

Research Note

**Human Rights Are Human Rights: Asian Values,
Chinese Characteristics and Universal Values**

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1. Preface – Human Rights: Chinese Emperor’s New Clothes

In April 2015 investigative journalist Gao Yu (高瑜) was convicted of “leaking state secrets” for allegedly sending Document Number 9 by e-mail to *Mingjing News* (明鏡新聞) in the United States of America and was sentenced to seven years in prison. The so-called “state secrets” Document Number 9 was actually issued in May 2013 by the Chinese Communist Party and not by any government sector. The fact discloses that China’s ruling party and state cannot be separated clearly. Document Number 9, titled “Communiqué on the Current State of the Ideological Sphere” (《關於當前意識形態領域情況的通報》) lists seven threats to the legitimacy of the Chinese Communist Party. These seven threats or “don’t mention” (七不講) which were prohibited for university professors and lecturers to be raised with students are: universal values, press freedom, civil society, civic rights, historical mistakes by the Communist Party, elite cronyism, and an independent judiciary (Ho, 2015).

The Chinese Communist Party is apparently hostile to universal values, especial press freedom, civil society, civic rights and independent judiciary, although the Information Office of the State Council of the People's Republic of China just issued a white paper *Progress in China's human rights in 2014* on June 8. Gao Yu told a truth to the world that the Chinese emperor does not wear any new clothes – that is the reason why the Chinese emperor was so angry and wanted to put her in jail.

2. Asian Values and Chinese Characteristics

In 1993 Asian states' ministers met in Bangkok to discuss human rights problems comprehensively for the second World Conference of Human Rights held for the post-Cold War time in Vienna. The Asian Human Rights Conference adopted the *Bangkok Declaration*, reaffirming their governments' commitment to the principles of the *United Nations Charter* and the *Universal Declaration of Human Rights*. They stated their view of the interdependence and indivisibility of human rights and stressed the need for universality, objectivity, and non-selectivity of human rights. At the same time, they emphasized the principles of sovereignty and non-interference, calling for greater emphasis on economic, social, and cultural rights. However, the *Bangkok Declaration* tries to advance a new perspective of human rights, which is called "Asian values", and offers an alternative vision of national development.

Unfortunately the advocates of Asian values are some authoritarian regimes' leaders. They are Malaysia's Mahathir bin Mohamad, Singapore's Lee Kuan Yew (李光耀), Indonesia's Muhammad Suharto and China's Jiang Zemin (江泽民). They defamed universal values, indicted the Western world for using these concepts as excuse to operate and interfere in the Third World. They argued and endeavored to

differentiate Asian values of human rights from Western universal values. They claimed that Asian values are based on communitarianism, and by contrast, Western universal values are based on individualism or egocentrism (Tseng, 1999). Following the discourse, “socialism with Chinese characteristics” is the Chinese edition of “Asian values” and deemed suitable for China’s national condition.

But is it true that universal values are based on individualism or egocentrism under Western cultural tradition or imperialist and new colonialist political conspiracy?

3. Recalling History as Proof

In fact, the *Universal Declaration of Human Rights* is shared with Chinese jurisprudence. The Republic of China (中華民國) is a founding member of the United Nations and was appointed to join the *Universal Declaration of Human Rights* drafting committee. Chang Peng Chun (張彭春) was China’s representative and served as vice-chairman of the original UN Commission on Human Rights. Chang Peng Chun and Lebanese philosopher-diplomat Charles Malik were delegated the shared ideals of universal human rights, and both of them were the philosophical leaders of the deliberations. Chang argued that the modern world should pay heed to Chinese philosophers such as Confucius (孔子) and Mencius (孟子) not because they were Chinese, but because their ideas had universal validity.

Mencius said, “The ability possessed by men without having been acquired by learning is intuitive ability, and the knowledge possessed by them without the exercise of thought is their intuitive knowledge.” He believed that every man has intuitive ability and intuitive knowledge. For the latter, he said elsewhere, “All men have a mind which cannot bear to see the sufferings of others.” He proved the existence of

commiserating mind by an illustration: if men suddenly see a child about to fall into a well, they will without exception experience a feeling of alarm and distress. Chang Peng Chun persuaded the drafting committee to accept the concept of man's innate goodness, intuitive knowledge or commiserating mind – that is why the Article 1 of the *Universal Declaration of Human Rights* provides that all human beings are endowed with conscience.

Western world believes that man is a rational animal. Ancient Greek philosopher Aristotle discovered in his *Nicomachean Ethics* that the human species has an ability to reason, a capacity for reasoning. Originally the drafting committee defined the characteristic of humanity as its rationality, but China's delegate Chang Peng Chun disagreed, because rationality is usually connected with economic rationality, which means interests calculating without value enhancing. If people were only concerned about rationality, there would be a risk of neglecting morality in the state's activities. China's delegate Chang Peng Chun tried to propose a philosophical source of Confucian communitarianism for the *Declaration* – the vision is as that from the standing point of human beings' intuitive conscience: "Children carried in the arms all know to love their parents, and when they are grown a little, they all know to love their elder brothers; filial affection for parents is the working of benevolence, respect for elders is the working of righteousness. There is no other reason for those feelings – they belong to all under heaven." Every feeling is endowed by heaven, as every creature is made by God, then it is concluded that all within the four seas will be brothers. Subsequently the Article 1 of the *Universal Declaration of Human Rights* provides that all human beings should act towards one another in a spirit of brotherhood. That is to say, various rights would appear more selfish if they were not preceded by the reference to a spirit of brotherhood. The spirit of brotherhood requires

people to be kind and considerate in their treatment of others – that is Confucian idea of benevolence (Twiss, 2011: 111-112).

4. Modern Interpretation of Confucian Communitarianism

We should realize that Confucianism is a kind of communitarianism – its view of the world is built on family relationship, and by extending the family relationship to social relationship and the relationship between citizen, civil society and state, so it seems that the world is a big family, with different members of the family having their respective specific roles, and different social roles having different determined social norms. Confucianism emphasizes the rectification of names, which means that to identify people's position in social relationship network is to identify everyone's rights and duties. So Confucius said, "Let the king be a king, the minister a minister, the father a father and the son a son." If anyone disobeys the norm of his social role, he is immoral and illegitimate, and would be condemned and isolated by his social relation network. For that, Mencius said, "He who outrages the benevolence proper to his nature, is called a robber; he who outrages righteousness, is called a ruffian. The robber and ruffian we call a mere fellow. I have heard of the cutting off of the fellow Zhou, but I have not heard of putting a sovereign to death, in his case." Even to sovereign, king, prince, if they disobey their obligation, they are only an ordinary fellow, who has no privilege to be free from being punished. Hence, Confucianism takes human beings as the essential, and opposes blindly obeying any ethic or political authority.

Confucius said, "A gentleman gets along with others, but does not necessarily agree with them." That is Confucian tolerance and value relativism. Regarding Confucian communitarianism, human beings' diversity should be respected in a harmonic way. As the Article 18 of the

Declaration provides: “Everyone has duties to the community in which alone the free and full development of his personality is possible. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

No one by his moral subjectivity must subdue any authority. At the same time, no one can claim he is absolute authority. Just like the thought of Voltaire: “I disapprove of what you say, but I will defend to the death your right to say it.” So Mencius said, “It is impossible that any one should become ruler of the people to whom they have not yielded the subjection of the heart.” Confucianism wishes world harmony without oppression.

Traditional Confucianism prevailed in feudal agricultural time; certainly traditional Confucianism had no contemporary ideas of human rights, but it does not mean that Confucianism is totally opposed to human rights. However, Confucian communitarianism has become a philosophical base of contemporary international legal system of human rights, so logically modern universal concept of human rights must include the spirit of eastern Confucian communitarianism. The question is how the contemporary international legal system of human rights is to express the spirit of Confucian communitarianism correctly and reasonably.

In my opinion, there are three suitable ways to express the Confucian communitarian spirit in universal human rights system:

1. Regarding intuitive conscience, everyone is subject for moral and value judgment, so men are created free and equal to be the subject of personality and human rights. The status should be protected and

safeguarded by the state.

2. Everyone has the right to choose his own value judgment for his legal interests or public goodness; the right is along with social responsibility. Who can judge the idea or thinking? Only people's reason and conscience.
3. The practice of modern communitarianism is to support the ideal of "human rights outmatching sovereignty". This is because modern sovereign and king has no absolute authority on values and interests. All the oppressed and discriminated are our brothers; the United Nations and international society have the responsibility to prevent oppression and discrimination by improving the human rights condition.

5. Rule of Law: Safeguarding Mechanism of Human Rights

Protecting natural human rights is the most important reason for people to form a social contract for state-building. Therefore, according to people's request through constitutional text, the state should promise to guarantee the total fulfilment of human rights. State's legal system is the tool for protecting people from the state's unfair and unreasonable interference. So, if it is necessary, the propositional restriction on human rights is only allowed by the legal reservation principle, which means that only the people own reserved initiative or legal power to agree on the necessary and limited state restriction on human rights through legislative procedure. The purpose and method of the state restriction on human rights will and should be recorded in law, and solely in law. That is why the subsection 2 of the section 29 of the *Universal Declaration of Human Rights* provides that: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the

rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.

In China, the draft *Constitution of the Republic of China* of 1936 did not actually realize the difference of meaning between “by law” and “by constitution” for guarantee of human rights, thus its wording of all human rights are “guaranteed by law”. It will bring many threats to human rights. Because law is easily amended by the majority of parliament, but human rights issue is unrelated to majority and voting. Human rights are rooted in equal and inalienable personality of all members of the human family. Therefore, when the Constituent National Assembly of the Republic of China formulated the *Constitution* in 1946, the words “guaranteed by law” were thoroughly deleted, and the legal reservation principle was embodied in the Article 23: “All these rights and freedoms may be restricted by statute laws”, that is, the power to restrict individual freedom is solely entrusted to the legislature based on constitutional requirements (Chen, 2000: 111). In other words, the function of the rule of law is for protecting people’s human rights and restricting state’s act.

There is no strict legal reservation principle in modern Mainland China. Article 9 of the *Legislation Law of the People’s Republic of China* authorizes the National People’s Congress and the Standing Committee thereof to have the power to make a decision to enable the State Council to enact administrative regulations on the sphere where only national law may be enacted in respect of matters relating to human rights. But that is not the most serious problem. The fundamental problem is the constitutional basic principle of the leadership of the Communist Party of China. The organized system of the Communist Party of China is based on democratic centralism. Democratic centralism stresses that all decisions of higher bodies shall be absolutely binding on lower bodies and on all party members. Up to now, the Communist Party

of China has not implemented out-and-out inner-party democracy, for the reason that party member has no free will to participate in the election of party representatives and leaders at all levels and has to subdue the superior indication of voting. So democratic centralism in China is equal to an oligarchy with only democratic formality, which is the so-called “socialist democracy with Chinese characteristics”. Because of the leadership of the Communist Party of China, all the state organs are controlled by the Communist Party of China. The Communist Party of China leads and controls the National People’s Congress, and then the National People’s Congress leads and controls executive power and the judiciary. Party is equal to state, state is party. There is no distinction between the Communist Party of China and the state of the People’s Republic of China. Due to the judiciary being controlled by the Communist Party of China, and all of the committees on political and legal affairs of the Communist Party of China allow Communist Party officials at every level to decide politically sensitive cases in advance and out of court, it is impossible for the judiciary to confront the will and act of the party-state. If people’s human rights are interfered by the party-state, no independent judiciary can afford ultimate protection of human rights. The rule of law needs to be distinguished from the rule by law where the law and institutions are used to protect the interests of the powerful party-state. May we conclude that the rule of law with Chinese characteristics is more like the rule by law in practice? (Tibetan Centre for Human Rights and Democracy, 2015: 29)

6. Epilogue

The Buddha said, “All creatures are equal.” The spirit is along with Confucian communitarianism and universal values in international system of human rights. Chinese Communist Party insists that its

leadership is the constitutional principle of China, and the combination of the universal principle with China's national conditions will safeguard Chinese people's human rights. But how does it own the absolute authority in judgment of China's national conditions? The answer is not found in logical reasoning but arbitrary violence of the powerful.

Note

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