and the emphasis on solidarity and common good.¹¹³

B. *A Social Person and Correlation of Rights and Duties*

At the very beginning of *Pacem in Terris*, it is stated that, “Peace on Earth—which man throughout the ages has so longed for and sought after—can never be established, never guaranteed, except by the diligent observance of the divinely established order (no.1).” The whole letter is built around the concept of order in human relationships, as found in natural law, which can be understood by all through reason and dialogue, and the concept of rights and duties.¹¹⁴

¹¹⁰ Gros, *supra* note 109, at 178.

¹¹¹ From the document of *Dignitatis Humanae* itself, there is a clear shift of language. In terms of implementation, the principles in this document are incorporated into the treaties of the Holy See with civil governments. Moreover, the several popes after Vatican II advocated religious freedom in their ministries. See Gros, *supra* note 109, at 192-222.

¹¹² *Dignitatis Humanae*, *supra* note 95, at art. 4.

¹¹³ Christiansen, *supra* note 94, at 226; Charles Curran et al., *Commentary on Sollicitudo Rei Sociales (On Social Concern)*, in *MODERN CATHOLIC SOCIAL TEACHING: COMMENTARIES & INTERPRETATIONS* 426-30 (Kenneth R. Himes ed. 2004).

¹¹⁴ J. Bryan Hehir, *The Modern Catholic Church and Human Rights*, in *CHRISTIANITY AND HUMAN RIGHTS: AN INTRODUCTION* 113, 121 (John Witte, Jr. & Frank S. Alexander eds., 2010).

Any well-regulated and productive association of men in society demands the acceptance of one fundamental principle: that each individual man is truly a person. His nature is endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable.¹¹⁵

Therefore, although the encyclical repeatedly affirms the importance of the freedom of persons and of states, urging the active assertion of rights,¹¹⁶ it also insists that the exercise of rights ought to be consistent with the fulfillment of duties.¹¹⁷ It lists the pairing of rights and duties, such as the right to life corresponds with the duty to preserve one's life.¹¹⁸ Such rights language is very different from the common understanding and discourse of human rights of many Western countries, such as the United States, which emphasizes the autonomous individual with freedom than duties. Rather, in *PT*, it is "a communitarian understanding of human beings," as Drew Christiansen points out, "emphasizing that human beings are persons among and with other persons, not just individuals with claims on one another, and that their full flourishing takes place in community where all flourish together."¹¹⁹ This is closer to the concept of a contextual self of the Confucian tradition, though it does not consist of a comprehensive understanding of role-based relationships.

C. *Cooperative Spirit and the Common Good*

With this understanding of rights and duties, a cooperative spirit across society and nation is called for in *Pacem in Terris*.¹²⁰ John XXIII argued that those who hold an advantage in any society

¹¹⁵ Pope John XXIII, *Pacem in Terris*, *supra* note 102, at no. 9.

¹¹⁶ *Id.* at nos. 11-27.

¹¹⁷ *Id.* at nos. 28-30.

¹¹⁸ *Id.* at no. 29.

¹¹⁹ Christiansen, *supra* note 94, at 226.

¹²⁰ Pope John XXIII, *Pacem in Terris*, *supra* note 102, at nos. 31-33, 98-100.

ought to be ready to sacrifice some degree of the enjoyment of their rights for the sake of those who are deprived.¹²¹ There is an obligation to lend mutual assistance to others in their efforts for improvement and to make a greater contribution to the general development of the people.¹²² He also argues against the development of national resources in ways that bring harm to other states and unjustly oppresses them.¹²³

Furthermore, *Pacem in Terris* lends its support to the idea of a government's role as an equalizer in an unequal world.¹²⁴ While the government's obligation to uphold the common good ought to be exercised without preference for any single citizen or civic group, public authorities bear a special responsibility "to give more attention to the less fortunate members of the community, since they are less able to defend their rights and to assert their legitimate claims".¹²⁵ These authorities should take suitable action with regard to economic, political and cultural matters as inequalities between citizens tend to become more and more widespread. At the international level, the wealthier countries, while providing various forms of assistance to the poorer countries, must have the highest possible respect for the latter's national characteristics and time honored civil institutions. The aim is to build "a world community, in which each individual nation, conscious of its rights and duties, can work on terms of equality with the rest for the attainment of universal prosperity."¹²⁶

The rights language in *PT* created a great impact in the Church and in the world at large. This right discourse legacy can be seen in *Gaudium et Spes*¹²⁷ of the Second Vatican Council and other social encyclicals. *GS* states that from the beginning of salvation history, God has chosen persons not just as individuals, but as members

¹²¹ Pope John XXIII, *Pacem in Terris*, *supra* note 102, at no. 36.

¹²² *Id.* at no.88.

¹²³ *Id.* at no. 92.

¹²⁴ *Id.* at nos. 60, 98.

¹²⁵ *Id.* at no. 56.

¹²⁶ *Id.* at no. 125

¹²⁷ *Gaudium et Spes* (*GS*, the Pastoral Constitution on the Church in the Modern World) (1965) at no. 40-44 (listing the defense of human rights as one of the primary services the Church brings the world).

of a certain community.¹²⁸ Human beings are individuals and participate in the common life of the civil community at the same time. With this communitarian nature, virtuous citizens should seek not only their own individual good but also the larger good of the community.¹²⁹ The obligations of justice and love are fulfilled only if each person, contributing to the common good, according to his/her own abilities and the needs of others, also promotes and assists the public and private institutions dedicated to bettering the conditions of human life. To fulfill these sacred obligations and duties, individual persons and associations ought to cultivate in themselves the moral and social virtues through education and promote them in society.¹³⁰

Indeed, it is stated in *GS* that the Church has the duty to protect human dignity and promote human rights, cultivate the unity of the human family, and offer a sense of meaning to all aspects of human activity in concrete ways in our shared social life. The church is called to political engagement in order to protect human dignity.¹³¹

According to this view of *GS*, the support for human rights does not require abandonment of the Catholic tradition's deep sensitivity to the importance of communal solidarity for human flourishing. This development has made the Catholic community of the post conciliar period one of the world's most vigorous advocates of human rights. Not only does *Gaudium et Spes* praise the work of the United Nations on human rights protection, but the Pontifical Council for Justice and Peace was established in 1968 by Pope Paul VI and it focused on human rights work in the early years of its establishment.¹³² No less important is that, since then, many local church-

¹²⁸ *Gaudium et Spes*, *supra* note 127, at no. 25.

¹²⁹ *Id.* at no. 27.

¹³⁰ *Id.* at no. 31.

¹³¹ KRISTIN E. HEYER, *PROPHETIC AND PUBLIC: THE SOCIAL WITNESS OF U.S. CATHOLICISM* 32 (2006).

¹³² Pope Paul VI founded the Commission *Justitia et Pax*, now known as the Pontifical Council for Justice and Peace. Its work on human rights can be seen in *PONTIFICAL COMMISSION JUSTITIA ET PAX, THE CHURCH AND HUMAN RIGHTS*, Working Paper No.1 (Vatican City: Commission *Justitia et Pax*, 1975). In 1998, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights, the Council held a World Congress on the Pastoral Promotion of Human Rights with representatives from all over the world. *See* Pontifical Council for Jus-

es all over the world have established their own Justice and Peace Commissions, which are concerned about social justice and human rights.¹³³ Many lay and religious people were also inspired to become involved in the human rights movement and educational work, as seen in different places.¹³⁴

D. *Spiritual Goods and Material Goods*

The United Nations and the international community often categorize human rights according to two big groups of rights, namely 1) civil and political rights and 2) economic, social and cultural rights. John Paul II defined them differently in his address to the U.N. General Assembly in 1979.¹³⁵ He spoke of rights to spiritual values and rights to material values,¹³⁶ urging that both must be protected and provided, as all persons requires both resources to flourish fully.¹³⁷ Although inseparable, he argued for the primacy of the spiritual goods – rights of conscience, speech, thought, and religious freedom – for they define the proper sense of earthly material goods and the way to use them.¹³⁸ They also ensure that material development, technical development and the development of civilization will

Justice and Peace, *Human Rights and the Pastoral Mission of the Church*, WORLD CONGRESS ON THE PASTORAL PROMOTION OF HUMAN RIGHTS (Rome, July 1-4, 1998).

¹³³ For example, in Europe, the European Conference for Justice and Peace is an alliance of thirty national Justice and Peace Commissions, working for the promotion of justice, peace, and respect for human dignity. For details, please refer to the website <http://www.juspax-eu.org/en/who-we-are/index.shtml?navanchor=1210000>. In Asia, there is a network among Asia-Pacific justice and peace workers of about ten to fifteen places in which many are volunteer members or full-time workers of national Justice and Peace Commissions or Justice and Peace groups of religious congregations. See also Christiansen, *supra* note 94, at 237-238.

¹³⁴ Christiansen, *supra* note 94, at 238.

¹³⁵ Address of His Holiness John Paul II to the 34th General Assembly of the U.N., no. 14-16 (Oct. 2, 1979), http://www.vatican.va/holy_father/john_paul_ii/speeches/1979/october/documents/hf_jp-ii_spe_19791002_general-assembly-onu_en.html [hereinafter Address of His Holiness John Paul II].

¹³⁶ *Id.* at no. 14.

¹³⁷ *Id.*

¹³⁸ *Id.*

be at the service of what constitutes human beings.¹³⁹

Pope John Paul II also points out the difference between the two. Spiritual goods are unlimited, indestructible with immortal worth, whereas material goods – food, housing, health care – can become scarce, not easily distributed, and give rise to tension, division and even conflict between those who possess and enjoy them and those who are without them.¹⁴⁰ Speaking in different categories than the international community usually employs, Pope John Paul II wanted to highlight the inner complexity and significance of human rights and the role the Church can play in promoting and advancing human rights.

E. Solidarity as Principle and Virtue for the Common Good

As David Hollenbach argues, the key point of divergence of *GS* from the United States and the Western liberal traditions understandings of human rights, is that rights are understood in the Catholic tradition in light of the social nature of the human person and in a framework of solidarity.¹⁴¹ This stress on the communal rather than individualist grounding of rights, Hollenbach further points out that, leads contemporary Catholic discussions of constitutional democracy and market capitalism to diverge in notable ways from liberal, individualistic approaches to political and economic life.¹⁴²

In Pope John Paul II's social encyclicals and speeches, we can see the continuation of such rights language, with a stress on the principle, attitude, virtue and duty of solidarity. Such emphasis is most explicit in the 1988 encyclical *Sollicitudo rei socialis* (On Social Concern), highlighting that all human beings can appreciate the interdependence of the world and the need to respond to that interde-

¹³⁹ Address of His Holiness John Paul II, *supra* note 135.

¹⁴⁰ *Id.*

¹⁴¹ See David Hollenbach, *Commentary on Gaudium et Spes*, in *MODERN CATHOLIC SOCIAL TEACHING: COMMENTARIES & INTERPRETATIONS* 280 (Kenneth R. Himes ed., 2004).

¹⁴² *Id.*

pendence in a spirit of solidarity.¹⁴³ Moreover, solidarity is also a Christian virtue with many links to Christian charity, with the dimensions of total gratuity, forgiveness, and reconciliation.¹⁴⁴ With the emphasis on solidarity as a Christian virtue, it is stated that:

One's neighbor is then not only a human being with his or her own rights and a fundamental equality with everyone else, but becomes the living image of God the Father, redeemed by the blood of Jesus Christ and placed under the permanent action of the Holy Spirit. One's neighbor must therefore be loved, even if an enemy, with the same love with which the Lord loves him or her; and for that person's sake one must be ready for sacrifice, even the ultimate one: to lay down one's life for the brethren.¹⁴⁵

Thus, according to Pope John Paul II, solidarity is a firm and persevering determination to commit oneself to the common good. If we are in a world that is in a stage of interdependence and that calls us to recognize each other as equal in dignity, then this relationship in solidarity will direct us to the good of all. This is because what hurts one hurts all and what is helpful to each one is helpful to all, to such an extent that it involves not only persons but also the integrity of creation. The very nature of the common good requires that all members of the political community be entitled to share in it, although in different ways according to each one's tasks, merits and circumstances. Thus, solidarity is not only "a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far".¹⁴⁶ Solidarity must be practiced between individuals, professions, classes, communities, and nations, as all must be committed to the common good and to overcoming the alienation and injustice that oppresses so many people.

¹⁴³ Pope John Paul II, *Sollicitudo rei socialis*, PAPAL ARCHIVE, no. 40 (Dec. 30, 1987), http://www.vatican.va/edocs/ENG0223/_P6.HTM., at no. 38 [hereinafter Pope John Paul II, *Sollicitudo rei socialis*].

¹⁴⁴ Curran, Himes & Shannon, *supra* note 113, at 429.

¹⁴⁵ Pope John Paul II, *Sollicitudo rei socialis*, *supra* note 143, at no. 40.

¹⁴⁶ *Id.*, at no. 38.

Employing solidarity as a virtue underscores the need for a change of heart on the part of the wealthy nations and their citizens, as well as, a change of structures, so that one can commit oneself to the common good and integral development of all women and men.¹⁴⁷ Solidarity calls for the Church and all to take their place beside the poor and to satisfy the just demands of the poor without losing sight of the common good; the stronger need to share with and be responsible for the weaker.¹⁴⁸ At the international level, solidarity stands in opposition to any form of imperialism or hegemony of the rich and powerful nations over the poor nations. *SRS* thus sees solidarity as “the path to peace and at the same time to development”.¹⁴⁹ It is human, social and world solidarity in the service of the common good.

In fact, Pope John Paul II conducted a philosophical analysis of the concept of solidarity when he was still Cardinal Karol Wojtyła, archbishop of Krakow. He published a study entitled *Osoba i Czyn* (The Self and the Act) in 1969 in which he illustrated how the notion of solidarity related to participation by people in the building of community.¹⁵⁰ In that work, he contends that solidarity does not always exclude opposition and confrontation. Rather, it is an expression of the vital need for participation, especially in a community of action, and such opposition has to be viewed as constructive. He points out that a balanced social structure must facilitate the expression of opposition. For Pope John Paul II, dialogue is one tool that helps ensure that opposition is not cut off, since at times opposition can also be a way of human solidarity.¹⁵¹ This interpretation of solidarity is significant in *Laborem Exercens*, a papal encyclical on the meaning of labor in 1981, which speaks of the activity of workers in an unjust and exploitative system as pointing towards unity and community without excluding confrontation.¹⁵² It is crucial for the

¹⁴⁷ Pope John Paul II, *Sollicitudo rei socialis*, *supra* note 143, at no. 38.

¹⁴⁸ *Id.* at no.39

¹⁴⁹ *Id.*

¹⁵⁰ KAROL WOJTYLA, *OSOBA I CZYN (THE SELF AND THE ACT)* (1969). Quoted from Dorr, *supra* note 93, at 304-305.

¹⁵¹ DORR, *supra* note 93, at 304-305.

¹⁵² Pope John Paul II, *Laborem Exercens* (1981),

rights of association and freedom of expression or speech. In *LE*, solidarity is used in the broader sense to indicate the role of worker solidarity and the struggle for justice and common good.¹⁵³ Solidarity of workers must always be a constructive factor of social order and human solidarity.¹⁵⁴ These insights demonstrate the common interests and shared responsibilities that are inherent in human rights thinking and implementation.

In the view of the above, I affirm that Catholic social teachings not only employ legal language of human rights, they also inherit the natural law tradition and begin to develop an ethic stressing the significance of virtue. Thus, they have both commonalities and differences with both Confucian virtue ethics and human rights legal discourse.

To conclude this section, the evolution in official Catholic approaches to freedom, equality, and social participation best demonstrate that living traditions can learn from others and develop or change. From its acceptance of rights language as an ethical discourse, and the development of religious freedom and a Catholic theory of human rights with its own characteristics, the possibility of transformation and appropriation of an existing ethical discourse with respect to its own language and tradition is made evident. This is demonstrated through its understanding of the social and communitarian nature of the human person, its critical attitude towards individualism and Western liberalism that fails to recognize human solidarity and human community, the importance of cooperation at the individual and international level, the integration of rights with the common good, and the usage of different categories in the rights language. Such transformation and appropriation can have an important impact on human flourishing and the building of a better world.

http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens_en.html.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at nos.8, 20.

*IV. Cross-Cultural and Cross-Religious Insights
on Human Rights*

Having examined Confucian and Catholic thought and the ways their teachings can help to translate the values of human rights, I would like to raise some points that emerge from the above discussion, which help us understand human rights in cultural and religious terms. This can be an intercultural way of understanding human rights.

Firstly, although no obvious rights language is used in Confucian ethics, it shares some commonalities with the U.N. human rights discourse and the rights discourse in Catholic social teachings, especially relating to upholding human dignity and respecting individual freedom. For example, the overarching concept of *ren*, or benevolence, with an altruistic direction in Confucian thought, that defines a person's relationships with others, not only within the role-based framework, but also toward other people's suffering, is of utmost importance in building a society with care and love, which is also valuable in human rights ethics. With this notion of *ren*, one will appreciate more the contextual self and role-based ethics of reciprocal relationships in Confucian thought. Through living out these socially grounded relationships, an individual affirms, rather than loses his or her identity. On the other hand, the Catholic theory of human rights, which is quite different from the western liberal tradition, emphasizes both rights and responsibilities of human persons, although it respects each individual self. Due to its understanding of the social and communitarian nature of the human person, it stresses the cooperative spirit among individuals, among groups and among different countries for the common good as a whole. These interpretations are comparable to the idea of contextual self and responsibilities of rulers and individuals in Confucian ethics, although the ways of expression are not the same.

Secondly, related to the above point, there is no one absolute way to express upholding human dignity and human rights in a pluralistic world. These concepts can be expanded, enriched and reinterpreted through other cultural and religious expression or language. For example, although Catholic Church leaders have praised

the work of human rights by the United Nations, they employ distinctive religious categories of rights – rights to spiritual and material values – apart from the usual secular categories. Moreover, the highlight of the concept and virtue of solidarity in many of the recent papal social encyclicals underscores both the significance of change of heart in individuals and transformation of social structure. Such understanding of solidarity also implies the importance of social participation, freedom of expression and association, and a concrete commitment to the common good of every individual and country.

On the other hand, the concept of relationship between the ruler and the people under a benevolent government with a virtuous ruler in early Confucian thought highlights the significance of a virtuous leader in bringing peace and security to people and treating people with respect and care. The notion of harmony and the concept of governance through moral persuasion in Confucian thought coincides with the human rights notion of freedom of expression. All these Confucian concepts can reflect and enrich meanings of human rights.

It is true that there are differences between Confucian ethics and Catholic social thought, nevertheless, their common emphasis on the social and communitarian nature of human persons, the bringing together of rights and responsibilities, the nurturing of virtues, and most of all, the caring for and benevolence towards others, open the possibility for these ethical traditions to dialogue and learn from each other when addressing issues relating to human dignity and freedom, human good and human rights.

Finally, as stated above, the development of a Catholic theory of human rights with its own characteristics shows that any ethical discourse, as a living tradition, can develop and adjust its expression or refine its concept and understanding of certain values, in the view of contemporary social reality and intellectual development. The Catholic social teachings offer a good example of renewing its understanding and expression of human dignity and human freedom. Modern Confucian scholars can also explore the related meanings of human rights in their tradition. Western notions of human rights can also refine the understanding of self and individual from the experi-

ence and teachings of other cultures and religions.¹⁵⁵ That development and reinterpretation can facilitate dialogue and offer concrete protection to the underprivileged.

Conclusion

Different countries have their own cultural and religious traditions for sustaining human flourishing and building a good society. Since 1948 and the proclamation of the Universal Declaration of Human Rights by the United Nations, human rights discourse has become one of the global ethical discourses for upholding human dignity. Because of its global usage, it is worth examining the common values between U.N. human rights discourse and other ethical traditions or the human rights values in other cultural and religious traditions. In this paper I have examined the human rights values of Confucianism and the development of human rights discourse of Roman Catholic tradition, so as to uncover those elements which are useful in upholding human dignity and freedom, including freedom of conscience and expression in China.

From the above analysis, although we can see differences in expressing human rights values in Confucian thought and Roman Catholic tradition, they offer great resources for human right reinterpretation. Since religion and culture play a central role in the lives of countless individuals, these religious and cultural resources are of utmost importance in understanding human rights discourse or any other ethical discourse which claims to have global and universal implications. Putting aside the political factor and unnecessary argument, if the common values of caring for human persons and re-

¹⁵⁵ Some Catholic scholars raise this issue of enculturation of human rights and cultural colonialism, always asking the non-Western tradition to develop its own distinctive conception of certain Western (and, in particular, Christian) notions (such as “rights”). See James T. Bretzke, *Human Rights or Human Rites: A Cross-Cultural Ethical Perspective*, 41 *EAST ASIAN PASTORAL REV.* 1 (2004), available at <http://eapi.admu.edu.ph/content/human-rights-or-human-rites-cross-cultural-ethical-perspective>; Lucas Chan, *Bridging Christian and Confucian Ethics: Is the Bridge Adequately Catholic and Asian?*, 5 *ASIAN CHRISTIAN REV.* 1 (2011).

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specting each other are recognized and affirmed, I believe that Chinese people, and other people in the world at large, irrespective of their cultural and religious background, would benefit and their freedom of conscience would be upheld.