

Making Sense of the Idea of 'Human Rights with Chinese Characteristics'

YITIAN ZHANG

LANCASTER UNIVERSITY



FEBRUARY 2025

This dissertation is submitted to Lancaster University for the degree of Doctor of Philosophy

ABSTRACT

China's divergence from the mainstream human rights position is often explained simply in terms of a rejection human rights. This PhD, by way of contrast, takes seriously the possibility of human rights relativism (i.e., that there can be different versions of 'human rights'), and the importance of culture on those visions of 'human rights'. This PhD first details the PRC's divergent positions on human rights, reflected in the claims that China is on its 'own path' of human rights, the importance of non-interference, the priority of economic development, and the pre-eminence of the collective interest. The work then locates this discussion within the wider debate on human rights universality versus cultural relativism. It then examines in detail the extent to which these policy positions can be explained by the cultural (or philosophical) influences on China: Confucianism and Marxism. The analysis demonstrates that the PRC's policy of 'Human Rights with Chinese Characteristics' reflects elements of both Confucianism and Marxism, and that the two philosophies are organically integrated and jointly function within human rights with Chinese characteristics.

CONTENTS

ABSTRACT	2
ACKNOWLEDGEMENTS.....	3
DECLARATION	4
Introduction Chapter.....	5
I. Why is China's human rights policy worthy of debate?	8
II. Why does the research question matter?	13
III. My Approach and Contribution to Knowledge	17
IV. Brief Outline of Each Chapter.....	20
Chapter 1: Human Rights with Chinese Characteristics (HRCC)	24
1.0. Introduction	24
1.1. Term on 'Human Rights with Chinese Characteristics (HRCC)'	25
1.2. China's Official Statement	26
1.2.0. Four Different HRCC's Characteristics	29
1.2.1. China has its own path.....	29
1.2.2. Non-interference principle	34
1.2.3. China prioritizes the right to subsistence and development.....	37
1.2.4. China values the common interests of collective human rights.....	41
1.3. Engagement with Human Rights Treaties	46
1.3.0. Four Different HRCC's Characteristics	46
1.3.1. China has its own path.....	47
1.3.2. Non-interference principle	52
1.3.3. China prioritizes the right to subsistence and development.....	55
1.3.4. China values the common interests of collective human rights.....	60
1.4. Interaction with Universal Periodic Review (UPR)	63
1.4.0. Four Different HRCC's Characteristics	63
1.4.1. China has its own path.....	64
1.4.2. Non-interference principle	67
1.4.3. China prioritizes the right to subsistence and development.....	70
1.4.4. China values the common interests of collective human rights.....	73
1.5. Conclusion: What are 'Human Rights with Chinese Characteristics'	76
Chapter 2: Cultural Relativism	83
2.0. Introduction	83
2.1. Background: Where human rights debates come from?.....	83
2.2. Dialogue between universalism and relativism	87

2.2.1. Universalism Revisited: Aspirations and Limitations	88
2.2.2. Cultural Relativism and Its Moral Boundaries	93
2.2.3. Summary: Cultural Relativism as a Practical Challenge and Resource	107
2.3. A representative of cultural and regional particularities: Asian Values.....	108
2.3.0. Introduction: Why revisit the old debate?.....	108
2.3.1. What are 'Asian Values'?.....	110
2.3.2. 'Asian Values' and Human Rights in Asia	116
2.3.3. International response and implications	121
2.3.4. Asian Values' dilemma	126
2.4. Conclusion: Asian Values Fail to Explain HRCC	134
Chapter 3: Human Rights in Confucianism	136
3.0. My Methodology	136
3.1. Introduction	137
3.2. What is Confucianism?	139
3.2.1. Main Representatives of Confucianism	140
3.2.2. Development of Confucianism	142
3.2.3. Confucianism's Compatibility with Difference	147
3.3. Confucianism influenced Chinese culture	150
3.3.1. Confucianism's 'rights' mode.....	151
3.3.2. Virtue-based Philosophy	155
3.3.3. Duty-based Philosophy	159
3.3.4. Welfare duty of government.....	163
3.4. Confucianism on HRCC.....	171
3.4.1. Confucianism's unique approach to human rights	171
3.4.2. Non-interference in Confucianism.....	173
3.4.3. Confucianism on Priority Economic Development	175
3.4.4. Confucianism on collective interests	181
3.5. Conclusion.....	187
Chapter 4: Human Rights in Marxism.....	188
4.0. Introduction	188
4.1. Marxism on Rights	189
4.1.1. Marx's biography, key writings.....	189
4.1.2. Marx on 'rights'	192
4.1.3. Soviet Marxism on Rights	195
4.1.4. Chinese Marxism on Rights.....	197

4.2. Marxism on Own Path	202
4.2.1. Marx on Own Path	202
4.2.2. Marxism on Own Path	205
4.2.3. Chinese Marxism on Own Path.....	207
4.3. Marxism on Non-intervention	211
4.3.1. Marx on Non-intervention	211
4.3.2. Marxism on Non-intervention	214
4.3.3. Chinese Marxism on Non-intervention.....	217
4.4. Marxism on Priority Economic Development	221
4.4.1. Marx on Priority Economic Development.....	221
4.4.2. Marxism on Priority Economic Development	223
4.4.3. Chinese Marxism on Priority Economic Development	226
4.5. Marxism on Priority Collective Interests.....	233
4.5.1. Marx on Priority collective interests	233
4.5.2. Marxism on Priority Collective Interests.....	235
4.5.3. Chinese Marxism on Priority Collective Interests	236
4.6. Conclusion:.....	240
Chapter 5: HRCC is a Combination of Confucianism and Marxism	242
5.0. Introduction	242
5.1. HRCC Between Confucianism and Marxism	246
5.1.1. Consistency	247
5.1.2. Limitations of Confucianism and Importance of Marxism	251
5.1.3. Can Marxism Replace Confucianism in HRCC?	258
5.2. Confucianism and Marxism Jointly Influence HRCC	264
5.2.1. Inconsistency.....	264
5.2.2. A Combination of Two	267
Conclusion: Understanding HRCC in the Philosophical Way	275
Final Thought	279
Bibliography.....	282

ACKNOWLEDGEMENTS

This work marks the end of a long and memorable journey that I could not have completed without the dedicated support of my supervisors. My heartfelt thanks go to my supervisor, Prof. Steven Wheatley, for his consistent and helpful support throughout my PhD journey. I want to thank him for his patience, help, empathy, and academic profession. He provided me with excellent chances in academic teaching, and he also spent a significant amount of time reviewing my papers and providing me with constructive feedback to help me better my work. Furthermore, I am grateful to my co-supervisor, Dr Lu Xu, who encouraged me to focus on my area of interest and provided me with many academic resources to participate in research, teaching, and conferences. I consider myself lucky to have benefited from the knowledge and character of both my supervisors.

I would like to thank my lovely husband, Bing, for his unwavering support; he never stopped encouraging me and stood by me through all of the hardships I had endured. His love and dedication allowed me to concentrate on my research and complete my work. I would also like to thank my dear parents, who have gotten me here.

DECLARATION

This dissertation is submitted to Lancaster University in support of my application for the Doctor of Philosophy degree. It has been composed by myself and has not been submitted in any previous application for any degree.

Introduction Chapter

This work examines how to understand human rights with Chinese characteristics, which are beyond the mainstream Western human rights thinking. Through the research method of cultural relativism, this essay uses Confucianism and Marxism to examine human rights with Chinese characteristics. First, the essay systematically analyses China's foreign human rights materials and summarises the four basic principles of China's human rights policy as constituting 'Human Rights with Chinese Characteristics' (HRCC). Secondly, the article reflects on the importance of cultural relativism to the human rights approach. Then, looking at Confucianism and Marxism, it reveals the underlying cultural and ideological logic behind China's approach to human rights and concludes that HRCC reflects both elements of Confucianism and Marxism. This study changes the perspective from adherence to Western human rights norms to an in-depth understanding of China's unique approach to human rights through its philosophical underpinnings. Taking into account the Chinese context, it concludes that Confucianism and Marxism have interplayed and jointly influenced the formation of HRCC. The originality of this paper is that the combination of Confucianism and Marxism forms human rights with Chinese characteristics, and the conflict between human rights with Chinese characteristics and mainstream Western human rights is philosophical rather than political.

The differences between Western and Chinese understanding of human rights are deep-rooted and long-standing. For centuries, Western human rights thinking has centred on individualism, with all human beings having inherent and inalienable rights, as held in the doctrine of natural rights. The principle is enshrined in the modern international system and dominates global human rights norms. Article 1 of the Universal Declaration of Human Rights emphasises that 'all human beings are born free and equal in dignity and rights.'¹ The mainstream concept of the United Nations is believed to have originated in the Vienna Declaration and Programme of Action adopted at the World

¹ Art.1, Universal Declaration of Human Rights.

Conference on Human Rights in 1993.² This was the first World Conference on Human Rights after the Cold War. Although the mainstream concept of human rights does not appear in the United Nations Charter, some of its articles, such as Article 1(3), refer to it. Of particular importance in the Vienna Declaration and Programme of Action are Articles 5 and 8. The former reflects the universality and indivisibility of human rights as the inherent rights of human beings, emphasising that regardless of differences in political, economic and cultural systems, it is the duty of all countries to protect all human rights and fundamental freedoms.³ The latter reflects the international community's consensus on the interconnection between human rights, democracy and development, emphasising the right of people to express their will to determine their own political, economic, social and cultural systems, and that countries must not impose conditions in their implementation.⁴ The Vienna Declaration emphasises and continues the original intention of the Universal Declaration of Human Rights: that the core of human rights is the human being, and that human rights are universal and come with no additional conditions.

In contrast, China's approach to human rights tends to deviate from current mainstream human rights norms, prioritising collective welfare, the right to development, and the assertion of sovereignty over individual civil and political rights. Clearly, China's human rights foreign policy differs significantly from the mainstream international human rights perspectives. Mainstream human rights are universal and come without any additional conditions, while human rights with Chinese Characteristics are contextual rights, and human rights discourse can never be separated from politics, economy, society and culture. Unlike mainstream human rights, which emphasise that the individual is at the centre of human rights, in China's human rights policy, the individual is more like an indirect beneficiary under sovereignty and collective interests. Among the package of rights under the mainstream human rights framework, China has continuously highlighted the right to economic and social development. In the case of China, it opts for an approach to human rights under the socialist system that is consistent with its

² Zdzislaw Kedzia, Mainstreaming Human Rights in The United Nations in *International Human Rights Monitoring Mechanisms*, (Brill Nijhoff, 2009). 231, 232.

³ Art.5, Vienna Declaration and Programme of Action, 25 June 1993.

⁴ Art.8, Vienna Declaration and Programme of Action, 25 June 1993.

national conditions, adheres to the non-interference principle, and attaches importance to providing individuals with the economic and social rights contained in the socialist system, while at the same time obeying and defending socialism's focus on the collective interest. While human rights with Chinese characteristics are not consistent with the original aspirations of a series of mainstream human rights declarations represented by the Universal Declaration of Human Rights, it is a consensus which suggests that international human rights instruments do not reflect any particular concept of rights and do not commit to any particular political or economic system.⁵ It is, therefore, fair to say that China's human rights policy under its socialist system, like the human rights policy of the United States under the liberal democratic system, is basically 'in line with international standards'. This further suggests that the approach to human rights under different political and economic systems and socio-cultural contexts may manifest itself in different ways.

The differences are often obscured by political narratives. The international community is more concerned about the human rights situation in China. Most literature frames China's human rights as a political issue. This further highlights the need for an essential understanding of China's distinctive human rights policy. This work shifts the discussion on China's human rights policy from political criticism to philosophical exploration, reflecting that the difference between Chinese and Western concepts of human rights is a philosophical conflict rather than a political one. It systematically analyses China's foreign human rights materials and inductively derives the four basic principles of China's human rights policy, which are referred to as 'Human Rights with Chinese Characteristics' (HRCC). It attempts to reveal the cultural and intellectual logic behind China's approach to human rights, i.e., Confucianism and Marxism influenced the formation of the HRCC. This work is original in that it shifts the lens from compliance with Western human rights norms to an in-depth understanding of China's distinctive approach to human rights through philosophical underpinnings, emphasising that Confucianism and Marxism interplay to jointly influence China's human rights policy.

⁵ R. Randle Edwards, Louis Henkin and Andrew J. Nathan, The Human Rights Idea in Contemporary China a Comparative Perspective in *Human Rights in Contemporary China* (Columbia University Press 1986) 7, 29.

I. Why is China's human rights policy worthy of debate?

The classic concept of Western human rights thinking follows the principle of individualism, which means that individual rights always come first.⁶ The emergence of modern nation-states and the development of a self-concept have reinforced this individualistic and rights-oriented view. The natural rights theory holds that all human beings are born with certain rights that cannot be violated, deprived of, transferred or renounced. Such human rights are therefore considered to apply universally to all states and societies in the world.⁷ Due to the fact that Western powers constructed the modern international system, this idea of human rights has become a mainstream part of the current international human rights norms.

In contrast, in the Western human rights framework, China's human rights policy is outside the mainstream. In the eyes of many Western countries, China's values on human rights are unique and even antagonistic. During the 45th president of the United States, Donald John Trump's campaign, he called China a revisionist power that erodes American values and interests.⁸ Ruskola compares the asymmetrical relationship between European and American law and Chinese law, saying that Europe and the United States believe they are bringing universal values, while China believes it is bringing special cultural values.⁹ In Ruskola's research, he argues that Chinese law is characterised by a perception of itself as a culturally distinctive expression of universal values, which is called 'Legal Orientalism', in contrast to the United States, which believes it represents universal values.¹⁰ Cai examines the relationship between China and international law through the lens of exceptionalism, covering China's state identity and

⁶ Stephen Hopgood, Human Rights on the Road to Nowhere in Snyder J and Vinjamuri L, *Human Rights Futures* (Cambridge University Press 2017) 283, 284.

⁷ Marina Svensson, the Conception of Human Rights in the West: Historical Origin and Contemporary Controversies in *Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Publishers 2002) 21, 22.

⁸ Simon Chesterman, 'Can International Law Survive a Rising China?' (2020) 31 *European Journal of International Law* 1507, 1508.

⁹ Teemu Ruskola, 'A Reader's Guide to *Legal Orientalism*' *Ancilla Iuris* (Social Science Research Network 2022) SSRN Scholarly Paper 146, 147.

¹⁰ *Ibid.*

broad foreign policies, including foreign human rights policies.¹¹ Xue, as a Chinese jurist and judge of the International Court of Justice, describes the tortuous development of human rights in China and the Chinese perspective on human rights based on China's national conditions and historical and cultural background.¹² To be sure, there are differences in the way China and the West view human rights. The differences between China and the West in terms of human rights have given rise to some thoughts in this article.

China has always been considered the country that violates human rights the most in the world. China has been consistently criticised in the field of human rights over the past 40 years. After joining the United Nations in 1971, China started participating as an observer in the United Nations Commission on Human Rights (replaced by the Human Rights Council in 2006) in 1979 and became a member of the Commission in 1982. Nonetheless, the international community has continued to criticize China in the field of human rights. In particular, human rights NGOs¹³ have been critical of China's authorities rejecting recommendations for human rights.¹⁴ Moreover, the label of 'human rights violator' has not been entirely removed by the Hu-Wen leadership (2002-2012). China was still occasionally accused of serious human rights violations, such as the persecution of prominent human rights defenders and political dissidents.¹⁵ Although China has formally recognised many principles of public international law during this period, gradual compliance with human rights treaties has been accompanied by criticism and controversy. In recent years, the United States has continued to attack China for human rights violations in Xinjiang for crimes such as forced labour and genocide.

¹¹ Congyan Cai, State Identity and Legal Policies in *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (Oxford University Press 2019) 41, 99.

¹² Hanqin Xue, Human rights as a Cause and a Process in *Chinese Contemporary Perspectives on International Law: History, Culture and International Law* (Martinus Nijhoff Publishers 2012) 121, 167.

¹³ Such as Amnesty International expressed its concern in the Universal Periodic Report of the first Cycle in 2009, A/HRC/11/37, p.140.

¹⁴ Gerald Chan, China's Compliance in Human Rights in *China's Compliance in Global Affairs: Trade, Arms Control, Environmental Protection, Human Rights* (World Scientific Pub 2006) 173, 175.

¹⁵ Eva Maria Pils, Rule-of-Law Reform and the Rise of Rule by Fear in China in *Authoritarian Legality in Asia: Formation, Development and Transition*, edited by Chen W and Fu H (Cambridge University Press 2020) 90, 97.

China used to be a resistant responder to the international human rights system. In the early years of the new China, some Western countries refused diplomatic recognition to China, and China was then isolated in a complex international context. China adhered to the Third World view of international human rights and rejected the Western view of human rights, believing that the Western view of human rights reflected the individualism of capitalist societies.¹⁶ In the mid-1980s, human rights issues often sparked confrontations between China and Western countries. China was highly critical of human rights rules, condemning them as a tool provided by capitalist states to intervene in the internal affairs of weaker states, including China. Particularly in *Beijing Review*, China's only national English-language newspaper reflecting the official position, China accepted the UN's concerns about China's human rights abuses. Still, it rejected the protection of human rights through interference in internal affairs.¹⁷

Subsequently, China was a learner and explorer of the international human rights system. Along with the reform and opening up policy further advanced, China has embraced Western concepts of the rule of law in many areas, including human rights.¹⁸ Since then, externally, China has extensively integrated into a wide range of international relations and has become a member of most international organisations. Internally, China has put forward 'governing the state according to the law'.¹⁹ As Ruskola says, China is slowly removing the obstacles posed by its special political traditions to make way for the universal development of law, moving ever closer to the 'civilised standards' of the rule of law model advocated by the United States, which is the ultimate criterion of the constitution's suitability for integration into the international community.²⁰ However, China was still reluctant to entirely apply the Western model to realise human rights. The United States is known to be a strong advocate of civil and political rights, but in the

¹⁶ Edward Wu, 'Human Rights: China's Historical Perspectives in Context' *Journal of the History of International Law* 4.2 (2002) 335, 347.

¹⁷ Ann Kent, UN Human Rights Regime and China Before 1989 in *China, the United Nations, and Human Rights: The Limits of Compliance* (University of Pennsylvania Press 2013) 18, 35.

¹⁸ Jianfu Chen, The Transformation of Chinese Law: From Formal to Substance, 37 Hong Kong L.J. 689 (2007) 736, 737.

¹⁹ Young Nam Cho, 'China's "Rule of Law" Policy and Communist Party Reform' (2016) 40 Asian Perspective 675, 681.

²⁰ Teemu Ruskola, Introduction: Legal Orientalism in *Legal Orientalism: China, The United States, and Modern Law* (Cambridge: Harvard University Press, 2013) 1, 17.

heated debates between China and the United States in the Commission on Human Rights, China stated that it never influences and determines the actions of other countries and also rejected the United States' use of its own values to determine China's actions.²¹ At that time, China still seemed to be exploring human rights; it was not ignoring UN conventions, while at the same time explicitly not adopting the Western human rights model. Although China's attitude towards human rights still seems to have some reservations, it contrasts sharply with its view of human rights in the early years of the founding of New China.

Later, China adapted to the international human rights system. As China has increasingly established diplomatic capacity in the field of human rights, it has been confident in dealing with Western governments on human rights issues. China is recognised as a leading player in the Human Rights Council and a 'norm-shaper' in Reis's words.²² Even though China has actively integrated itself into the international human rights system, this interaction seems to be superficial. Woodman argues that China's approach to international human rights law is to deal with diplomatic affairs procedurally, and that reporting to international human rights treaty bodies is just a formality. Human rights in China are an internal matter, and international human rights obligations have little practical significance.²³

Recently, more and more scholars have observed that China has gradually transformed itself from a responder, learner, and adaptor of the international human rights system to an active participant and builder of the international human rights system.²⁴ China played an active part in the reform of the United Nations human rights mechanism and played an important role in establishing the Human Rights Council as the new

²¹ Katrin Kinzelbach, 'An Analysis of China's Statements on Human Rights at the United Nations (2000–2010)' (2012) 30 *Netherlands Quarterly of Human Rights* 299, 309.

²² Isis Sartori Reis, *China and the United Nations Human Rights Council – Understanding Processes of Socialization and Norm Shaping*. Lund University, Centre for East and South-East Asian Studies, (2016) 2, 40.

²³ Sophia Woodman, 'Human Rights as Foreign Affairs: China's Reporting under Human Rights Treaties Chinese Law' (2005) 35 *Hong Kong Law Journal* 179, 201.

²⁴ Meng Sun, Haina Lu, 'China and the Special Procedures of the UN Human Rights Council: Is China Cooperative and Can They Work Better with Each Other?' (2020) 42(2) *Human Rights Quarterly*, 357, 390.

institution.²⁵ To date, China has provided development assistance to over 160 countries and debt relief to developing countries among the G20 members; in the Global Development Initiative proposed by China at the 76th session of the General Assembly, particular weight was given to fields such as food security, which is related to the concrete well-being of the population, and clean energy, which is closely related to the subsistence and development of human beings.²⁶ The human rights position advocated by China and the human rights practices it highlights appear to differ from the traditional Western human rights view, which emphasises civil and political rights. Tom Facchiatz Watt argues that while China's position is challenging for compliance, the challenge is in the interpretation of the system's norms rather than in the human rights system itself.²⁷ Dai goes further, suggesting that China may be helping to put international human rights back on track.²⁸

China is becoming much more vocal on the international stage on the subject of human rights and engaging in debates. With Xi Jinping's speech in Geneva as a starting point, China's position on human rights has evolved from accepting human rights but seeing human rights as something imposed on China by the West to actively engaging with the international human rights system. China has traditionally not been thought of as a country that's interested in human rights. Yet, Xi Jinping (President: 2012-) made his open speech in Geneva with some interesting points. Xi's speech represents the Chinese human rights proposition, which emphasises human society and economic development and cooperation. I first intuitively recognised that this could be something new, not only providing an important perspective on human rights issues in foreign policy but also reflecting China's philosophical understanding of the nature of human rights.

²⁵ Ruijun Dai, 'China and International Human Rights Law' in Ignacio De La Rasilla and Congyan Cai (eds), *The Cambridge Handbook of China and International Law* (1st edn, Cambridge University Press 2024) 261, 272.

²⁶ Permanent Mission of the People's Republic of China to the UN, 'Remarks by Ambassador Dai Bing at the Side Event of the Group of Friends in Defense of the Charter of the United Nations on the Negative Impact of Unilateral Coercive Measures on Human Rights' on 12 October 2022 <http://un.china-mission.gov.cn/eng/hyyfy/202210/t20221013_10782627.htm> accessed 10 September 2024.

²⁷ Aining Zhang, 'The Communist Party of China's Human Rights Assertions in Its Centennial Diplomacy: An Evolutionary Evaluation Academic Forum' (2021) 20 *Journal of Human Rights* 639, 668.

²⁸ Ruijun Dai, 'China and International Human Rights Law' in Ignacio De La Rasilla and Congyan Cai (eds), *The Cambridge Handbook of China and International Law* (1st edn, Cambridge University Press 2024) 261, 268.

Whether it is the uniqueness of China's human rights policy or the transformation of China's role in the international human rights system, it means that the topic of human rights in China is worth discussing. With a population of roughly one-fifth of the world's population, China's entry into the international human rights system makes the system truly universal in its broad application. Due to China's unique historical and cultural style, there are differences in the philosophical understanding of human rights issues between China and the West. These differences may lead to different approaches to safeguarding human rights as well as implementation policies. If people's attention is focused on understanding China's human rights from a political point of view, and on magnifying the international community's concerns about China's human rights situation, they will only see the superficial phenomenon of China's unique approach to human rights, while ignoring the seriousness of the underlying logic of human rights with Chinese characteristics. A full understanding of human rights with Chinese characteristics needs to be viewed from multiple perspectives, not excluding the value of political considerations and ideological perspectives, but this article attempts to take a philosophical view. China's human rights policy is rooted in a specific historical and cultural context, which is worth discussing.

II. Why does the research question matter?

When I started researching, I found the study of China's human rights policy is more often framed as a politically relevant issue. Particularly, when China and the U.S. attack each other's human rights situation, the two sides are targeting completely different points and seem to be speaking more like their own languages. My sense is that there may be some philosophical differences between China and the West on the issue of human rights. While much of the current literature about this topic has looked at China's non-compliance with human rights from a political perspective as being valuable, it is the differences between Chinese and Western views of human rights that are at the root of the human rights debate. This inspired me to study human rights with Chinese characteristics from its philosophical underpinnings.

What are human rights foreign policies in China? China's more comprehensive official view of human rights is attributed to the 1991 White Paper on Human Rights in China. While on the one hand, China explicitly endorses the language of human rights through national documents, the White Paper, on the other hand, China has a relativist view of human rights, particularly with regard to the perception and implementation of human rights. For example, it believes that human rights fall within the scope of national sovereignty, and that their content varies according to 'historical background, social system, cultural tradition, and economic development';²⁹ and that in the implementation of human rights, the right to subsistence is the primary human right over and above other rights.³⁰ But is that all?

China is perceived to be influencing the world in its own way, operating by bringing its own ideas. China's foreign human rights policy doesn't follow the West's formula. With regard to the increased activities undertaken by China at the international level, China is practising the right to development, which it actively promotes. In China's relationship with Africa, China carries out its human rights foreign policy, treating Africa in its own unique way in contrast to the way the West has done over the past hundred years. What China has done in Ethiopia, for example, is to build infrastructure and improve the railway system, the road system, and the communication system.³¹ Controversially, a significant number of people have negative views of the rapid development that China has brought to Africa. There is a great deal of concern about China's approach to offset the negative impact on civil and political human rights by focusing on economic, social and cultural rights, such as poverty reduction.³² Yet there are those who hold a different view, such as Ethiopia's previous prime minister, Meles Zenawi, who gave a strong assertion that 'China plays an irreplaceable role in our economy. Its contribution to

²⁹ The State Council Information Office of the PRC. 'Human Rights in China' 1991. <<https://en.humanrights.cn/1991/11/30/800fc09d948848069d95f86433700d6d.html>> accessed 18 December 2024.

³⁰ Ibid.

³¹ David H Shinn, 'Ethiopia and China: Two Former Empires Connect in the 20th Century' (2014) 8 International Journal of Ethiopian Studies 149, 153.

³² Marek Hanusch, 'African Perspectives on China–Africa: Modelling Popular Perceptions and Their Economic and Political Determinants' (2012) 40 Oxford Development Studies 492, 493.

infrastructure activities is unparalleled.’³³ suggesting appreciating China’s economic achievements it has brought about as humane and worthy of encouragement. It is evident that today China’s commitment to the right to development in relatively disadvantaged regions has indeed brought about a significant change in the human rights quality for the local people. And the world is increasingly recognising that China’s approach to human rights is different.

While there is a growing awareness of a different aspect of China’s approach to human rights, where China’s human rights approach comes from is not deeply understood. There are some countries in Africa that have emulated China’s model, such as Ethiopia³⁴ and Rwanda³⁵. These countries have focused mainly on infrastructure development and government-led planning. Africa's following of the Chinese model is still largely due to being impressed by China's achievements in improving economic conditions since the 1980s and expecting to learn from the Chinese model to alleviate the challenges it faces, such as youth unemployment, low levels of industrialisation and the debt crisis. However, due to different social conditions, Africa does not have China's large population, labour force and large domestic market, so learning from the Chinese model has been limited to borrowing some of the elements of the Chinese model. Apart from the apparent inability to replicate China's structural scale and capabilities, it is also difficult for African countries to deeply appreciate China's unique history and culture. Various differences in social conditions make it neither realistic nor desirable for these African countries to follow the Chinese model fully.

As mentioned earlier, China is committed to the right to development in the relatively backward regions of Africa and to improving local infrastructure. Some people with the lens of Sino-pragmatism don’t understand why, but based on the experience of Western societies, see this as the result of a kind of neo-colonialism, where infrastructure is exchanged for diplomatic support, with China’s role not much different from that of the

³³ David H Shinn, ‘Ethiopia and China: Two Former Empires Connect in the 20th Century’ (2014) 8 *International Journal of Ethiopian Studies* 149, 160.

³⁴ Seifudein Adem, ‘China in Ethiopia: Diplomacy and Economics of Sino-Optimism’ (2012) 55 *African Studies Review* 143, 147.

³⁵ Wioleta Gierszewska, Relations Between China and Rwanda. *Selected Socio-Economic and International Relations Issues in Contemporary Asian States*, (2021) 13, 16.

Americans and Europeans in history.³⁶ This view is undoubtedly understandable from a practical point of view, as there is inevitably a convergence of interests between countries, but it is based solely on Western values in terms of capital logic. This is certainly one-sided. Meanwhile, it is undeniable that China's implementation would pedal its influence by improving the human rights quality in disadvantaged countries, but the influence did not include interference in the internal affairs of other countries. For example, it was coined by the Ethiopian Deputy Prime Minister that 'he preferred the Chinese way of doing things because they don't have preconditions, they don't say "do this, don't do that"'.³⁷ Indeed, China opposes intervention in China's internal affairs under the excuse of human rights, which is something that a few Western countries cannot agree with.³⁸ In short, despite the negative view that China is motivated by interests, and the optimistic view that China's approach to human rights seems to be welcomed, China's human rights approach has remained at the comment level, with no details given on the deeper reasons for China's emphasis on people's welfare and its adherence to the principle of non-interference. In other words, positions on China's human rights policy are still superficially understood.

On the other hand, the reality is that the theoretical study of human rights with Chinese characteristics is still inadequate, which does not provide sufficient conditions for Western observers to understand the underlying logic of China's human rights approach from more perspectives. As we all know, the Western understanding of China's human rights policy is more like a reality-based understanding, a direct observation of China's human rights reality followed by a descriptive sense. Sort of understanding of reality is a way of self-projection from the subconscious of Western culture onto other cultures, which is more examined and written from a Western liberal perspective. And inevitably, the field of international law is no longer considered absolutely neutral and universal, but rather a legal field in which international lawyers from different countries and

³⁶ Seifudein Adem, 'China in Ethiopia: Diplomacy and Economics of Sino-Optimism' (2012) 55 *African Studies Review* 143, 144.

³⁷ David H Shinn, 'Ethiopia and China: Two Former Empires Connect in the 20th Century' (2014) 8 *International Journal of Ethiopian Studies* 149, 160.

³⁸ Permanent Mission of the People's Republic of China to the UN, 'The Overwhelming Majority of the United Nations Member States Oppose the Interference in China's Internal Affairs in the Name of Human Rights' <http://un.china-mission.gov.cn/eng/hyyfy/202211/t20221101_10794920.htm> accessed 4 May 2024.

cultural backgrounds compete for influence.³⁹ Leaving aside the perspective of international politics, despite the fact that some international lawyers now discuss China's human rights approach with a normative orientation, there is a lack of systematic elaboration and explanation of the characteristics of China's human rights approach through philosophical underpinnings within the international human rights framework. As human rights are the common pursuit of human civilisation, the international human rights field needs to understand China's human rights policy in order to build a holistic view of international human rights.

III. My Approach and Contribution to Knowledge

Any criticism of human rights in China should first ask a fundamental question: what exactly is China's human rights policy? This question is particularly difficult because human rights policies are dynamic in nature, and different stages may have different human rights policies. Policies may change and replace each other, or they could be too specific. Although it is difficult to fully analyse China's human rights policy, the characteristics of China's human rights policy are more feasible and more important to summarise in verifying human rights claims. Therefore, the first question to explore is what human rights with Chinese characteristics are. Although there has already been some existing literature on China's human rights value from different perspectives and in different contexts, it has not yet been systematically argued. Since it is China's human rights policy, I suggest starting with human rights materials at the national and international levels. By systematically examining three dimensions: 1) political statements (including documents and speeches); 2) China's participation in human rights treaty bodies; and 3) China's participation in the Universal Periodic Review (UPR), the characteristics of China's human rights policy will be yielded through the inductive method. Therefore, we could detail China's divergent positions on human rights.

Why are human rights with Chinese characteristics divergent? The human being as the holder of rights in human rights policy appears more as the performer of duties and

³⁹ Ming Du, 'History and Theory of International Law - A Chinese Theory of International Law by Zhipeng He and Lu Sun' (2021) 11 *Asian Journal of International Law* 392, 393.

indirect beneficiary. Indeed, every right involves corresponding obligations, and reciprocal obligations should be fulfilled (Hohfeldian Rights).⁴⁰ But these characteristics, which are outside the mainstream human rights, will shift the discussion of human rights in China to a relative perspective. It is worth taking seriously the competing debate between the universality of human rights and cultural relativism. It is difficult to discuss human rights without ideological and cultural perspectives. Moreover, more and more human rights literature is beginning to reflect on traditional universal human rights, and there is a trend towards decolonising human rights narratives. Although the concept of decolonisation is rather sensitive, it reflects the need to rethink Eurocentric universal human rights and consider human rights with Chinese characteristics from cultural and philosophical perspectives.

The formation of 'human rights' involves the interplay of many factors, and any adequate and comprehensive understanding of 'human rights' requires a multifaceted perspective. While there is no doubt that the philosophical foundations are the root causes that influence the emergence and formation of 'human rights'. Since a work can only focus on a particular perspective, I will engage in 'Human Rights with Chinese Characteristics (HRCC)' from a cultural philosophical approach that can provide insight into the logic behind China's unique view of human rights. Then, the essay towards a theoretical framework that China's positions on human rights policy can be explained by the cultural influence of a combination of Confucianism and Marxism. Next, this thesis examines the 'Human Rights with Chinese Characteristics (HRCC)' under Confucian and Marxist philosophical underpinnings respectively. Finally, the analysis contributes that China's human rights foreign policy is formed by distinct philosophical combination of Confucianism and Marxism. The essay helps to answer the research question, i.e. the unique philosophical combination of Confucianism and Marxism helps to understand Chinese human rights thinking, gain insight into the 'Human Rights with Chinese Characteristics (HRCC)' and explain the logic behind it. The implication of the study is to deliver a change in the conversation about China's human rights policy from politics to

⁴⁰ Heidi M Hurd and Michael S. Moore, 'The Hohfeldian Analysis of Rights*' (2018) 63 *The American Journal of Jurisprudence* 295, 309.

philosophy, and the differences between China's and the West's views on human rights are philosophical differences rather than political conflicts.

In terms of the methodological challenges, defining Confucianism and Marxism is the main challenge. The content of Confucianism and Marxism is not equivalent to the words and deeds of the philosophers; in other words, Confucianism is not equivalent to the words and deeds of Confucius and Mencius; and Marxism is not equivalent to the words and deeds of Marx and other Marxists. In discussing the discourse of human rights in China, I think it is oversimplified and reluctant to attribute the philosophy behind human rights policies to the words and deeds of certain thinkers. Take Confucianism for example; Confucianism is all-encompassing and is itself an evolving philosophy, with many of the great Confucian scholars' views being even opposed to each other and then pushed forward. The way I avoid this limitation is to emphasise in the context that Confucianism, as expressed in the essay, is a comprehensive and integrated non-school-specific philosophical thought representing a main part of traditional Chinese culture. Furthermore, Marxism has gone far beyond what Marx himself proposed initially. I avoid this limitation by developing Marxism in a logical way by starting with Marx's view of human rights – the Marxist view of human rights – and the Chinese Marxist view of human rights, so that readers can gain a comprehensive understanding of Marxism's view of human rights.

Another potential challenge is the selection of the philosophical content from Confucianism and Marxism. I use Confucianism and Marxism as components of the philosophical framework, but the content of Confucianism and Marxism here does not represent everything about the two philosophies, as the depth and expanse of the two philosophies can themselves easily be extended, forming many different research projects separately. Since the first chapter summarises the four features of China's human rights policy, it is important to overcome the challenge for the sake of justifying the length of the essay by remaining focused on the points of four features of China's human rights policy and their corresponding counterparts in Confucianism and Marxism. In particular, I will analyse the relevance of Confucianism and Marxism for the four features of China's human rights policy. The objective of this research project is to use

philosophical underpinnings to explain China's human rights policy, and to conclude further that Confucianism and Marxism have a combined influence on China's human rights policy.

IV. Brief Outline of Each Chapter

Chapter 1 explores the distinctive characteristics of China's human rights foreign policy. After reading through and systematically examining three areas, i.e. China's political statements in documents and speeches, China's engagement with human rights treaty bodies and China's documents towards UN's Universal Periodic Review, it has been made structural by a different approach, and by the analysis of the arguments summarised by way of examples, to demonstrate that there are four characteristics of China's human rights policy that differ from existing international human rights norms, i.e. 1) China has its own path in human rights in line with its national realities; 2) China emphasises the non-interference principle, ensuring sovereign independence and stability; 3) China always prioritises the right to subsistence and development; 4) China values the common interests of collective human rights. By sorting through the material on China's human rights foreign policy and systematically studying the examples, it can demonstrate that China has different positions and understandings of human rights and explain my argument that there is something new going on from a philosophical point of view, and there are four aspects that make it different.

Chapter 2 locates the discussion in a wider debate and derives the idea that cultural relativism coexists with universals by describing universals and relativities. Despite the universality of human rights, there is an unavoidable relativity in the application of universal human rights norms to different cultural societies. This is because in the State practice of applying international human rights treaties, the terminology of the treaties may be interpreted and focussed somewhat differently depending on the cultural context. Ultimately the debate between universality and cultural relativism stems from values debates. Cultural relativity is a major factor affecting the use of universal human rights. One of the typical representatives of this debate concerning cultural relativism human rights is the Asian values. In particular, based on cultural relativism and the Asian

context, Asian values put forward a regional descriptive human rights proposition emphasising economic development and collective rights and interests, which is incompatible with Western conceptions of human rights. Although the controversial motives and flawed internal logic of Asian values make this regional human rights value fail to explain human rights with Chinese characteristics, the influence of cultural relativism on the understanding of human rights has been confirmed. It demonstrates the necessity from the cultural relativity perspective to examine the philosophical foundations of China to look at China's human rights policies.

Chapter 3 and Chapter 4 are about the two philosophical underpinnings of human rights with Chinese characteristics, i.e. Confucianism and Marxism. Neither Confucianism nor Marxism are fully and widely understood philosophies in mainstream Western societies, even though they have been influential in global intellectual history and social practice. In the West, although Confucianism, as represented by Confucius, has gained broader acceptance in China's foreign cultural communications in recent years, Eurocentric tendencies in Western education have limited deeper exposure to this non-Western philosophy. Unless one specialises in Asian philosophy, it is difficult to access the philosophical and political theories of Confucianism. Moreover, the fact that the classical works of Confucianism are composed in classical Chinese further increases the barriers for non-Chinese users to study Confucian texts. Also, as Confucianism is often simplified and associated with authoritarianism in modern history, it is highly tempting to label it as incompatible with contemporary liberal and democratic values, which leads to the under-representation of this non-Western philosophy in the global discourse.

As for Marxism, although it originated in the West, it is not universally understood in mainstream Western societies. Marxism is relatively minor and marginal in front of the mainstream liberal systemic structure.⁴¹ In the West, where capitalist ideology is dominant, liberalism, individualism and private property are upheld, which however are exactly the core of Marxism's critique. Moreover, Marxism, which originated in the West but was more closely aligned with the socialist system of the Soviet Union, is seen as a

⁴¹ David Held, 'Liberalism, Marxism, and Democracy' (1993) 22 *Theory and Society* 249, 255.

confrontational ideology by the Western world.⁴² This opposition has led to Marxism rarely being seen in the West as a set of sustained critical theories. Instead, the structural inequalities, class relations and changes in the production mode analysed by Marxist philosophy provided the theoretical basis for post-New China transformation, allowing Marxism to be responded to and shaped by local Chinese

Since cultural relativism is an important factor influencing the application of universal human rights, Chapters 3 and 4 discuss two philosophies that influence human rights with Chinese characteristics. Chapters 3 and 4 are two parallel chapters, namely, Chapter 3 on Confucianism and Chapter 4 on Marxism. Chapter 3 introduces what Confucianism is, discusses the relevance of Confucianism to the human rights idea, as well as the openness and inclusiveness of Confucianism, and demonstrates that Confucianism as a dominant traditional value influenced the Chinese conception of human rights before the Western human rights entered China. Chapter 4 logically and progressively describes the journey from Marx's view of human rights to the Marxists' view of human rights, and finally to the Chinese Marxism's view of human rights, searching for how the four features of human rights with Chinese characteristics correspond in Marxism.

Chapter 5 is the main contributing part of this work. Based on the influence of Confucianism and Marxism on China's human rights view, the final chapter constructs a guiding framework for understanding the ways that these two philosophies have influenced human rights with Chinese characteristics. The framework philosophically examines the consistency and inconsistency between Confucianism and Marxism in their conceptions of human rights, discussing the limitations of Confucianism and the importance of Marxism, as well as the irreplaceability of Confucianism. The framework explains why Confucianism can be one of the elements, but not the only one, in explaining human rights with Chinese characteristics, and why Marxism cannot replace Confucianism as the only element affecting human rights with Chinese characteristics. Thus, it finally draws the original contribution of this work, the conclusion that human rights with Chinese characteristics are a combination of two philosophies, Confucianism

⁴² Angelo Segrillo, 'Liberalism, Marxism and Democratic Theory Revisited: Proposal of a Joint Index of Political and Economic Democracy' (2012) 6 Brazilian Political Science Review 8, 8.

and Marxism. The contribution to originality of this work is helpful to view the conflict between 'Human Rights with Chinese Characteristics' and Western conceptions of human rights as a philosophical conflict rather than a political one.

Chapter 1: Human Rights with Chinese Characteristics (HRCC)

1.0. Introduction

The objective of this chapter is to bring the point that the PRC's human rights policy reflects four features that reflect 'Human Rights with Chinese Characteristics (HRCC)'. Policies themselves have the attributes of tools that can be released at any time and need to be interpreted. Considering that policies are often dynamic and overly detailed, this chapter will summarise the features from PRC's foreign human rights policy materials and summarise 'Human Rights with Chinese Characteristics (HRCC)' as relatively stable topics. The materials analysed as reflecting the characteristics of China's human rights foreign policy include China's official statements, China's engagement with international human rights treaty bodies, and China's relevant works submitted during the United Nations periodic reviews. A close reading of materials in those three dimensions reveals that China's human rights foreign policy differs from the Western approach. In particular, after a systematic examination of the examples on the above three dimensions, it has been found that four themes kept coming up as a pattern. Therefore, through an inductive method, the chapter has been structured into three dimensions to provide evidence of the four themes.

The reasons for focusing on the above three areas are as follows. First, official statements on human rights issues are of direct value in identifying the characteristics of China's human rights policy, as they can be regarded as the most concise and direct way to express China's human rights position. By collecting and summarising China's human rights White Papers and international statements over the years, it can be found that, despite the evolving practice, there are core ideas that remain continuous in China's foreign human rights policy. Second, after the Reform and Opening up, in the pursuit of economic and social development goals, China has become proactive in the international human rights system. An examination of China's integration into international human rights treaties can be used to summarise China's preferences in the human rights list. Third, China's participation in the Universal Periodic Review can be seen as an important

interaction with the international human rights mechanism. A couple of national reports and outcome reviews are worth looking at to discover the characteristics of China's human rights policy.

1.1. Term on 'Human Rights with Chinese Characteristics (HRCC)'

I bring something new to the world rather than translating material only in Chinese for English-speaking readership. The term 'Human Rights with Chinese Characteristics' originally comes from a Chinese rhetorical term to describe the path of human rights development in China. In the context of China's developing attitude and policies on international human rights, some Chinese official newspaper headlines have used the expression.¹ In Chinese-language journals, there is no fixed and uniform expression by scholars of China's distinctive human rights vision or approach. It is more often inspired by and related to the broader notion of 'Socialism with Chinese characteristics', such as 'human rights thought in Socialism with Chinese characteristics',² 'Socialist human rights theory with Chinese characteristics'³, or 'human rights of Socialism with Chinese characteristics'⁴. Although there are a few journal articles that use expressions similar to human rights with Chinese characteristics, in language, they are in Chinese, and in content, they are more in the context of socialist ideological discourses and China's domestic policies rather than international human rights frameworks.

¹ such as 'pursuing the path of human rights with Chinese characteristics to promote the healthy development of the international human rights cause' in People's Daily 31st January 2024 or 'the path of human rights with Chinese characteristics is broadening' in Guangming 17th October 2023.

² Fangxu Chi, Yubang Wei, 'The Value Orientation of Human Rights Rule of Law Thought in Socialism with Chinese Characteristics - CNKI' <https://oversea-cnki-net.ezproxy.lancs.ac.uk/KCMS/detail/detail.aspx?dbcode=CJFD&dbname=CJFDLAST2023&filename=LXSK202303003&uniplatform=OVERSEA&v=Ir4pOcbrZEqnVCz7pyAX889Kg-fYl6v1Lm2GuiQpnt_KbcZ51a539eLFMXeHBXZx> accessed 18 December 2024

³ Tao Meng & Feng Chen, 'On the System Structure of Socialist Human Rights Theory with Chinese Characteristics - CNKI' <<https://oversea-cnki-net.ezproxy.lancs.ac.uk/KCMS/detail/detail.aspx?dbcode=CJFD&dbname=CJFDLAST2022&filename=RCYW202201003&uniplatform=OVERSEA&v=95Mug6TlmlcXzG-Ws3b-UtpOjuXhdQVPpT9nwaAHWr5mDK6d6Run2GSR07jbTkRJ>> accessed 18 December 2024.

⁴ Jihong Mo, 'On the Historical Logic, Theoretical Basis and Basic Characteristics of the Development Path of Human Rights of Socialism with Chinese Characteristics', Journal of Shanxi Normal University (Social Science Edition 2022); Yong C, 'Research on the Human Rights of Socialism with Chinese Characteristics', Chinese Master's Theses Full-text Database (2009); Wu F, 'On the Innovation of Human Rights Theory of Socialism with Chinese Characteristics', Theory Monthly (2018); Zhao M, 'A new summary of the system of human rights theory of socialism with Chinese characteristics', The Journal of Yunnan Provincial Committee School of CPC (2018).

The chapter is the first to bring the specific features of 'Human Rights with Chinese Characteristics' into English literature. This term is a novel and unestablished term in English literature. The expression 'human rights with Chinese characteristics' currently appears only in Chen's analysis of China's rise in the field of international relations. From the perspective of identity-based politics, he questions the purpose of the expression 'human rights with Chinese characteristics' as a means of playing politics of relativism and criticises China for evading international scrutiny.⁵ Therefore, the content of this chapter is the first to bring the specific features of 'Human Rights with Chinese Characteristics' into English literature, i.e. what are in fact the characteristics of 'Human Rights with Chinese Characteristics'? The term 'Human Rights with Chinese Characteristics' will come in the form of the acronym 'HRCC' later in this work.

1.2. China's Official Statement

Official statements are of great research value in studying a country's stance on human rights. Although the international community has established universal human rights, there is no consensus on the status of many of these rights. Official statements are often made in the context of a country's social reality, so a country's human rights preferences can be disclosed in official statements. The characteristics of human rights policies can be summed up from the differences in the interpretation of human rights. For example, in the US Congressional Bill, the Patient Protection and Affordable Care Act was discussed to be repealed.⁶ When it comes to economic and social rights such as health care, either the word 'right' is put in quotation marks or the word 'so-called' is added before 'right'. Health care in the United States is more regarded as a market product than a public service. This is evident from official statements made on behalf of the US government. The United States does not entirely deny economic and social rights as a

⁵ Yu-Jie Chen, 'China's Challenge to the International Human Rights Regime' (2018) 51 New York University Journal of International Law and Politics 1179, 1182.

⁶ The U.S. Government Publishing Office, 'H.R.114 - 119th Congress (2025-2026): Responsible Path to Full Obamacare Repeal Act' (1 March 2025) <<https://www.congress.gov/bills/119th-congress/house-bill/114>> accessed 18 February 2025.

human right, but prefers to believe that welfare should not be provided by government public funds, but should be distributed according to free market principles.⁷ The US government documents reveal the US government's approach to economic and social rights. The need to examine the characteristics of human rights through official statements is self-evident, as exemplified by the example of US government documents.

It may be argued that it seems to be talking about the conditions for human rights rather than human right itself. This is not accidental. Given the title of this subsection, 'China's Official Statements', my aim is to highlight how official State documents reflect a State's understanding of and approach to human rights. So I begin by clarifying why analysing such documents is crucial: they reveal the State's priorities, positions and policy preferences on different categories of human rights issues, be they economic, social or political. I use the example of the US Affordable Care Act, which reflects how human rights are interpreted, weighed and implemented in a particular national context. In this sense, it provides a basis for the later focus on China's Official statement and thus for summarising features of China's human rights policies.

Official speeches made by Chinese leaders will be examined. Official speeches represent the development of China's human rights discourse to a certain extent, including the Chinese government's reflection on the past and its updating understanding of human rights. Chinese leaders have demonstrated their ambition for global governance, and China has actively proposed its own way to improve human rights, such as President Xi Jinping's concept of 'creating a community with a shared future for mankind'⁸ and the 'Global Security Initiative (GSI)'⁹. China has expressed its voice on international platforms, and although there is no lack of scepticism about China's increasing financial

⁷ Aryeh Neier, 'Social and economic rights: A critique.' *Human Rights Brief* 13(2), (2006), 1, 3.

⁸ Xi proposed that all countries are interconnected and interdependent, and that they should work together to counter global challenges such as terrorism, the refugee crisis, major infectious diseases and climate change. The peaceful development of humanity is the ultimate goal, and only through cooperation will all win.

⁹ Xi first proposed in April 2022, it includes the supremacy of national sovereignty and territorial integrity; non-interference in the internal affairs of states; and opposition to 'unilateral' sanctions and 'group confrontation'.

contributions to international organisations,¹⁰ Chen believes that this is the Chinese government's internalised interpretation of international human rights norms.¹¹ Although many of the ideas in the speech are not new, a close reading not only effectively defines the characteristics of China's human rights policy, it also confirms that the characteristics are characteristics because of continuity.

Official documents, such as China's National Human Rights Action Plan, will be examined. The three documents of the National Human Rights Action Plan are for the three stages of 2009 to 2010, 2016 to 2020, and 2021 to 2025. The Chinese government has formulated the National Human Rights Action Plans and corresponding implementation and evaluation reports. In the plan documents, there are five main themes: protection of economic, social and cultural rights; protection of civil and political rights; protection of the rights of minorities; human rights education; and fulfilment of international human rights obligations and international human rights communication and cooperation. International human rights obligations are planned and evaluated as a separate theme. Although the fulfilment of international human rights obligations is related to people's livelihood in China, it is not integrated with the other four aspects. China's approach to international human rights affairs is similar to that of diplomacy, as can be seen from the thematic division module.

White Paper on Human Rights will be examined. The White Papers on Human Rights issued by the Chinese government are aimed at an international audience, and each one is translated into English. Since 1991, the State Council has issued more than 30 white papers covering different aspects of human rights issues.¹² The Chinese government has actively used human rights white papers to promote its human rights stance. Multiple human rights white papers describe the stage-by-stage human rights situation in China and the progress of human rights in China. The human rights white papers also cover

¹⁰ Yu-Jie Chen, 'China's Challenge to the International Human Rights Regime' (2018) 51 New York University Journal of International Law and Politics 1179, 1193.

¹¹ Dingding Chen, 'Explaining China's Changing Discourse on Human Rights, 1978–2004' (2005) 29 Asian Perspective 155, 155.

¹² The State Council Information Office of the PRC. 'China's Peaceful Development' <https://english.www.gov.cn/archive/white_paper/2014/09/09/content_281474986284646.htm> accessed 18 February 2025.

many specific issues, such as sovereignty over Xinjiang and Tibet, judicial safeguards, poverty alleviation, healthcare and social development, and so on and so forth.

It is notable that the White Paper does not mention the catastrophic events that have taken place since the founding of New China, such as the Great Famine and the violent political movements. The Chinese government's publication of the White Paper is often seen as a counterattack against Western criticism of the Chinese government's human rights.¹³ Although official statements on human rights in China in some ways have the purpose of presenting an optimistic picture of the situation, the official documents are still valuable for research because they provide a detailed overview of the basic information about the human rights situation in China. More importantly, they contain China's views on human rights and proposals for the future of human rights, making them a good source of research samples on China's human rights policies. Thus, we are going to look at the human rights white papers and national speeches to summarise the four distinctive characteristics of China's human rights foreign policy.

1.2.0. Four Different HRCC's Characteristics

This section provides a detailed analysis of official statements on China's foreign human rights policy. From looking at official speeches made by national representatives and national documents which reflect the concept of human rights, it is clear that China's policies and practices in the field of human rights are different. By examining specific examples from official documents in a systematic way, it demonstrates that China's human rights policy has four distinctive features, which are China has its own path in human rights; China emphasises the non-interference principle; China prioritises the right to subsistence and development; and China values collective human rights.

1.2.1. China has its own path

¹³ Yu-Jie Chen, 'China's Challenge to the International Human Rights Regime' (2018) 51 New York University Journal of International Law and Politics 1179, 1187.

China's discourse on universal human rights can be seen as a qualified acceptance. As is well known that the People's Republic of China has the second largest population in the world, with approximately 1.42 billion people in 2024. China accepts the universality of human rights while emphasising that human rights policies need to be tailored to national conditions. For example, China's National Human Rights Action Plan (2012-2015) conditions the universality of expression: 'The Chinese government respects the universality of human rights, but also insists on promoting the development of human rights based on China's national conditions and new realities.'¹⁴ It would be an overreaction to say that China's rhetoric on universality is contradictory and conflicting. If the universality of human rights is considered an ideal, the means to achieve it are not necessarily universal or unique. Cognitively accepting universality does not prevent one from choosing one's own path in practice. Therefore, it is more objective to say that while accepting universality, China chooses its own path.

China's political statements show that China's human rights foreign policy has its own path in line with its national realities. The narrative of the White Paper reflects that China has chosen its own human rights path, which is consistent with China's conditions and realities. The 1991 white paper articulated that China has drawn its own views on human rights issues and formulated relevant laws and policies from its historical conditions, social realities and practical experience.¹⁵ The 2013 white paper stated that 'only by adhering to the socialist path with Chinese characteristics can China's human rights undertaking achieve better development'.¹⁶ The 2014 white paper stated that China is taking the 'correct path of human rights which is in line with its national conditions', and China will adhere to the path of combining the universal human rights principle with China's national realities to guarantee the people's right to subsistence and development

¹⁴ The State Council Information Office of the PRC, Introduction in National Human Rights Action Plan of China (2012-2015). '<http://www.china.org.cn/government/whitepaper/node_7156850.htm> accessed 18 February 2025.

¹⁵ The State Council Information Office of the PRC. "Human Rights in China", 1991. <<https://en.humanrights.cn/1991/11/30/800fc09d948848069d95f86433700d6d.html>> accessed 18 February 2025.

¹⁶ The State Council Information Office of the PRC. "Progress in China's Human Rights in 2013", 2014. <https://english.www.gov.cn/archive/white_paper/2014/08/23/content_281474982986564.htm> accessed 18 February 2025.

at a higher level.¹⁷ The 2018 white paper stressed that China's human rights policy integrates the human rights universal principle with China's national realities while taking advantage of socialism with Chinese characteristics.¹⁸

The Chinese Government has made it clear that in developing human rights, China has found its own path that suits its national conditions. The path of human rights with 'Chinese characteristics' was stated in the White Paper on Fifty Years of Human Rights Development in China:

“China has based on summing up its historical experiences...found a road to building socialism with Chinese characteristics... The practice has proved that building socialism with Chinese characteristics is a road of development that is in accordance with the fundamental interests of the Chinese people, and also the only road which can effectively promote human rights in China.”¹⁹

The 2000 White Paper underlines that China's path in human rights has been concluded through its distinctive historical experience and national conditions, as a unique starting point for the human rights path different from the universal human rights theory. It also reflects China's adherence to its own path of human rights policy because it has been concluded through practice that China's own path in human rights is feasible and can well safeguard the basic interests of the people.

At the 1993 World Conference on Human Rights, the head of the Chinese Delegation, Liu Huaqiu explained that China has its own path in human rights in line with its national realities. He stated on behalf of China that,

¹⁷ The State Council Information Office of the PRC. “Progress in China's Human Rights in 2014”, 2015. <https://english.www.gov.cn/archive/white_paper/2015/06/08/content_281475123202380.htm> accessed 18 February 2025.

¹⁸ The State Council Information Office of the PRC. “Progress in Human Rights over the 40 Years of Reform and Opening Up in China”, 2018. <https://english.www.gov.cn/archive/white_paper/2018/12/13/content_281476431737638.htm> accessed 18 February 2025.

¹⁹ The State Council Information Office of the PRC, “Fifty Years of Progress of China's Human Rights” (February 2, 2000), Part VI. <<http://www.china.org.cn/e-white/3/index.htm>> accessed 18 February 2025.

“The concept of human rights is a product of historical development. It is closely associated with specific social, political and economic conditions and the specific history, culture and values of a particular country. Different historical development stages have different human rights requirements. Countries at different development stages or with different historical traditions and cultural backgrounds also have different understandings and practices of human rights. Thus, one should not and cannot think the human rights standards and model of certain countries as the only proper ones and demand all other countries to comply with them.”²⁰

China’s statement at the 1993 World Conference on Human Rights emphasises one basic principle of China’s human rights foreign policy that China insists on its own path in human rights. The statement demonstrates that the promotion of human rights should be in line with the conditions and realities of each country. The promotion of human rights is a social movement carried out in a gradual and progressive manner. In terms of China’s historical, social and economic realities, China has chosen its own proper path to achieving human rights. In Xue’s words, social factors, such as the social and economic development of a state, tend to be more meaningful and decisive in the achievement of human rights.²¹ In other words, human rights protection depends, principally, on the level and degree of development of each country.

China’s view of human rights is seen as distinctive and contested. As China presents a perspective as a developing country with its view on the universal human rights principle, China’s human rights viewpoint is endorsed by some Asian countries²², which

²⁰ Statement by Mr. Liu Huaqiu, at the World Conference on Human Rights at Vienna, 15 June 1993, see ‘Selected Documents on Human Rights: Chinese and Asian Perspectives’ (2002) 1 *Chinese Journal of International Law* 729, 737; see also Liu Huaqiu, ‘Vienna Conference Statement (1993)’, *The Chinese Human Rights Reader* (Routledge 2001) 424, 426.

²¹ Hanqin Xue, Chapter 3. Human Rights as a Cause and a Process in *Chinese contemporary perspectives on international law history, culture and international law* (2012) The Hague: Hague Academy of International Law. 121, 150.

²² China’s view of human rights was stated in the Bangkok Declaration, adopted jointly by the representatives and ministers of Asian countries in 1993.

was stated as Article 8 in the Bangkok Declaration.²³ In Article 8, “While human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.”²⁴ While China’s human rights viewpoint is echoed in Article 8 of the Bangkok Declaration, the similar thematic articulation at the Vienna meeting was challenged and ultimately rejected by the Vienna Declaration and Programme of Action.²⁵ China’s claim, if not a denial of the universality of human rights, is an indication that human rights under the Chinese lens are a special extension and supplement to universal human rights. The resistance for western governments and international NGOs confirmed that China’s this kind of view of human rights is contested.

China’s statements in international contexts have always emphasised adhering to its own path. The political statement of China reflects China’s adherence to its own path of human rights policy based on its distinctive history and national conditions, also China’s endorsement of universal human rights. The criticism or scepticism that may be harvested here is if this distinctive understand a conflict with the universal human rights principle or a denial of the universality of human rights? It is more plausible that, in terms of the view on human rights, China seeks common ground while preserving differences. This view first originated in Chinese Confucianism and has profoundly influenced Chinese diplomacy and views on foreign issues.²⁶ Xi Jinping’s (President: 2012-) speech in Geneva also confirms this. Xi stated in his speech that it is necessary for every state to follow its own path to achieve human rights for the best effect and emphasised that the

²³ See the Final Declaration of the Regional Meeting for Asia of the World Conference on Human rights (Bangkok Declaration) for the reparations for the World Conference on Human rights of 1993 in accordance with General Assembly resolution 46/116 of 17 December 1991.

²⁴ UN Doc A/CONF.157/ASRM/8, Art.8.

²⁵ Michael C. Davis, ‘Human Rights in Asia: China and the Bangkok Declaration Symposium: East Asian Approaches to Human Right. Selected Panellists from the 1995 Annual Meeting of the American Society of International Law’ (1995) 2 Buffalo Journal of International Law 215, 227.

²⁶ E.g. China uses this idea to forge unity and harmony with India, Myanmar, and African countries, see Hanqin X, Multilateralism and Regional Co-operation in *Chinese Contemporary Perspectives on International Law: History, Culture and International Law* (Martinus Nijhoff Publishers 2012) 209, 213.

diverse civilizations should not cause global conflict, calling for “open and mutual learning”.²⁷

As analysed previously, China’s political statements prove that China has its own path in human rights, which is in line with its history and social realities. While China says it accepts and respects the universality of human rights principles,²⁸ at the same time, China is working to engage in “dialogue and cooperation” to promote the development of the human rights approach with Chinese Characteristics.²⁹

1.2.2. Non-interference principle

China’s political statements show that China’s human rights foreign policy emphasises the non-interference principle, ensuring sovereign independence and stability. On the one side, China considers the human rights issue as a domestic matter. The narrative of the 1991 White Paper adequately demonstrates that human rights issues are essentially within the sovereignty of each state, despite its international dimension.³⁰ The 1995 White Paper conditioned political stability and economic and social development as China’s social order in order to improve human rights.³¹ The 2018 White Paper stated that all UN member states should abide by the sovereign equality principle of the Charter and engage in human rights cooperation in a constructive manner.³²

²⁷ ‘习近平主席在联合国日内瓦总部的演讲（全文）’
Full Text: Speech by Xi Jinping at the United Nations Office at Geneva - China.Org.Cn’ <http://www.china.org.cn/chinese/2017-01/25/content_40175608.htm> accessed 10 September 2024.

²⁸ UNHRC. National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21, China, UN Doc. A/HRC/WG.6/17/CHN/1 (2013), para 4 (hereafter A/HRC/WG.6/17/CHN/1 (2013)).

²⁹ A/HRC/WG.6/17/CHN/1 (2013), para. 5.

³⁰ The State Council Information Office of the PRC. “Human Rights in China”, 1991. <<https://en.humanrights.cn/1991/11/30/800fc09d948848069d95f86433700d6d.html>> accessed 18 December 2024.

³¹ The State Council Information Office of the PRC. “The Progress of Human Rights in China”, 1995. <<http://www.china.org.cn/e-white/phumanrights19/index.htm>> accessed 18 February 2025.

³² The State Council Information Office of the PRC. “Progress in Human Rights over the 40 Years of Reform and Opening up in China”, 2018. <https://english.www.gov.cn/archive/white_paper/2018/12/13/content_281476431737638.htm> accessed 18 February 2025.

On the other side, China regards sovereignty and national stability as prerequisites for the protection of human rights. The 1991 White Paper stated that China's historical experience shows that when national sovereignty is compromised and social wealth is undermined, the Chinese people are deprived of their most fundamental human rights.³³ The White Paper 1992 stated the Central Government's firm opposition to interference with sovereignty and asserted that sovereignty brings with it the fundamental human rights of the Tibetan people.³⁴ China stated that after the peaceful liberation of Tibet, the Tibetan people were freed from slavery and given personal freedom, achieving their basic human rights.³⁵ The Chinese government also indicated the importance of sovereign independence and stability in China's White Paper on Fifty Years of Human Rights Development (2000), 'in terms of the methods of promoting and guaranteeing human rights, we stress that stability is the prerequisite.'³⁶

China's international speeches emphasise the importance of the principle of sovereign equality. China's foreign policy regards sovereignty as a prerequisite for the realization of all other rights, including human rights. China adheres to mutual respect, non-interference, and constructive dialogue in the promotion of international human rights protection, emphasizing the non-interference principle in the human rights foreign policy particularly. At the United Nations Office in Geneva, Xi Jinping (President: 2012-) said in his speech,

"Sovereign equality has been the most important norm guiding relations between states over the centuries and is the main principle observed by the United Nations and all other international organizations. The substance of sovereign equality is that the sovereignty and dignity of all nations, whether big or small, strong or weak, rich or poor, must be respected, that there must be no

³³ The State Council Information Office of the PRC. "Human Rights in China", 1991. <<https://en.humanrights.cn/1991/11/30/800fc09d948848069d95f86433700d6d.html>> accessed 18 December 2024.

³⁴ The State Council Information Office of the PRC. "White Paper 1992: Tibet – Its Ownership and Human Rights Situation", Part II, V, VI. <http://ie.china-embassy.gov.cn/eng/zt/ChinasTibet/201404/t20140409_2540521.htm> accessed 18 February 2025.

³⁵ Ibid, Part V.

³⁶ The State Council Information Office of the PRC. "Fifty Years of Progress of China's Human Rights" (February 2, 2000), Part VI. <<http://www.china.org.cn/e-white/3/index.htm>> accessed 18 February 2025.

interference in their internal affairs, and that they independently have the right to choose their own social system and development path.”³⁷

Sovereign equality is one of the main points throughout Xi’s speech. By calling for peace, Xi further explained that in order to achieve peace, ‘the principles of equality and sovereignty³⁸, the four purposes³⁹ and seven principles⁴⁰ of the UN Charter, as well as the Five Principles of Peaceful Coexistence⁴¹, should be the fundamental principles for building a community of shared future for mankind’.⁴² China consistently highlights mutual understanding, respect, equality, and cooperation of states and organisations to implement human rights.⁴³

The reference to sovereignty in the context of Chinese human rights foreign policy is related to China’s domestic history of oppression by the West since the Opium War in 1840. After 1840, due to the invasion of foreign powers, China was gradually transformed into a semi-colonial and semi-feudal state.⁴⁴ Old China’s human rights were not truly acquired until the Chinese people gained independence and freedom with the founding of the new China. The importance of ending semi-colonialism and restoring sovereignty cannot be overstated. Therefore, China had an endogenous mindset of salvation and survival, linking the struggle for sovereignty with the struggle for human rights.

³⁷ ‘习近平主席在联合国日内瓦总部的演讲（全文）’
Full Text: Speech by Xi Jinping at the United Nations Office at Geneva - China.Org.Cn’ <http://www.china.org.cn/chinese/2017-01/25/content_40175608.htm> accessed 10 September 2024.

³⁸ established in the Peace of Westphalia over 360 years ago.

³⁹ UN Charter, Article 1, the Purposes of the United Nations.

⁴⁰ UN Charter, Article 2, the Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the principles.

⁴¹ The Five Principles initially appeared in the preamble of the Agreement on the Trade and Intercourse between the Tibet Region of China and India, which was concluded between China and India in April 1954. The Preamble read that two countries would resolve their relations basing on “(a) mutual respect for each other’s territorial affair and sovereignty; mutual non-aggression; mutual non-interference in each other’s internal affairs; equality and mutual benefit; peaceful coexistence.”

⁴² ‘习近平主席在联合国日内瓦总部的演讲（全文）’
Full Text: Speech by Xi Jinping at the United Nations Office at Geneva - China.Org.Cn’ <http://www.china.org.cn/chinese/2017-01/25/content_40175608.htm> accessed 10 September 2024.

⁴³ UNHRC. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 - China. (20 August 2018) A/HRC/WG.6/31/CHN/1.

⁴⁴ UNHRC. National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1, China, UN Doc. A/HRC/WG.6/4/CHN/1 (2009), para. 3 (hereafter A/HRC/WG.6/4/CHN/1 (2009)).

In terms of historical experiences, from China's view, the guarantee of human rights in China is premised on sovereign independence. Despite the fact that China's position has long since moved from a "victim-minded underdog" to an "active status-quo keeper",⁴⁵ the principle of non-interference and ensuring sovereign independence and stability remain at the core of China's human rights policy. Maintaining sovereign independence has been an unchanging idea in China since the establishment of New China. Since the Maoist era, China pursued a resolute defence of its sovereignty through self-reliance. Despite joining the international community, Kent believes that China has continued this policy by acutely promoting this fundamental policy in international organizations.⁴⁶ In other words, matters that could interfere with national sovereignty and threaten domestic regime stability are not acceptable in the eyes of China.

In short, China's emphasis on the non-interference principle, ensuring sovereign independence and stability, is a distinctive characteristic of China's human rights foreign policy. This is because China has always considered that sovereignty is of primary importance and that the realization of sovereignty is the only way to guarantee human rights.

1.2.3. China prioritizes the right to subsistence and development

China's political statements show that China's human rights foreign policy always prioritizes the right to subsistence and development over social goods. Despite China's awareness that its total GDP is among the highest in the world, GDP per capita is still very low, it is more rational to define the right to development in terms of GDP (Gross Domestic Product), as China views the maintenance of GDP growth rates as a significant achievement and practice in the promotion and protection of human rights.⁴⁷ Since China's economic reform and opening up in the 1980s, GDP has grown by an average of nearly ten per cent per year, lifting hundreds of millions of people out of poverty and

⁴⁵ Clarke Donald C, *China's Legal System: New Developments, New Challenges* (Cambridge University Press 2008) 1, 10.

⁴⁶ Ann Kent, 'China's International Socialization: The Role of International Organizations' (2002) 8 *Global Governance: A Review of Multilateralism and International Organizations* 343, 345.

⁴⁷ A/HRC/WG.6/17/CHN/1*, Part III, A (1).

providing access to health, education and other services.⁴⁸ As China says, the Chinese people have made ‘a historic transition from poverty to secure food, clothing and shelter, to a decent living, and finally to moderate prosperity’.⁴⁹

Looking at the content of the White Papers on Human Rights, China has always included the right to subsistence and development as the first element of content. The 1991 White Paper stated that the right to subsistence is the primary human right of the Chinese people.⁵⁰ The 1998 White Paper reaffirmed that protecting and promoting people’s right to subsistence and development has always been a top task of human rights in China.⁵¹ The 2000 White paper reiterated the Chinese government put the people’s right to subsistence and development at the forefront of its agenda and spares no effort in economic development.⁵² In the 2019 human rights paper, China indicated that keeping economic development is the central mission to protect human rights better.⁵³

In a series of White Papers, the Chinese Government has set out its position on human rights foreign policy, emphasising the right to subsistence and economic development as the basis for all other rights. In the White Paper on Fifty Years of Human Rights Development in China (2000), China stated that prioritizing the right to subsistence and development is the characteristic of its human rights foreign policy.

⁴⁸ The World Bank in China, ‘Overview’ (*World Bank*)

<<https://www.worldbank.org/en/country/china/overview>> accessed 10 September 2024.

⁴⁹ The State Council Information Office of the PRC. “Moderate Prosperity in All Respects: Another Milestone Achieved in China’s Human Rights”, 2021. <http://english.scio.gov.cn/whitepapers/2021-08/12/content_77689144_3.htm> accessed 18 February 2025.

⁵⁰ The State Council Information Office of the PRC. “Human Rights in China”, 1991. <<https://en.humanrights.cn/1991/11/30/800fc09d948848069d95f86433700d6d.html>> accessed 18 December 2024.

⁵¹ The State Council Information Office of the PRC. “Progress in China’s Human Rights Cause in 1998”, 1998. <<https://en.humanrights.cn/1999/04/30/6c67e28cc45f48529eb2dc3bc7a630e7.html>> accessed 18 February 2025.

⁵² The State Council Information Office of the PRC. “Progress in China’s Human Rights Cause in 2000”, 2001. <http://qa.china-embassy.gov.cn/eng/zt/zfbps/200207/t20020709_1603785.htm> accessed 18 February 2025.

⁵³ The State Council Information Office of the PRC. “Seeking Happiness for People: 70 Years of Progress on Human Rights in China”, 2019. <http://english.scio.gov.cn/2019-09/23/content_75235239.htm> accessed 18 February 2025.

China insists on ‘putting the rights to subsistence and development in the first place’, and ‘the characteristics of this road are, in terms of the basic orientation of developing human rights, that we stick to the principle of developing the productive forces’, and ‘in terms of the order of priority, the top priority is given to the rights to subsistence and development.’⁵⁴

The 2000 White Paper highlighted that the human right to subsistence and economic development are the foremost concern of China’s human rights foreign policy, and repeatedly emphasized this point. In China’s view, it will adhere to its human rights policy with the right to subsistence and development at the core, irrespective of the challenges it encounters. Facing the challenge of the international financial crisis in 2009, the Chinese government invested 4,000 billion in the improvement of people’s rights to subsistence and development.⁵⁵ It is believed that, without economic development to feed and clothes the people first, all other human rights will be difficult to realise. Economic development is the key to advancing human rights for 1.4 billion people in China.⁵⁶

In terms of the reason why China prioritizes the right to subsistence and development for the advancement of human rights, China has enjoyed the great benefits of development since its foundation. Despite the structural constraints that make economic development opportunities unequal in different regions, China seems to have recognised this and has continued to emphasise common prosperity through development. All processes in China are inseparable from development. The development of human rights will also accompany the development process of China’s revolution and reform. Although more needs to be done, it’s a fact that China has made

⁵⁴ The State Council Information Office of the PRC. “Fifty Years of Progress of China’s Human Rights” (February 2, 2000), Part VI. <<http://www.china.org.cn/e-white/3/index.htm>> accessed 18 February 2025.

⁵⁵ The State Council Information Office of the PRC. “China’s Progress in Human Rights in 2009”, 2010. <http://www.china.org.cn/government/whitepaper/node_7101466.htm> accessed 18 February 2025.

⁵⁶ The State Council Information Office of the PRC. “Progress in China’s Human Rights in 2012”, 2013. <http://www.npc.gov.cn/zgrdw/englishnpc/news/Focus/2013-05/22/content_1795820.htm> accessed 18 February 2025.

great progress in terms of improving its human rights record,⁵⁷ which seems to prove that China's approach to human rights is sound and viable.⁵⁸ Thus, the rights to subsistence and economic development are on the mainstream agenda in China.

On the other hand, China claims that the pursuit of economic and social development is a fundamental task for most developing countries today, including China.⁵⁹ The human rights policy emphasising development has enabled China to solve the problem of feeding more than 1.3 billion people and lifting more than 700 million people out of poverty, which is a major contribution to the cause of human rights worldwide.⁶⁰ Even though some people still criticise China's human rights stance as prioritising economic and social rights over civil and political rights,⁶¹ African countries have been highly supportive of China's view on human rights and have contributed to the concept of the right to development in the Article 22 of the African Charter on Human and Peoples' Rights.⁶² Thus, China maintains a human rights policy that emphasises economic and social development for the realisation of human rights.

With the rise of China and progress made in economic development, China is increasingly determined and engaged in calling for the right to development. Xi's Speech in Geneva confirmed the importance of the right to development with China's experience. In the Davos Agenda in 2021, Xi called for the continued priority to

⁵⁷ National Human Rights Action Plan of China (2016–2020) (August 2016); National Human Rights Action Plan of China (2009–2010) (April 13, 2009); Committee on Economic, Social and Cultural Rights, Concluding Observations on the Second Periodic Report of China, including Hong Kong, and Macao, China, Ec.12/CHN/CO/ 2, June 13, 2004.

⁵⁸ The State Council Information Office of the PRC. Human Rights Situation in China (November 1999), Preamble. 'Progress in China's Human Rights Cause in 1998-China Human Rights' <<https://en.humanrights.cn/1999/04/30/6c67e28cc45f48529eb2dc3bc7a630e7.html>> accessed 18 February 2025.

⁵⁹ Hanqin Xue, Chapter 3. Human Rights as a Cause and a Process in *Chinese contemporary perspectives on international law history, culture and international law* (2012) The Hague: Hague Academy of International Law. 121, 152.

⁶⁰ '习近平主席在联合国日内瓦总部的演讲（全文）
Full Text: Speech by Xi Jinping at the United Nations Office at Geneva - China.Org.Cn' <http://www.china.org.cn/chinese/2017-01/25/content_40175608.htm> accessed 10 September 2024.

⁶¹ Margaret K. Lewis, 'Why China Should Unsign the International Covenant on Civil and Political Rights' (2020) 53 *Vanderbilt Journal of Transnational Law* 131, 151.

⁶² African Charter on Human and People's rights, Art. 22 "1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development."

development to tackle types of global matters.⁶³ In the Speech on China's 50th Anniversary of the Restoration of the Lawful Seat in the United Nations, Xi also appealed to 'promoting economic and social development for the benefit of people' and stated that China would continue to persist in reform and opening up and be a contributor to global development.⁶⁴ In many public speeches, President Xi has incorporated the distinctive feature of development into human rights initiatives and proposals, attempting to achieve 'win-win development' by 'win-win cooperation' and to contribute to the development of international human rights.

China's political statements, not only in white papers but also in presidential speeches, have shown that the main priority of China's human rights foreign policy has always prioritized to focus on the right to development. Through the above analysis of the Human Rights White Papers and the President's international speeches, China adheres to a human rights foreign policy that is in line with its national conditions and believes that development is the key to solving all problems, including the protection of human rights.

1.2.4. China values the common interests of collective human rights

China's political statements show that China's human rights policy values the common interests of collective human rights. Looking at the content of the White Papers on Human Rights, China tends to emphasize the notion of "common" in its statements. While "common" is normally used in the context of people as a collective, such as "common prosperity", "common development", and "common interests". These slogans are believed to be linked to the increase in inequality over the past two decades.⁶⁵ Specifically, because of the inequalities created by the Reform and Opening-up policy

⁶³ World Economy Forum (2021) *President Xi Jinping's Speech at Davos Agenda is Historic Opportunity for Collaboration*. Available at: <https://www.weforum.org/press/2021/01/president-xi-jinping-s-speech-at-davos-agenda-is-historic-opportunity-for-collaboration/> accessed: 10 September 2024.

⁶⁴ 'Xi Jinping Attends the Conference Marking the 50th Anniversary of the Restoration of the Lawful Seat of the People's Republic of China in the United Nations and Delivers an Important Speech' <http://newyork.china-consulate.gov.cn/eng/xw/202110/t20211025_9982432.htm> accessed 10 September 2024.

⁶⁵ Cindy C. Fan, 'China's Eleventh Five-Year Plan (2006-2010): From "Getting Rich First" to "Common Prosperity"' (2006) 47 *Eurasian Geography and Economics* 708, 709.

that made some people rich first, China has advocated common prosperity. As stated in the 1991 white paper, the Chinese government encourages some people to become rich through their own labour and legitimate business activities and then helps others to achieve common prosperity.⁶⁶ The 2016 white paper stated that China has made constant efforts and played an important role in promoting common development for the society, striving to achieve the common prosperity of all ethnic groups and turn China into a socialist country.⁶⁷ The 2018 White Papers stated that China's ultimate goal is to achieve common prosperity.⁶⁸ To achieve prosperity for the whole population as a goal demonstrates that China values collective rights.

In the White Papers, the statements of the Chinese government claim that China values collective interests. China's emphasis on collective rights is manifested in the expression of the subject 'people', which is a strong preference for collective over individual values.

"The Communist Party of China has always prioritized the people's interests, ensuring that reform is conducted for the people and by the people and that its benefits are shared by the people. It has worked to safeguard the fundamental interests of the overwhelming majority of the people."⁶⁹ While China is "taking into consideration the people's political, economic, social and cultural rights and the overall development of individual and collective rights; ... Practice has proved that building socialism with Chinese characteristics is a road of development that is in accordance with the fundamental interests of the Chinese people, and also the only road which can effectively promote human rights in China."⁷⁰

⁶⁶ The State Council Information Office of the PRC. "Human Rights in China", 1991. <<https://en.humanrights.cn/1991/11/30/800fc09d948848069d95f86433700d6d.html>> accessed 18 December 2024.

⁶⁷ The State Council Information Office of the PRC. "The Right to Development: China's Philosophy, Practice and Contribution", 2016. <https://english.www.gov.cn/archive/white_paper/2016/12/01/content_281475505407672.htm> accessed 18 February 2025.

⁶⁸ The State Council Information Office of the PRC. "Progress in Human Rights over the 40 Years of Reform and Opening Up in China", 2018. <https://english.www.gov.cn/archive/white_paper/2018/12/13/content_281476431737638.htm> accessed 18 February 2025.

⁶⁹ Ibid.

⁷⁰ The State Council Information Office of the PRC. "Fifty Years of Progress of China's Human Rights" (February 2, 2000), Part VI. <<http://www.china.org.cn/e-white/3/index.htm>> accessed 18 February 2025.

The passage highlights the following priorities of the PRC government: (1) the “people” mentioned in the statements refer to all the Chinese people as a collective, not individually; (2) despite the statements mention that China will consider “political, economic, social and cultural rights”, it has always been committed to safeguarding the fundamental interests of the vast majority people; (3) according to the statements, China claims that human rights are ‘a unity of individual and collective rights’.⁷¹ It is submitted as the subsection 1D that a person should also be mindful of its duties and obligations to the community while enjoying individual human rights; (4) China claims that its human rights policy in the collective interest, has Chinese characteristics and can promote human rights in China.

On the one side, the feature in the political statements that China tends to prioritize the value of collective rights over the value of individual rights stems from Chinese social life. Based on China’s conditions, China attaches importance to developing basic rights for public, such as public health,⁷² fair education, poverty reduction, and public service to serve the great majority of the society, achieving common interests of collective human rights.⁷³ It has been argued that China has a unique public-private relationship highly stresses the collective value, which is a benefit for enhancing China’s development.⁷⁴ In this context, Cai believes that the characteristic of stressing the collective value over individual value helps more “Chinese people” than “Chinese individuals”.⁷⁵ Some western scholar has a more radical view on this, that collective rights take precedence over those of the individual in Chinese society. The collectively based rights show that

⁷¹ The State Council Information Office of the PRC. “The Right to Development: China’s Philosophy, Practice and Contribution”, 2016.

<https://english.www.gov.cn/archive/white_paper/2016/12/01/content_281475505407672.htm> accessed 18 February 2025.

⁷² The State Council Information Office of the PRC. “Development of China’s Public Health as an Essential Element of Human Rights”, 2017.

<https://english.www.gov.cn/archive/white_paper/2017/09/29/content_281475894089810.htm> accessed 18 February 2025.

⁷³ The State Council Information Office of the PRC. “Progress in China’s Human Rights in 2014”, 2015. <https://english.www.gov.cn/archive/white_paper/2015/06/08/content_281475123202380.htm> accessed 18 February 2025.

⁷⁴ Congyan Cai, Institutions in *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (Oxford University Press 2019) 154, 210.

⁷⁵ Congyan Cai, Institutions in *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (Oxford University Press 2019) 154, 210.

the sovereign state prevails, and the human being exists for the state and not conversely.⁷⁶ Thus, it is suggested that the character of human rights is different from which the west is based on individualism.

On the other side, the characteristic is also rooted in Chinese cultural traditions. Without a proper understanding of China's historical foundation, it would be difficult to understand why China values the common interests of collective human rights than individual human rights. For example, in China, the word 'private/individual' is often taken to mean 'selfish'. Yu believes that this is because of the lack of space for the distinction between the "public and private spheres" under Confucianism's influence.⁷⁷

Controversially, there is a tension between the political context and legal practice in China between the collective nature of rights and the individual nature of law. In terms of China's political statements, it appears that at the political level China frames rights in terms of serving the collective, and the Chinese government's political discourse includes notions of collective rights such as sovereignty and unity. At the judicial level, however, litigation and procedural laws define the subject of rights as an isolated individual, and the state encourages individual citizens to seek judicial remedies. The tension between the collective nature of rights and the individual nature of the law is not accidental; in addition to the limitation of judicial procedures to individual claims, the Chinese government's stability concerns, which view organised collective action in practice as potentially destabilising, have also fragmented collective claims. This results in rights in China having both a judicial procedural function of ensuring individual claims and a political function of preventing the emergence of autonomous, organised collective action. Thus, the collective rights in HRCC are embodied at the level of state-led policy objectives rather than citizen-led forms, which reflects the unique characteristics of China's approach to human rights issues.

⁷⁶ Kathryn Pongonis, 'Review of Between Freedom and Subsistence: China and Human Rights' (1997) 19 Human Rights Quarterly 218, 220.

⁷⁷ Xingzhong Yu, 'State Legalism and the Public/Private Divide in Chinese Legal Development' (2014) 15 Theoretical Inquiries in Law 27, 32.

Andrew Nathan has commented on China's collective interest-focused approach to human rights, arguing that individual rights in China are not independent of society and are always subordinated to collective needs, and that such human rights policies fail to fulfil individual civil and political human rights.⁷⁸ Nathan's comparative view of human rights reveals the importance of the individual as a real and concrete person capable of enjoying rights; however, in China, the rights of the individual often give way to the interests of the people being represented. I think this emphasis should not be speciously exaggerated. The 'people' as a collective in Chinese human rights discourse is not a sentient subject, but rather a reference object for policies and normative systems. While I agree that human rights are ultimately experienced by individuals, collectives do not need to have an individual sensibility to be significant at the practical level; they represent a shared moral and legal identity. Moreover, the emphasis on collective rights is not a neglect of individual rights, but rather an analysis of how the collective interest has become a priority. In China's official human rights discourse, collective interests—such as poverty eradication, public healthcare, or national economic development—are presented as prerequisites for the realisation of individual rights. From this perspective, collective interests are not intended to cover up the absence of individual interests or to replace them, but rather to construct the basis on which individual well-being can be realised.

China's political statements have shown that China values the common interests of collective human rights. The above analysis of the white papers on human rights shows that China emphasizes community duties for the sake of collective rights in stating individual rights. The dimension of community duties is grounded in the combination of Socialism and Confucianism.⁷⁹ Such a value on common interests of collective rights is in line with the influence of the socialist ideology that has been enshrined as orthodox in China since the founding of the state. Thus, we can see that one of the characteristics of

⁷⁸ Randle R. Edwards, Louis Henkin and Andrew J. Nathan, *The Human Rights Idea in Contemporary China: A Comparative Perspective* in *Human Rights in Contemporary China* (Columbia University Press 1986) 7, 30.

⁷⁹ Congyan Cai, Regime in *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (Oxford University Press 2019) 101, 143.

human rights foreign policy is that the Chinese government emphasizes collective human rights over individual rights.

1.3. Engagement with Human Rights Treaties

China has ratified twenty-six international human rights instruments, including six core UN human rights treaties.⁸⁰ Under the provisions of the human rights treaties, China is obliged to submit relevant records to the competent treaty bodies for review. Since the beginning of China's reform and opening-up policy in the late 1970s, China has begun to cooperate constructively with the international human rights system. In 1982, China became a member of the United Nations Commission on Human Rights for the first time. China signed and ratified its first core international human rights treaty, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in 1980. This was followed by the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1981. From the 1990s onwards, China continued to actively participate in international human rights treaties. Maintaining a stable international environment was considered necessary for China's economic recovery and growth.⁸¹ China ratified the Convention Against Torture in 1988. China actively participated in the drafting of the Convention on the Rights of the Child as well as ratifying it in 1992. In 1998, China signed the International Covenant on Civil and Political Rights. China signed and ratified the International Covenant on Economic, Social and Cultural Rights respectively in 1997 and 2001. The most recent core treaty signed and ratified by the PRC is the Convention on the Rights of Persons with Disabilities, separately in 2007 and 2008.⁸²

1.3.0. Four Different HRCC's Characteristics

⁸⁰ OHCHR, 'Treaty Bodies Treaties'

<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=36&Lang=EN> accessed 10 September 2024.

⁸¹ Rana Inboden, and Chen Titus, 'China's Response to International Normative Pressure: The Case of Human Rights,' *The International Spectator* 47, no. 2 (2012), 45, 46-48.

⁸² 'United Nations Treaty Collection'

<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en#top> accessed 10 September 2024.

This section examines China's progressive engagement with the international human rights system. From focusing on the relationship between China and human rights covenants and China's interactions with other state parties and treaty bodies, it is clear that China has been selective in fulfilling its international legal obligations in the context of the international human rights system. By systematically examining specific examples of China's entering into human rights conventions, as well as China's decision to make reservations upon ratification of human rights treaties, it is possible to identify four distinctive features of China's human rights policy: China has its own path in human rights; China emphasises the non-interference principle; China prioritizes the right to subsistence and development; and China values collective human rights.

1.3.1. China has its own path

China's initial intention to accede to international human rights treaties was to take into account the needs of the national situation. It has been argued that China's compliance with international human rights treaties is largely driven by its domestic policies.⁸³ That is, China's engagement with human rights treaties has taken place in the context of economic reform and national identity transformation. Specifically, under its economic reform policy, China's desire to achieve integration with the global economic market requires it a signal to other countries that it is willing to actively engage with international human rights treaties. Moreover, the Chinese government came under international pressure and condemnation after the Tiananmen Square incident in 1989.⁸⁴ In this context, the Chinese government made changes to its international image. China signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), the two most important human rights treaties, in 1997 and 1998 respectively. Many Western democracies have shifted in the wake of China's positive engagement towards human rights treaties, with the international community being more supportive rather than

⁸³ Ming Wan, 'Human Rights Lawmaking in China: Domestic Politics, International Law, and International Politics' (2007) 29 Human Rights Quarterly 727, 728.

⁸⁴ Rosemary Foot, Tiananmen and its Aftermath, June 1989-November 1991 in *Rights Beyond Borders: The Global Community and the Struggle over Human Rights in China* (OUP Oxford 2000) 113, 139.

putting pressure on the country.⁸⁵ Against this background, China's active move towards international human rights treaties is in line with Chinese domestic policy.

Despite this initial background, China's own path is not one of rejection. I do not think that China's own path is the same as a different path of non-compliance. According to the Vienna Convention on the Law of Treaties (VCLT), a state is bound by a treaty only when it expresses its consent to be bound by the treaty through ratification or accession.⁸⁶ China has signed and ratified five of the six core international human rights treaties,⁸⁷ and the only core human rights treaty that China has not ratified is the International Covenant on Civil and Political Rights (ICCPR), meaning that China is only a signatory to the ICCPR and is not bound by it. Yet, China's failure to ratify the ICCPR cannot be simply interpreted as a rejection of international norms. China joins the international treaty system and makes a full or near-full commitment to it. China follows its own path in terms of how it engages with and implements some international human rights norms. China's such participation and engagement has led to a path of compliance that is formally within the international human rights system and contentually based on domestic policies. Thus China has its own path, not a different path of confrontation and rejection, but a selective and strategic path.

China's own path to human rights is reflected in the fact that China has made its human rights policy manageable through reservations when ratifying treaties. States have the right to make reservations when ratifying international human rights treaties. In view of any valid reservation that exists in the treaty, the obligations of the reserving State may be reduced.⁸⁸ In other words, it is more practical to make reservations to evade the consequences of international legal obligations. Although China has a welcoming attitude towards international human rights treaties, it does not simply accept ratification of core human rights treaties, but actively exercises reservations. By looking

⁸⁵ Qing Liu, *Moving in the Right Direction: China's Irreversible Progress Towards Democracy and Human Rights* (1999) in *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000*, Angle SC and Svensson M edited, (Taylor & Francis Group 2001) 436, 439.

⁸⁶ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art. 11.

⁸⁷ CEDAW ratified in 1980, ICERD ratified in 1981, CAT ratified in 1988, CRC ratified in 1992, ICESCR ratified in 2001.

⁸⁸ Vienna Convention on the Law of Treaties (VCLT), Art. 2(1)(d).

at China's accession to human rights treaties, it is noted that China has made the treaties conform to China's national interests and principles by making reservations.⁸⁹ For example, in China's declaration of the reservation in the International Covenant on Economic, Social and Cultural Rights⁹⁰, "the application of Article 8.1(a) of the Covenant to the PRC shall be consistent with the relevant provisions of the Constitution, Trade Union Law, and Labour Law of PRC".⁹¹ Hill Jr believes that international human rights treaties are more likely to be fully ratified when the treaty does not actually bind domestic law.⁹² Conversely, those treaties that are subject to reservations contain provisions that bind domestic law, making it difficult to implement domestic policies.

China's approach to human rights is manifested in the fact that China's engagement is selective rather than extensive. It is well known that a convention is binding on a state under international law only when it has been ratified by the state if the content of the convention is not customary international law. Although China has signalled an active commitment to signing international human rights treaties, it has not actively ratified some human rights treaties. In particular treaties related to civil and political rights. China does not ratify the Convention for the Protection of All Persons from Enforced Disappearance. With regard to political dissidents, the Chinese government has sometimes been criticised for the enforced disappearances that constitute human rights abuses. The Chinese government has been criticised for its lack of accountability, its refusal to provide assistance and a general resistance to revealing the truth.⁹³ It can be said that China's selective non-ratification of the Convention for the Protection of All Persons from Enforced Disappearance is for a purpose.

⁸⁹ China declared reservations regarding Article 8(1) of the CESCR; Article 29 (1) of the CEDAW; Article 22 of the ICERD; Article 20 and Article 30(1) of the CAT.

⁹⁰ The reservation was considered incompatible with the object and purpose of the treaty and the reservation should be considered null and void. For the objection and recommendation to this reservation, see Human Rights Watch, *Paying the Price: Worker Unrest in Northeast China* (New York: Human Rights Watch, Aug 2002), Vol 14, No. 6 (C), "Rescind the reservation to Article 8(1)(a) of the ICESCR, and respect the right of workers to form and join their own trade unions".

⁹¹ 'United Nations Treaty Collection'

<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=en#top> accessed 10 September 2024.

⁹² Jr Daniel W Hill, 'Avoiding Obligation: Reservations to Human Rights Treaties' (2016) 60 *Journal of Conflict Resolution* 1129, 1129.

⁹³ Megan E. Summers, 'Social Control and Social Response: Enforced Disappearance as a Human Rights Abuse.' *Webster University Righting Wrongs a Journal of Human Rights*, Vol.2(2), (2012) 1, 8.

Another example of selective ratification that reflects China's own path is the non-ratification of the International Covenant on Civil and Political Rights (ICCPR). It has been 20 years since China signed the ICCPR, but it has not yet been ratified. This means that China, which is only a signatory to the ICCPR, is not bound by the Covenant. Due to delays in China's ratification of the ICCPR, China had previously stated separately in 2009, 2013 and 2018 that the relevant government departments are proceeding with administrative and judicial reforms as they prepare for the ratification of the ICCPR.⁹⁴ In 2008, China admitted the fact that it would continue to "necessary legislative, judiciary and administrative reforms to create the conditions for the early ratification of the ICCPR".⁹⁵ Moreover, China took no action toward the two Optional Protocols of ICCPR, one of which aims to abolish the death penalty, which is inconsistent with Chinese social and cultural values.⁹⁶ Although China has continuously reiterated that it would continue to work towards the ratification of the ICCPR, due to the delay in ratifying the Covenant, Chesterman argued that "much of the form over substance".⁹⁷ It is clear that the focus on civil and political rights in ICCPR is not the mainstream of China's path. Based on national realities, China has so far not adopted the ICCPR.

China's engagement with International human rights treaties reflects the pragmatism and complexity of China's human rights governance. China ratified CEDAW, CERD and CAT in 1980, 1981 and 1988 respectively. Although China does not provide a normative framework completely different from that of international human rights norms in areas such as gender equality, anti-discrimination or anti-torture, it has developed a

⁹⁴ National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1, China, UN Doc. A/HRC/WG.6/4/CHN/1 (2009), para. 11. National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21, China, UN Doc. A/HRC/WG.6/17/CHN/1 (2013), para. 7. National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21, China, UN Doc. A/HRC/WG.6/31/CHN/1 (2018), para. 14.

⁹⁵ National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1, A/HRC/WG.6/4/CHN/1, November 10, 2008, para. 11.

⁹⁶ When studies have discussed the possibility of further reforms to abolish the death penalty in China, the overwhelming majority of public opinion has indicated unwillingness to abolish the death penalty. Based on the ancient Chinese principle of 'life for life', Chinese people have different cultural attitudes towards the death penalty. See Hood Roger, 'Abolition of the Death Penalty: China in World Perspective' (2009) 1, 21.

⁹⁷ Simon Chesterman, 'Can International Law Survive a Rising China?' (2020) 31 European Journal of International Law 1507, 1515.

distinctive national governance-oriented approach in these areas. For example, under CEDAW, China emphasises the integration of gender equality with macro-level national policies and economic development.⁹⁸ This top-down, state-driven path has somewhat limited civil society activity on gender equality. It is argued that China's legislation and law enforcement in the area of CEDAW show a significant gap.⁹⁹ Similarly, in the area of anti-torture, China has been more conservative in its implementation for reasons of national security and stability than the CAT's demands for transparent procedures and judicial accountability. Inboden argues that the Chinese-led pathway somehow weakens the regime, and is acting like a constrainer.¹⁰⁰ This type of Chinese way is rooted in the logic of state-led, collective stability and development, which emphasises the priority of institutional regulation over individual litigation and social order over identity claims. This pragmatic, state-led path is fundamentally different from the liberal rights-based model, which emphasises individual autonomy.

China's engagement with human rights treaties reveals that China has its own path rather than being a passive norm-follower. China strategically engages with international human rights treaties to fit its own path. Two key features are submitted in the previous subsections: China emphasizing the social and economic rights over civil and political rights; and valuing collective human rights over individual human rights. Despite criticism of China's delays in ratifying some core human rights treaties, Chinese official statements assert that China has chosen its own path of human rights promotion that is in line with its social, historical and cultural particularities in spite of the universality of human rights, justifying its own path in human rights.¹⁰¹ Potter argued that China is not only actively integrated into the international human rights system but also selectively accepts the obligations of international human rights treaties.¹⁰² Johnson says although

⁹⁸ CEDAW/C/CHN/9, p.4-5.

⁹⁹ Sida Liu, Xian Yun, and Sitao Li. "China's Pragmatic Approach to International Human Rights Law." *UC Irvine J. Int'l Transnat'l & Comp. L.* 9 (2024), 46, 48.

¹⁰⁰ Rana Siu Inboden, Introduction in *China and the international human rights regime*. Cambridge University Press, (2021). 1, 13.

¹⁰¹ Statement by Mr. Liu Huaqiu, at the World Conference on Human Rights at Vienna, 15 June 1993, see 'Selected Documents on Human Rights: Chinese and Asian Perspectives' (2002) 1 Chinese Journal of International Law 729, 737; see also Liu Huaqiu, 'Vienna Conference Statement (1993)', *The Chinese Human Rights Reader* (Routledge 2001).

¹⁰² Pitman B. Potter, 'China and the International Legal System: Challenges of Participation*' (2007) 191 *The China Quarterly* 699, 700.

China strongly supports the United Nations and its institutions, it is the least supporter of the international rules related to treating people politically.¹⁰³ In the view of those scholars, their comments are largely in the context of the fact that China has strategically chosen to sign but not adopt the International Covenant on Civil and Political Rights. Therefore, in essence, China's engagement with international human rights treaties reveals that China has its own path of human rights in line with its national realities, conforming to China's domestic policies.

1.3.2. Non-interference principle

China's progressive engagement with the international human rights system represented both a means and a gesture for China to re-engage with the international community. Because of the prominent part played by human rights in international relations, accession to human rights conventions is viewed as the main source of legitimacy for a state.¹⁰⁴ Since the Reform and Opening-up in the late 1970s, China has been positively accessing core human rights treaties.¹⁰⁵

Simultaneously, China's engagement with human rights treaties reflects the distinctive characteristics of China's human rights policy, which manifests that China emphasises the non-interference principle, ensuring sovereign independence and national stability. By looking at China's reservations with CEDAW, ICERD, and CAT, we see PRC signed and ratified the CEDAW, with the declaration that "it does not consider itself bound by paragraph 1 of Article 29",¹⁰⁶ PRC ratified the ICERD with the reservation that "the PRC

¹⁰³ Alastair Iain Johnston, 'The Failures of the "Failure of Engagement" with China' (2019) 42 *The Washington Quarterly* 99, 101.

¹⁰⁴ Congyan Cai, Regimes in *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (Oxford University Press 2019) 101, 140.

¹⁰⁵ They are the Elimination of All Forms of Discrimination against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), had all been acceded to before 1990.

¹⁰⁶ Article 29(1) of CEDAW, "Any dispute between two or more States Parties...which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration...unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice..."

will not be bound by the provisions of article 22”.¹⁰⁷ PRC signed and ratified the CAT with reservations on the authority of the Committee against Torture in article 20 and article 30(1).¹⁰⁸ All the above declarations express China’s reservation to the power of the International Court of Justice to intervene in its domestic justice and to the investigation concerning interference in sovereignty by the relevant treaty bodies. This fact shows that China has excluded itself from the dispute settlement procedures of the Conventions and in order to avoid any intervention rights by the relevant organizations concerned, thus demonstrating China’s adherence to the non-intervention principle in human rights treaties in order to ensure its sovereign independence.

Moreover, in its second periodic report to the Committee on Economic, Social and Cultural Rights, China sought to explain that its national courts would not apply human rights conventions directly. China claims that

“In accordance with the conventional practice of applying international treaties in China, such treaties do not directly function as the legal basis for the trial of cases in Chinese courts, and international human rights treaties are no exception; rather, they are applied after being transformed into domestic law through legislative procedures.”¹⁰⁹

Even though the treaty body keeps reiterating its recommendation that China consider withdrawing its reservations and declarations to the Convention, from the above, it is clear that China is reluctant to deal with international institutions and legal provisions that may affect its sovereignty and jurisdiction.¹¹⁰ China made reservations when

¹⁰⁷ Article 22 of ICERD, “Any dispute between two or more States Parties...which is not settled by negotiation...be referred to the International Court of Justice for decision...”

¹⁰⁸ Article 20 of CAT, “...the Committee shall invite that State Party to co-operate in the examination of the information... the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently...such an inquiry may include a visit to its territory...”

Article 30(1) of CAT, “Any dispute between two or more States Parties...which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration...unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice...”

¹⁰⁹ E/C.12/CHN/2, (2010) page 9. 4(2).

¹¹⁰ CAT/C/CHN/CO/5, para.64; see also A/55/44, para. 124, and CAT/CO/CHN/4, para. 40.

accessing the international human rights treaties to shield its sovereignty and judicial power from international pressure and avoid being constrained by international human rights treaty bodies. In the declaration of the CAT, China reserved provisions about the cooperated examination, confidential enquiry or visit within the territory of China, and dispute resolution mechanism of the Convention, preventing the Committee or even the International Court of Justice (ICJ) may intervene in national human rights matters or convention disputes. Meanwhile, China disallows the automatic incorporation of human rights treaties exposing its authority to potential interferences or challenges. Although China has actively engaged in the international human rights community, in practice, China seeks to shield its executive power from international pressure by leaving the application of human rights treaties untouched in the judicial sector.¹¹¹

The non-interference principle is now more frequently and subtly mentioned in public by China. China's emphasis on "non-intervention" and "self-reliance" in its human rights policy reflects its pursuit of "peaceful coexistence or sovereignty equality". This is similar to the Non-Aggression Principle on which libertarians rely. Liberal theories rely heavily on this moral principle, which is not limited to the individual behaviour of citizens, but also applies between states.¹¹² As there is a link between human rights protection and interference in internal affairs, in the history of international relations, it is believed that the concept of sovereignty was reaffirmed by non-Western countries in opposition to the illegal intervention of Western powers in their domestic affairs.¹¹³ Western countries were often perceived as interfering in China's internal affairs under the excuse of 'protecting human rights'.¹¹⁴ Liu Huaqiu argued that If the non-interference principle did not apply to human rights issues, then it was essentially a manifestation of power politics that contradicted the purposes of the UN Charter.¹¹⁵ Liu's words conveyed three

¹¹¹ Congyan Cai, Chinese Courts in *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (Oxford University Press 2019) 233, 261.

¹¹² Matt Zwolinski, 'The Libertarian Nonaggression Principle' (2016) 32 *Social Philosophy and Policy* 62, 63.

¹¹³ Congyan Cai, 'The Rise of China and the Strategy of Universality of International Law' (2021) 3 *China International Strategy Review* 154, 158.

¹¹⁴ Huaqiu Liu, Part V. 1949-1975 in 'Vienna Conference Statement (1993)', *The Chinese Human Rights Reader* (Routledge 2001) 390, 390.

¹¹⁵ Huaqiu Liu, Part V. 1949-1975 in 'Vienna Conference Statement (1993)', *The Chinese Human Rights Reader* (Routledge 2001). 390, 393-394.

meanings, the first emphasising the importance of the non-interference principle, which should not intervene even where there are human rights issues at stake. The second stresses that human rights issues are domestic matters and that human rights issues are outside the scope of what can be interfered with, and the third stresses that human rights questions are often utilised as political tools. Liu's public speeches as a representative of the country reflected China's advocacy of the non-interference principle of human rights. China was opposed to interference, especially when Western powers attempted to use international law as a tool to defame China on the pretext of protecting human rights.

The above description shows that China's emphasis is on independent sovereignty rather than the universality which has been proposed by Western powers since the 1990s.¹¹⁶ China has made reservations about provisions of international human rights treaties in case treaty bodies may interfere with its sovereignty and judicial power. Although it has been argued that China's engagement with human rights is essential in its rise as a great power in the age of human rights,¹¹⁷ China made reservations over provisions concerning the investigations or dispute settlement procedure on its own, preventing the human rights treaty bodies or the International Court of Justice may intervene. Thus, we can see China emphasises the non-interference principle to ensure sovereign independence.

In a nutshell, we see the distinctive characteristics of China's human rights foreign policy through the engagement with international human rights treaties, which manifests the point that China's human rights foreign policy emphasises the non-interference principle, seeking sovereign independence by making reservations.

1.3.3. China prioritizes the right to subsistence and development

¹¹⁶ Congyan Cai, 'The Rise of China and the Strategy of Universality of International Law' (2021) 3 China International Strategy Review 154, 158.

¹¹⁷ Congyan Cai, Regimes in *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (Oxford University Press 2019) 101, 140.

China's engagement with international human rights treaty bodies shows that China values the right to subsistence and development. In looking back on the history of China's involvement in human rights at the United Nations, China has been committed to contributing to the promotion of the right to development in human rights. China joined the United Nations Commission on Human Rights (UNCHR) as an observer from 1979 onwards.¹¹⁸ In 1981, China was selected to participate in a governmental experts group established by the United Nations Commission on Human Rights in the drafting of the Declaration on the Right to Development, and China joined each session and made positive suggestions.¹¹⁹ In 1986, the Declaration on the Right to Development was finally adopted at the 41st session of the United Nations General Assembly.¹²⁰

China maintains a human rights policy that emphasises social and economic development for the realisation of human rights. Looking at the three reports of China submitted to the United Nations Committee on Economic, Social and Cultural Rights, China stated that socio-economic development has led to the continuous and better protection of human rights.¹²¹ Particularly, China links economic development to the safeguarding of human rights. As the 2010 report states, in international cooperation in the field of human rights, the aid funds from international agencies are mainly used by China to reduce poverty and promote economic development in underdeveloped areas.¹²² Moreover, China's foreign aid in human rights is mainly focused on helping underdeveloped countries improve their socio-economic development and collective living conditions and bring tangible benefits to local people.¹²³ It is thus a characteristic of China's human rights policy that emphasises that social and economic development is the fundamental way to achieve human rights protection.

By prioritising the right to subsistence and development, China has raised the standard of living and literacy of its people. It is the 1986 Declaration on the Right to Development

¹¹⁸ Sophia Woodman, 'Human Rights as Foreign Affairs: China's Reporting under Human Rights Treaties Chinese Law' (2005) 35 Hong Kong Law Journal 179, 181.

¹¹⁹ Ibid.

¹²⁰ GA Res. 41/128, 4 December 1986.

¹²¹ E/C.12/CHN/3, (CESCR Third Periodic Report, 2019); E/C.12/CHN/2, (CESCR Second Periodic Report 2010); E/1990/5/Add.59, (CESCR Initial Report, 2003).

¹²² E/C.12/CHN/2, 2010, pp.7.

¹²³ Ibid, pp.7, 8.

noted that the state should ensure that people enjoy “access to basic resources, education, health services, food, housing, employment and the fair distribution of income.”¹²⁴ China’s human rights policy claims that economic development can better guarantee people’s rights to subsistence and development. The results of China’s focus on the right to subsistence are reflected in the reduction of the number of people living in extreme poverty. According to the First United Nations Millennium Development Goal¹²⁵, China’s achievements in reducing poverty have contributed prominently to global poverty reduction. Since the 1990s, the number of people living in extreme poverty in China, the largest country in terms of population, has been drastically reduced by 150 million.¹²⁶

Through the above descriptions on the human rights achievements China made, it has been seen that, China attaches importance to the right to subsistence and socio-economic development as a way and means of promoting human rights. In China’s view, the right to socio-economic development is a fundamental human right that people need to realise before other civil and political rights. As the statement of the Proclamation of Tehran said, “If there are no economic, social and cultural rights, civil and political rights can never get the full realization. The achievement of human rights and fundamental freedoms is dependent on the policies of economic and social development.”¹²⁷

China proposed a resolution to the Human Rights Council¹²⁸ entitled ‘The Contribution of Development to the Enjoyment of All Human Rights’ in 35th session of the Human Rights Council in 2017.¹²⁹ The resolution was supported by many countries.¹³⁰ In fact,

¹²⁴ Declaration on the Right to Development, art. 8, G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986).

¹²⁵ It was adopted in 2000 by 189 states and signed by 147 heads of State and Government.

¹²⁶ Thomas Pogge, ‘The First United Nations Millennium Development Goal: A Cause for Celebration?’ (2004) 5 *Journal of Human Development* 377, 379.

¹²⁷ UN doc. A/CONF. 32/41. Proclamation of Tehran, Final Act of the International Conference on Human rights (1968) p4, point 13.

¹²⁸ Members of the Human Rights Council have an important duty to propose resolutions, which usually condemn human rights violations and call for action. Many resolutions are adopted by consensus, while others are voted on.

¹²⁹ A/HRC/35/L.33/Rev.1, 20 June 2017.

¹³⁰ Adopted by a recorded vote of 30 to 13, with 3 abstentions.

the right to development is not unfamiliar in the international human rights system. In 1986, the United Nations groundbreakingly published the Declaration on the Right to Development, which states: ‘Everyone has the right to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.’¹³¹ The Vienna Declaration and Programme of Action, which was adopted by the World Conference on Human Rights in 1993, recognised the right to development as an integral part of fundamental human rights.¹³² However, this does not mean that the right to development is mainstream. It is still worth noting that the resolution on the right to development proposed by China in 2017 was the first resolution of the Human Rights Council to focus entirely on development issues. China’s human rights policy reflects that China attaches great value to the right to economic and social development.

Economic development is not a sufficient human rights policy in the context of Western human rights values, which makes China’s prioritisation of the right to economic development a distinctive feature. For instance, the United States has ratified the International Covenant on Civil and Political Rights but rejected the International Covenant on Economic, Social and Cultural Rights. As Albright conveyed, despite economic development resulting in an improvement in human rights quality, they have American values that must be defended.¹³³ Despite the hierarchy of human rights in the West being deeply rooted in the Western concept of natural law, which states that civil and political rights have always taken precedence over economic, social, and cultural rights,¹³⁴ this does not mean that the West places the right to economic development outside the hierarchy of rights. As in the United States, in times of relative economic downturn, its recent industrial policy has emphasised employment environment,

¹³¹ General Assembly Resolution 41/128, para. 3, 04 December 1986.

¹³² Vienna Declaration and Programme of Action 1993, Part I, 10.

See also, Zhixiong Huang, ‘The Right to Development: The Chinese Perspective’ (2010) in F. Bestagno and L. rubini (eds.), *Challenges of Development: Asian Perspectives*, 34.

¹³³ Alastair I. Johnston, ‘The Failures of the “Failure of Engagement” with China’ (2019) 42 *The Washington Quarterly* 99, 105.

¹³⁴ C. Fred Alford, *Narrative, Nature, and the Natural Law: From Aquinas to International Human Rights* (Palgrave-Macmillan 2010), 2.

economic competitiveness and collective well-being.¹³⁵ Unlike the United States' Make America Great Again (MAGA), which resists economic globalisation through nationalism and economic isolationism and emphasises employment and economic resilience, China relies on state-led developmentalism, which emphasises long-term economic development. Economic and development rights have always been a priority in China. The prioritisation of the right to economic development is a distinctive feature of China's human rights policy because China has redefined priorities for the promotion and protection of human rights.

In a nutshell, we see the distinctive characteristics of China's human rights foreign policy through the engagement with international human rights treaty bodies, which manifests the point that China's human rights foreign policy emphasises socio-economic development is a prerequisite for realizing human rights. With regard to the relationship between the right to development and human rights, the attitudes of Western and non-Western countries are polarised, and even form a North-South line of opposition. Western countries have mostly questioned the right to development in its normative sense in the international community. Of course, even if the right to development is universally accepted, the universal implementation of the right to development as a human right is still difficult.¹³⁶ Although the status of the right to development is established in the United Nations Declaration on the Right to Development (DRD), which means that it is inalienable under the international law system¹³⁷, the Covenant is considered to be a vague instrument rather than a universal instrument.¹³⁸ This shows that the right to development is not an important point in the Western-dominated human rights positions, yet China attaches particular importance to the right to development on its side, which makes its human rights policy different from that of the West.

¹³⁵ Donald J. Trump, *Get Tough in Time to get tough: Make America great again*. Simon and Schuster, (2024) 1, 4.

¹³⁶ Bonny Ibhawoh, 'The Right to Development: The Politics and Polemics of Power and Resistance' (2011) 33 Human Rights Quarterly 76, 77.

¹³⁷ Declaration on the Right to Development, UN General Assembly, A/RES/41/128, December 4, 1986.

¹³⁸ Bonny Ibhawoh, 'The Right to Development: The Politics and Polemics of Power and Resistance' (2011) 33 Human Rights Quarterly 76, 77.

1.3.4. China values the common interests of collective human rights

China's engagement with human rights treaties bodies shows that China values the common interests of collective human rights. Looking at the six core human rights treaties that China has accessed,¹³⁹ there are four instruments representing collective human rights, which are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Economic, Social and Cultural Rights (CESCR), Convention on the Rights of the Child (CRC), and Convention on the Rights of Persons with Disabilities (CRPD).

As can be seen through China's reporting under the Economic and Social Council, China's emphasis on collective rights is in the context of Chinese reality. In the 2004 state report to the Economic and Social Council¹⁴⁰, China says it is faced with the task of reducing poverty and narrowing the gap between the rich and the poor and faces various difficulties such as population growth and a shortage of resources.¹⁴¹ Given its large population, the Chinese government spares no effort to maintain stable employment.¹⁴² Moreover, the principal expectation of enhancing common interests includes increasing living standards, public services, and basic infrastructure, such as universalizing cable television and high-speed broadband networks¹⁴³, increasing the average annual income,¹⁴⁴ and ensuring a convenient transport system.¹⁴⁵ Therefore, China's human rights progress reflects that China values the common interests of collectives.

Moreover, by examining China's interaction with the treaty bodies that monitor the implementation of the CRC, it shows that China's emphasis on collective rights is in the context of Chinese common interests. Although China takes into consideration the overall development of the individual and the collective, China values the common interests of collectives. China's macro-regulation of population growth is a good example

¹³⁹ CAT, CEDAW, CERD, CESCR, CRC, CRPD.

¹⁴⁰ China's initial report under the ICESCR, China was under the spotlight at the UN.

¹⁴¹ E/1990/5/Add.59, 4 March 2004, pp.8.

¹⁴² Ibid, pp.16.

¹⁴³ Ibid, pp.16, 19.

¹⁴⁴ Ibid, pp.16.

¹⁴⁵ Ibid, pp.19, 20.

of this point. China took a family planning policy for decades. Even though China signed the CRC in 1990 and ratified it in 1992, China made the declaration with the Convention that

“China shall comply with its obligations under Article 6 of the Convention¹⁴⁶ presupposes that the Convention is consistent with the provisions of Article 25 of the Constitution¹⁴⁷ on family planning and with the provisions of Article 2 of the Law of Minor Children.”¹⁴⁸

Through the reservations and declarations China made in terms of family planning, we can see China fulfils the obligations of the CRC only if the treaty does not conflict with the view of China’s common interest of collective human rights. Regarding this, the relative human rights treaty bodies have kept showing concern about the family planning policy. The Committee on the Rights of the Child called on China to withdraw the reservation and expressed its deep concern about the ‘forced abortions and forced sterilizations imposed on women in the context of the one-child policy.’¹⁴⁹ The Committee on the Rights of the Child also urges China to immediately withdraw its reservation to Article 6 of the Covenant.¹⁵⁰

China, as a reserving State, is not required to withdraw its reservation but must respond in good faith to objections from other member States and monitoring bodies in its next periodic report.¹⁵¹ In terms of the comments and recommendations about the family-planning policy, the Chinese government explained that

“The implementation of this policy has effectively eased the pressure on resources and the environment brought about by excessively fast population

¹⁴⁶ Art.6 of the CRC: 1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

¹⁴⁷ Art.25 of PRC’s Constitution: The state shall promote family planning to see that population growth is consistent with economic and social development plans.

¹⁴⁸ ‘United Nations Treaty Collection’

<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=en#top> accessed 10 September 2024.

¹⁴⁹ CRC/C/CHN/CO/3-4, para. 7(a); see also E/C.12/1/Add.107, 13 May 2005, pp. 5.

¹⁵⁰ CRC/C/15/Add.56 7 June 1996, pp. 5.

¹⁵¹ “Where a State, after review, decides to maintain a reservation, the Committee requests that a full explanation be included in the next periodic report.”: Committee on the Rights of the Child, General Comment No. 5 (2003), ‘General measures of implementation of the Convention on the Rights of the Child’, UN Doc. CRC/GC/2003/5, 27 November 2003, para. 13.

growth and contributed to the development of China and the rest of the world.”¹⁵²

In order to control the population growth and safeguard the common interests, China established a family planning policy as the basic state policy of China. Prior to 2013, the One-child policy was one of the basic state policies. In 2013, China introduced a policy that allows couples to have a second child if at least one of them is an only child.¹⁵³ In 2015, China revised the Population and Family Planning Law to fully implement the two-child policy. This officially put an end to the one-child policy.¹⁵⁴ Despite it being believed that the family planning policy may soon be abolished and then China will be improving its compliance with the Covenants,¹⁵⁵ according to the continuous updating of China’s family planning policy, China has not yet adopted and lifted its reservation to Article 6 of the CRC.

In the case of population planning, rather than protecting the right to have children, China tried to make the most optimum option in line with the collective interests of society at different stages of development, which benefits the common interests of collective human rights under the economic and social development plans. The primacy of collective rights over individual rights is a key element in understanding the discourse of China’s human rights policy.¹⁵⁶ In the pursuit of a harmonious, peaceful and well-ordered society, if necessary, the collective and public interest is expected to take precedence over individual interests, and this has been regarded as a virtue in Chinese culture since ancient times.¹⁵⁷ This cultural attribute has largely influenced the way human rights are perceived in China today.

¹⁵² Comments of the Chinese Government about the Concluding Observations on the Combined 3rd & 4th Periodic Reports of China Adopted by the CRC Committee at its 64th Session.

¹⁵³ Yim Zeng, Therese Hesketh, ‘The Effects of China’s Universal Two-Child Policy’ (2016) 388 *The Lancet* 1930, 1932.

¹⁵⁴ *Ibid*, 1930.

¹⁵⁵ Congyan Cai, Regimes in *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (Oxford University Press 2019) 101, 106.

¹⁵⁶ Pitman B. Potter, ‘China and the International Legal System: Challenges of Participation*’ (2007) 191 *The China Quarterly* 699, 710.

¹⁵⁷ Hanqin Xue, Chapter 3. Human Rights as a Cause and a Process in *Chinese contemporary perspectives on international law history, culture and international law* (2012) The Hague: Hague Academy of International Law. 121, 157.

We see the distinctive characteristics of China's human rights foreign policy through China's engagement with human rights treaty bodies, which manifest in valuing the common interests of collective human rights. As illustrated by the example of China's family planning policy, China puts priority on the responsibilities and duties of citizens under the Constitution and specific laws, with the realization of human rights as a corollary.¹⁵⁸ There is a unique relationship between the collective and the individual in China's human rights policy, one that prioritises collective values over the individual values on which the West is based. Therefore, there is a distinctive feature of valuing collective human rights in China's human rights policy.

1.4. Interaction with Universal Periodic Review (UPR)

The Universal Periodic Review (UPR) is an important human rights mechanism in the United Nations. The General Assembly established this unique human rights mechanism in 2006, the same year that the General Assembly established the Human Rights Council.¹⁵⁹ UPR was established to ensure that every country would be equally treated when assessing the human rights situation at the national level.¹⁶⁰ On this basis, all 193 Member States are expected to submit national reports on their human rights records every four or five years and undergo a peer review. All Member States, including China, have now undergone the Universal Periodic Review three times.

1.4.0. Four Different HRCC's Characteristics

This section examines China's progressive engagement with the UPR, focusing on the national reports submitted by China and China's interactions with peer review. China has submitted its national reports to the Human Rights Council for three cycles (2008, 2013, 2018) to provide what actions it has taken to improve its national human rights situation

¹⁵⁸ Ibid.

¹⁵⁹ GA Res. 60/251 (15 March 2006).

¹⁶⁰ Hanqin Xue, Chapter 3. Human Rights as a Cause and a Process in *Chinese contemporary perspectives on international law history, culture and international law* (2012) The Hague: Hague Academy of International Law. 121, 158.

and to meet its human rights obligations.¹⁶¹ Although UPR's monitoring mechanisms are not empowered to make binding decisions, they serve as helpful forums developed to monitor compliance with international law, allowing States to report regularly on their compliance and to receive comments and recommendations from other States and international bodies. China's engagement with the UPR can be considered an important interaction with the international human rights system. China's interaction with the UPR reveals four distinctive features of China's foreign human rights policy.

1.4.1. China has its own path

China has stated its basic position on human rights issues in each of the three review report cycles. In the first national report in 2008, China stated that it is normal for countries to have different viewpoints on human rights issues due to different political systems, levels of development and historical cultures.¹⁶² The observations of the treaty bodies are taken seriously and adopted in light of China's national conditions.¹⁶³ In the second national report in 2013, the Chinese government defined its position on human rights as 'human rights under socialism with Chinese characteristics, and China is constantly exploring and improving this distinctive path.'¹⁶⁴ In the third national report in 2018, China reaffirmed the path of human rights with Chinese characteristics and gave more concrete conceptual and theoretical content.¹⁶⁵ As China's national report in 2018 stated that

'There is no universal road for the development of human rights in the world. As an important element in the economic and social development of each country, the cause of human rights must be promoted on the basis of the national

¹⁶¹ China has interacted with five United Nations treaty bodies which monitor the implementation of the Convention Against Torture (CAT), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

¹⁶² A/HRC/WG.6/4/CHN/1, 2009, Part I, C, 6.

¹⁶³ A/HRC/WG.6/4/CHN/1, Part II, 12.

¹⁶⁴ A/HRC/WG.6/17/CHN/1*, Part I, C, 4.

¹⁶⁵ A/HRC/WG.6/31/CHN/1*, Part I, C, 4, 5, 6, 7, 8, 9, 10.

conditions and the needs of the people of that country and cannot be defined on the basis of a single authority.’¹⁶⁶

The declaration highlights that China has chosen its own path of human rights policy in light of China’s national conditions and realities¹⁶⁷. China says it is still confronting the difficulties of a large population and a weak economic base, which are unavoidable national conditions and realities when it comes to the promotion and protection of human rights.¹⁶⁸ As China says, as a developing country, although China’s overall GDP is among the highest in the world, its per capita level is still relatively low. Meanwhile, the central government itself has realised that this approach to development can cause development imbalance and proposed countermeasures accordingly. In its words, development is imbalanced between urban and rural areas and between different regions, while economic and social development is still constrained by resources, energy and the environment.¹⁶⁹ In China’s future goals, China states that it will continue to prioritise the right to development, to put its development vision into practice and to achieve comprehensive human development through progressive completion of phased targets.¹⁷⁰ Therefore, China claims its own path in human rights is the only path that can effectively promote human rights in China.¹⁷¹

Though there are social and economic difficulties and challenges across the country,¹⁷² China has shown its firmness on its own path in terms of human rights, because the data shows that China’s approach looks feasible in improving human survival and livelihoods. Xue thinks China’s human rights policy is sensible because the implementation of international human rights treaties varies according to different social practices, as as

¹⁶⁶ UNHRC. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 - China. (20 August 2018) A/HRC/WG.6/31/CHN/1.

¹⁶⁷ A/HRC/WG.6/4/CHN/1, Part II, 12.

¹⁶⁸ Ibid, Part IV, 80; A/HRC/WG.6/17/CHN/1*, Part IV, 90.

¹⁶⁹ Ibid, Part IV, 80.

¹⁷⁰ Absolute poverty will be eliminated and a moderately well-off society comprehensively built by 2020, socialist modernization will be essentially realized by 2035, and the construction of a great modern socialist country that is prosperous, strong, democratic, culturally advanced, harmonious and beautiful will be achieved by 2050. See A/HRC/WG.6/31/CHN/1*, pp.18.

¹⁷¹ The State Council Information Office of China, White Paper: Fifty Years of Progress of China’s Human Rights (February 2, 2000), Part VI. <<http://www.china.org.cn/e-white/3/index.htm>> accessed 18 February 2025.

¹⁷² A/HRC/WG.6/4/CHN/1, Part IV.

demonstrated by the fact that China's reform experience over the past three decades has proved that human rights are closely related to economic and social development.¹⁷³ According to China's 2008 UPR report, China stated that it became the first state in the world to achieve the target of reducing poverty in the UN Millennium Development Goals (UN MDN).¹⁷⁴ In light of China's contribution to UN MDN, Xue commented that nothing has had a more positive impact on the cause of human rights than China's success in lifting several million people out of poverty within two decades.¹⁷⁵ This also reflects China's emphasis on basic material survival as a key point in developing human rights as a developing country.

Through the engagement with the UPR, we can see China has chosen its own path of human rights policy. China's own path in human rights is under the spotlight because it is not the same as mainstream human rights under Western liberalism. Therefore, it is a distinctive feature of China's human rights policy that it has chosen a unique human rights path. Nye early commented that benefits from the current world order, but as China's power grows internationally, it continues to expand its influence in ways that are moderately different from the current U.S.-led international order.¹⁷⁶ In Xue's words, the difference in human rights standards between China and the West is ultimately due to the difference in the model of rights.¹⁷⁷ Arguably, China has maintained a relatively autonomous trajectory of development. China's human rights foreign policy manifests the importance of collectivism, and prioritises economic and social rights, which in China's view is the most suitable path for China's situation and the most effective approach to improving human rights.¹⁷⁸

¹⁷³ Hanqin Xue, Chapter 3. Human Rights as a Cause and a Process in *Chinese contemporary perspectives on international law history, culture and international law* (2012) The Hague: Hague Academy of International Law. 121, 154.

¹⁷⁴ Ibid, Part III, 20. See also World Health Organization, the United Nations Millennium Development Goals, see annex 4, table 1, for information on poverty alleviation in China during the period 1986-2007.

¹⁷⁵ Hanqin Xue, Chapter 3. Human Rights as a Cause and a Process in *Chinese contemporary perspectives on international law history, culture and international law* (2012) The Hague: Hague Academy of International Law. 121, 155.

¹⁷⁶ Joseph S. Nye Jr., 'Power and Interdependence with China' (2020) 43 *The Washington Quarterly* 7, 17.

¹⁷⁷ Hanqin Xue, Chapter 3. Human Rights as a Cause and a Process in *Chinese contemporary perspectives on international law history, culture and international law* (2012) The Hague: Hague Academy of International Law. 121, 163.

¹⁷⁸ This is reflected in all China's UPR reports.

1.4.2. Non-interference principle

China takes its engagement with the UPR quite seriously. According to China's national reports for the three cycles, approximately 30 government institutions and 20 NGOs were participating in the report, which was also open for public comment.¹⁷⁹ The report also describes the establishment of a working group under the Ministry of Foreign Affairs to study how to implement the recommendations made to China by the 2009 UPR.¹⁸⁰ Moreover, the reports have improved over time, with serious attempts being made to cover the content of the relevant treaties and to assess the situation in more realistic detail, as reflected in corresponding materials of stakeholders' overview.¹⁸¹

China's engagement with the UPR shows that China emphasizes the non-interference principle, ensuring sovereign independence and stability. This can be seen through China's response to the recommendations made during the interactive dialogue under UPR. China supported most of the recommendations¹⁸², such as the strengthening of exchanges and cooperation with the international community¹⁸³ and the improvement of support for women¹⁸⁴ and persons with disabilities¹⁸⁵. However, there are types of recommendations that may interfere in China's domestic affairs that did not enjoy China's acceptance and support. In response to some recommendations that would interfere with internal affairs, which in turn affects sovereign independence and stability, China expressed its disapproval of these recommendations. For example, to reduce and preferably abolish the death penalty¹⁸⁶ and publish detailed figures on the death

¹⁷⁹ National Report, Para. 5 of the Annex to Human Rights Council Resolution 16/21: China, A/HRC/WG.6/17/CHN/1, August 5, 2013, see also A/HRC/WG.6/4/CHN/1, and A/HRC/WG.6/31/CHN/1*.

¹⁸⁰ A/HRC/WG.6/17/CHN/1, August 5, 2013.

¹⁸¹ Summary of Stakeholders' Submissions on China, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/31/CHN/3*, 3 September 2018; see also A/HRC/WG.6/17/CHN/3, and A/HRC/WG.6/4/CHN/3.

¹⁸² A/HRC/11/25*, Part II, point 114, 3, 7, 9, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 40, 41, 42. China agreed to support the recommendations on economic and development rights, such as continuing to promote economic, social and cultural rights, combating poverty and guaranteeing employment opportunities in rural areas, promoting education, and covering basic health services.

¹⁸³ A/HRC/11/25*, Part II, Point 114, 8.

¹⁸⁴ Ibid, Part II, Point 114, 14.

¹⁸⁵ Ibid, Part II, Point 114, 15.

¹⁸⁶ Ibid, Part I, Point 27(b), 28(b), 30, 31(a), (c), 38, 56(c), 83(c).

penalty¹⁸⁷; or to provide information on legal safeguards for persons charged with national security crimes¹⁸⁸, minimising the reservations to ratifying the International Covenant on Civil and Political Rights and amending Chinese legislation to be in line with the the International Covenant on Civil and Political Rights¹⁸⁹; positively inviting and welcoming visits by UN special rapporteurs¹⁹⁰.

As China regards some recommendations as domestic matters, it is clear that China expressed its disagreement with some recommendations that would interfere with its internal affairs. China has maintained a stance that interfering in the internal affairs of other countries is considered to be a breach of the UN Charter.¹⁹¹ In return, China firmly emphasizes the non-interference principle in terms of its own domestic affairs even under the UPR. According to the above recommendations, it is understandable from the point of view of monitoring the human rights situation in a country; however, they have been rejected by the Chinese government. This shows that China firmly emphasizes the non-interference principle under the UPR, as long as it refers to China's internal affairs.

China's emphasis on the non-interference principle in its human rights policy, particularly in relation to the Commission on Human Rights. The United States is known to be a strong advocate of civil and political rights and has a significant role in the Commission on Human Rights. In the heated debates between China and the United States in the Commission on Human Rights, China stated that it never influences and determines the actions of other countries, and also rejected the United States' use of its own values to determine China's actions.¹⁹² Since China is opposed to the double standard approach of the U.S.-represented Commission on Human Rights towards developing countries,¹⁹³

¹⁸⁷ Ibid, Part I, Point 28(c), 42(b), 96(a).

¹⁸⁸ Ibid, Part I, Point 28(f).

¹⁸⁹ Ibid, Part I, Point 27(e), 28(a), 30(b), 31(a), 38, 56(a), 83(g).

¹⁹⁰ Ibid, Part I, Point 27(d), 28(h), 38, 42(c).

¹⁹¹ Timothy Webster, 'China's Human Rights Footprint in Africa' (2012) 51 Columbia Journal of Transnational Law 626.

¹⁹² Katrin Kinzelbach, 'An Analysis of China's Statements on Human Rights at the United Nations (2000–2010)' (2012) 30 Netherlands Quarterly of Human Rights 299, 309.

¹⁹³ Hanqin Xue, Chapter 3. Human Rights as a Cause and a Process in *Chinese contemporary perspectives on international law history, culture and international law* (2012) The Hague: Hague Academy of International Law. 121, 158.

China is vigilant against possible interfering criticism in the internal affairs of any human rights body. Ambassador Sha Zukang had affirmed in an official statement at the 61st session of the Human Rights Commission that China resisted the use of country-specific criticism as a double standard and politically motivated practice.¹⁹⁴ A western observer commented on the performance of the Human Rights Commission, “the Commission has been unable to pass even a single resolution addressing human rights conditions in a Western state, reducing its credibility as a representative of human rights for the entire international community and giving rise to criticisms.”¹⁹⁵ Despite the controversial nature of the Commission of Human Rights (CHR), China has been the target of confrontation during the CHR's time, which explains why China's human rights policy has emphasised the principle of non-interference in China's human rights policy.¹⁹⁶

In its engagement with UPR, China has always emphasized the non-interference principle. Under China's non-interference principle, some scholars even argue that the Chinese government attempts to separate the domestic human rights sphere from the impact of international human rights treaties obligations, which are treated as a matter of foreign affairs.¹⁹⁷ This distinctive feature of China's human rights policy, which differs from that of the West, has often been targeted. China has met resistance in its candidacy for election to the UN Human Rights Council for the 2021-2023 term. It has been argued by some NGOs that China's candidacy should be rejected because China does not qualify for membership under UN General Assembly resolution 60/251.¹⁹⁸

¹⁹⁴ Pitman B. Potter, ‘China and the International Legal System: Challenges of Participation*’ (2007) 191 *The China Quarterly* 699, 712.

¹⁹⁵ Ron Wheeler, ‘The United Nations Commission on Human Rights, 1982–1997: A Study of “Targeted” Resolutions*’ (1999) 32 *Canadian Journal of Political Science/Revue canadienne de science politique* 75, 86.

¹⁹⁶ Xue sees political confrontation in the Human Rights Commission as the reason for its replacement by the Human Rights Council. See Xue H, Chapter 3. Human Rights as a Cause and a Process in *Chinese contemporary perspectives on international law history, culture and international law* (2012) The Hague: Hague Academy of International Law. 121, 158.

¹⁹⁷ Sophia Woodman, ‘Human Rights as Foreign Affairs: China's Reporting under Human Rights Treaties Chinese Law’ (2005) 35 *Hong Kong Law Journal* 179, 180.

¹⁹⁸ Written Statement by United Nations Watch, A/HRC/45/NGO/123, pp.2.

Therefore, through China's engagement with UPR, we can absorb the key distinctive feature of China's human rights foreign policy, which emphasises the non-interference principle and non-intervention in each other's domestic affairs.

1.4.3. China prioritizes the right to subsistence and development

Through China's national reports in the UPR, we see China has always been emphasizing and prioritizing the right to subsistence and development. China claims that "the right to subsistence comes before any other right, and the right to development is closely linked to the right to subsistence."¹⁹⁹ For a country and a nation, the right to subsistence is the foundation of human rights. Without the right to survival, there is no way to talk about all other human rights.²⁰⁰ The Chinese Government has always prioritised the right to subsistence and development in its agenda. China says in the 2008 UPR report that since 1953, the Chinese government has formulated and implemented 11 national plans for development, which have played an important role in raising the living standards of the Chinese people and promoting social progress, resulting in two historic leaps: from poverty to subsistence and from subsistence to relative prosperity.²⁰¹ Particularly, the number of people living in extreme poverty has decreased from 250 million to 15 million in 30 years as a result of a development-oriented poverty alleviation plan implemented by the Chinese government.²⁰²

China views the right to subsistence and development as the primary rights. Implementing people's right to subsistence and development is a top priority for the government.²⁰³ China has made significant progress in promoting the right to subsistence and development of the poor and vulnerable. China has invested huge amounts of money in poverty alleviation in recent years, reducing the total number of

¹⁹⁹ The Information Office of the State Council of the PRC. The Communist Party of China and Human Rights Protection – A 100-Year Quest, June 2021. <http://english.scio.gov.cn/whitepapers/2021-06/24/content_77584416.htm> accessed 18 February 2025.

²⁰⁰ The Information office of the State Council of the PRC. "Human Rights in China", 1991. <<https://en.humanrights.cn/1991/11/30/800fc09d948848069d95f86433700d6d.html>> accessed 18 December 2024.

²⁰¹ A/HRC/WG.6/4/CHN/1 (2009), page 8, para 19.

²⁰² Ibid, page 8, 9, para 20.

²⁰³ A/HRC/WG.6/31/CHN/1 (2018), page 3, para.7.

people living in rural poverty by 68.53 million from 2013 to 2017.²⁰⁴ The continuous improvement in people's living standards is due to China's emphasis on the people's right to subsistence and development.

China's human rights foreign policy prioritises the right to survival and development. China claims that it has an obligation to cooperate with each other to ensure development and to remove obstacles to development in order to realise human rights.²⁰⁵ From China's 2018 UPR National Report, it is clear that China's human rights foreign policy attaches importance to the right to development. In its bilateral and multilateral cooperation on human rights, China supports and helps the aid-recipient states to realise the right to development. China actively promotes the implementation of the right to development in other developing states. As China stated in the national report, "[it] is steadily expanding the scale of its aid to other developing countries. China supports and assists aid-recipient countries' efforts to enhance their own development capabilities, reduce poverty, improve their people's livelihoods, and protect the environment, thereby creating better conditions for all peoples to realize the right to development."²⁰⁶

China emphasises the protection of the right to subsistence and development as its overriding principle.²⁰⁷ Through China's engagement with the UPR, we see that China not only values the right to subsistence and development but also calls on the international community to pay attention to the right to subsistence and development. In China's 2009 national report, China called on the international community to "attach equal importance to civil and political rights and economic, social and cultural rights as well as the right to development"²⁰⁸ In China's 2013 national report, China stated that

"The international community should accord equal attention to the achievement of civil and political rights, economic, social and cultural rights, and the right to development; it should also promote the coordinated development of individual

²⁰⁴ Ibid, page 6, para.23.

²⁰⁵ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986). Art. 3(3).

²⁰⁶ A/HRC/WG.6/31/CHN/1 (2018), page 17, para. 77.

²⁰⁷ A/HRC/WG.6/17/CHN/1 (2013), page 3, para.5.

²⁰⁸ A/HRC/WG.6/4/CHN/1 (2009), page 5, para.6.

and collective human rights. China is committed to carrying out exchanges and cooperation on human rights with all countries, and to promoting the resolution of human rights issues in a fair, objective and non-selective manner by the international community.”²⁰⁹

The quote highlights that the right to development is a fundamental and inalienable right under international law. It also implied that although the right to development appears fundamental, its status as international law is still far from being secured as civil and political rights as well as economic, social, and cultural rights. Developed countries have tried to counteract or deny the existence of the right to development for a long time.²¹⁰ The United States, for example, voted against the adoption of the Declaration on the Right to Development at the UN General Assembly, and many other Western countries abandoned the vote.²¹¹ In the absence of widespread international support for the Convention on the Right to Development, China’s emphasis on the right to development in its human rights policy has become a distinctive characteristic that differs from that of the West. In the Chinese perception, influenced by the general Marxist tradition, socio-economic and development rights are the foundational human rights on the basis of which other rights can be realized.

China’s human rights policy emphasises the right to development because it sees this as being in line with the country’s development orientation. China has made meeting the material needs of its citizens a core function of government. In other words, China tends to meet the basic survival needs of 1.4 billion people, which has proven to be no small achievement in China’s UPR reports.²¹² China views the right to subsistence and development as an indivisible core right that guarantees human rights in China, which stated in the 1986 Declaration on the Right to Development stated that people should be ensured to enjoy “their access to basic resources, education, health services, food,

²⁰⁹ A/HRC/WG.6/17/CHN/1 (2013), page 2, para.4.

²¹⁰ Timothy Webster, ‘China’s Human Rights Footprint in Africa’ (2012) 51 Columbia Journal of Transnational Law 626, 636.

²¹¹ John Charvet and Elisa Kaczynska-Nay, *The Liberal Project and Human Rights: The Theory and Practice of a New World Order* (Cambridge University Press 2008), 79, 136.

²¹² A/HRC/WG.6/31/CHN/1 (2018), page 6, para. 23, 25, 26, 27, 28.

housing, employment and the fair distribution of income”.²¹³ Moreover, it is the responsibility of states to “take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.”²¹⁴ Thus China emphasises the full realisation of the right to development in its human rights policy.

Therefore, through the engagement with the UPR, we can see China emphasises the right to subsistence and development in its human rights policy. In contrast to the reluctance of Western countries to enshrine the right to development,²¹⁵ China attaches particular importance to the status of the right to development. China has expressed its determination to continue to focus its efforts on economic development.²¹⁶ Thus, the emphasis on the right to development is a distinctive feature of China’s human rights policy.

1.4.4. China values the common interests of collective human rights

Via China’s engagement with UPR, we see China values the common interests of collective human rights. In a dynamic process in which China has submitted three UPR national reports, China’s human rights policy has remained largely consistent, emphasizing the collective interests represented by the majority as a whole over individual rights. Like other Asian countries, China emphasises community values and the importance of groups of people.²¹⁷ Therefore, China’s achievements and practices in the promotion and protection of human rights have tended to meet the basic needs of large groups of people. The objectives set for future work in China’s 2009 UPR national

²¹³ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986). Art.8.

²¹⁴ Ibid, Art.4(1).

²¹⁵ Timothy Webster, ‘China’s Human Rights Footprint in Africa’ (2012) 51 Columbia Journal of Transnational Law 626, 637.

²¹⁶ Premier Wen Jiabao stated in his speech in the UN General Assembly in 2010, China has made progress in modernisation, and while it is relatively advanced in some areas, it still remains behind in others. China will therefore continue to focus its efforts on economic development. See Wen Jiabao, Getting to Know the Real China, General Debate of the 65th Session of the UN General Assembly, September 23, 2010.

²¹⁷ Timothy Webster, ‘China’s Human Rights Footprint in Africa’ (2012) 51 Columbia Journal of Transnational Law 626, 634.

report are mainly for the realization of collective rights of the public community, such as poverty alleviation, employment, social security system, public welfare, and environmental protection.²¹⁸ In China's 2013 and 2018 reports, China has made notable achievements in the above areas.²¹⁹ Moreover, China is serious about meeting the basic survival needs of large groups of people. As China declared in its UPR report, China has eliminated smallpox, controlled SARS and avian flu, and provided free medical treatment to patients with major infectious diseases.²²⁰

In both current and traditional China, the collective lies at the core of Chinese society rather than individuals. In the conceptual and theoretical system of human rights with Chinese characteristics, the term 'people' is mostly expressed on behalf of the community as a whole. This is evidenced by the articulation of China's road on human rights in China's 2018 UPR national report:

"This is a road that takes the people to the centre. In China, the road of human rights development always takes the well-being and interests of the people as the starting point and end result. As it upholds the principle of the people's sovereignty... As it upholds the principle of the people's primacy, China is enhancing the people's well-being and promoting the comprehensive development and common prosperity of the people as a whole."²²¹

In the above-mentioned statement on human rights in the UPR national report, it is clear that China's human rights policy emphasises collective interests over individual interests. It is straightforward to note from China's UPR reports that the expression of human rights is seeing the people as a whole, where the collective common interests prevail. The path of human rights can be understood as the path of people's rights. From the perspective of rights, China prefers to support the rights of the community as a whole rather than allowing individuals to claim rights against the sovereignty or community. It has been argued that this trend toward human rights with Chinese characteristics, which emphasises collective rights, is certain to change as more individual autonomy emerges

²¹⁸ A/HRC/WG.6/4/CHN/1, (2009), page 19, 20, 21.

²¹⁹ A/HRC/WG.6/17/CHN/1, (2013), page 5, 6, 7, 8; A/HRC/WG.6/31/CHN/1 (2018), page 7, 8, 9, 10.

²²⁰ A/HRC/WG.6/4/CHN/1, (2009), page 12, para. 39.

²²¹ A/HRC/WG.6/31/CHN/1, (2018), page 3, para. 6

in contemporary China.²²² However, the current official Chinese view of human rights, as reflected in the UPR report, is that of the people as a whole and that the collective common interests prevail.

Among the concept and theoretical system of human rights, the emphasis on collective rights as a characteristic of China's human rights policy is distinctive. Obviously, China's understanding of human rights differs from the traditional Western 'rights-centred' conception of human rights. The Western concepts of human rights concentrate on the aspect of individual rights and considerably ignore the aspect of obligations.²²³ Just because China values collective rights as a distinctive human rights characteristic, there is some concern that China's rise may threaten individualism.²²⁴ However, China claims that it can provide an unprecedented level of protection for people's rights and interests.²²⁵ China confidently proposed China's human rights policy with Chinese characteristics would help to build a new type of international relations characterized by "a community with a shared future for mankind",²²⁶ where China sees it as a mutually beneficial foreign policy.²²⁷

As to why China's human rights policy reflects a value on collective rights, it is mainly because of the socialist philosophy and Chinese civilization. Firstly, China has established a human rights theoretical system with Chinese characteristics based on Marxist human rights theory.²²⁸ China has always maintained that both aspects, rights and obligations, must be taken into account simultaneously. As the official Chinese statement goes,

²²² Timothy Webster, 'Ambivalence and Activism: Employment Discrimination in China' (2011) 44 *Vanderbilt Journal of Transnational Law* 643, 705.

²²³ Congyan Cai, Regimes in *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (Oxford University Press 2019) 101, 143.

²²⁴ Anne Peters, *Beyond Human Rights: The Legal Status of the Individual in International Law* (Cambridge University Press 2016), 3.

²²⁵ A/HRC/WG.6/31/CHN/1, (2018), page 3, para. 6

²²⁶ UNHRC. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 - China. UN Doc. A/HRC/WG.6/31/CHN/1 (2018), para. 10 (hereafter A/HRC/WG.6/31/CHN/1 (2018)).

²²⁷ A/HRC/WG.6/31/CHN/1*, Part I, C, 10.

²²⁸ Hainian Liu, 'On Building Theoretical System of Human Rights with Chinese Characteristics Interviews' (2011) 10 *Human Rights* 6, 6.

human rights are “a unity of individual rights and collective rights.”²²⁹ Thus, while people enjoy their human rights, they should also be mindful of their community obligations to achieve collective rights. Secondly, the Chinese unique public-private relationship, which strongly emphasises collective values rather than individual values, is deeply grounded in Chinese civilization. In terms of public-private relations, contemporary Chinese human rights policy has many similarities with Confucianism. Confucianism, with its emphasis on hierarchy and collectivism, was adopted as the official doctrine in the Chinese Empire.²³⁰ In brief, Confucianism has shaped the unique character of China’s human rights policy in its emphasis on collective rights.

Therefore, through China’s national reports with UPR, we see there is a distinctive characteristic that China values the common interests of collective human rights in China’s human rights policy. This characteristic has largely been influenced by China’s socialist philosophy and Chinese civilization, which manifests China's high stress on collective values rather than individual values.

1.5. Conclusion: What are ‘Human Rights with Chinese Characteristics’

A review of foreign policy material on China’s human rights reveals that China has a different understanding of human rights. After a close examination of the policy statement, treaty body engagement, and the UPR works, through an inductive methodology, there are four themes that kept coming up as a pattern. Thus, through the examination of examples in above three dimensions, human rights with Chinese characteristics are manifested in the four thematic elements (in no particular order) of China’s approach to human rights issues, which are A) China’s human rights foreign policy has its own path in line with its national realities; B) China emphasises the non-interference principle, seeing national security and sovereign independence as

²²⁹ Information office of the State Council of the PRC. “The Right to Development: China’s Philosophy, Practice and Contribution”, 2016, Part I.
<https://english.www.gov.cn/archive/white_paper/2016/12/01/content_281475505407672.htm> accessed 18 February 2025.

²³⁰ Dingxin Zhao, Part IV the Confucian-Legalist State and Patterns of Chinese History in *The Confucian-Legalist State: A New Theory of Chinese History* (Oxford University Press 2015), 297, 331.

preconditions of all other rights; C) China follows the human rights policy that takes the rights to subsistence and development as the priority; D) China values the common interests of collective human rights over individual ones.

The first feature is that China has its own path in human rights policy in accordance with its national realities. China holds a distinct view of human rights, whose unique perspective is based on its cultural and historical context. China has been exploring its own path of human rights that is in line with its national realities and social values, and the human rights path is adapting and evolving to meet social development. This point has also been seen many times not only in China's political statements, such as human rights white papers and international speeches, but also in the national reports submitted to UPR. While recognising the universality of human rights, China emphasises that China's human rights policy should have special characteristics.²³¹ There is no single view on human rights in the world because of the different situations in each country.²³² As far as China is concerned, although China accepts and respects the universality of human rights principles,²³³ it argues that China has its own particular national conditions and social characteristics. Moreover, by looking at China's engagement with human rights treaty bodies, we see China made declarations several times that the application of certain provisions of the Covenants to the PRC shall be consistent with the relevant provisions of the Constitutions and other laws. China strives to work within a socialist framework and to build a strong human rights system. In its case, China favours a more inclusive and culturally sensitive perspective. While China accepts and respects the universality of human rights principles, it does not consider the way to achieve them to be universal; rather, it considers that China's human rights approach should take into account its own national conditions and social features. Therefore, China is distinctive in adopting its own path in human rights that is in line with its national conditions.

²³¹ A/HRC/WG.6/31/CHN/1 (2018), para. 4, 5.

²³² Ibid.

²³³ UNHRC. National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21, China, UN Doc. A/HRC/WG.6/17/CHN/1 (2013), para 4 (hereafter A/HRC/WG.6/17/CHN/1 (2013)).

The second feature is that China emphasises the non-interference principle, ensuring sovereign independence and stability. China's practical actions have consistently emphasised the importance of sovereignty to China's fundamental human rights position. Through China's political statements, with regard to the promotion and protection of human rights, China has always stressed that stability is a prerequisite.²³⁴ It also can be seen that China regards human rights as a domestic matter falling within its sovereignty, despite its international dimension.²³⁵ Moreover, according to China's engagement with human rights treaty bodies, both the declarations about China's exclusion from the dispute settlement procedures of the Conventions and its reservation of the right to intervene of the relevant organizations suggest that China keeps the non-interference principle to ensure its sovereign independence. Furthermore, China disallows the provisions of human rights treaties that are automatically incorporated, therefore, to shield its executive power from potential interference by leaving the application of human rights treaties untouched in the judiciary. Additionally, according to China's engagement with UPR, China firmly emphasizes the non-interference principle in terms of its own domestic affairs. When China faced the recommendations of UPR's outcome of reviews, China disagreed with a proposal to interfere in its internal affairs if the content of the proposal was considered a domestic matter in China. It can also be seen that, despite human rights issues being of international character, China considers them as domestic affairs within the scope of its sovereignty. Therefore, China's human rights policy is characterized by emphasising the non-interference principle, seeking sovereign independence and stability.

The third feature is that China emphasises economic development as the basis of China's approach to human rights. China's human rights policy takes the promotion of the right to subsistence and development as a means to achieve human rights ultimately as a result. Reviewing China's human rights white papers and international speeches, the content of the right to subsistence and development is a heavily weighted part of the

²³⁴ For example, the White Paper by the State Council Information Office of China, "Fifty Years of Progress of China's Human Rights" (February 2, 2000), Part VI. <<http://www.china.org.cn/e-white/3/index.htm>> accessed 18 February 2025.

²³⁵ For example, The State Council Information Office of the PRC. "Human Rights in China", 1991. <<https://en.humanrights.cn/1991/11/30/800fc09d948848069d95f86433700d6d.html>> accessed 18 December 2024.

content. Looking back at the engagement with international human rights treaties, we saw China's efforts for the right to development. China particularly considers the right to development to be an integral part of fundamental human rights and a universal and indivisible right.²³⁶ Referring back to the national reports to UPR, enhancing the right to subsistence and development has led to achievements in improving human rights in China. In the case of China, given its backward social conditions from the founding of New China, the road to the full achievement of human rights should have been slow and long, but it is reassuring to see that China's economic and modernisation development has helped to accelerate this process. There is no doubt in China's mind that the right to development is an integral part of fundamental human rights and is a universal and inalienable right. Therefore, China's human rights policy is distinctive in always prioritizing the right to subsistence and development.

The last but not least point is that China values the common interests of collective human rights. Looking at China's political statements, such as in the white papers, China understands 'human rights in a bigger picture that tends toward the rights of the people or the rights of the population. China's human rights are primarily collective rights for the social and economic welfare of all the Chinese people rather than individual ones, such as improving the overall standard of living and eradicating poverty, providing social security, health care, and education, and guaranteeing other basic material necessities.²³⁷ In particular, efforts to eradicate poverty and raise the standard of living of the general population were seen as a core of its human rights achievements. Moreover, according to China's engagement with human rights treaty bodies, China has actively accepted treaties such as the Convention on the Elimination of All Forms of Discrimination against Women, International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention on the Rights of Persons with Disabilities. In contrast to its active embrace of a series of international treaties represented by the ICESCR, China has not ratified the International Covenant on Civil and Political Rights, which represents

²³⁶ In Xue's view, the right to development, challenged initially by some Western countries as a human rights concept, is regarded as the third-generation human rights. (Civil and political rights belong to the first-generation human rights, and economic, social and cultural rights are of the second-generation).

²³⁷ The State Council Information Office of China, Development: Human Rights in China (November 1991). Preamble. <<https://en.humanrights.cn/1991/11/30/800fc09d948848069d95f86433700d6d.html>> accessed 18 February 2025.

individual political rights. China's selective subscribing to treaties relating to social and economic well-being as a collective right indicates that it values collective rights more than individual rights. In particular, China's reservations to the Convention on the Rights of the Child, which are aimed at achieving a controlled population policy,²³⁸ are a further indication of the importance of collective rights. Additionally, according to China's national report to UPR, China has positively responded to those recommendations, which would benefit people as a community.²³⁹ We can see China views the value of collective rights comes before those of individuals because the focus on collective rights creates the conditions and basis for the realisation of individual rights,²⁴⁰ despite the fact that China emphasises the integration of individual and collective human rights.²⁴¹ Therefore, we see the distinctive characteristics of China's human rights foreign policy, which manifest that China values the common interests of collective human rights over individual rights.

The emphasis on social and economic development in HRCC is rooted in the belief that material well-being is a prerequisite for the full enjoyment of all other rights. This reflects both Marxist economic determinism and the policy priorities of China's reform era, where poverty eradication and economic growth were seen as foundational to human rights protection. A critical question, however, is whether this culturally specific emphasis would diminish once China reaches a stage of advanced prosperity. While the developmental justification is historically contingent, its philosophical foundation—particularly the collectivist orientation that prioritises social stability over individual autonomy—suggests it may persist in a reframed form. In a post-prosperity China, the discourse could shift from rapid growth to the maintenance of “common prosperity,” addressing inequality, and safeguarding collective welfare. This could provide continuity to the HRCC framework while potentially opening greater political space for the expansion of civil and political rights.

²³⁸ ‘United Nations Treaty Collection’

<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-2&chapter=4&clang=en#top> accessed 10 September 2024.

²³⁹ A/HRC/WG.6/17/CHN/1*, Part I, B.

²⁴⁰ A/HRC/WG.6/31/CHN/1, (2018), page 3, para. 6.

²⁴¹ A/HRC/WG.6/17/CHN/1*, (2013), page 3, para. 4.

While the above four features describe HRCC at the macro-level, their significance becomes clearer when examined through the lens of daily human rights protection at micro-level. For instance, the feature that 'China has its own path' shapes domestic lawmaking, as seen in the Anti-Domestic Violence Law (2016), which reflects national priorities but often faces inconsistent enforcement due to localised understandings of family harmony.²⁴² The feature of non-interference, while reinforcing state sovereignty, may limit the adoption of international best practices in areas such as torture prevention or victim support in harassment cases, which is often criticised by foreign human rights NGOs.²⁴³ The emphasis on social and economic development has contributed to poverty reduction and improved living conditions, indirectly reducing vulnerability to abuse; however, economic imperatives may override the prompt redress of individual rights violations, as in the case of the Government's encouragement of women to marry and have children after the demographic dividend of the market economy had faded following a decline in the fertility rate, and the addition of a 30-day cooling-off period, which was prone to abuse, made it difficult for women to get divorced.²⁴⁴ Finally, the prioritisation of collective interests, aimed at preserving social stability, can lead to the suppression or quiet settlement of sensitive cases where public disclosure is perceived as destabilising. Linking HRCC's principles to such concrete rights issues reveals how the Chinese model not only diverges from mainstream Western human rights discourse, but also how it operates in practice, potentially affecting victims' access to justice and the extent to which China fulfils its international human rights obligations.

As China has largely eliminated mass poverty, the right to subsistence is no longer the main battleground. Instead, the Communist Party has shifted to promoting high-quality development, which provides a possible foundation for the next phase of its human rights discourse. Collective rights, such as ecological resources and environmental rights are gaining prominence, particularly in the context of Xi Jinping's 'Beautiful

²⁴² Fei Qi, Yuqi Wu, & Qi Wang, 'Anti-domestic violence law: The fight for women's legal rights in China'F. *Asian Journal of Women's Studies*, 26(3), (2020). 383, 383.

²⁴³ 'Human Rights in China' (*Amnesty International*) <<https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/china/report-china/>> accessed 9 August 2025.

²⁴⁴ Human Rights Watch, 'China: Events of 2024', *World Report 2025* (2025) <<https://www.hrw.org/world-report/2025/country-chapters/china>> accessed 9 August 2025.

China' and 'Citizens' Environmental Rights' initiatives.²⁴⁵ In addition, the definition of the right to development, which aims at the fulfilment of economic and social rights, is expanding to include the sharing of technology and the digital economy by human beings. Although the regulation of the media and digital governance may lead to debates about domestic regulation and control,²⁴⁶ China was the first country to present a position document called 'The Pact for the Future' to the United Nations on new developments brought about by future challenges including digitisation.²⁴⁷ China's continuation of the right to development to gain legitimacy for digital governance reflects its focus on the right to development in China's human rights discourse. This feature of China's focus on the right to development is being promoted outwards, to the world through the 'Belt and Road Initiative'.²⁴⁸ China's position and initiative on the right to development may hint at the ultimate goal of human rights issues in China, a collective human rights model rooted in development, stability and national rejuvenation.

²⁴⁵ Xiang-chao, Pan. "Research on Xi Jinping's thought of ecological civilization and environment sustainable development." *IOP conference series: Earth and environmental science*. Vol. 153. IOP Publishing, (2018) 1, 4.

²⁴⁶ Jian Xu, and Haiqing Yu. "Regulating and governing China's internet and digital media in the Xi Jinping era." *Media International Australia* 185.1 (2022) 3, 3.

²⁴⁷ A/RES/79/1, 22 September 2024.

²⁴⁸ Yunlong Li, 'Belt and Road Initiative and Realization of the Right to Development Focus: Global Human Rights Agenda and South-South Cooperation' (2018) 17 *Journal of Human Rights* 21, 21.

Chapter 2: Cultural Relativism

2.0. Introduction

The main objective of this chapter is to reveal the necessity of examining the philosophical underpinnings of China's human rights policy from the perspective of cultural relativity. The previous chapter deductively summarised four distinctive features of China's approach to human rights, terming it Human Rights with Chinese Characteristics (HRCC). HRCC locates the discussion in the broader debate between the universality and relativity of human rights. Section 2.1. describes where the human rights debate comes from, facing up to the debate about the co-existence of universality and cultural relativity. Section 2.2. outlines universalism and relativism, critically drawing out the point that the discourse of rights can be affected by relative factors, such as cultural differences. Despite the universality of human rights, there is an unavoidable relativity in the application of universal human rights norms to different cultural societies. This is because, in the State practice of applying international human rights treaties, the terminology of the treaties may be interpreted and focussed somewhat differently depending on the cultural context. Ultimately, the debate between universality and cultural relativism stems from debates on values. Section 2.3 provides further discussion on one of the typical representatives of the cultural relativism human rights debate, Asian values, which, based on the Asian regional context, puts forward a regional human rights proposition emphasising economic development and collective rights and interests, which is incompatible with the Western conception of human rights. Although the controversial motives and inherent logical flaws of Asian values prevent them from explaining HRCC, the impact of cultural relativism on understanding human rights is confirmed. Therefore, from the perspective of cultural relativism, it is necessary to examine China's philosophical underpinnings in order to make sense of China's human rights policy.

2.1. Background: Where human rights debates come from?

Hohfeld proposed a classification of rights, namely claims, privileges, powers and immunities.¹ Although rights are often expressed without distinction as various forms of legal interests, among which 'claim' seems to best fit the narrow expression of rights, or the true expression of rights.² Dworkin argues that rights are an unbeatable trump card.³ One sees here an absolute nature of rights that takes precedence over all other considerations and is immune to other common interests. However, absolute claims of human rights inevitably pose a threat to civilised society, just as the American authorities, who fail to control the freedom to carry guns in the United States. Even in a less extreme example, would it be against the public interest for someone who believes in absolute freedom of speech to shout 'fire' in a theatre? Although the latter example may be too dramatic, let us be clear that before analysing the attributes of human rights with Chinese characteristics, it is necessary to take the time to step back and discuss the philosophical and conceptual issues surrounding human rights. What are human rights? Or how should the human rights concept be interpreted?

How did human rights come about? Human rights are the result of historical development. Five hundred years ago, almost everyone in the world did not have the freedom to choose their nationality, religion, occupation, place of residence, and personal identity.⁴ During the Reformation in the 16th century, the Protestants who initiated the reform believed that the power of the church was not absolute, that everyone was equal before God, and that everyone had the freedom of thought and belief.⁵ After the individual was separated from theology, and following the Renaissance in the 17th century, the concept of human rights was further developed in a secular direction, becoming a demand for civil and political freedom. One of the representatives of the Renaissance, John Locke, proposed the social contract theory, which states that

¹ Wesley Newcomb Hohfeld, 'Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1917) 26 The Yale Law Journal 710, 716.

² Ibid, 718.

³ Chris Brown, 'Universal Human Rights: A Critique' (1997) 1 The International Journal of Human Rights 41, 47.

⁴ Thomas M. Franck, 'Is Personal Freedom a Western Value?' (1997) 91 American Journal of International Law 593, 593.

⁵ Charles John Sommerville, *The Politics of Secularization (1529-1603) in the Secularization of Early Modern England: From Religious Culture to Religious Faith*. (1992) Oxford University Press, USA. 55, 59.

no government is possible without the consent of the people.⁶ After civil and political freedoms entered sovereign states, sovereignty belonged to the people and gave rise to the democratic system, which was laid down by the United States Independence Movement and the French Revolution in the late 18th century. The American Declaration of Independence states that 'all men are created equal, that they are endowed by their Creator with unalienable Rights; that among these are Life, Liberty and the pursuit of Happiness'.⁷ The French National Assembly adopted the Declaration of the Rights of Man and of the Citizen, which states that 'no one may be disturbed in their opinions, even in religious matters, as long as their expression does not disrupt public order as defined by law'.⁸ According to these, all citizens are not only equal before God but also before the law. Today, the state's normative recognition of human individuality is supported almost universally.

What are the contents of human rights? It is important to mention here the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948. The Declaration was drafted by an international committee of experts from a wide range of ethnic backgrounds, so that the content of human rights could be as multicultural as possible. This document, which laid the foundations for modern human rights doctrine, describes the content of human rights. The Universal Declaration of Human Rights consists of 30 articles and describes the content of the right to human dignity, equality and freedom as a common standard to be owned by all people and strived for by all countries. However, according to Charles Beitz, in the early stages of drafting the Universal Declaration of Human Rights, the framers found that while there was agreement on the content of the Universal Declaration of Human Rights, it was not easy to reach a common set of fundamental principles on human rights. This is because the fundamental principles guiding human rights are philosophical rather than practical issues.⁹

⁶ John Locke, Two Treatises of government, 1689. in *the anthropology of citizenship: A reader*, (2013). 43, 43.

⁷ William F. Dana, 'Declaration of Independence' (1899) 13 Harvard Law Review 319, 323.

⁸ Thomas M. Franck, 'Is Personal Freedom a Western Value?' (1997) 91 American Journal of International Law 593, 593.

⁹ Charles Beitz, 'What Human Rights Mean' (2003) 132 Daedalus 36, 36.

If it is difficult to agree on the basic principles guiding human rights, is the universality of the human rights content absolutely and uniformly upheld in all cases? In fact, non-Western countries, especially multi-ethnic and multicultural countries, feel more alienated from the external force of human rights universalism.¹⁰ If rights are universal because they are derived from human nature, the biological nature of human beings is unified, but the social nature of human beings is abstract. Societies differ according to their cultural backgrounds, and it is difficult to quickly unify the social attributes of human beings. Human rights issues are seen as part of a dominant Western-centred discourse that shapes the world.¹¹ Although the assumption that ‘universalists’ are people from the West and ‘relativists’ are people from the East is far from an objective contrast, it is worth noting the logic behind this oversimplification—the East and the West have different values, and it is difficult for the basic principles guiding human rights to be completely consistent. Relativism breaks down this absolute nature. As Shany suggests that while human rights are considered to be universal, a flexible understanding of culture and justice can lead to non-compliance or even resistance to universality.¹²

Discussion of the human rights concept places this chapter in the broader debate about the universality and relativity of human rights. Although human rights are supposed to be universal, human rights as universal norms and standards for all nations and all peoples are sometimes challenged by arguments of relativism. Relativism, as a philosophical concept, holds that truth and moralities are not absolute or universal, but depend on one’s lens or context in which they are considered.¹³ Chris Brown argues that the question of what rights individuals have or should have has been controversial from the beginning and is not a result of the globalisation of the international system. In other words, the controversy over the universality of human rights is not caused by the

¹⁰ Yash Ghai, ‘Universalism and Relativism: Human Rights as a Framework for Negotiating Interethnic Claims Symposium - State and Federal Religious Liberty Legislation: Is It Necessary - Symposium - A Roundtable on Constitutionalism, Constitutional Rights &(and) Changing Civil Society: Universal Rights and Cultural Pluralism’ (1999) 21 *Cardozo Law Review* 1095, 1096.

¹¹ Thomas M. Franck, ‘Is Personal Freedom a Western Value?’ (1997) 91 *American Journal of International Law* 593, 594.

¹² Yuval Shany, Introduction in ‘The Universality of Human Rights: Pragmatism Meets Idealism’ Hebrew University of Jerusalem Legal Studies Research Paper Series No. 18-29 (2018) v, vi.

¹³ Relativism encompasses various disciplines such as philosophy, anthropology, sociology, and cultural studies. Nearly all of the recent literature directly addressing the issue of relativism in human rights has been written by authors whose primary disciplines are political science, anthropology, or philosophy.

unacceptability of cross-cultural outsiders. On the contrary, he believes that rights only make sense in a particular type of social context.¹⁴ Herlin-Karnell also believes that rights exist and work by their interpretation and application.¹⁵ Jacques Martin argues that universality is a general and abstract concept, and rights must be interpreted and applied, but as long as people differ in their beliefs or philosophies, there is inevitably going to be an inconsistency in the interpretation of rights in terms of their justification.¹⁶ This could lead to confusion in supply-side theory and state applications.¹⁷ Shany mentioned that critics of universalism, therefore call for a ‘thin’ interpretation of universal human rights, only including those few norms where there is international consensus.¹⁸ The above description of relativism and universalism with pragmatism and idealism reflects a position that calls for taking account of cultural differences. The debate around relativism has led to a rethinking of the universality of human rights.

Therefore, only by acknowledging the debate between universalism and relativism and exploring the guiding principles of human rights through relativism can we go beyond the debate to explore the philosophical differences behind China’s human rights policy at the empirical level. By outlining universalism and relativism, I will critically explore the fact that the discourse of rights must be taken seriously and may be influenced by relative factors such as cultural differences. Rights are rarely absolute, and the emphasis on interests surrounding rights does not contradict the equality of rights. Cultural relativity brings a degree of flexibility to the discourse on rights. Cultural relativism brings a degree of flexibility to the discussion of universal rights.

2.2. Dialogue between universalism and relativism

¹⁴ Chris Brown, ‘Universal Human Rights: A Critique’ (1997) 1 *The International Journal of Human Rights* 41, 41.

¹⁵ Ester Herlin-Karnell, ‘The Interdependence of Human Rights, Peace and Law. Some Reflections on Relativism and Human Rights. A Theory of Pluralist Universalism by Claudio Corradetti’ [2022] *Etica & Politica / Ethics & Politics*, XXIV, 427, 430.

¹⁶ Man Yee Karen Lee, Religion, human rights and the role of culture. (2011). *The International Journal of Human Rights*, 15(6), 887, 888.

¹⁷ Samantha Besson, ‘The Bearers of Human Rights’ Duties and Responsibilities for Human Rights: A Quiet (R)Evolution?’ (2015) 32 *Social Philosophy and Policy* 244, 244.

¹⁸ Yuval Shany, Introduction in ‘The Universality of Human Rights: Pragmatism Meets Idealism’ Hebrew University of Jerusalem Legal Studies Research Paper Series No. 18-29 (2018) v, viii.

This part provides an overview of universalism and relativism, with the aim of pointing out that the discourse of rights may be affected by relative factors such as cultural differences, and that it is therefore necessary to take into account cultural relativism in the process of realising universal human rights. This section is not a defence of cultural relativism and questioning of universality but rather an attempt to establish a dialogue between universality and relativism, highlighting the practical reality that behind universality, there is cultural relativism that cannot be agreed upon, and that universality and cultural relativism coexist.

2.2.1. Universalism Revisited: Aspirations and Limitations

All human beings are born free and equal in dignity and rights.

Article 1 of the Universal Declaration of Human Rights

This subsection looks at where the concept of universal human rights came from. How has universality developed in the international human rights system? What is the relationship between the universality of human rights and the effectiveness of the State's fulfilment of its corresponding obligations in practice? The aim is to gain an objective understanding of the universality of human rights. It suggests that the universality of human rights implies that human rights are universally owned by human beings as they are born but are not absolutely the same as being universally implemented.

The idea of universal human rights is considered to be a set of concepts based on a "particular conception of the good".¹⁹ From a legal point of view, human rights take universality and ethics as a starting point and have been continuously developed since 1945.²⁰ After experiencing two world wars, the respective governments realised the catastrophe that war brings to human beings. Governments should exercise power for

¹⁹ Chris Brown, 'Universal Human Rights: A Critique' (1997) 1 The International Journal of Human Rights 41, 54.

²⁰ Major international legal instruments dealing with human rights issues, including the 1945 UN Charter, the 1948 Universal Declaration of Human Rights and in the corpus of IHRL treaties concluded from 1948 onwards.

the good and in an appropriate manner. While establishing an international organisation, the United Nations, the UN Charter was also born. The 1945 UN Charter strongly affirms the determination to protect the fundamental rights, dignity and freedom of human beings.²¹ Such protection and respect are universal and belong to all people in the world, regardless of race, sex, language or religion.²²

The 1948 Universal Declaration of Human Rights is the foundational document of universal human rights. Delegates from many countries contributed to the content of the Declaration, which was revised many times before it was finally adopted by the United Nations General Assembly. Article 1 of the Declaration is aspirational in nature and states that 'All human beings are born free and equal in dignity and rights.'²³ Article 2 goes further, stating that 'everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'²⁴ The general principles of freedom, equality and dignity, freedom and equality proclaimed in Articles 1 and 2 are considered the cornerstones of the Declaration.²⁵ Although the Universal Declaration of Human Rights is often compared to older documents, it is different. The American Declaration of Independence considers that people are endowed by their creator with certain rights, while the French Declaration of the Rights of Man and of the Citizen considers human rights to be natural and sacred.²⁶ However, the Universal Declaration of Human Rights skips the theoretical foundation and simply and directly emphasises that universal human rights are the rights of all people and are inherent in the dignity of the human person. The Universal Declaration of Human Rights proclaims a series of values as universal human rights. It should also be made clear here that the Universal Declaration of Human Rights is not a list of rights.²⁷

²¹ Preamble, United Nations Charter.

²² Art.1(3), United Nations Charter.

²³ Art.1, Universal Declaration of Human Rights.

²⁴ Ibid, Art.2.

²⁵ Mary Ann Glendon, 'Knowing the Universal Declaration of Human Rights' (1997) 73 Notre Dame Law Review 1153, 1163.

²⁶ Charles Beitz, 'What Human Rights Mean' (2003) 132 Daedalus 36, 36.

²⁷ Mary Ann Glendon, 'Knowing the Universal Declaration of Human Rights' (1997) 73 Notre Dame Law Review 1153, 1163.

The universal human rights listed in the Universal Declaration of Human Rights are more like a series of principles revolving around the general idea of good.

The Vienna Declaration in 1993 reaffirms what the Universal Declaration of Human Rights declared that human rights are universal and belong to every human being.²⁸ At the outset, the first paragraph of Part I clearly states that “the universal nature of these rights and freedoms is beyond question.”²⁹ And immediately following the fifth paragraph of the declaration, which clarifies the issue of universalism more specifically. “All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis... States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”³⁰ The Vienna Declaration reaffirmed the universality of human rights 45 years after the Universal Declaration of Human Rights. Perhaps the philosophical differences associated with moral traditions behind universal human rights will never be resolved, but decades after universal human rights were practised globally, they are being emphasised again, seemingly to dispel the doubts about universality raised by some countries and regions in the international community due to their historical, cultural or religious particularities.

The universality of human rights is recognised worldwide. Put another way, the cornerstones of the universality of human rights will not be subject to different interpretations depending on the external environment. It is recognised that although the rotation of experts in the Human Rights Committee may have introduced a number of different perspectives on the rights contained in the Convention. However, the Committee’s position on the universality of human rights remains unchanged. Shany claims that during his tenure as a member of the Committee, new members from different States have occasionally presented different interpretations of the scope of article 6, ‘the right to life’. However, the Committee’s position on the universality of

²⁸ At the 1993 World Conference on Human Rights, Member States adopted the Vienna Declaration by consensus.

²⁹ Vienna Declaration and Programme of Action, adopted on 25 June 1993, Part I, para.1.

³⁰ Ibid, para.5.

human rights stayed the same: that all individuals had the same fundamental right to life and that States were obligated to protect them.³¹ The absolute and universal nature of the right to life is remarked in the General Comments that “the right to life is the supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies that threaten the life of the nation.”³² Clearly, the political context may be seen as a factor affecting the fulfilment of human rights, yet turbulent political situations, even in the case of war, are not considered to affect the universality of the right to life as a fundamental human right. Although the independent expert who serves on the Committee may propose different interpretations, the universality of human rights will not change under external factors.

The universality of human rights, which covers all human beings around the world, has a powerful influence, but the implementation of universal human rights is difficult to put into words. The treaty bodies and other human rights mechanisms are in place to protect human rights, but the reality is that some of them are struggling to be effective in this regard.³³ The international legal system is currently considered to be largely premised on the sovereignty doctrine, and international obligations continue to depend on determined sovereign wills.³⁴ The implementation of human rights is subject to political considerations; the neglect and abuse of human rights in national implementation are all possible results. Moreover, there may be conflicts between the practical requirements for the fulfilment of universal human rights and priorities among universal human rights that need to be decided. For example, Joe Hoover believes that the human rights declaration will give rise to a competing understanding between humanity and political identity.³⁵ In that case, it is practically impossible for states within such a system to allow their foreign policies to be consistently guided by a just concern for human rights as a

³¹ Yuval Shany, Introduction in ‘The Universality of Human Rights: Pragmatism Meets Idealism’ Hebrew University of Jerusalem Legal Studies Research Paper Series No. 18-29 (2018) v, vi.

³² Human Rights Committee, General Comment No.36 Article 6: right to life, CCPR/C/GC/36, pp.1 (3 Sep 2019).

³³ Yuval Shany, Introduction in ‘The Universality of Human Rights: Pragmatism Meets Idealism’ Hebrew University of Jerusalem Legal Studies Research Paper Series No. 18-29 (2018) v, vii.

³⁴ Chris Brown, ‘Universal Human Rights: A Critique’ (1997) 1 The International Journal of Human Rights 41, 54.

³⁵ Joe Hoover, ‘Rereading the Universal Declaration of Human Rights: Plurality and Contestation, Not Consensus’ (2013) 12 Journal of Human Rights 217, 218.

primary concern. In other words, human rights enforcement mechanisms are constrained by an international order based on sovereignty.

While a state party may fail to effectively implement universal human rights or fulfil the obligations that correspond to them, this does not make these universal rights lose their universality. Simply put, the universality of human rights is not affected by the lack of enforcement of rights. States parties to the International Covenant on Civil and Political Rights generally comply with most of their obligations but remain with effectiveness deficiencies. However, there are still deficiencies in effectiveness, and the level of human rights in different countries also varies. On the one hand, there are States that are unwilling to do so, for example, because of geopolitical status and little international criticism vulnerability;³⁶ on the other hand, there are States that are unable to do so, for example, States that lack sufficient legal frameworks to monitor the implementation of rights.³⁷ It is a reality that universal human rights are not effectively upheld in all cases. However, the lack of implementation does not affect the universality of human rights. Just as the failure to enforce traffic regulations does not invalidate the regulations themselves. The mere fact that a law is not enforced does not mean that it is invalid. Poor implementation of rights does not affect the universality of human rights.

Accordingly, universalism holds that all individuals, regardless of their culture, are entitled to certain fundamental rights. Both the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights support and emphasise the claim that human rights are universal based on the 'inherent dignity of the human person'.³⁸ Universal human rights are defined as

³⁶ For example, the Commission has so far not been able to convince China to introduce free elections in Hong Kong, probably because of China's ability to resist international pressure due to its geopolitical position and the particular sensitivity of the norms that require free and democratic elections in Chinese countries. See Human Rights Committee, Report on Follow-Up to the Concluding Observations of the Human Rights Committee. UN Doc, CCPR/C/114/2. Pp. 8-9 (24 Aug 2015).

³⁷ For example, Sudan lacks a legal framework for the prevention of gender-based violence, including family violence. See Human Rights Committee, Concluding observation on the fifth periodic report of the Sudan. CCPR/C/SDN/CO/5, pp. 4 (19 Nov 2018).

For example, Sudan lacks a legal framework that avoids the imposition of the death penalty on children under the age of 18 when crimes are committed. See Human Rights Committee, Concluding observation on the fifth periodic report of the Sudan. CCPR/C/SDN/CO/5, pp. 6 (19 Nov 2018).

³⁸ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, GA Res 2200A (XXI), Preamble.

aiming to protect human dignity. It asserts the inherent dignity and inalienable rights of all people. Although the Universal Declaration does not provide a theoretical justification for universal human rights, the multicultural background of its framers ensured that people from different cultural backgrounds could find support for the values of the Universal Declaration in their own ethical traditions during the drafting and revision process. Moreover, it is difficult to imagine societies that are morally capable of defending themselves would use culture as a justification for opposing the recognition of fundamental individual rights, such as the right to life, freedom and security, or the prevention of inhuman treatment, such as slavery and torture. It is after all these fundamental rights and humane treatment that are so clearly linked to the basic requirements of human dignity.

From the foregoing, although the practice is fraught with uncertainty, the universality of human rights is theoretically strong. Although state parties and even human rights mechanisms themselves may make the realisation of universal human rights plagued with uncertainty, this does not affect the universality of the language of human rights. In Donnelly's words, it is "universal possession not universal enforcement".³⁹ In other words, the effectiveness or availability of human rights enforcement mechanisms does not change the universality of the right itself. Overall, the fact that universal human rights are not effectively upheld in all contexts does not mean that human rights themselves lack universality. The universality of human rights remains strong, though the universality of human rights in practice is difficult to ensure.

2.2.2. Cultural Relativism and Its Moral Boundaries

This subsection provides a brief overview of relativism, which is shaped by philosophical and cultural factors, and establishes a dialogue between relativity and universality, reflecting on the relationship between cultural relativism and universal human rights. It is shown that the debate between universalism and cultural relativism is rooted in the values debate; in other words, universal human rights do not have an uncontested

³⁹ Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29 Human Rights Quarterly 281, 283.

philosophical basis. In the application of universal human rights norms, countries may have philosophically different understandings and preferences for human rights due to different moral values in varying cultural contexts. The aim is to emphasise that it is necessary to understand human rights in the context of their philosophical underpinnings.

In the process of drafting the Universal Declaration of Human Rights (UDHR), it was not easy for the framers to agree on a common set of fundamental human rights principles, despite their agreement on the content of the UDHR.⁴⁰ This is because the fundamental principles that guide human rights are metaphysical philosophical issues. Although the concept of universal human rights is considered to be a set of concepts based on the 'notion of a particular good,'⁴¹ the concept of good is inevitably abstract, and there is no absolute uniformity in how to achieve the good. As the current international order is based on sovereignty, different ethnic cultures may have different and possibly conflicting interpretations of 'good'.⁴² This does not mean that there are no shared moral values among different human cultures, but rather that there are different ways of understanding the equal dignity and rights of human beings in different cultural contexts. This kind of different way of understanding human dignity and rights that is not practical content but rather philosophical, which is difficult to agree on through the framing and drafting of the Universal Declaration of Human Rights, is the reason why we need to look at relativism. Because behind the universality of human rights, there has always been the relativity that cannot be agreed upon.

The tension between universalism and relativism is thought to have been part of the development of the international human rights movement from the very beginning.⁴³ According to Kretschmann, the idea of universality was adopted by the United Nations General Assembly in the Universal Declaration of Human Rights in 1948. Although

⁴⁰ Chris Brown, 'Universal Human Rights: A Critique' (1997) 1 *The International Journal of Human Rights* 41, 54.

⁴¹ Charles Beitz, 'What Human Rights Mean' (2003) 132 *Daedalus* 36, 36.

⁴² Chris Brown, 'Universal Human Rights: A Critique' (1997) 1 *The International Journal of Human Rights* 41, 54.

⁴³ Yuval Shany, 'The Universality of Human Rights: Pragmatism Meets Idealism' Hebrew University of Jerusalem Legal Studies Research Paper Series No. 18-29 (2018) 1, 2.

ultimately adopted unanimously, the principle of universality was challenged by conflicting ideologies due to the abstentions of the Communist countries,⁴⁴ Saudi Arabia, and South Africa, manifesting themselves in different interpretations of human rights concepts due to cultural differences.⁴⁵ Even though the Universal Declaration of Human Rights, the Vienna Declaration, constantly articulates the universality of human rights, granting fundamental and inalienable rights to every human being without distinction as to race, sex, religion, nationality, or any other factor, this concept of universality can still be challenged by scholars or government officials by presenting the idea of cultural relativism. Particularly when it comes to the implementation of important human rights treaty norms, such as the International Covenant on Civil and Political Rights, which contains many sensitive issues relating to culture, traditions and social practices, some universal norms are often challenged.⁴⁶

Relativism, in contrast to the universalism of human rights, is shaped by cultural-philosophical factors, and therefore in this sub-section, relativism refers primarily to cultural relativism, and the terms relativism and cultural relativism may appear interchangeably. As an axiomatic principle, cultural relativism has become widespread in the discipline of anthropology.⁴⁷ In the discipline of anthropology, cultural relativism is seen as a heuristic tool which reflects the principle that an individual's beliefs are meaningful to his own culture.⁴⁸ Gellner argues that cultural relativism is a social science theory that claims that there are no absolute ethical, moral or cultural truths and no meaningful universal way of judging different cultures because all judgments are ethnocentric.⁴⁹ In the context of the debate on the feasibility of international universal human rights, cultural relativism, according to the technological definition given by Fernando, can be defined as "the position that local cultural traditions (including

⁴⁴ Soviet Union, Ukraine, Czechoslovakia, Poland and Yugoslavia.

⁴⁵ Edna Raquel Hogemann, 'Human Rights beyond Dichotomy between Cultural Universalism and Relativism' [2020] *The Age of Human Rights Journal* 19, 31-32.

⁴⁶ Yuval Shany, 'The Universality of Human Rights: Pragmatism Meets Idealism' Hebrew University of Jerusalem Legal Studies Research Paper Series No. 18-29 (2018) 1, 2.

⁴⁷ Ayodeji K. Perrin, 'Human Rights and Cultural Relativism, the "Historical Development" Argument and Building a Universal Consensus' (2005) *Academia.Edu* 1, 2.

⁴⁸ Amit Kumar Singh, 'Paradox between Universalism of Human Rights and Relativism of Culture: A Case Study of Honour Killings in India' (2020) 4 *Journal of Southeast Asian Human Rights* 253, 255.

⁴⁹ Elizabeth M. Zechenter, 'In the Name of Culture: Cultural Relativism and the Abuse of the Individual' (1997) 53 *Journal of Anthropological Research* 319, 323.

religious, political and legal practices) properly determine the existence and scope of civil and political rights enjoyed by individuals in a given society.”⁵⁰ Subsequently, several variants of cultural relativism have been developed.⁵¹ Cultural relativism was once conflated with moral relativism during the preparation of the Universal Declaration of Human Rights.⁵² However, a core feature of cultural relativism is that there is no legal or moral benchmark across boundaries to judge whether human rights practices are acceptable or not. Recognising this, we can better understand the complicated interplay between cultural relativism and international universal human rights principles.

Human rights universalism is global and transcends national borders. The concept of human rights is a relatively new term, traditionally understood as natural rights or the rights of man.⁵³ International human rights legislation dates back to the 19th century, but the modern regime began after World War II.⁵⁴ Since World War II, the Universal Declaration of Human Rights was produced under the leadership of Ms Eleanor Roosevelt, who chaired the United Nations Commission on Human Rights.⁵⁵ As the parent document of cross-cultural human rights legislation on human dignity and freedom, the Universal Declaration of Human Rights is idealistic, concise, general and grander.⁵⁶ It can be said that the Universal Declaration of Human Rights is the product of a number of global thinkers in the post-Nazi era and represents the outcome of the struggle to eliminate human rights violations. Although it has been argued that universal

⁵⁰ Amit Kumar Singh, ‘Paradox between Universalism of Human Rights and Relativism of Culture: A Case Study of Honour Killings in India’ (2020) 4 *Journal of Southeast Asian Human Rights* 253, 255.

⁵¹ Ranging from weak cultural relativism (also known as descriptive relativism; amounting to a commonsense observation that cultures vary), through strong cultural relativism (holds that culture is the principal source of the validity of a moral right or rule) to radical cultural relativism (exemplified by Geertz claiming that humans are shaped exclusively by their culture and therefore there exist no unifying cross-cultural human characteristics).

⁵² Ayodeji K. Perrin, ‘Human Rights and Cultural Relativism, the “Historical Development” Argument and Building a Universal Consensus’ (2005) *Academia.Edu* 1, 3.

⁵³ Satya Arinanto, ‘Human Rights in Context of the Historical Non-aligned Countries’ *Debates on Universalism and Cultural Relativism, and Current Human Rights Development in Indonesia* (2021) 7 *Indonesian Journal of International Law*, 479, 479.

⁵⁴ Chris Brown, ‘Universal Human Rights: A Critique’ (1997) 1 *The International Journal of Human Rights* 41, 52.

⁵⁵ Satya Arinanto, ‘Human Rights in Context of the Historical Non-aligned Countries’ *Debates on Universalism and Cultural Relativism, and Current Human Rights Development in Indonesia* (2021) 7 *Indonesian Journal of International Law*, 479, 480.

⁵⁶ Mary Ann Glendon, ‘Knowing the Universal Declaration of Human Rights’ (1997) 73 *Notre Dame Law Review* 1153, 1153.

human rights are a 'Western concept of limited applicability',⁵⁷ facing wartime atrocities or facing a dictator who justifies atrocities in the name of culture, it seems appropriate and necessary to emphasise universality. Arguably, it was the first attempt by human rights bodies to establish strict limitations on the internal scope of the State, resulting in a series of regional and global pieces of legislation, with practically all areas within the State covered by some form of international human rights standards.⁵⁸ Universal human rights are, to some extent, the result of historical development, and wars have contributed to the universalisation of human rights provisions. Non-universality is not very applicable at the level of world human rights unless history is reversed.

However, the inevitable historical trend towards universality does not mean that universality has an indisputable philosophical foundation. From a theoretical point of view, universal human rights are supported by three major theories⁵⁹. Natural law theories and the theory of rationalism are the central theoretical pillars of human rights principles, which claim that universal human rights are independent of cultural practices, ideologies, or value systems.⁶⁰ Positivist theories consider that the universality of human rights is rooted in international law, such as international treaties and customary international law, and not in cultural aspects.⁶¹ However, these three major theories continue to be challenged by relativism. Natural law theories claim that every human being possesses certain inherent God-given rights, while conversely, there is no substantial consensus on whether or not a higher moral order exists based on cultural and religious diversity.⁶² The theory of rationalism affirms that human beings are universally capable of rational reasoning and thinking; however, it has been argued that universalism reflects Western culture and fails to reflect the diversity of human society.⁶³

⁵⁷ Adamantia Pollis, Schwab Peter, & Koggel Christine. M, Human rights: A western construct with limited applicability. (2006). *Moral issues in global perspective. Vol. 1: Moral and political theory*, 1, 1.

⁵⁸ Chris Brown, 'Universal Human Rights: A Critique' (1997) 1 *The International Journal of Human Rights* 41, 52.

⁵⁹ natural law theory, theory of rationalism, and theory of positivism. See Singh Amit Kumar, 'Paradox between Universalism of Human Rights and Relativism of Culture: A Case Study of Honour Killings in India' (2020) 4 *Journal of Southeast Asian Human Rights* 253, 254.

⁶⁰ Amit Kumar Singh, 'Paradox between Universalism of Human Rights and Relativism of Culture: A Case Study of Honour Killings in India' (2020) 4 *Journal of Southeast Asian Human Rights* 253, 255.

⁶¹ Ibid.

⁶² Ibid, 254.

⁶³ Ayodeji K. Perrin, Human Rights and Cultural Relativism, the "Historical Development" Argument and Building a Universal Consensus. (2005). *Academia.Edu* 1, 10-13.

Positivist theories that focus on international law as the justification for universal human rights, when applied to countries with different cultural backgrounds, can also make rights mere products of law.⁶⁴

In the light of the above theoretical foundation for universality, and the corresponding counterarguments, it is at least possible to show that the theoretical basis for universality is not perfectly convincing. Without attempting to create a rigid dichotomy of universality versus relativity, a more nuanced perspective is preferred that recognises that while the underlying ideals of human rights may claim universal legitimacy, their interpretation and implementation are inevitably affected by local histories, ethical traditions, and institutional contexts. While Asian Values or Global South discourses are not always coherent or representative examples, they do reflect a fundamental concern that the sustainable development of human rights may require the search for a middle ground that accommodates diversity alongside universal ideals. Rather than rejecting universality, such a perspective places it within a pluralist framework that acknowledges the importance of contextual adaptation and prompts us to rethink how universal norms can be localised in a meaningful way without losing their normative force. Such as Donnelly seems to offer a new paraphrase of the imperfect foundation of human rights. He asserts that human rights cannot be universal but relative, and claims that the recognised international human rights have 'relative universality'.⁶⁵

Although universality is an inevitable result of historical development, the colonial history of European countries has led to universality being labelled as unwanted foreign values. Hogemann argues that the discourses of justice, human rights, democracy and development in modern rhetoric carry a hidden colonial logic of Eurocentric epistemology, which imposes a standard of knowledge of human universality.⁶⁶ This is particularly true of Third World countries under non-Western cultural systems. In Third World countries, individuals usually view their personality in terms of group identity.

⁶⁴ Chris Brown, 'Universal Human Rights: A Critique' (1997) 1 *The International Journal of Human Rights* 41, 52-53.

⁶⁵ Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29 *Human Rights Quarterly* 281, 281.

⁶⁶ Edna Raquel Hogemann, 'Human Rights beyond Dichotomy between Cultural Universalism and Relativism' [2020] *The Age of Human Rights Journal* 19, 25.

They may usually have experienced occupation, colonisation, or repression of dissident indigenous people, etc. These experiences make them more cautious about foreign cultures and values, and they always think their own values are best.⁶⁷ The fundamental claim to universality in international human rights law is not recognised in practice by some States, especially in the post-colonial era of the late twentieth century, either because of the lessons of history or because of the cultural-religious context. Cultural relativists tend to reject the idea of the universality of human rights norms and reject the use of 'alien values' in the form of universal human rights⁶⁸ to judge the legitimacy of their own cultures.⁶⁹

Human rights relativism holds that human rights are cultural and regional in nature and can hardly transcend borders. Shany argues that regional human rights norms have been shaped by regional experiences and traditions; they are of limited validity in calling for changes in the realities of other regions.⁷⁰ Specifically, many of the norms that make up international human rights law have their origins in specific Eurocentric or Judeo-Christian historical experiences and are therefore of limited relevance for their application, especially to post-colonial societies and underdeveloped countries in the global South.⁷¹ Put simply, human rights relativists do not believe that human rights norms can be universally applied. Moreover, many views of cultural relativism are also reflected in critiques of the human rights institutional setting. The cultural relativist view is that the historical development of international human rights law has been primarily within the United Nations treaty system and other regional bodies, which is seen as problematic.⁷² Accordingly, even the United Nations is unable to achieve universality due

⁶⁷ Satya Arinanto, 'Human Rights in Context of the Historical Non-aligned Countries' Debates on Universalism and Cultural Relativism, and Current Human Rights Development in Indonesia' (2021) 7 Indonesian Journal of International Law, 479, 482.

⁶⁸ From the historical context, the Universal declaration was the product of some western thinkers in the post-Nazi's era. See Arinanto S, 'Human Rights in Context of the Historical Non-aligned Countries' Debates on Universalism and Cultural Relativism, and Current Human Rights Development in Indonesia' (2021) 7 Indonesian Journal of International Law, 479, 480 <<https://scholarhub.ui.ac.id/ijil/vol7/iss3/1>> accessed 25 June 2023.

⁶⁹ Amit Kumar Singh, 'Paradox between Universalism of Human Rights and Relativism of Culture: A Case Study of Honour Killings in India' (2020) 4 Journal of Southeast Asian Human Rights 253, 256.

⁷⁰ Yuval Shany, 'The Universality of Human Rights: Pragmatism Meets Idealism' Hebrew University of Jerusalem Legal Studies Research Paper Series No. 18-29 (2018) 1, 8.

⁷¹ Ibid.

⁷² Amit Kumar Singh, 'Paradox between Universalism of Human Rights and Relativism of Culture: A Case Study of Honour Killings in India' (2020) 4 Journal of Southeast Asian Human Rights 253, 258.

to its relatively under-diverse representation. Cultural relativists view universality and universal application from a relativist angle. Universality is not truly universal but contextual and conditional because there is no such thing as absolute universalism in the context of relativism.

However, objectively speaking, relativist human rights are not completely opposed to universalist human rights but rather specific interpretations of the relevant abstract concepts. Relativism recognises that rights derive from human nature but does not believe that the abstract concept of human nature is universally applicable to all societies in which human beings live. According to Fernando's definition of cultural relativism, the scope of local cultural traditions includes religious, political, and legal practices.⁷³ Societies with different cultures have different understandings of human well-being in terms of religious, political and legal practices. It is well known that authoritarian regimes in parts of East Asia consider the limitations on personal freedoms to be in the interest of economic development and in line with local customs.⁷⁴ Cultural traditions that emphasise materialism lie behind the reasons why manipulators can successfully trade off individual freedoms for social stability and economic interests. As Singh argues, Asian traditions are not as heavily focused on legalism and individualism as European or American cultures.⁷⁵ Another similar example is that some Islamic countries are reluctant to recognise the right of people to change their religion. The freedom and right to change religion is regarded as the crime of apostasy in the eyes of Islamic countries, which is also intolerable to local families and society.⁷⁶ Although universalism believes that there is an underlying human unity so that all individuals, regardless of their cultural or regional background, enjoy certain minimum rights,⁷⁷ the complexity lies in the fact

⁷³ Ibid, 255.

⁷⁴ Chris Brown, 'Universal Human Rights: A Critique' (1997) 1 *The International Journal of Human Rights* 41, 55.

⁷⁵ Amit Kumar Singh, 'Paradox between Universalism of Human Rights and Relativism of Culture: A Case Study of Honour Killings in India' (2020) 4 *Journal of Southeast Asian Human Rights* 253, 258.

⁷⁶ It was on this issue that Saudi Arabia abstained in the vote on the 1948 Universal Declaration of Human Rights. See Brown C, 'Universal Human Rights: A Critique' (1997) 1 *The International Journal of Human Rights* 41, 55.

⁷⁷ Elizabeth M. Zechenter, 'In the Name of Culture: Cultural Relativism and the Abuse of the Individual' (1997) 53 *Journal of Anthropological Research* 319, 320.

that different civilizations or societies have different understandings of what constitutes appropriate rights.

Also, cultural relativism is viewed as a more persistent fact in practice in countries where cultural and religious customs are more deeply rooted. According to Boaventura Santos, the regional systems of human rights in Europe, Africa, and Asia may be different because there are clashing contact zones between religious and secular norms in various cultural contexts.⁷⁸ In light of the UN Human Rights Committee's practice, which shows particularly strong resistance to the International Covenant on Civil and Political Rights norms, Shany argues that these norms contradict deep-rooted cultural and religious traditions or that there is tension with the target's underlying ideological principles or fundamental political interests.⁷⁹ For example, the Human Rights Committee has failed to motivate Sudan to amend its religion-based criminal law and abolish the death penalty for apostasy and marital infidelity.⁸⁰ Bound by religious beliefs, apostasy and marital infidelity are morally unacceptable to Sudanese culture and are totally incompatible with the primacy of life as enshrined in the UDHR. While universal claims are all about rights as human beings, whether or not anyone enjoys them is an entirely different matter. According to another example, in Saudi Arabia, gender discrimination is deeply rooted in local culture and government institutions, and women living under their jurisdiction continue to be victims of discrimination.⁸¹ With regard to the human rights of women, although the Islamic Government has ratified the relevant core international human rights instruments,⁸² it continues to violate them blatantly. Sudan's and Saudi's examples are not intended to endorse relativist positions but to underscore the limits of universalist enforcement in the absence of meaningful cultural engagement. This is not to suggest that such practices are justifiable under international law, but to

⁷⁸ Adam Gearey, 'Boaventura De Sousa Santos: If God Were a Human Rights Activist Book Reviews' (2015) 42 *Journal of Law and Society* 660, 661.

⁷⁹ Yuval Shany, 'The Universality of Human Rights: Pragmatism Meets Idealism' Hebrew University of Jerusalem Legal Studies Research Paper Series No. 18-29 (2018) 1, 8.

⁸⁰ UN Human Rights Committee, Concluding Observations by the Human Rights Committee: Sudan, UN Doc. CCPR/C/SDN/CO/4 (19 Aug 2014) para.20.

⁸¹ Amani Hamdan, Women and education in Saudi Arabia: Challenges and achievements. (2005). *International Education Journal*, 6(1), 42, 45.

⁸² Saudi Arabia ratified Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 2000 and ratified International Covenant on the Elimination of All forms of Racial Discrimination (CERD) in 1997.

illustrate the degree to which cultural and religious traditions can form entrenched barriers to compliance with international norms. It has to be recognised that cultural relativism is an undeniable and constant fact in practice, despite the accession to the international human rights framework.

Another aspect to consider is that some practices that are harmful in the name of cultural relativity do require intervention by human rights bodies, but it is not advisable to emphasise universality without regard to social reality. Despite legal prohibitions, traditions that are inconsistent with universality still exist in some regions due to their deep-rooted cultural and religious backgrounds. For example, even though the universal principle of equal rights for men and women calls for the abolition of polygamy, polygamy is practised in South Africa due to the deep-rooted culture.⁸³ South Africa also claims that polygamy is a follow-on reaction to the suppression of indigenous practices during the apartheid era.⁸⁴ It can be seen that although polygamy was banned in South Africa during the apartheid era, this did not completely change this deep-rooted cultural practice. Furthermore, further information reveals that, in reality, polygamy continued to be practised underground during the apartheid era. This has resulted in women involved in such relationships being subjected not only to gender inequality but also to a lack of effective South African legal protection.⁸⁵ Although the universal principle of equal rights for men and women starts from good intentions that polygamy be outlawed so that women are entitled to the same rights as men in marriage, the reality of the situation is such that women involved in polygamy in South Africa fall into a vacuum of legal protection. This is not to justify polygamy culturally or politically, but to highlight the unintended consequences of a purely formalist universal approach. When legal reforms fail to engage with entrenched social practices and institutional gaps, they may leave vulnerable populations—such as women in customary marriages—without meaningful protection. The South African example illustrates that effective human rights protection must account for the interplay of culture, history, and structural conditions,

⁸³ UN Doc. CCPR/C/ZAF/Q/1/Add. 1 para.15 (13 Dec 2015) Replies of South African to the List of Issues in relation to the Initial Report.

⁸⁴ Ibid.

⁸⁵ Judith Stacey, Chapter 3: A South African Slant on the Slippery Slope in *Unhitched: Love, marriage, and family values from West Hollywood to Western China* (Vol. 7). (2011). NYU Press. 89, 96.

rather than rely solely on normative prescriptions. Acknowledging the cultural dimension of rights violations should not be misread as justification, but rather as an analytical lens to understand why certain universal protections fail in practice, and how they might be better adapted to ensure actual, rather than merely formal, equality.

A blind emphasis on the universality of human rights without regard for social realities at all is not desirable, especially in pluralistic societies, and can result in the universality of human rights being rendered meaningless. Some scholars have taken a strong position that human rights are universal and that there is no alternative interpretation. For example, in *On Human Rights*, Griffin argues against relativism on human rights and states that human rights are based on normative agency. This agency requires the autonomy to shape perceptions of the good life and freedom, and if there are persistent moral differences, it may be because people with the same values are in very different environments.⁸⁶ Griffin's view seems to be overly idealistic; it obscures the role of the relevant culture, environment and experiences of social groups, and presupposes that values of the good are universally shared and that if human rights are not guaranteed, then it is the responsibility of institutions. In practice, if only the absoluteness of universal values is emphasised without a grounded look at the realities of the global community, then the universality of human rights will only be shelved and detached from reality. As the human rights system places more and more detailed demands on countries, the different claims made by different cultures will inevitably weaken its actual influence on the behaviour of countries and their nationals.

Excessive emphasis on limited universality also runs counter to the original intent of the Universal Declaration of Human Rights. Relativity and universality are dialectical. Excessive emphasis on the universality of a particular human right may also lead to an imbalance between two competing human rights. For example, the United States emphasises the 'universal' value of freedom of speech, but this freedom of speech includes hate speech that incites violence.⁸⁷ The United States has entered a

⁸⁶ Nicole Hassoun, 'Review of *On Human Rights*' (2012) 109 *The Journal of Philosophy* 462, 462-463.

⁸⁷ The United States also rejected Article 20(2) of the International Covenant on Civil and Political Rights similarly requires that 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'

reservation to Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), stating that it would not accept any obligation to restrict the right to freedom of expression protected by the U.S. Constitution.⁸⁸ The United States also reserved the obligations under Article 20 of the International Covenant on Civil and Political Rights (ICCPR), on the grounding that conflicts with constitutional guarantees of freedom of expression.⁸⁹ While such reservations reflect a specific legal tradition, they arguably undermine the universal commitment to combating racial hatred and protecting vulnerable communities. Accordingly, the emphasis on freedom of expression in the United States limits the scope of government regulation, thereby protecting speech, even hate speech, unless it directly incites the commission of an illegal act. Such an approach may have competing and unbalanced rights, i.e. an excessive focus on freedom of expression may contribute to the spread of racist and discriminatory speech. While such similar reservations reflect a particular legal tradition in the United States, they go some way towards undermining the global community's general commitment to combating racial hatred and protecting vulnerable groups. This cannot be described as consistent with the initial intention of universal human rights. Donnelly arguably saw this as an ideological war in defiance of international legal norms.⁹⁰

Taking cultural relativism into account is necessary in the process of realising universal human rights. Melville Herskovits strongly believes that cultural relativism is a philosophy that recognises that each society establishes values to guide its own life, stresses the inherent dignity of each individual's customs, and emphasises the need to accommodate practices that may differ.⁹¹ In Hegel's words, rights may well be rational

⁸⁸ United States, *Declaration and Reservations to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*, (ratified 21 October 1994), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=en#EndDec, accessed 9th July 2025.

⁸⁹ United States, *Declarations and Reservations to the International Covenant on Civil and Political Rights (ICCPR)*, (17 June 1992) https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4, accessed 9th July 2025.

⁹⁰ Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29 *Human Rights Quarterly* 281, 282.

⁹¹ Satya Arinanto, 'Human Rights in Context of the Historical Non-aligned Countries' *Debates on Universalism and Cultural Relativism, and Current Human Rights Development in Indonesia* (2021) 7 *Indonesian Journal of International Law*, 479, 483-484.

‘ideas’, but they are formulated ‘in the world’ and therefore require contextual judgements of justice and fairness.⁹² Moreover, the practice of the Human Rights Committee’s response seems to confirm the validity of taking into account cultural relativism, as evidenced by the attempt to balance the ideal of universality with pragmatic considerations of effectiveness.⁹³ For example, the HRC has taken incrementalism in relation to polygamy in South Africa, taking into account the historical context and whether an urgent push to outlaw polygamy would realistically benefit women.⁹⁴ The HRC grants state parties a cushion for applying the International Covenant on Civil and Political Rights without sacrificing its universality. Shany sees this as a way of avoiding the strong resistance that might arise from attempts to implement universal norms that require changes in deeply rooted cultural practices.⁹⁵

Considering the necessity of cultural relativism is not a defence of relativism or a questioning of the need for universal human rights. It was assumed that, even without the Universal Declaration of Human Rights, the suffering of the victims of some harmful practices was real. There are even cases that do not sound like religious practices but rather denigration of religions. Take, for example, the cruel rituals of female genital mutilation and ritual servitude in Ghana,⁹⁶ or the case of a woman in Mozambique who entered a space reserved for a boy’s initiation ceremony and was ‘punished’ by the head of the ceremony, whose order to commit group violations led to her being raped by 17 men.⁹⁷ The above-mentioned gender-based violence in the name of culture cannot be tolerated. Culture and religion cannot be used to justify harming people.

This, however, leads to a more fundamental question: what constitutes culture and which cultural practice should be protected? Culture is not a static monolithic entity, and

⁹² Fred Dallmayr, “‘Asian Values’ and Global Human Rights”, *Theories of Rights* (Routledge 2006) 173, 174.

⁹³ Yuval Shany, ‘The Universality of Human Rights: Pragmatism Meets Idealism’ Hebrew University of Jerusalem Legal Studies Research Paper Series No. 18-29 (2018) 1, 14.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*, 15.

⁹⁶ UN Doc. CCPR/C/GHA/CO/1 para. 17 (9 Aug 2016) UN Human Rights Committee, Concluding Observations by the Human Rights Committee: Ghana.

⁹⁷ Edna Raquel Hogemann, ‘Human Rights beyond Dichotomy between Cultural Universalism and Relativism’ [2020] *The Age of Human Rights Journal* 19, 29.

not all cultural practices claimed under the umbrella of tradition or religion are authentic or immutable. Some of them may become instruments of power or control, serving political, patriarchal, or economic interests, rather than reflecting deeply held community values. Therefore, when engaging with cultural relativism, it is necessary to scrutinise the authenticity, function, and impact of any claimed cultural practice.

At the same time, accepting cultural relativism as a foundation for human rights raises further difficulties. While it rightly emphasizes respect for diversity and local traditions, it can also open the door to legitimising practices that violate fundamental human rights, such as gender discrimination, forced marriage, or denial of freedom of expression. Cultures are themselves internally contested; not all members of a community equally support or benefit from traditional norms, especially women, children, or marginalized minorities.

Such as the cases of Ghana and Mozambique show, it is possible to criticise the practice without reference to universal norms, even if the behaviour is under the banner of culture or religion. From this perspective, it is important that, regardless of the existence of ‘universal moral standards’ applicable to all human beings, social criticism should be based on the notion of goodness related to the context of living, going for the dignity of human beings. As Hogemann argues, whatever the cultural values specific to each community, the values that need to be preserved most are those of respect for the dignity of every human being.⁹⁸ While in reality, addressing human rights disparities needs to take into account cultural relativism, none of the persistence of harmful practices can be justified by reference to the social background and cultural history within the State, which cannot justify non-compliance with the obligations of the Covenant.

To put it briefly, the cultural relativism of human rights is in reality a complex but necessary matter that has to be confronted. Cultural relativism is an unavoidable fact in the discussion of universality, both in theory and in practice. As previously described, in

⁹⁸ Ibid.

theory, the philosophical foundations of universal human rights are not perfectly solid. On a practical level, if one overlooks explaining the different approaches to human rights under the lens of cultural relativism in different societies, then one does not seem to be facing up to the reality of the human rights situation. An understanding of the cultural context of human rights is necessary. Meanwhile, cultural relativism as a foundation for human rights is also contentious. The complexity of the debate suggests that while cultural relativism deserves attention, it cannot serve as an absolute foundation for human rights. A more balanced contextualised approach is needed - one that respects both cultural diversity and universally applicable fundamental rights to protect individual dignity and freedom. As Shany argues, the human rights debate between universality and cultural relativism should be construed in a contextual way, looking at the relevant cultures, circumstances and experiences of the social groups that implement these rights.⁹⁹

2.2.3. Summary: Cultural Relativism as a Practical Challenge and Resource

The preceding sub-sections reveals that cultural relativism is not merely an intellectual counterpoint to universalism but a persistent reality in the global practice of human rights. While universal human rights norms articulate a grander moral vision, their realisation in diverse socio-cultural contexts is far from straightforward. Culture, far from being the enemy of human rights, constitutes a site of negotiation, resistance, and potential transformation. Culture can serve both as a challenge to the implementation of human rights norms and also as a resource through which those norms may gain local legitimacy.

However, not all claims of cultural relativism can or should be accepted as legitimate variables within the human rights framework. The challenge lies in distinguishing between cultural expressions that are compatible with human dignity and those that perpetuate structural harm. This requires not only normative clarity but also a deep sensitivity to local histories, ethical frameworks, and lived experiences. Achieving

⁹⁹ Yuval Shany, 'The Universality of Human Rights: Pragmatism Meets Idealism' Hebrew University of Jerusalem Legal Studies Research Paper Series No. 18-29 (2018) 1, 1.

genuine universality, therefore, depends not on imposing uniform standards, but on the capacity to engage critically with cultural diversity through principled and context-aware dialogue.

This recognition sets the stage for the next section, which turns to a regional example often framed within debates about cultural relativism: the discourse of "Asian values." The notion of Asian values has been invoked both to critique Western-centric human rights models and to assert culturally specific approaches to governance, social order, and rights. A closer examination of this discourse will further illuminate the complexities of negotiating human rights across cultural and political boundaries.

2.3. A representative of cultural and regional particularities: Asian Values

This sub-section outlines the literature on Asian values and explains some examples of country-specific values in Asia, aiming to explore whether old debates on Asian values can help explain the new topic of Human Rights with Chinese Characteristics (HRCC). The analysis shows that the controversial motives and inherent logical flaws of Asian values make them ineffective in helping to understand HRCC.

2.3.0. Introduction: Why revisit the old debate?

The cultural relativism discussed in the previous section makes us see the need to face up to regional cultures. In the thesis of Clash of Civilisations, the American scholar Huntington presupposes that culture is the fundamental cause of future international conflicts---and Confucianism in East Asia is one of the two 'challenger civilizations' to Western Christian civilisation.¹⁰⁰ Asian values are a highlighted representative topic of the East-West cultural conflict. Asian values are political and cultural ideas advocated by former Singaporean Prime Minister Lee Kuan Yew in the 1990s. They have not only been welcomed by politicians and academics in East Asia and Southeast Asia but have also attracted widespread attention in Western countries. Lee Kuan Yew believes that East

¹⁰⁰ Huntington Samuel, The clash of civilizations. *Foreign Affairs*, 72(3), (1993). 22, 24.

Asia has a Confucian tradition of authoritarianism with a tradition of loyalty to the state and loyalty to the family, and that economic and social development should be guided by the values of its own unique cultural traditions. Against the background of the complex debate about the universality and relativity of human rights, Englehart sees Asian values as a particular version of cultural relativism.¹⁰¹ Lee Kuan Yew's defence of Asian values is seen as a particular application of cultural relativism on human rights in Asian societies.¹⁰²

'Asian values' combine the regional cultures and community experiences of East Asia. The value positions involved are manifested on multiple levels. At the individual level, there is an emphasis on hard work, education, honesty, self-discipline and fulfilling obligations. At the family level, there is an emphasis on traditional concepts such as filial piety and respect for elders. At the level of the relationship between the individual and the state, there is an emphasis on social stability and order, social harmony, respect for social authority, and the principle that the collective is superior to the individual. At the socio-economic level, there is an emphasis on the leading role of the government and the interests of the state and the collective. In short, the description of Asian values in terms of human rights can be summarised as follows: rights are culturally specific and linked to a stable national order; the collective takes precedence over the individual; and the active role of the government in leading social and economic development is valued.¹⁰³ Asian values are very different from Western liberal democratic values. Some East Asian political leaders who have advocated Asian values, such as Singapore's Lee Kuan Yew and Malaysia's Mahathir Mohamad, have openly stated that the predominance of 'Asian values' made Western liberal democracy impractical for the Asia region.¹⁰⁴

¹⁰¹ Neil A. Englehart, 'Rights and Culture in the Asian Values Argument: The Rise and Fall of Confucian Ethics in Singapore' (2000) 22 Human Rights Quarterly 548, 549.

¹⁰² William Talbot, Chapter 3. Cultural Relativism About Human Rights in *Which Rights Should Be Universal?* (Oxford University Press 2005) 39, 40.

¹⁰³ Marina Svensson, Culture and Human Rights Between Universalism and Relativism in *Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 59.

¹⁰⁴ Nicholas Spina, Doh C. Shin and Dana Cha, 'Confucianism and Democracy: A Review of the Opposing Conceptualizations' (2011) 12 Japanese Journal of Political Science 143, 151.

Asian values were born after the Asian economic miracle represented by South Korea, Hong Kong, Taiwan and Singapore, but were then widely questioned following the 1997 East Asian financial crisis, which hit Southeast Asia and East Asia hard. As a product of cultural relativism, Asian values have been a very eye-catching and controversial topic. Although nowadays fewer and fewer people discuss Asian values, we are concerned about this: since China is within the Asian region, can Asian values that combine the cultural and social experiences of the Asian region explain China's foreign human rights policy? This section introduces the content of 'Asian values', outlines the unique human rights content advocated by proponents of Asian values and the response of the international community, discusses the dilemma of the decline of Asian values, and reflects on whether Asian values contribute to understanding human rights with Chinese Characteristics (HRCC).

2.3.1. What are 'Asian Values'?

In the early 1990s, Asian values became a heated topic in the international human rights discourse. In the debate over relativism, references to culture and national conditions became more prominent in the official human rights discourse of some Asian countries.¹⁰⁵ The proponents of the Asian values discourse are led by Singapore, Malaysia, Indonesia and China.¹⁰⁶ In contrast to the universal interpretation of human rights advocated by the West, a culturally specific understanding of human rights is proposed.¹⁰⁷ The 1993 World Conference on Human Rights in Vienna can be considered a landmark event in the 'Asian values' debate. On the occasion of the Conference, the delegations of China and Singapore expressed a culture-specific vision of human rights by emphasising cultural diversity. It was argued that East Asian cultures, influenced by Confucianism, cherished a tradition of collectivism, while the tradition of individualism under the concept of universal human rights, which had been repeatedly proclaimed by

¹⁰⁵ Marina Svensson, Culture and Human Rights Between Universalism and Relativism in *Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 58.

¹⁰⁶ Ibid.

¹⁰⁷ Christian Welzel, 'The Asian Values Thesis Revisited: Evidence from the World Values Surveys' (2011) 12 Japanese Journal of Political Science 1, 2.

the West, clashed with Asian cultures.¹⁰⁸ Asian values seemed to be discussed later under a different title, the 'ASEAN way'.¹⁰⁹ In fact, a group of the Association of Southeast Asian Nations (ASEAN), after decades of thoughtful negotiations, created the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009.¹¹⁰ The statements made by representatives of Asian countries and the later formation of regional human rights organisations suggest that Asia appears to have its own values and approach to human rights issues.

The background to how the 'Asian values' discourse developed can be viewed in terms of multiple political, economic and cultural factors. First, the fall of communism in Eastern Europe and the failure of the democratic movement in China brought back the focus on human rights.¹¹¹ Human rights have become increasingly important since the end of the Cold War. A noteworthy shift is that the human rights discourse during the Cold War was concerned with more political and ideological perspectives, whereas after the Cold War, there has been a greater focus on cultural and economic dimensions.¹¹² Next, nationalism is also a key factor behind the formation and widespread propagation of Asian values. Many Asian countries that were colonised by the West in the past are particularly sensitive to Western propaganda on human rights and democracy.¹¹³ It was shown that developing countries in Asia expressed that certain Western countries have always played 'the role of human rights "judges"'.¹¹⁴ Third, within the broader context of economic growth, booming Asian countries are experiencing vibrant economic growth and increased self-confidence. Although the non-Western world has not yet been able to challenge the West, the rapid economic development of Southeast and East Asian countries is thought to make these countries confident to bring more voice to

¹⁰⁸ Ibid.

¹⁰⁹ Gillian Goh, 'The 'ASEAN Way': Non-Intervention and ASEAN's Role in Conflict Management' (2003) 3, *Stanford Journal of East Asian Affairs* (2003) 113, 113.

¹¹⁰ Yung-Ming Yen, 'The Formation of the ASEAN Intergovernmental Commission on Human Rights: A Protracted Journey' (2011) 10 *Journal of Human Rights* 393, 395.

¹¹¹ Marina Svensson, *Culture and Human Rights Between Universalism and Relativism in Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 58.

¹¹² Ibid.

¹¹³ Ibid, 59.

¹¹⁴ Statement by H. E. Ambassador QIAO Zonghuai, Head of the Chinese Delegation, on Organization of Work (Item 3) at the 57th Session of the Commission on Human Rights, 20 March 2001, Geneva.

themselves.¹¹⁵ Fourth, from a cultural point of view, it is believed that Asian civilisations maintain a direct link with their ancestral cultures and traditions.¹¹⁶ In retrospect, it could be argued that the emergence of Asian values was the result of a blend of factors: the growing importance of human rights after the end of the Cold War, the increased self-confidence of Asian countries as a result of the new economic prosperity; and the distinctive identity of Asian civilisations among the region's large populations.

The main arguments put forward by proponents of 'Asian values' on human rights will next be discussed. The distinctive aspects of human rights asserted by proponents of 'Asian values' can be viewed as three main arguments. Firstly, questioning the applicability of Western standards, namely questioning the extent to which human rights are applicable or appropriate to Asian cultures.¹¹⁷ This main argument questions the compatibility of the focus on individual rights with the Asian cultural context. It also argued that some rights are not well fitted to Asian cultures, where the basic component of society is not the individual, but the family.¹¹⁸ For example, Lee Kuan Yew once referred to the importance of Confucianism in Asian values, and that the paternalism prevalent in the countries of eastern and south-eastern Asia was not challenged by the stress on freedom and rationality in the West.¹¹⁹ Because Asian cultures focus on social network relationships or collectives, individuals exist in relation to their families and communities, where duties and responsibilities to others are as important or even more important than individual rights. This explanation is not an exaggeration; the values of Asian culture are indeed such that none of the major philosophies throughout Asia use the individual as the ultimate measure of all things around it.¹²⁰ By describing distinctive Asian values, it can be seen that this argument primarily questions the non-differentiated

¹¹⁵ Yash Ghai, 'Universalism and Relativism: Human Rights as a Framework for Negotiating Interethnic Claims Symposium - State and Federal Religious Liberty Legislation: Is It Necessary - Symposium - A Roundtable on Constitutionalism, Constitutional Rights & Changing Civil Society: Universal Rights and Cultural Pluralism' (1999) 21 *Cardozo Law Review* 1095, 1095.

¹¹⁶ Christina M. Cerna, 'Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts' (1994) 16 *Human Rights Quarterly* 740, 743.

¹¹⁷ Fei Shen and Lokman Tsui, 'Revisiting the Asian Values Thesis: An Empirical Study of Asian Values, Internet Use, and Support for Freedom of Expression in 11 Societies' (2018) 58 *Asian Survey* 535, 537.

¹¹⁸ Michael D. Barr, 'Lee Kuan Yew and the "Asian Values" Debate' (2000) 24 *Asian Studies Review* 309, 311.

¹¹⁹ *Ibid.*

¹²⁰ Diane K. Mauzy, 'The Human Rights and "Asian Values" Debate in Southeast Asia: Trying to Clarify the Key Issues' (1997) 10 *The Pacific Review* 210, 215.

application of Western human rights standards. In contrast to the West, Asian peoples emphasise collective rather than individual rights and prioritise economic and social rights that benefit the group over individual civil and political rights.

Secondly, another major strand of opinions argued that Asia was not ready for universal human rights and that priority should be given to development.¹²¹ This argument does not question universal human rights themselves, nor does it see Asia as a static cultural insulator, but it argues that Asia is not yet ready. It is widely known that many Asian countries are still developing countries. Therefore, the right to economic development is considered equally important, or even more important, than other traditional concepts of human rights, such as the right to freedom of expression. For example, in Hitchcock's survey in which people from different industries from eight East Asian countries and the United States participated at the same time, three-quarters of the Asian participants believed that a harmonious social order and a rich and powerful state were more important than individual freedoms and rights; yet the order Americans choose is, freedom of speech, individual liberty and individual rights¹²² Such findings suggest that while Asian values do not mean that everyone shares a similar set of values, there are significant differences in the beliefs and values of Asians and Westerners as a whole. Thus, the argument that Asia is not ready can be seen as essentially emphasising an order of priorities. Economic development is the most important and pressing concern of these Asian societies, even at the brief expense of individual civil and political rights.

Last but not least, a view that rejects double standards and the use of human rights as a justification for interference in internal affairs. Some Southeast and East Asian countries see Western values and some human rights claims as a form of 'intellectual hegemony', and Asian values are somehow seen as a response to Western values imposed on

¹²¹ Fei Shen and Lokman Tsui, 'Revisiting the Asian Values Thesis: An Empirical Study of Asian Values, Internet Use, and Support for Freedom of Expression in 11 Societies' (2018) 58 *Asian Survey* 535, 537.

¹²² Diane K Mauzy, 'The Human Rights and "Asian Values" Debate in Southeast Asia: Trying to Clarify the Key Issues' (1997) 10 *The Pacific Review* 210, 216.

them.¹²³ It is well known that, prior to the 1993 UN World Conference on Human Rights, it is explicitly mentioned in the Bangkok Declaration, which was adopted by 40 Asian Governments, that 'reaffirming the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of States'.¹²⁴ In the case of the later Association of South-East Asian Nations (ASEAN), the non-interference in internal affairs and respect for national sovereignty form the basis of relations between member countries.¹²⁵ Specifically, China, Indonesia, Singapore and Malaysia questioned the Western practice of using human rights issues as a tool in international relations. In the Bangkok Declaration, there is an implicit statement that stresses the universality, objectivity, and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization. Recognizing that the promotion of human rights should be encouraged by cooperation and consensus, and not through confrontation and the imposition of incompatible values.¹²⁶ Although the Bangkok Declaration does not mention Asian values at all, what is written between the lines already represents Asian values. These Asian countries rejected the double standards of human rights interference in their internal affairs and the imposition of Western values.

However, it should be noted in particular that not all Asian societies - or even different groups within the same nation - are guided by this concept of non-interventionism. The notion of 'Asian values' articulated in diplomatic forums, such as the Bangkok Declaration, tends to reflect the positions of leading governments rather than the diverse voices of Asian peoples. For example, compared to mainland China, democratic forces in Taiwan are more in favour of civil and political rights than social and cultural

¹²³ Yash Ghai, 'Universalism and Relativism: Human Rights as a Framework for Negotiating Interethnic Claims Symposium - State and Federal Religious Liberty Legislation: Is It Necessary - Symposium - A Roundtable on Constitutionalism, Constitutional Rights &(and) Changing Civil Society: Universal Rights and Cultural Pluralism' (1999) 21 *Cardozo Law Review* 1095, 1096.

¹²⁴ Report of the Regional Meeting for Asia of the World Conference on Human Rights, UN. Doc. A/CONF.157/ASRM/8A/CONF.157/PC/59, Bangkok, 7 April 1993, page 3.

¹²⁵ Amrita Kapur, 'Asian Values v. The Paper Tiger: Dismantling the Threat to Asian Values Posed by the International Criminal Court' (2013) 11 *Journal of International Criminal Justice* 1059, 1061.

¹²⁶ Report of the Regional Meeting for Asia of the World Conference on Human Rights, UN. Doc. A/CONF.157/ASRM/8A/CONF.157/PC/59, Bangkok, 7 April 1993, page 3.

rights.¹²⁷ Clearly Taiwan does not agree that its values are represented by state-dominated strategic Asian values. This suggests that the rejection of 'Western' human rights claims could be often motivated by non-cultural dimensions and does not necessarily reflect a single regional cultural consensus.

Accordingly, the Asian values argument can be summarised in terms of a particular East Asian political and colonial culture - one that rejects intervention, where economic development is the primary concern, and where collective rights are emphasised over individual rights. In the Asian cultural context, proponents of Asian values seem to be both for and against human rights. They support economic and social rights for the benefit of the majority of society and oppose individual-centred civil and political rights. Also, Asian values are reflected in the consistent assertion of greater respect for sovereignty. This region-specific understanding of human rights contrasts with the Western interpretation of universal human rights. As Engle boldly argues, Asian values use cultural context as a means to counter the dominant human rights system.¹²⁸

It must be acknowledged, however, that the discourse on "Asian values" has been largely shaped by political elites from a few East and Southeast Asian countries—most notably Singapore, Malaysia, and China—rather than reflecting the full diversity of Asia. Asia is a vast and heterogeneous continent encompassing liberal democracies like Japan, South Korea, and India, as well as Muslim-majority countries such as Indonesia and Pakistan, each with distinct political traditions, religious values, and colonial histories. The claim that "Asia is not ready" for universal human rights should thus be understood not as a blanket cultural assertion, but as a political argument rooted in the specific developmental challenges of many postcolonial states.

Moreover, the emphasis on economic development over civil and political rights is not uniquely "Asian," but rather a broader position shared by many developing countries in

¹²⁷ Li-Jung Wang, 'Cultural Rights and Citizenship in Cultural Policy: Taiwan and China' (2014) 20 *International Journal of Cultural Policy* 21, 22.

¹²⁸ Karen Engle, 'Culture and Human Rights: The Asian Values Debate in Context Millenium Issue: Shaping the Parameters of International Law in the New Millennium' (1999) 32 *New York University Journal of International Law and Politics* 291, 294.

the Global South, regardless of region. For example, African nations have similarly advocated for the position that the right to development (RtD) as a prerequisite for the meaningful enjoyment of other rights. Though there are gaps at a practical and enforceable level for some nations, planning and agendas related to RtD are in place.¹²⁹ What distinguishes the “Asian values” discourse is the way in which this developmental priority is sometimes framed as culturally grounded—drawing on Confucian ideals of harmony, social order, and deference to authority—rather than purely instrumental or pragmatic.

2.3.2. ‘Asian Values’ and Human Rights in Asia

As previously seen, some proponents¹³⁰ of Asia consider liberal democracy to be a Western concept. However, it needs to be pointed out with special attention that equalising human rights principles with Western values is not a sensible view. There may be a prejudice that noble principles are somehow synonymous with Western cultural traditions. If it is wrongly assumed that international human rights are primarily a Western construct, then logic would point to the flawed conclusion that human rights problems in Western countries would be slightly less serious. In fact, some of the world’s racist societies are also founded on Western ideology and culture, such as Apartheid in South Africa, Nazism in Germany, the unfair treatment of Aborigines in Australia, and the mistreatment of African Americans in America.¹³¹ In particular, some commentators sometimes imply that Asian or Islamic countries ‘naturally’ deny the universality of human rights. It is possible to fall into the biased logic that opposition to international human rights will necessarily come from non-Western countries.¹³²

International human rights also benefit from Asian contributions. The United Nations Universal Declaration of Human Rights involves a large number of countries around the

¹²⁹ Carol C. Ngang, ‘Towards a right-to-development governance in Africa.’ *Journal of Human Rights* 17.1 (2018). 107, 107.

¹³⁰ Some Southeast and East Asian countries mentioned earlier.

¹³¹ Fernand de Varennes, ‘The Fallacies in the “Universalism Versus Cultural Relativism” Debate in Human Rights Law’ (2006) 7 *Asia-Pacific Journal on Human Rights & the Law* 67, 74.

¹³² *Ibid.*

world. The United Nations Universal Declaration of Human Rights (UDHR) involves a large number of countries from around the world. Among the 58 countries that participated in its creation, 20 were from Latin America, 4 from Africa and 14 from Asia.¹³³ It can be said that the UDHR is a blend of the many ideologies of human society and that multiculturalism has been met to some extent. As P. Imbert points out, this does not mean that the diverse perceptions of human society ‘blow up’ in this core document, but rather that multiculturalism is integrated at the world level and that the different cultures of human society are reconciled.¹³⁴

While Asian countries emphasised their distinct historical, cultural and religious backgrounds, this emphasis was not intended to negate the universality of international human rights. In the Bangkok Declaration, the Asian Governments reaffirmed ‘their commitment to principles contained in the UN Charter and the UDHR’.¹³⁵ It also encourages broader ratification of core human rights treaties by stating that ‘ratification of international human rights instruments, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, by all States should be further encouraged.’¹³⁶ For example, the Indonesian delegate to the World Conference on Human Rights in Vienna acknowledged that ‘the issue of human rights is no longer a bloc dispute’,¹³⁷ clearly signalling a shared normative foundation.

What many Asian states object to, however, is their opposition to the selective use of human rights discourse by the Super Powers for their own purposes.¹³⁸ From this perspective, the criticism made by the representative of Asian values is not a rejection of universal human rights standards per se, but rather a response to so-called double

¹³³ Ibid, 71.

¹³⁴ Margaret MacMillan, *Paris 1919: Six months that changed the world*. (2003) Random House Trade Paperbacks 37, 38.

¹³⁵ Report of the Regional Meeting for Asia of the World Conference on Human Rights, UN. Doc. A/CONF.157/ASRM/8A/CONF.157/PC/59, Bangkok, 7 April 1993, page 4.

¹³⁶ Ibid, page 3.

¹³⁷ Fernand de Varennes, ‘The Fallacies in the “Universalism Versus Cultural Relativism” Debate in Human Rights Law’ (2006) 7 Asia-Pacific Journal on Human Rights & the Law 67, 76.

¹³⁸ Report of the Regional Meeting for Asia of the World Conference on Human Rights, UN. Doc. A/CONF.157/ASRM/8A/CONF.157/PC/59, Bangkok, 7 April 1993, page 3.

standards and external impositions. Their opposition is directed not at the universality of human rights, but at the instrumentalization of human rights language to justify interference or the imposition of a unity of values without regard to cultural and contextual diversity. In this context, the position of Asian Values can be seen as a call for a more inclusive, balanced and non-hegemonic approach to the promotion of human rights - one that honours diversity while upholding universal principles.

The fact that Asia contributes perspectives to international human rights does not make it easy for Asian societies to accept human rights, especially those that limit sovereignty. Although Asian societies recognise the importance of human rights concepts such as human dignity, human freedom, equality, etc., there are still areas of potential conflict between Asian values and certain human rights principles. For instance, the Singaporean Government emphasises the Confucian tradition of placing the group above the individual and obedience to authority.¹³⁹ When Lee Kuan Yew was criticised for restricting the freedom of the press to question the government and for limiting the ability of citizens to express their dissatisfaction towards the government, he rebuked his critics for their ignorance of 'Asian values'.¹⁴⁰ Moreover, Lee criticised attempts to impose limited Western cultural values on societies with different Asian values.¹⁴¹ Although the arguments for Asian values have since been enriched beyond Lee Kuan Yew's range of ideas, the stance of Asian values has always been from cultural relativism, regardless of whether it is from a strategic position¹⁴² or an intuitively appealing moral position¹⁴³. Lee Kuan Yew's embrace of Asian values is seen as a particular application of human rights cultural relativism in Asian societies.¹⁴⁴ From cultural relativism, the tension between Asian values and universal human rights is evident.

¹³⁹ Michael D. Barr, 'Lee Kuan Yew and the "Asian Values" Debate' (2000) 24 Asian Studies Review 309, 311.

¹⁴⁰ William Talbott, 3. Cultural Relativism About Human Rights in Which Rights Should Be Universal? (Oxford University Press 2005) 39, 39.

¹⁴¹ Ibid, 86.

¹⁴² Michael D. Barr, 'Lee Kuan Yew and the "Asian Values" Debate' (2000) 24 Asian Studies Review 309, 310.

¹⁴³ It is suggested that cultural relativism comes naturally, and that this subtle influence is an intuitively attractive moral stance. Talbott W, 3. Cultural Relativism About Human Rights in Which Rights Should Be Universal? (Oxford University Press 2005) 39, 39-40.

¹⁴⁴ William Talbott, 3. Cultural Relativism About Human Rights in Which Rights Should Be Universal? (Oxford University Press 2005) 39, 39.

Many of the statements made by the former Prime Minister of Singapore, Lee Kuan Yew, on 'Asian values' have been cited above. It is worth noting that while Lee Kuan Yew's views were highly influential and reflective of a particular mindset in the Asian region, the broader argument of cultural relativism is not unique to Singapore. Lee Kuan Yew's similar tension between universal human rights and local priorities, such as development-first policies or community-based ethics, exists in various forms in Malaysia, China and even Indonesia. The Singaporean case thus embodies an influential interpretation within the wider debate, but should be situated within the wider jigsaw of regional political thought and social context.

While the notion of 'Asian values' has largely been shaped by East and Southeast Asian states such as Singapore, Malaysia, and China, it is also important to recognise that certain traditional institutions across Asia exhibit value systems distinct from Western liberalism. In particular, there is indeed a tendency in certain traditional Asian cultures to emphasise collectivity, order and hierarchy, in contrast to the Western liberal tradition, which is centred on individual rights. One example is the Hindu caste system in India. Indian society values order first and foremost, and therefore emphasises not the individual but the individual's role in the collective, and the consistency of obedience to the collective.¹⁴⁵ Despite the establishment of a democratic republic after India's independence, the Indian caste system has been preserved to this day.¹⁴⁶ It is interesting to note that the Indian caste system has been described as a 'traditional, multi-dimensional view of human rights'.¹⁴⁷ It is not very easy to tell whether this is a rhetorical statement or a serious attempt to summarise the fact that universal human rights are present in the traditional social practices of India.¹⁴⁸ Of

¹⁴⁵ Edna Raquel Hogemann, 'Human Rights beyond Dichotomy between Cultural Universalism and Relativism' [2020] *The Age of Human Rights Journal* 19, 30.

¹⁴⁶ The caste system gives people unequal access to valuable resources such as wealth, income, education, power and prestige. See Thorat S and Newman KS, 'Caste and Economic Discrimination: Causes, Consequences and Remedies' (2007) 42 *Economic and Political Weekly* 4121, 4122; Deshpande M, 'History of the Indian Caste System and Its Impact on India Today' [2010] *Social Sciences* 1, 1.

¹⁴⁷ Ralph Buultjens, Thompson Kenneth, 'Human rights in Indian political culture.' *The Moral Imperatives of Human Rights: A World Survey* (1980) Kenneth W. Thompson ed., 109, 113.

¹⁴⁸ Some have argued that under the proper interpretation, it becomes clear that the norms of justice within Hinduism are not very different from those of the West. See Talbott W, 3. *Cultural Relativism About Human Rights in Which Rights Should Be Universal?* (Oxford University Press 2005) 39, 46.

course, if we are talking about the Indian caste system and universal human rights, then that is a whole other topic. In this context, we would just like to say that although India does not claim a voice for Asian values, the caste system coincides with the Asian values that emphasise the primacy of the collective over the individual and differs from the universal human rights that place value on the individual. In other words, The Indian caste system, although outside of 'Asian values', embodies a non-liberal, traditional view of order that bears some structural resemblance to some of the concepts of 'Asian values', i.e., collectivism and hierarchical order.

Further, communitarianism exists in South Korea, and harmony and hierarchy exist in Japan. Some Confucian values and beliefs, such as respect for authority, are thought to tend to cross over many Asian ethnic groups, such as Chinese, Japanese and Koreans.¹⁴⁹ South Korean society usually emphasises group interests and collective decision-making.¹⁵⁰ While this promotes social cohesion, it can also challenge individual autonomy and freedom of decision-making, especially in family or workplace matters. Japanese society places a high value on harmony and the maintenance of social hierarchy.¹⁵¹ While these values contribute to social cohesion, they can also limit public discussion of controversial topics, which potentially restricts freedom of speech and expression. It can be seen that even the more democratised societies of Japan and South Korea display a focus on the group over the individual as a feature of Asian values. Particularly, Japan tends to discuss human rights within the framework of broader international human rights standards and has never expressed a preference for Asian values or a belief in an Asian-specific approach to human rights,¹⁵² although some argue

¹⁴⁹ Derek Kenji Iwamoto and William Ming Liu, 'The Impact of Racial Identity, Ethnic Identity, Asian Values, and Race-Related Stress on Asian Americans and Asian International College Students' Psychological Well-Being' (2010) 57 *Journal of Counselling Psychology* 79, 80.

¹⁵⁰ Kyung-Sup Chang, 4. The Anti-Communitarian Family? Everyday Conditions of authoritarian Politics in South Korea in *Communitarian Politics in Asia* (Routledge 2004) 57, 57.

¹⁵¹ In a study of the recognition of Confucian cultural values in East Asian countries, analyses of the interpersonal harmony and relational hierarchy showed that Japan was ranked second and fourth respectively. See Zhang Yan Bing and others, 'Harmony, Hierarchy and Conservatism: A Cross-Cultural Comparison of Confucian Values in China, Korea, Japan, and Taiwan' (2005) 22 *Communication Research Reports* 107, 111.

¹⁵² Surprisingly, Japan was the first country to incorporate human rights into universal and binding international rule in the twentieth century (13 February 1919), and there is no evidence in the literature on

that Japan has been pressured to do so as an ally of the United States.¹⁵³ The emphasis of Asian values on the collective over the individual is reflected in South Korea and Japan. It doesn't matter what values are labelled; it is indeed shaped by relatively divergent historical and cultural backgrounds.¹⁵⁴ Both Japan and Korea prefer to defend human rights through community-based, appropriate obligations and a belief in the harmony of society as a whole.

2.3.3. International response and implications

In this section we will look at the global community's response to the debate about 'Asian values', as well as discuss the implications of Asian values for the universality of human rights. In the past, some Western scholars accepted Asian values as some form of cultural relativism, and as Bell concludes in *Beyond Liberal Democracy*, liberal democracy cannot be legitimised in Asia on the basis of Western values but must be rooted in Asian intellectual traditions.¹⁵⁵ However, the vulnerability of cultural relativism to being politicised has led some scholars to change their views. Referring to Asian values tends to associate the possibility of abusing them for political purposes and justifying human rights violations. For example, Admantia Pollis, who questioned the universality of human rights and criticised the Universal Declaration of Human Rights as a 'Western conception of limited applicability', was later concerned about the use of the language of cultural relativism by some East Asian countries to rationalise their repressive practices.¹⁵⁶

Asian values of widespread support for the notion of 'Asian values' among Japanese officials, as there was among some other Asian countries. See Fernand de Varennes, 'The Fallacies in the "Universalism Versus Cultural Relativism" Debate in Human Rights Law' (2006) 7 *Asia-Pacific Journal on Human Rights & the Law* 67, 68.

¹⁵³ Diane K. Mauzy, 'The Human Rights and "Asian Values" Debate in Southeast Asia: Trying to Clarify the Key Issues' (1997) 10 *The Pacific Review* 210, 221.

¹⁵⁴ Modern Confucianism has widely influenced governmental organisations and social values in East and Southeast Asian countries such as Cambodia, China, Indonesia, Korea, Japan, Malaysia, Mongolia, Myanmar, the Philippines, Singapore, Taiwan, Thailand and Vietnam. See Spina Nicholas, Shin Doh C and Cha Dana, 'Confucianism and Democracy: A Review of the Opposing Conceptualizations' (2011) 12 *Japanese Journal of Political Science* 143, 144.

¹⁵⁵ Christian Welzel, 'The Asian Values Thesis Revisited: Evidence from the World Values Surveys' (2011) 12 *Japanese Journal of Political Science* 1, 3.

¹⁵⁶ Marina Svensson, *Cultural Human Rights Between Universalism and Relativism in Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 50.

Most criticisms of Asian values question the motives behind them. A dominant view is that advocacy of Asian values is politically motivated. It is claimed that the promotion of Asian Values is politically and ideologically motivated and has moved away from the traditional practices of Asian societies.¹⁵⁷ The reason for the assumed political manipulation seems to be that the link between the political stance and the support for Asian values theory is considered to be too obvious. For example, supporters are mostly leaders of authoritarian regimes, such as Lee Kuan Yew in Singapore or former President of Malaysia, Mahathir Mohamad.¹⁵⁸ This has led to Asian values being seen as a political smokescreen designed to hide repressive power practices behind cultural diversity.¹⁵⁹ Asian NGOs have criticised Asian governments for promoting Asian values as ‘a thin disguise for their authoritarianism’.¹⁶⁰ In particular, Lee Kuan Yew’s particular claims have been criticised, with critics arguing that by emphasising Asian values, the government does not want its citizens to participate freely in national affairs, and therefore Asian values claims on economics and politics are seen as a means of consolidating an authoritarian government.¹⁶¹ Svensson therefore argues that Asian governments’ claims of cultural authenticity should not be taken at face value, as their advocacy of Asian values may have more to do with their own political interests rather than the cultural values themselves.¹⁶²

The other major argument is that Asian values were advocated not only for political, but mainly for economic purposes. For one thing, Asian values emerged in the context of the Asian economic boom. It is argued that Asia is beginning to rise to the world stage,

¹⁵⁷ Neil A. Englehart, ‘Rights and Culture in the Asian Values Argument: The Rise and Fall of Confucian Ethics in Singapore’ (2000) 22 *Human Rights Quarterly* 548, 549.

¹⁵⁸ Clive S. Kessler, ‘The Abdication of the Intellectuals: Sociology, Anthropology, and the Asian Values Debate — or, What Everybody Needed to Know about “Asian Values” That Social Scientists Failed to Point Out’ (1999) 14 *Sojourn: Journal of Social Issues in Southeast Asia* 295, 299.

¹⁵⁹ Christian Welzel, ‘The Asian Values Thesis Revisited: Evidence from the World Values Surveys’ (2011) 12 *Japanese Journal of Political Science* 1, 3.

¹⁶⁰ Marina Svensson, *Cultural Human Rights Between Universalism and Relativism in Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 60.

¹⁶¹ Richard C. Kagan, Chapter 12. Lee’s Stewardship of Taiwan: From One-Party Rule to Democracy in Taiwan’s Statesman: Lee Teng Hui and Democracy in Asia (Naval Institute Press 2014) 149, 157.

¹⁶² Marina Svensson, *Cultural Human Rights Between Universalism and Relativism in Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 49.

witnessing economic prosperity and increased confidence. This has given Asian countries a voice and a role in the world, even if it means challenging the West on human rights issues.¹⁶³ For the other thing, Asian countries that stand up for Asian values are seen as preferring to be 'left alone' to develop their economies.¹⁶⁴ For example, there was a debate on international environmental law in a similar context at the time.¹⁶⁵ According to the context at that time, the rapid economic development of Asian countries was inevitably constrained by the protection of rights under international law, such as international environmental law or international human rights law. It is not surprising that Asian values are shared mainly by third-world countries and that non-interference is one of the main points of Asian values. Although these Asian countries do not share exactly the same historical and political views, these countries in the Bangkok Declaration present a united front as an Asian group. It seems that economic explanations for this issue are more reasonable than cultural as a starting point, and the countries calling for non-interference are those that wish to promote domestic economic development without being pressured and sanctioned for environmental or human rights reasons. Although Asian values are set against a backdrop of cultural relativism, economic interests are more of a persuasive means to promote consensus among these Asian countries.

Besides criticisms of the motivation of Asian values, the implications of 'Asian values' as a particular version of cultural relativism¹⁶⁶ for universal human rights have also been mirrored in the debate. There is a voice arguing that the universality of human rights has not been denied. Although some Asian governments with Asian values emphasise national sovereignty, no state representative denies the universality of human rights.¹⁶⁷ Indeed, in the Bangkok Declaration, 40 Asian Governments reaffirmed their commitment

¹⁶³ Kishore Mahbubani, 'The Pacific Way Essay' (1995) 74 *Foreign Affairs* 100, 100.

¹⁶⁴ Karen Engle, 'Culture and Human Rights: The Asian Values Debate in Context Millennium Issue: Shaping the Parameters of International Law in the New Millennium' (1999) 32 *New York University Journal of International Law and Politics* 291, 313.

¹⁶⁵ *Ibid.*

¹⁶⁶ The assertion of Asian values is seen as a particular version of cultural relativism. See Englehart NA, 'Rights and Culture in the Asian Values Argument: The Rise and Fall of Confucian Ethics in Singapore' (2000) 22 *Human Rights Quarterly* 548, 549.

¹⁶⁷ Fernand de Varennes, 'The Fallacies in the "Universalism Versus Cultural Relativism" Debate in Human Rights Law' (2006) 7 *Asia-Pacific Journal on Human Rights & the Law* 67, 76.

to the Universal Declaration of Human Rights and also affirmed the universality, interdependence and indivisibility of civil, political, economic, social and cultural rights.¹⁶⁸ Moreover, many Asian political activists call for human rights and democracy and reject the idea that human rights do not apply to Asian societies. For example, as the Korean democracy activist Kim Dae-Jung (elected President of Korea in 1997) noted, 'the greatest obstacle [to democracy and human rights] is not [Asia's] cultural heritage, but the resistance of authoritarian rulers and their apologists'.¹⁶⁹ According to Kim, despite the implication of authoritarian rule in parts of Asia, it is denied that Asia's cultural values can substantially conflict with universal human rights and democracy. Practical developments in a growing number of Asian countries show that ordinary people and even Governments themselves increasingly see human rights as a profoundly cultural, political and moral contemporary expression of their own.¹⁷⁰

Moreover, from a philosophical context, Asian values do not necessarily undermine the universality of human rights. Within the Asian philosophical tradition, Confucianism, Buddhism and Hinduism are considered to have elements that contain emancipatory values and are compatible with liberal democracy.¹⁷¹ There is evidence of governmental practices documented in the 13th century in the region of Thailand in support of individual rights to liberty, including freedom of movement, freedom of thought, freedom of religion or conscience, and the free flow of commerce, which today are considered fundamental human rights, without distinction as to race or sex.¹⁷² The most influential Asian religious and ethical systems are all believed to contain a profound respect for the dignity of human life and a commitment to human fulfilment, a recognition of the need for justice between the rulers and the ruled, and the rightness or correctness of human behaviour. While the focus of different Asian philosophical

¹⁶⁸ Ibid.

¹⁶⁹ Marina Svensson, *Cultural Human Rights Between Universalism and Relativism in Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 60.

¹⁷⁰ Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29 *Human Rights Quarterly* 281, 290.

¹⁷¹ Christian Welzel, 'The Asian Values Thesis Revisited: Evidence from the World Values Surveys' (2011) 12 *Japanese Journal of Political Science* 1, 4.

¹⁷² Fernand De Varennes, *Asia-Pacific human rights documents and resources*. (1998). Brill. Volume 1, Kluwer Law International, The Hague, p. 1.

theories may vary, they all recognise limits to the power of rulers or state sovereignty in the name of moral obligations such as humanity and just treatment.¹⁷³ Although not a universal standard of human rights enshrined in international instruments, Asian values are considered to include cultural norms found in Confucianism and other traditional Asian writings that are complementary to, rather than contradictory to, liberal democratic ideals.¹⁷⁴

Another voice argues that Asian values run counter to the universality of human rights. The debate on Asian values is usually seen as a contest between the West, which espouses liberal and democratic values, and the East, which represents conservatism and traditional values. In Robison's eyes, Asian cultures are seen as conservative, and Asian values are a counterspeech to Western liberal and democratic values.¹⁷⁵ The non-interference promoted by Asian values is seen as conflicting with the values of liberal democracy. In contrast to international and regional instruments that increasingly limit the power of governments over their citizens and recognise the right to remedy human rights violations,¹⁷⁶ the meetings discussed by Asian country representatives seem to turn a blind eye to human rights issues. ASEAN, for example, has shown a notable silence on mass abuses in member countries such as Myanmar and Indonesia.¹⁷⁷ There is also a slightly moderate view that points to a weakening of democracy by Asian values, or a greater emphasis on strong leadership and community cohesion by these supportive governments, despite their support for Western liberal understandings of democracy. Nathan's data show signs of erosion of democracy in the eight samples of Asian societies surveyed.¹⁷⁸ Although Asian countries support democracy under liberalism, they are also influenced by Confucian values that emphasise social harmony and strong leadership.¹⁷⁹

¹⁷³ Fernand De Varennes, 'The Fallacies in the "Universalism Versus Cultural Relativism" Debate in Human Rights Law' (2006) 7 Asia-Pacific Journal on Human Rights & the Law 67, 75.

¹⁷⁴ Fei Shen and Lokman Tsui, 'Revisiting the Asian Values Thesis: An Empirical Study of Asian Values, Internet Use, and Support for Freedom of Expression in 11 Societies' (2018) 58 Asian Survey 535, 538.

¹⁷⁵ Richard Robison, 'The politics of "Asian Values"', *The Pacific Review*, 9(3), (1996). 309, 309.

¹⁷⁶ David S Weissbrodt and Connie de la Vega, *Overview and History of International Human Rights in International Human Rights Law: An Introduction* (University of Pennsylvania Press 2007), 14, 22-26.

¹⁷⁷ Amrita Kapur, 'Asian Values v. The Paper Tiger: Dismantling the Threat to Asian Values Posed by the International Criminal Court' (2013) 11 *Journal of International Criminal Justice* 1059, 1064.

¹⁷⁸ Japan, Hong Kong, South Korea, China, Mongolia, the Philippines, Taiwan, and Thailand.

¹⁷⁹ Christian Welzel, 'The Asian Values Thesis Revisited: Evidence from the World Values Surveys' (2011) 12 *Japanese Journal of Political Science* 1, 4.

However, it is worth noting that the conflict between Asian traditional social values and the values of human rights and democracy is not a zero-sum game, and there is a risk that the negative impact of Asian or Confucian values on democracy and human rights may have been exaggerated. As Asian values are often invoked by politicians, the term is sometimes inevitably over-interpreted in a provocative way, resulting in Asian values and human rights being placed in opposition to each other as two insulated spheres.¹⁸⁰ As Robison's article demonstrates, there is a sense of superiority over Western human rights cultures, but the comparison tends to be based on nationalism rather than foundationalism, in the sense of dividing Eastern and Western cultures into camps. However, Asian versus Western nationalism is not seen as helpful to the existence of universal human rights, which, after all, are not primarily aimed at proving superiority over other cultures through interculturalism.¹⁸¹ Sri Lankan President Chandrika Kumaratunga said that she did not prefer Western values over Asian values, because every country has its own national ethos. In the modern world, the national ethos is reflected, to a large extent, by culture rather than by the political system. However, the emphasis on the conflict between values seemed to her to be a deliberate attempt to cover up sinful intentions.¹⁸² Clearly, differences do not necessarily lead to conflict. Although Asian values may be incompatible with democracy and the free market, there is no denial of the universality of human rights in Asia. At least none of the Asian countries officially deny the universality of fundamental human rights.¹⁸³ As Dalton and Ong's data from the Worldview Survey show, traditional social values in East Asia are no longer a barrier to support for democracy.¹⁸⁴

2.3.4. Asian Values' dilemma

¹⁸⁰ Ole Bruun and Michael Jacobsen, *Introduction in Human rights and Asian values: Contesting national identities and cultural representations in Asia*. (2003) Routledge. 1, 5.

¹⁸¹ Fred Dallmayr, "Asian Values" and Global Human Rights', *Theories of Rights* (Routledge 2006) 173, 174, 175.

¹⁸² Thomas M. Franck, 'Is Personal Freedom a Western Value?' (1997) 91 *American Journal of International Law* 593, 627.

¹⁸³ Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29 *Human Rights Quarterly* 281, 290.

¹⁸⁴ Christian Welzel, 'The Asian Values Thesis Revisited: Evidence from the World Values Surveys' (2011) 12 *Japanese Journal of Political Science* 1, 5.

The content of Asian values shows the cultural roots and innate differences between the East and the West. However, after the 1997 East Asian financial crisis hit Southeast Asia and East Asia hard, Asian values encountered difficulties and were widely questioned. From a cultural relative human rights perspective, Asian values are not essentially the ideology of a distinctive Asian culture, but rather a collection of governmental statements and official declarations by Asian values proponents. In particular, the Bangkok Declaration, signed by Asian countries at the Asian Regional Conference preceding the 1993 Human Rights Conference in Geneva, both supported the universality of human rights and, at the same time, emphasised national and regional particularities and different cultural, historical and religious backgrounds, even though the phrasing of the declaration itself was considered contradictory.¹⁸⁵ Moreover, the diversity of political and economic systems, the richness of philosophical and cultural traditions, and the range of historical and colonial experiences in Asia make it difficult for ordinary people who do not hold a national macro-perspective to develop a deeper understanding of shared values and common heritage. This has left Asian values at the level of state diplomacy, with more political influence than cultural identity.

Economic and political objectives are at the heart of the debate on Asian values. Economic issues appear prominent in the Asian values debate. Asian values are proposed in the context of Western economic hegemony and new Asian economic developments. Although the interpretation of human rights in Asian values differs from that of the West, the main purpose is seen to be aimed at pursuing the benefits of economic development in its own way, especially as reflected in what most of the ASEAN countries wish to do.¹⁸⁶ Moreover, the issue of politics appears prominent in the Asian values debate. It has been argued that Asian values make claims in the context of relative culture, which seems similar to earlier expressions of sovereignty.¹⁸⁷ While culture refers to specific local knowledge, national culture is sometimes considered synonymous with sovereignty,¹⁸⁸

¹⁸⁵ Ole Bruun and Michael Jacobsen, *Introduction in Human rights and Asian values: Contesting national identities and cultural representations in Asia*. (2003) Routledge. 1, 1.

¹⁸⁶ Karen Engle, 'Culture and Human Rights: The Asian Values Debate in Context Millenium Issue: Shaping the Parameters of International Law in the New Millennium' (1999) 32 *New York University Journal of International Law and Politics* 291, 314.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*, 329.

such as the statement in the Bangkok Declaration that 'ensure their stability and security from external interference in any form of manifestation in order to preserve their national identities'.¹⁸⁹

Consequently, the economic and political issues highlighted by Asian values have alerted many people and caused them to rethink the applicability of Asian values. Critics argue that political elites hope that Asian values can bring about stable economic development, while using Asian values to maintain authoritarian rule or suppress dissent. According to Greer, the claims to human rights in Asia are often seen as serving the interests of elites whose power and wealth are often created by modern capitalism.¹⁹⁰ Greer's point of view is worth considering, and who are the people or beneficiaries represented by Asian values. Greer's view that Asian values serve the political elite and capitalised governments is similar to Simon Tay's. As Simon Tay points out, cultural issues in the Asian values debate are increasingly coming from governments representing multi-ethnicity and increasingly modernised and capitalist Asian societies, and no longer from ethnic minorities, indigenous peoples or anthropologists.¹⁹¹

This is not the first time that similar arguments have been made about Asian values. Jacobsen and Bruun argue that there are many precedents for Asian values in Asian history, such as the Chinese debate on 'self-strengthening' at the end of the nineteenth century, the Pancasila ideology in post-war Indonesia, the Panchayat system in Nepal, the policy of 'basic democracy' in Pakistan, etc.¹⁹² Others argue that the sudden emergence and cooling of Asian values is simply a case of substituting culture for politics and economics as a battle speak, and that such a proposition is highly susceptible to the economic context. As a matter of fact, the emergence of Asian values has been

¹⁸⁹ The ASEAN Declaration (Bangkok Declaration), 8 August 1967, para.5.

¹⁹⁰ Steven Greer, Chapter 1. Universalism and Relativism in the Protection of Human Rights in Europe: Politics, Law and Culture in Human Rights Between Law and Politics: The Margin of Appreciation in Post-National Contexts, Bloomsbury Publishing Plc, (2017) 17, 20.

¹⁹¹ Simon S.C. Tay, Human Rights, Culture, and the Singapore Example, (1996) 41 McGauL L.J. 743, 751.

¹⁹² Ole Bruun and Michael Jacobsen, Introduction in Human rights and Asian values: Contesting national identities and cultural representations in Asia. (2003) Routledge. 1, 4.

accompanied by the globalisation of capitalist and liberal economies.¹⁹³ Most proponents of Asian values made their arguments during the period of booming economic development.¹⁹⁴ However, the arguments for Asian values changed significantly due to the Asian economic crisis, during which the arguments for Asian values were no longer prominent.¹⁹⁵ The defence of authoritarian governments in the service of rapid economic growth embodied in the argument for Asian values became unacceptable,¹⁹⁶ which also provides fodder for critics of Asian values to attack them.¹⁹⁷

Asian values are not representative of Asia as the name suggests, but rather lack diversity. First, the diversity of Asian politics is ignored. Considering that 'Western' empires once had more than 85 per cent of the Earth's land under their control, it is considered understandable that some countries and communities that had been colonized and exploited by European powers for centuries would now want to go their own way.¹⁹⁸ While elite members of Asia, as defenders of Asian values, have portrayed a positive image of Asia as morally upright, politically stable and committed to a common economy,¹⁹⁹ not all Asian governmental and non-governmental groups subscribe to an Asian-specific conception of human rights. Asia contains both authoritarian and democratic countries, and it has been argued that the authoritarian and democratic countries in Asia are in different camps.²⁰⁰ For example, Japan does not deny universal human rights, nor does it have any official statement in support of Asian values.²⁰¹ The Korean democracy activist Kim Dae-Jung (elected President of Korea in 1997) noted, 'the

¹⁹³ Karen Engle, 'Culture and Human Rights: The Asian Values Debate in Context Millenium Issue: Shaping the Parameters of International Law in the New Millennium' (1999) 32 *New York University Journal of International Law and Politics* 291, 330.

¹⁹⁴ *Ibid*, 328.

¹⁹⁵ Mark R. Thompson, 'Whatever Happened to "Asian Values"?' (2001) 12 *Journal of Democracy* 154, 154.

¹⁹⁶ Ole Bruun and Michael Jacobsen, *Introduction in Human rights and Asian values: Contesting national identities and cultural representations in Asia*. (2003) Routledge. 1, 16.

¹⁹⁷ Mark R. Thompson, 'Whatever Happened to "Asian Values"?' (2001) 12 *Journal of Democracy* 154, 155.

¹⁹⁸ Gerd Langguth, 'Asian Values Revisited' (2003) 1 *Asia Europe Journal* 25, 26.

¹⁹⁹ Ole Bruun and Michael Jacobsen, *Introduction in Human rights and Asian values: Contesting national identities and cultural representations in Asia*. (2003) Routledge. 1, 5.

²⁰⁰ Richard C. Kagan, Chapter 9. *Democracy in Taiwan in Taiwan's Statesman: Lee Teng Hui and Democracy in Asia* (Naval Institute Press 2014) 116, 117.

²⁰¹ Japanese leaders and intellectuals may discuss the distinctiveness of Asian cultures and the significance of cultural diversity, in light of the idea of 'Asian values' Japanese officials have not expressed widespread support for the concept as they have in some other Asian countries.

greatest obstacle [to democracy and human rights] is not [Asia's] cultural heritage, but the resistance of authoritarian rulers and their apologists'.²⁰² Moreover, some Asian activists call for human rights and democracy and reject the illiberal and anti-democratic elements in the 'Asian values' argument to their societies.²⁰³ In 2000, Asian non-governmental organisations (NGOs) called Asian values a synonym for government control of social dialogue.²⁰⁴ In the view of NGOs, the emphasis on Asian values by some Asian governments reflects more a need to defend their political power than a genuine concern for cultural uniqueness and diversity. This shows that there is no uniform view of Asian values within Asia.

Second, the diversity of Asian cultures is ignored. While the introduction of Asian values is seen as fundamentally challenging the West's uncontested 'monopoly of interpretation' since the French Revolution,²⁰⁵ Asian values themselves are somewhat chaotic. It is a fact that Asia itself is culturally, religiously, politically and economically diverse.²⁰⁶ Against the background of this diversity, it is questioned how difficult it is for any common Asian values to exist.²⁰⁷ Asian values are often equated with Confucian values. Instead, Confucianism is by no means the only or dominant value system in Asia. It is quite alien to most Asian societies.²⁰⁸ Some commentators have pointed out that it is oversimplified and even absurd to talk about 'Asian values', as the region is well known for its wide diversity of cultures, religions, traditions and histories.²⁰⁹ Given Asia's

²⁰² Marina Svensson, *Cultural Human Rights Between Universalism and Relativism in Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 60.

²⁰³ Michael D. Barr, 'Lee Kuan Yew and the "Asian Values" Debate' (2000) 24 *Asian Studies Review* 309, 315. See Kagan Richard C, Chapter 12. *Lee's Stewardship of Taiwan: From One-Party Rule to Democracy in Taiwan's Statesman: Lee Teng Hui and Democracy in Asia* (Naval Institute Press 2014) 149, 157.

²⁰⁴ Asian Human Rights Commission, 'AHRC's Human Rights Day Statement, December 10, 2000' (*Asian Human Rights Commission*) <<http://www.humanrights.asia/news/ahrc-news/AS-02-2000/>> accessed 12 September 2024.

²⁰⁵ Gerd Langguth, 'Asian Values Revisited' (2003) 1 *Asia Europe Journal* 25, 26.

²⁰⁶ Asia is home to 60 per cent of the world's population and is a vast and diverse region. See Sen Amartya, *Human Rights and Asian Values: 16th Morgenthau Memorial Lecture on Ethics and Foreign Policy* (Carnegie Council on Ethics and International Affairs 1997) 7, 13.

²⁰⁷ Marina Svensson, *Cultural Human Rights Between Universalism and Relativism in Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 59.

²⁰⁸ *Ibid.*, 60.

²⁰⁹ Diane K. Mauzy, 'The Human Rights and "Asian Values" Debate in Southeast Asia: Trying to Clarify the Key Issues' (1997) 10 *The Pacific Review* 210, 215.

extreme geographic, cultural, religious, linguistic and political diversity, generalisations about Asia, such as Asian values, are seen as inevitably misjudged.²¹⁰ This is supported by the fact that many empirical studies on Asian values have consistently produced conflicting results.²¹¹ Because of the considerable differences in socio-cultural structures among East Asian countries, studies and research on culture and values in East Asian countries and regions have led to different conclusions.²¹² Moreover, culture is inherently flexible and complex. It is recognised that almost all cultures have multiple traditions, and that different traditions may dominate in response to changing circumstances and may simultaneously take new elements from other cultures.²¹³ Thus, the concept of 'Asian values' tends to essentialise and stereotype Asia's diverse cultures, oversimplifying the complexity and diversity of value systems. In Dalton's words, stereotypes of Asian political culture are overdrawn.²¹⁴ The human rights approach emphasised by Asian values would reduce Asia as a whole and would undermine the importance of the unique history and experiences of each society.

The factual statements on Asian values are the result of selective interpretation, which further contributes to the lack of diversity in Asian cultures. The existing literature on 'Asian values' selectively focuses on certain cultural aspects that are consistent with traditional East Asian values, while ignoring or downplaying other factors that are consistent with universal human rights. Asian values are often equated with Confucian values. Rather, Confucianism is by no means the only or dominant value system in Asia.²¹⁵ As can be seen from the argument for Asian values, Confucianism is strongly advocated, but Buddhism and Hinduism, which are just as prominent in Asian philosophy as Confucianism, are downplayed. For example, Lee Kuan Yew's argument for Asian

²¹⁰ Gerd Langguth, 'Asian Values Revisited' (2003) 1 *Asia Europe Journal* 25, 31.

²¹¹ Nicholas Spina, Doh C. Shin and Dana Cha, 'Confucianism and Democracy: A Review of the Opposing Conceptualizations' (2011) 12 *Japanese Journal of Political Science* 143, 156.

²¹² Russell J. Dalton and Nhu-Ngoc T. Ong, 'Authority Orientations and Democratic Attitudes: A Test of the "Asian Values" Hypothesis' (2005) 6 *Japanese Journal of Political Science* 211, 229.

²¹³ Neil A. Englehart, 'Rights and Culture in the Asian Values Argument: The Rise and Fall of Confucian Ethics in Singapore' (2000) 22 *Human Rights Quarterly* 548, 566.

²¹⁴ Russell J. Dalton and Nhu-Ngoc T. Ong, 'Authority Orientations and Democratic Attitudes: A Test of the "Asian Values" Hypothesis' (2005) 6 *Japanese Journal of Political Science* 211, 219.

²¹⁵ Marina Svensson, *Cultural Human Rights Between Universalism and Relativism in Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 60.

values, that Confucianism's Asian culture is so different from Western culture, is considered to justify Singapore's paternalistic and illiberal system of government, to the extent that such a selective reading of Asian culture dispenses with considerations of liberal democracy.²¹⁶ Moreover, elements of Confucianism, Buddhism and Hinduism that exist to embrace the values of liberation and are inclusive of liberal democracy seem also selectively omitted from Asian values.²¹⁷ Asian cultures have many foundational elements of democratic norms that are considered to be conducive to democracy, and it is clear that Asian values do not emphasise this. The factual statement of Asian values fails to recognise the dynamic nature of culture and its evolving relationship with human rights.

Moreover, the regional distinction of values is not very meaningful. On the one hand, the values of a region may change over time. Societal values may change over time as a result of globalisation, urbanisation and generational change. An interesting example is that some Western values dating back 100 to 150 years were considered similar to many of the values and virtues related to economic success in Asia, including thrift, working hard, saving, strong family ties, collective cooperation, etc., yet the West seems to have lost or abandoned these values with subsequent development.²¹⁸ On the other hand, human value identity can transcend regional boundaries. Those who argue for values based on region may overlook the fact that people can have cultural values that transcend national and regional boundaries. With the example offered by Svensson, feminists in China and Sweden certainly have more values in common than the male chauvinists in their respective societies.²¹⁹ Another example comes from Greer, who argues that the daughter of a Glasgow-born Pakistani immigrant can be Sunni Muslim,

²¹⁶ Michael D. Barr, 'Lee Kuan Yew and the "Asian Values" Debate' (2000) 24 Asian Studies Review 309, 309.

²¹⁷ Russel J. Dalton and Nhu-Ngoc T. Ong, 'Authority Orientations and Democratic Attitudes: A Test of the "Asian Values" Hypothesis' (2005) 6 Japanese Journal of Political Science 211, 213.

²¹⁸ Diane K. Mauzy, 'The Human Rights and "Asian Values" Debate in Southeast Asia: Trying to Clarify the Key Issues' (1997) 10 The Pacific Review 210, 217.

²¹⁹ Marina Svensson, *Cultural Human Rights Between Universalism and Relativism in Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 60.

Scottish, British and Asian cultures at the same time.²²⁰ Plus, the expression of Asian regional values is not very meaningful in terms of distinguishing values, and the deliberate invocation of Asian values may instead be perceived negatively as being aimed at counteracting certain Western democratic values.²²¹ In this case, the division of values by region appears to be of little significance.

In this case, the existence of specific regional values is questioned. Is there such a thing as Asian values, understood as common social and moral values embraced by half of the humans living in Asia? Bruun and Jacobsen argue that there is hardly a distinctive 'Asian' perspective that is completely different from Western or other perspectives and that is shared by all Asian societies. There is hardly a unique 'Asian' perspective that is completely different from Western or other perspectives, and that is shared by all Asian societies.²²² In terms of cultural and historical unity, regional identity itself is considered meaningless.²²³ Mauzy argues that there is no single pan-Asian perspective or value, no unified ideology, and no single cultural system.²²⁴ Empirical research also negates Asian exceptionalism or exceptionalism in the name of Asian culture. For example, data from cross-cultural empirical research on liberal-democratic values suggest that the differences between Asian and Western values are not absolute, as liberal-democratic values that once produced liberation in the West are also present in Asia.²²⁵ Besides, there is very little evidence of truly empirical data to support the argument that under the forces of modernisation, the values of Asian populations are free from the liberal-democratic values of the West.²²⁶

²²⁰ Steven Greer, Chapter 1. Universalism and Relativism in the Protection of Human Rights in Europe: Politics, Law and Culture in Human Rights Between Law and Politics: The Margin of Appreciation in Post-National Contexts, 17, 20.

²²¹ For example, authoritarian regimes in Africa may claim to share the same values as the countries concerned in Asia, and it is clear that Asia and Africa cannot be ethnically or culturally homogenous, but they may share the goal of resisting certain values that they consider unnecessary. See Bary W Theodore de, "Asian Values" and Confucianism in 'Asian Values and Human Rights: A Confucian Communitarian Perspective', Asian Values and Human Rights (Harvard University Press 2000) 1, 4.

²²² Ole Bruun and Michael Jacobsen, Introduction in Human rights and Asian values: Contesting national identities and cultural representations in Asia. (2003) Routledge. 1, 1.

²²³ Ruiping Fan, 'Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia' (2003) 33 Journal of Contemporary Asia 420, 420.

²²⁴ Diane K. Mauzy, 'The Human Rights and "Asian Values" Debate in Southeast Asia: Trying to Clarify the Key Issues' (1997) 10 The Pacific Review 210, 215.

²²⁵ Christian Welzel, 'The Asian Values Thesis Revisited: Evidence from the World Values Surveys' (2011) 12 Japanese Journal of Political Science 1, 1.

²²⁶ Ibid, 4.

In brief, Asian values is a discussion that once existed, centred mainly around the year 2000. Asian values represent a critical dichotomy between cultural relativism and universalism. Whether Asian values are right or wrong, the discussion of Asian values goes far beyond Asian culture and brings more attention to Asian politics and ideology.²²⁷ As the debate on Asian values deepens, it has become clear that the general concept of Asian values does not adequately take into account the social, cultural and political diversity of Asia.²²⁸ It was even argued that in all modern societies, and especially in societies in transition, Asian values can never be characterised as exclusively Asian; in other words, values unique to Asia do not exist.²²⁹ Moreover, the question is not only whether Asian values exist, but also, if they do, whether they must be characterised as region-specific values. And even if they exist, do Asian values actually explain Asian human rights policy? Existing literature on Asian values has often been criticised for being divorced from Asian cultural contexts, for not taking sufficient account of Asian complexity and diversity, for having a flawed empirical approach, and so on. The above description suggests that Asian values cannot withstand more scrutiny.

2.4. Conclusion: Asian Values Fail to Explain HRCC

Asia is not a single geographical entity, nor an entire region that can be characterised by a single set of values. Defining Asian values in terms of a continent may lead to oversimplification and ignoring cultural differences between countries. It can be easily concluded that Asian values, even if based on cultural relativism, are merely a simplified, essentialist interpretation of relative cultures.²³⁰ Asian values have not stood the test of time. Even assuming that 'Asian values' survived the financial crisis, the shortcomings of Asian values summarised in the existing literature ultimately led to the inevitable failure

²²⁷ Ibid, 2.

²²⁸ Gerd Langguth, 'Asian Values Revisited' (2003) 1 Asia Europe Journal 25, 30.

²²⁹ Ibid, 38.

²³⁰ This ignoring of the differences in national cultures and minimising what is common to different national cultures is also known as cultural essentialisation. Of course, neither the essentialisation of Eastern nor Western cultures is objective enough. See Sewpaul Vishanthie, 'Challenging East–West Value Dichotomies and Essentialising Discourse on Culture and Social Work' (2007) 16 International Journal of Social Welfare 398, 405.

of Asian values. Langguth appropriately described Asian values as a ‘tool’ for integration, a tool that in itself can solve a particular problem but as such is destined to be difficult to use forever.²³¹

There is a need for specific philosophical underpinnings to make sense of the human rights perspective. Given the existing literature on Asian values, it is difficult to apply Asian values as a comprehensive framework for explaining the complexity of human rights in the Asian region. Instead, it is necessary to adopt a more contextualised and refined approach in order to understand the interplay between relative cultural values and human rights principles. Despite the reference to Confucianism, which dominates East Asian culture, in Asian values, regional values fail to objectively reflect cultural diversity, and such references that ignore cultural differences between countries are of little significance. Even cultural relativism based on regionality is merely cultural essentialism that oversimplifies culture in a relative manner.

Asian values do not philosophically explain the source of values but are more a collection of government statements and official declarations by proponents of Asian values. Moreover, Asian values, which are characterised by cultural essentialism, lack the philosophical underpinning that further supports the HRCC. Asian values cannot contribute to an understanding of human rights with Chinese characteristics (HRCC). Although the idea of Chinese characteristics is similar to the East Asian cultural roots emphasised by Asian values, it is supported by two more specific cultural philosophical underpinnings that distinguish China’s human rights policies philosophically from other cultures, which are Confucianism and Chinese Marxism. The next two chapters will respectively explore the HRCC from the perspective of the philosophical foundations of Confucianism and Marxism.

²³¹ Gerd Langguth, ‘Asian Values Revisited’ (2003) 1 Asia Europe Journal 25, 37.

Chapter 3: Human Rights in Confucianism

3.0. My Methodology

Before Chapter 3 officially starts, this mini part outlines my methodology, indicating what will come in Chapters 3 and Chapter 4. The previous chapter on cultural relativity reminded us of the need to look at the culture behind human rights. The idea of Asian values as a representation of the clash of Eastern and Western cultures is a response to complex cultural realities. Despite being based on cultural relativity, the analysis of Asian values hardly ever explains the origin of values from a philosophical perspective. Since Asian values do not have a specific philosophical foundation to support and explain them systematically, individual characteristics of Asian values can even be linked to Western European traditions. For example, although obedience to authority is one of the main ideas in Asian values, it is widely recognised that the fundamental philosophical principle of absolute state sovereignty has traditionally been a construct of Western political thought rather than a construct of Asian values. One of the most articulate defences of absolute rule is thought to come from the Western philosophical tradition, in Plato's *Ideal State*.¹ Even at the end of the Second World War, many Western countries still struggled to accept the idea that state sovereignty should be subject to some form of limitation.² The lack of philosophical support for Asian values based on cultural relativism means that the stereotypical subservience to sovereignty and authority in Asian values cannot be said to be an Asian characteristic. It can even be seen as being in line with traditional Western European philosophy. In Freeman's words, almost all of those values labelled as 'Asian' are similar to conservative Western values.³

If human rights values are to make sense, we need to discuss the specific philosophical culture behind their formation. While Plato in the West proposed absolute rule in 375

¹ William Talbott, 3. *Cultural Relativism About Human Rights in Which Rights Should Be Universal?* (Oxford University Press 2005) 39, 41.

² Fernand De Varennes, 'The Fallacies in the "Universalism Versus Cultural Relativism" Debate in Human Rights Law' (2006) 7 *Asia-Pacific Journal on Human Rights & the Law* 67, 72.

³ Michael Freeman, *Human Rights, Democracy and "Asian Values"* (1996) 9 *The Pacific Review* 352, 352.

BC, Confucius, the representative figure of Confucianism, was born in 551 BC in the East. There is no connection, but Confucius proposed views that are similar to Plato's to a certain extent – valuing social order and respecting authority. This is considered to share the same values as Western conservatives.⁴ Despite the perceived similarity between Eastern and Western values, it is important to start with the origins that influence human rights in China. The Western understanding of China's human rights policy is a reality-based understanding, a direct observation of China's human rights reality followed by a descriptive sense. This understanding of reality is a way of self-projection from the subconscious of Western culture onto other cultures, which is more examined and written from a Western liberal perspective. Arguably, the best way to understand China's unique approach to human rights is to explain the logic behind it through the philosophical thinking of Confucianism, which represents its deep traditional culture. While Asian values mention Confucianism and give us a glimpse, it is extremely limited in interpreting China's unique view of human rights. Only a systematic explanation of the philosophical ideas that support the views of human rights is the best way to truly comprehensively understand human rights with Chinese characteristics (HRCC).

My methodology is therefore to view HRCC through the lens of Confucianism and Marxism; I will study the HRCC from a cultural, philosophical perspective in Chapter 3 on Confucianism and Chapter 4 on Marxism in order to gain an in-depth understanding of the logic behind China's unique view of human rights.

3.1. Introduction

This chapter on Confucianism will demonstrate that Confucianism has influenced Chinese culture and partly provided the philosophical basis for China's distinctive view of human rights. In this chapter of Confucianism, I will unpack and discuss it in three main sections: Section 3.2. mainly explores what Confucianism is. It introduces the main representatives and major works of Confucianism. In addition, Confucianism is argued to be an open and compatible philosophy that keeps pace with the times, which paves

⁴ Ibid, 355.

the way for Confucianism to further integrate with Marxist philosophical thinking in China. Section 3.3. mainly argues that the philosophical foundation of Confucianism has influenced the formation of human rights values in China, and Section 3.4. reflected the similarities between the traditional values related to human rights advocated in Confucianism and the position of Human Rights with Chinese Characteristics (HRCC), looking at how Confucianism has influenced the four features of HRCC, namely China's own human rights pathway, the emphasis on sovereignty non-interference, the prioritisation of the right to economic and social development and prioritising collective interests.

Confucianism, as the main traditional philosophy influencing Chinese culture, has influenced the way human rights are viewed, especially before the concept of rights entered China. Although traditional Chinese values are not exclusively confined to Confucianism, Confucianism is the dominant ideology of the class that formulates and conducts human rights policies, and therefore the contribution of Confucianism to human rights policies is more direct. Rather than the Western mechanism of asserting rights, Confucianism distinctively creates a social environment that leads to the realisation of human rights. According to Svensson's empirical research on the relationship between traditional Chinese values and human rights, he argues that the idea of human rights in traditional Chinese values is a social fact that exists in social experience.⁵ Confucianism is described as containing the conception of human rights. Confucianism provides an explanation for the reasons that underpin human rights from the Chinese cultural perspective and contributes to the formulation of human rights theory and practice in China. Although Confucianism does not explicitly define rights or human rights, it provides a theoretical basis and numerous illustrations for the ideology of human rights. In this section, we examine how Confucianism interplays with the four features of HRCC, namely China's own human rights path, the emphasis on sovereign non-interference, the prioritisation of the right to economic and social development, and the prioritisation of the collective interest.

⁵ Swedish human rights expert Marina Svensson and American philosopher Stephen Angle both have research on this topic. See Svensson Marina, *Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002); Angle SC and Svensson M, *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000* (Taylor & Francis Group 2001).

Why is Confucianism rather than other traditional philosophical ideas in China, **the focus?**

Apart from Confucianism, one of the well-known philosophies in Chinese history is Taoism. Taoism is a philosophy represented by Laozi and Zhuangzi, which seeks to follow the way of nature and advocates the idea of doing nothing and having no desire, so as to achieve harmony with the outside world through the pursuit of physical inaction and mental peace.⁶ Unlike Confucianism, which is a political theory based on moral principles to govern the country and stabilise society, Taoism is centred on the 'Tao', which represents the order in which all things are transformed and developed, and Taoism believes that there is a natural order of the universe in which all things function, and that people need to respect such natural order.⁷ This value is to some extent similar to the advocacy of classical economics, which holds that the market economy is largely a self-regulating system governed by the natural laws of production and exchange, such as the famous Adam Smith analogy of the 'invisible hand'. Smith believed that God was the designer of human order, and the Taoists believed that Heaven had long ago designed the Tao rules by which everything operates. Although Taoist thought contains political ideas that are systematic and profound, its overly metaphysical ultimate values tend to be a mixture of theocracy and anarchism, which are more suited to the individual's pursuit of wisdom in dealing with the world and life and are of limited relevance to contemporary Chinese human rights policy.

3.2. What is Confucianism?

Before the concept of rights was introduced into China, Confucianism served as the dominant normative framework guiding social behaviours in traditional Chinese society. Under the guidance of Confucianism, individuals were expected to perform their social roles in accordance with a hierarchical moral order, such as those between husband and wife, parent and child, ruler and its people. These roles were cultivated

⁶ Livia Kohn, Chapter 1 Reality in *Daoism: a contemporary philosophical investigation*. Routledge, (2019). 11, 11.

⁷ Joshi therefore sees Taoism as an Ancient Chinese liberal way of thinking. See Devin K Joshi, 'The Other China Model: Daoism, Pluralism, and Political Liberalism' (2020) 52 *Polity* 551, 555.

through socialisation and moral education by Confucianism, leading to a sense of self-regulation and role recognition. Unlike legal norms, which require each individual in society to abide by certain rules and rely on formal enforcement mechanism, Confucianism brings about people's automatic identity confirmation and daily behaviour towards coexistence in the social structure. Simply to put, in a Confucian society, individuals recognise and practice the behavioural norms associated with their social position. In this sense, Confucianism is very close to what Elton Mayo called the 'social skills' required for established societies in the Middle Ages or primitive tribes to move towards adaptive societies.⁸ In my view, Confucianism shares certain functional similarities with the internalised role-consciousness in organised team sports: much like how a football player instinctively understands the expectations tied to their position—be it defender, striker, or goalkeeper—and adjusts their conduct accordingly within the team structure. Sportsmanship causes a footballer to recognise the role he or she is playing and to behave automatically in a way that corresponds to that role. Therefore, this sub-section will outline what Confucianism actually is as a traditional doctrine. This metaphor is meant to illustrate the underlying logic of Confucianism, not as a doctrine of rights, but as a relational ethic that sustains social order through role consciousness.

3.2.1. Main Representatives of Confucianism

Confucianism is named after its founder, Master Confucius (551-479 BCE).⁹ Confucius lived in a wretched society of political and moral decay, where social order was chaotic and disorderly. What Confucius envisioned for the future was a harmonious society with a saint and wise government. This is considered to be the starting point for the Confucian commitment to social and political change over time.¹⁰ Confucius and his disciples developed a new philosophy based on old traditions. The views of Confucius and subsequent generations of Confucian students were compiled and collated into a text

⁸ Reinhard Bendix and Lloyd H Fisher, 'The Perspectives of Elton Mayo' (1949) 31 *The Review of Economics and Statistics* 312, 318.

⁹ Haiming Wen and William K. Akina, 'Human Rights Ideology as Endemic in Chinese Philosophy: Classical Confucian and Mohist Perspectives' (2012) 22 *Asian Philosophy* 387, 388.

¹⁰ Daniel Bell and others, Introduction in *Confucianism for the Modern World* (Cambridge University Press 2003) 1, 1.

called the Analects. Confucius' writings cover almost every aspect of life, from the ruler's way of governing to the ethics of social virtues and personal cultivation. Several decades after Confucius, Socrates of Athens also held similar views, emphasising the importance of virtue-based ethics in learning knowledge.¹¹ Some scholars have outlined the Confucian thesis as containing two main categories of issues: what makes a man good and what makes a good government.¹² Perhaps this view fails to fully define all the essence of Confucianism,¹³ but it acknowledges the two significant ideas: Confucianism focuses on the centrality of virtue; and a well-ordered society based on good government.

Mencius (372-289 BCE) and Xunzi (313-238 BCE) are also key founders of the Confucian tradition. As a student of Confucius and a renowned Confucian thinker, Mencius is understood to be the second greatest master, next to Confucius.¹⁴ Mencius turned to teaching after failing to meet a ruler who would be appreciative of his talents and views, and his writings, which go by the same name, consist of transcripts of conversations between Mencius and his disciples.¹⁵ Unlike the Analects and the Mencius, the eponymous works of Xunzi are argumentative essays rather than records of scattered conversations or reflections. Although Mencius and Xunzi occasionally had competing views on specific methods of achieving morality, Mencius and Xunzi fully accepted Confucius's core ideas. Some scholars refer to the system of thought created by Confucius, Mencius and Xunzi as traditional Confucianism, the version promoted by Zhu Xi (1130-1200) and his followers after the Song Dynasty (960-1279) as Neo-Confucianism, and some Confucian cultures that flourished in East Asian countries as

¹¹ Arthur Kenyon Rogers, 'The Ethics of Socrates' (1925) 34 *The Philosophical Review* 117, 121.

¹² Daniel K. Gardner, Chapter 1 Confucius (551-479 BCE) and his legacy: An introduction in *Confucianism: A Very Short Introduction* (Oxford University Press 2014), 1, 15.

¹³ Among Confucianism, for example, there is also the famous idea of the Zhong Yong, which is mostly taken as a philosophy or wisdom of life, interpreted as a kind of release of life from all things, it is a wisdom that understands the need to follow the laws of nature after making efforts in life.

¹⁴ Sungmoon Kim, 'Confucianism, Moral Equality, and Human Rights: A Mencian Perspective: Confucianism, Moral Equality, and Human Rights' (2015) 74 *American Journal of Economics and Sociology* 149, 152.

¹⁵ Daniel K. Gardner, Variety within early Confucianism in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 48, 49.

‘Constitutional culture in the Confucian political tradition’.¹⁶ Despite the many schools of Confucianism, the interpretations of Confucius’ vision by Mencius and Xunzi are considered the most enduringly influential. In the words of Daniel Gardener, the Confucian thinking of Mencius and Xunzi has run throughout the history of the Chinese empire.¹⁷

Although Confucianism is named after Confucius, it is more of a system of thought rooted in traditional Chinese culture and integrated by Confucius and Confucian scholars rather than a new system of thought created from scratch by Confucius. Confucianism began with Confucius, but this system of thought is not like religion and does not need to rely on faith in Confucius to maintain itself. Confucius and his disciples successfully passed on and transformed ancient culture, and later, Confucian scholars continued to explore and elaborate on the basic principles of Confucianism.

3.2.2. Development of Confucianism

Confucianism was widespread and prominent over the centuries, although the ‘Hundred Schools of Thought’ emerged during the Spring and Autumn Era and Warring States periods (403-221 BCE).¹⁸ The research has been descriptive that Confucianism flourished during the reign of Emperor Wu of the Han Dynasty (141-87 BCE). During the reign of Emperor Wu of the Han Dynasty, Confucian scholars were allowed to advise boldly. They were given a privileged position in the court, promoting the teaching of Confucianism.¹⁹ Students who proved their expertise in Confucianism in the imperial examinations would be appointed to the bureaucracy. This recruitment to the bureaucracy through examinations based on Confucianism led to the dominance of Confucianism in the government. Further, the dominance of Confucianism in government allowed

¹⁶ Sungmoon Kim, ‘Confucianism, Moral Equality, and Human Rights: A Mencian Perspective: Confucianism, Moral Equality, and Human Rights’ (2015) 74 *American Journal of Economics and Sociology* 149, 150.

¹⁷ Daniel K. Gardner, Variety within early Confucianism in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 48, 49.

¹⁸ Many schools of thinking and teachings, such as, Daoist, Legalists, Yin-Yang cosmologists, Maoists.

¹⁹ Daniel K. Gardner, Chapter1 Confucius (551-479 BCE) and his legacy: An introduction in *Confucianism: A Very Short Introduction* (Oxford University Press 2014), 1, 6.

Confucianism to become the direction of education.²⁰ It can be said that almost all educated Chinese, especially before the collapse of Imperial China in 1912, were raised, taught, and socialised in Confucianism.²¹ Thus, Confucianism has been the orthodoxy ideology of the Chinese monarchy for about 2000 years, and the beliefs and ideas of Confucianism are widely spread in Chinese people's life and work.

Confucianism has gone through three distinct periods since its inception. The first period is represented by Confucius, Mencius and Xunzi. It extends from the Spring and Autumn Period (770–476 BC) to the end of the Han Dynasty (25–220 AD). During this period, Confucianism originated, and the Confucian tradition was widely accepted and became the mainstream ideology. The second period corresponds to the Song Dynasty (960–1279) to the beginning of the 20th century, which is known as the Neo-Confucianism period, and was accompanied by the spread of Confucianism to other parts of East Asia.²² With social and political developments, this period is also seen as more of an extended interpretation of earlier traditions and doctrines.²³ The third period began with the critical rethinking of Confucian tradition after the 20th century, when Western culture was introduced into China and China entered the world. This period is still ongoing.

Though the status of Confucianism had its ups and downs after the early 20th century, all the studies reviewed so far failed to prove Confucianism stopped in old China. It is well known that Confucianism has faced huge setbacks, such as political movements, since the founding of New China. It is reported that during the Cultural Revolution, Confucius' doctrines were criticised as representing feudalism and possibly influencing socialism.²⁴ However, In the context of the 1980s, Confucianism made a comeback and was reintroduced into its once long-banned political and economic spheres. Much of the research shows that the teachings and ideals of Confucianism have been summarised

²⁰ Ibid, 7.

²¹ Ibid.

²² Xinzhong Yao and Hsin-chung Yao, Introduction Confucian Studies East and West in *An Introduction to Confucianism* (Cambridge University Press 2000), 1, 6.

²³ Yu-Lan Fung, A General Survey of the Period of the Philosophers in *A History of Chinese Philosophy*, vol. 2, tr. by Derk Bodde, (Princeton University Press 1953), 7, 19.

²⁴ Merle Goldman, 'China's Anti-Confucian Campaign, 1973-74' [1975] *The China Quarterly* 435, 437.

and extracted to suit political, social, and spiritual needs. The wisdom of Confucianism has rebounded, and it is deeply embedded in the speech given by President Xi Jinping in Geneva.²⁵

The continued survival and up-to-date development of Confucianism depends on its openness. In other words, openness is the most important feature that allows Confucianism to continue to develop. The openness of Confucianism is reflected in the fact that, when considering the concretisation of the content of Confucianism, we find that some Confucian ideas tend to be intangible. As we all know the central idea in Confucianism is benevolence (*Ren*). In *Analects of Confucius*, there are many interpretations of the word *Ren*, but they are also very enigmatic. On the one hand, Confucius repeatedly tries to give a clear explanation of the broad virtue of benevolence (*Ren*). When Yen Yuan asked about *Ren*, the answer he got was that ‘benevolence is to restrain oneself, to bring words and behaviour into conformity with rites; not to look, not to listen, not to speak, and not to do what is not in accordance with rites.’²⁶ When Zhong Gong asked what *Ren* was, Confucius answered him that ‘it was to go out to do business as if you were going to receive an honoured guest, to call upon the people as if you were going to perform a great sacrifice, and not to impose on others what you did not want; and that no one would resent you in your domains.’²⁷ On the other hand, Confucius repeatedly wanted to say and stopped short of saying anything about this moral element. When Sima Niu asked what *Ren* was, Confucius claimed that ‘people with *Ren* spoke prudently, for *Ren* was difficult to do, and could it not be said prudently?’²⁸ When three different people asked Confucius how to practice benevolence, Confucius spoke of *Ren*, but all three aspects were different. Despite the many ways in which Confucianism outlines what a benevolent person looks like, the exact meaning of benevolence remains elusive.

²⁵ Chinese President Xi Jinping delivered a speech at the United Nations in Geneva, with a “Work Together to Build a Community of Shared Future for Mankind” theme. Full Text: Speech by Xi Jinping at the United Nations Office at Geneva - China.Org.Cn’ <http://www.china.org.cn/chinese/2017-01/25/content_40175608.htm> accessed 10 September 2024.

²⁶ *Analects* 12.1.

²⁷ *Analects*, 12.2.

²⁸ *Analects*, 12.3.

Confucianism's interpretation of *Ren* is open-ended and seems to be a logical sum of moral elements. Although this idea is not clear in Confucian philosophy, the absence of a fixed definition in some concrete form rather keeps Confucianism up to date. Unlike the way in which laws are prescribed, it is not easy to formulate a clear and general moral concept in Confucianism. Whenever it is to be specified, one has to go back to the specific moral elements of the category of 'filial piety, fraternal duty, loyalty and trust'. Taking the interpretation of *Ren* in the last paragraph as an example, it is true that '*Ren*' needs some specific form to be embodied. However, this also suggests that the way to realise *Ren* extends beyond basic human morality. What is also implied is that there would be a lot of room and scope for interpretation of the specific form and definition of realising '*Ren*'. Further, this contributes to the integration of Confucianism with other ideas.

A similar example to '*Ren*' is the idea of 'the world under heaven' in which 'everything under heaven is attributed to *Ren*'. The world under heaven that matches '*Ren*' also fails to be clearer than the idea of '*Ren*'. In Confucianism, when it comes to specifying 'the world under heaven', one has to go back to the ethical relationships of father and son, brothers and peers, and friends, etc. The hierarchical construct of 'family-state-world under heaven' is a distinctive ideology in Confucianism. All the schools of Confucian thought have an orderly and harmonious world as their ultimate goal, but the boundaries of the 'world under heaven' are always unclear and open-ended. The illusory concept of the 'world under heaven' is connected to the universe above and to the nation, family or human being below. This value illustrates the ambiguity of subject and object in Confucianism and the lack of specificity between private relationships and groups.

Due to the openness of Confucian concepts such as *Ren* and 'the world under heaven', the Confucian philosophy of self-cultivation of virtues and human-social relations has been carrying the development of society, leaving room for the interpretation of values needed by society. As times have changed, Confucianism's interpretation of virtue has become richer. In the New Life Movement of the early 20th century, Confucianism advocated four virtues as the basic principles of morality: *Li* (礼, ritual), *Yi* (义,

righteousness), *Lian* (廉, integrity) and *Chi* (耻, sense of shame).²⁹ In the 21st century, China pursues social stability and economic prosperity, and Confucian ideas about social harmony and the value of harmony are once again being interpreted in a high-profile and expansive manner.³⁰ As such, it can be seen that Confucianism continues to develop; on the one hand, there is the cause of nationalism's surge of enthusiasm for local traditions, and on the other hand, it is also because Confucianism's all-encompassing moral values leave scope and leeway for the interpretation of values needed by society.

Although Confucianism is a traditional doctrine, it has evolved with the times due to its openness. Although Confucianism has a long history, it is not obsolete; its essence has been preserved and its contents enriched. The part of Confucianism that has been inherited is called the essence, and even after integration with advanced foreign cultures, the traditional Confucian culture is still maintained as the dominant one.³¹ In particular, the pursuit of harmony. Harmony between man and man, man and society, and man and nature in Confucianism has been extended to international relations. In the current world development trend, for example, the Confucian idea of harmony is being used to establish theories of coordinating international relations and protecting the natural ecological environment in a harmonious and balanced way.³²

Chinese politicians still often cite the traditional Confucian idea of 'harmony makes for prosperity' or 'harmony above all' in their international speeches.³³ The promotion of harmony is considered to have a positive contribution to the survival and development of human society, especially with regard to interpersonal or international relations, the protection of the natural environment, and the maintenance of ecological balance. Some scholars also believe that Confucianism, although a historical approach, has important implications for the just distribution of power and wealth and the global scale of

²⁹ Daniel K. Gardner, Confucianism in the twentieth and twenty-first centuries in *Confucianism: A Very Short Introduction* (Oxford University Press 2014), 112, 115.

³⁰ Ibid, 118.

³¹ William Theodore De Bary, Preface in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming, ix, xii.

³² Ibid, xiii.

³³ William Theodore De Bary, Preface in *Confucianism and human rights*. William Theodore De Bary, and Weiming Tu, eds. Columbia University Press (1998) 4, 7.

ecosystems and peace.³⁴ It is clear that Confucianism is still continuing in today's Chinese society, and it is being modified through integration with outstanding foreign cultures in order to better solve the problems of today's world.

The Confucian philosophy discussed today has become a comprehensive traditional philosophy that is compatible with different schools of thought. This is precisely the result of the fact that Confucian philosophy did not initially reject the theory of differences, which further demonstrates its openness. Notably, in this work, the discussion of Confucianism is not defined strictly in terms of Chinese philosophical schools, but only conceptually, structurally and cognitively levelled integrational philosophical traditions, and thus Confucianism in this paper is an integrative traditional philosophy without regard to the subdivision of different schools. The openness of Confucianism means that it is compatible not only with human rights but also with a number of other ideas in historical development.

3.2.3. Confucianism's Compatibility with Difference

Confucianism as a philosophical system with comprehensive complexity and enormous resources, is a result of the compatibility of different schools of thought. In particular, the figures representing Confucianism may have completely different understandings of some values. As we all know, Confucianism emphasises filial piety in the parent-child relationship, which is one of the basic moral elements in Confucianism and the law of propriety. Confucius believed that children should not defy this ritual and should be gently advised even when their parents make mistakes, and they should remain respectful even when their parents do not accept the advice.³⁵ However, Mencius had a different understanding; Mencius suggested that when a parent makes a mistake, the child should try to influence the parent and make him or her correct it. Xunzi also had a different perspective on understanding filial piety; he believed that one should follow

³⁴ Yong Li, 'Liang, Tao, Ed., Virtues and Rights: On Confucianism and Human Rights from Cross-Cultural Perspectives: Beijing: Zhongguo Shehui Kexue Chubanshe, 2016, 350 Pages' (2017) 16 Dao 457, 457.

³⁵ Wejen Chang, Confucian Theory of Norms and Human Rights in *Confucianism and Human Rights*, Edited by Wm. Theodore de Bary and Tu Weiming, Columbia University Press New York. (1998) 117, 120.

the right sense of truth, even when dealing with one's parents, and that knowing what to follow and what not to follow was filial piety.³⁶ The three great scholars who formulated different theories, Confucius, Mencius and Xunzi, were either conservative or radical in their views on the moral element of filial piety. As a result, filial piety has become an all-encompassing principle that continues to incorporate new insights. Through the continuation of Confucianism, it has been refined into a widely accepted standard that is consistent with human nature. This reflects the inclusiveness of Confucianism.

As Confucianism incorporates different schools of thought, it is a combination of internal Confucianism and external legalism. Confucius's view was that moral advice and the rites discipline were more effective in guiding human behaviour than the measures such as government decrees and penalties. Mencius believed that both law and morality were necessary. Xunzi regarded the importance of law as a sub-category under rites, but the application of governmental decrees and penalties should not be mechanical.³⁷ We can see that Confucianism has different views on the application of rules. While the theory of Confucius, i.e. relied completely inwardly on self-reflection to achieve self-restraint, the later approaches of Mencius and Xunzi saw the need to rely not only on inwardly directed self-moral examination, but also on a combination of rules formulated by a person of some special authority. Confucianism has continued to evolve from its initial form into a combination of internal Confucianism and external law, i.e. relying on a core of traditional Confucian values combined with the means of legal forms. This point also reflects the inclusiveness of Confucianism in its development.

The inclusiveness of 'internal Confucianism and external law' allows rights to be implicit in Confucian virtues and social obligations. If the rule of the Mandate of Heaven had a religious character akin to divine right, the rulers of the two thousand years of Confucian continuity could not rely solely on the Confucian way of governing based on benevolence and ritual. According to Laozi, 'It is only when there is virtue that benevolence can be manifested, and when benevolence is present in the heart, only then can great

³⁶ Ibid, 121.

³⁷ Ibid, 130.

righteousness be manifested, and when great righteousness is performed, only then can there be a reputation for rites and rituals.³⁸ The Confucian set of moral standards is no less desirable. However, on the other hand, if these moral baselines are not in place, when virtue, benevolence and righteousness cannot be relied upon, only legal rights can work. Cheng argues that the statements of Mozi and Xunzi can be inferred to suggest that people's 'mutual interests' ultimately lead to government under the rule of the sages.³⁹ This resonates with Thomas Hobbes's view that before the emergence of government a state in which everyone fought against each other. It was also confirmed in later history that political rule was based on a subtle combination of Confucianism, Daoism and Legalism, with the virtues and rites of Confucianism evolving to encompass additional elements. On this basis, we see that Confucianism is based on a philosophy of morality and duty, and that the inclusiveness is so broad that it also covers rights-like mechanisms.

Confucianism is inherently a philosophy that does not exclude differences. As discussed earlier, the integration of different schools of Confucian thought, as well as the development and evolution of the application of Confucianism in ruling, all reflect the inclusiveness of Confucianism. Zhuangzi once said that if things are viewed through the lens of difference, the two are as distant as Chu and Yue;⁴⁰ if they are viewed through the lens of sameness, all things are in common.⁴¹ Simply put, the differences in the things themselves are not the most important thing; it is the way in which they are viewed that counts. Differences or similarities are based on the needs of interests. Even two philosophies with completely different ways of thinking, Confucianism and Marxism, can still find similarities in the Confucian vision of seeking common ground. Although Confucianism is an ancient Chinese moral culture, this concept of Confucianism's pursuit of harmony has great ideological similarities with these Western concepts of utopia and communist society and a global village.

³⁸ Tzu Lao, Chapter 38, Tao Te Ching.

³⁹ Chung-ying Cheng, Transforming Confucian Virtues into Human Rights: A Study of Human Agency and Potency in Confucian Ethics in *Confucianism and Human Rights*, Edited by Wm. Theodore de Bary and Tu Weiming, Columbia University Press New York. (1998) 142, 144.

⁴⁰ Chu and Yue are two countries at war in ancient Chinese history.

⁴¹ Zhuangzi, Zhuangzi - The Inner Chapters - De Chong Fu.

3.3. Confucianism influenced Chinese culture

It is far-fetched to talk directly about human rights in the literature of Confucianism. Some people believe that the concept of human rights did not exist in Chinese history and was imported and spread by the West.⁴² Literally speaking, the concept of human rights was first introduced by the West. Human rights are essentially individualistic and Western-generated.⁴³ In contrast, Confucianism never conceptualised rights or human rights. There is not a single word for rights or human rights that appears in the vocabulary of Confucianism. It has been claimed that feudalism and hegemonic rule in old China, guided by Confucianism, created an authoritarian culture that is not conducive to the formation of any form of individual rights.⁴⁴ Indeed, the use of the term rights in the context of Confucianism is awkward, as there is no concept in Confucianism that directly corresponds to modern human rights.

But does this mean that Confucianism has no contribution to the Chinese characteristics perspective on human rights? Confucianism has continued to rise and fall with Chinese society for more than two thousand years. Chinese culture has been influenced by Confucianism. It is certain that the formation of the Chinese characteristics perspective on human rights has also been influenced by Confucianism. Many people have already recognised the close relationship between the Confucian tradition and the economy, supporting economic and social rights, especially the right to subsistence. The emphasis on the collective nature of Chinese-specific human rights is also closely linked to the Confucian idea of achieving collective well-being and dignity. As Han argues that the Confucian tradition includes such a participatory view of human rights as communitarianism based on the common good or collective interest.⁴⁵

⁴² James Hsiung, *Human Rights in East Asia: A Cultural Perspective*. Paragon House. (1985). 3, 17.

⁴³ Craig Williams, International Human Rights and Confucianism (2006) 7 *Asia-Pacific Journal on Human Rights and the Law* 38, 39.

⁴⁴ Yong Xia, Human rights and Chinese tradition. In P.R. Baehr, et al. (Eds.), *Human rights: Chinese and Dutch perspectives*. The Netherlands: Kluwer Law International. (1996). 77, 78.

⁴⁵ Sang-Jin Han, Confucianism and human rights. *Confucianism in Context: Classic Philosophy and Contemporary Issues, East Asia and Beyond*, (2011). 89, 89.

Although the term ‘rights’ is a stretch in Confucianism, it nevertheless influences the way human rights are viewed. As we mentioned at the beginning of Chapter 2, Cultural Relativity, claiming rights carries the risk of rights conflicts, especially if rights are claimed excessively in inappropriate situations. The Confucian concept of virtue seems to be well-suited to reconcile rights and the risk of unrestrained rights claims. Confucianism seeks to establish a society made up of morally righteous individuals in harmonious member relationships rather than a collection of self-interested individuals. In contrast to the rights-based approach of liberalism, the ideal picture of society in Confucianism is based on virtue, emphasising personal virtues such as modesty, care and benevolence, rather than constant individual claims for rights. Unlike the priority of rights in liberalism, Confucianism prioritises becoming a noble person and maintaining social harmony, rather than individual rights and interests. This kind of moral philosophy in Confucianism is considered to be an effective way to switch perspectives in a liberal rights society.⁴⁶

3.3.1. Confucianism’s ‘rights’ mode

Confucianism as the traditional Chinese moral philosophy has influenced China’s human rights perspective. Confucianism is a philosophy, and since the Confucian classics are written, Confucian ethics is more of a ritual system or foundational system of norms. Confucianism does not advocate rights but a unique perspective on the realisation of rights, which to some extent enriches the methods of realising rights. Kwok says that this traditional philosophy can be an antidote to individualism and moral chaos.⁴⁷ Confucianism, the traditional Chinese moral philosophy, is not only not opposed to human rights, but is also compatible with human rights and other philosophies. As Tu argues that the human rights theory can be enriched and enhanced through the cultural and philosophical roots of this enlightenment heritage.⁴⁸ Although Confucianism is a traditional Chinese philosophy, the differences between traditional Confucian values and modern Western values are not the issue, based on the openness and inclusiveness of

⁴⁶ Seung-hwan Lee, *Virtues and Rights: Reconstruction of Confucianism as a Rational Communitarianism*, (PhD, University of Hawai’i at Manoa, 2022) 1, 2.

⁴⁷ D.W.Y. Kwok, *On the Rites and Rights of Being Human in Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 83, 84.

⁴⁸ Weiming Tu, ‘Joining East and West: A Confucian Perspective on Human Rights’ *Harvard International Review*, Vol.20, 3 (1998), 44, 49.

Confucianism. Having adopted a clear historical perspective on human rights as an evolving concept, de Bary identified a series of proposed reforms to Neo-Confucianism that seemed to make Confucianism and human rights complementary.⁴⁹

Although Confucianism does not contain any concepts that directly correspond to modern human rights, the moral philosophy of traditional Confucian thought provides an alternative perspective on 'rights'. Confucianism's views aspired to help human beings to live a good and dignified life. Out of the cultural diversities and moral elements, Confucianism, like other traditions, agreed on certain norms of human behaviour, although the basic picture of human life is expressed through different cultures. It is argued that Confucianism just simply occupies a larger place in the community and in the complex web of interpersonal relationships in which everyone is involved.⁵⁰ It is also important to recognise that the traditional community-based Confucian understanding of rights often leads to the primacy of collective good over individual rights.⁵¹ Although Confucianism principles are not consistent with modern concepts of human rights, it has been argued that Confucianism provides an explanation for the reasons that underpin fundamental human rights.⁵²

Despite Confucianism being in a completely different cultural context, I find it far-fetched to emphasise that Confucianism has no connection with human rights. Confucianism contains notions of human equality, social justice, and human life with dignity. For example, there is a famous saying in the Analects of Confucius that 'education for everyone, irrespective of background (*you jiao wu lei*)'. Before Confucius, 'learning was in the government', which meant that only the descendants of the nobility had the right to education, and it was also assumed that only the descendants of the nobility were qualified to be bureaucrats. By Confucius' time,

⁴⁹ Summer Twiss, *A Constructive Framework for Discussing Confucianism and Human Rights* in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 27, 40.

⁵⁰ Charles Taylor, 'Conditions of An Unforced Consensus on Human Rights' To be presented at Bankok Workshop, (Beogradski krug, 1996) 4, 5.

⁵¹ David Hall & Roger Ames, Chapter 5 A Pragmatist Understanding of Confucian Democracy in *Confucianism for the Modern World* (Cambridge University Press 2003) ed. Bell D and others, 124, 153.

⁵² Weiming Tu, 'Joining East and West: A Confucian Perspective on Human Rights' *Harvard International Review*, Vol.20, 3 (1998), 44, 49.

Confucius started private schools. The 3,000 disciples of Confucius came from different countries, regardless of whether they were nobles or ordinary people, regardless of national boundaries or ethnicities. As long as they had the will to learn, they could all be educated. This broke down not only class distinctions, but also national and ethnic boundaries. Unlike the caste system in India which severely restricts access to education,⁵³ Confucianism promotes the equal right to education in terms of the recipients of education. The notion that Confucianism recognises equality in education is also reflected in the principle of universal human rights, which states that '...recognize the right of everyone to education...education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.'⁵⁴ It is therefore impossible to say that Confucianism has no connection with human rights.

Notably, although Confucianism has been considered compatible with the idea of human rights, the formation of these rights may not follow the Western pattern⁵⁵. Xia Yong argues that Confucianism contains moral law and the notion of a dignified and equal personality, and that such moral law has not evolved into rights because Confucianism is inwardly oriented and therefore seldom outwardly associated with self-interest, self-defence, and confrontation with the rest of society.⁵⁶ Unlike the Western assertion of rights through law and external enforcement, Confucianism emphasises the fulfilment of obligations, harmony and reciprocity. Although Confucianism does contain moral resources relevant to human rights, Confucian ideas about human dignity and justice do not lead directly to the creation of rights, and the non-creation of rights means that there are no safeguard mechanisms brought about by rights to ensure the applied value of

⁵³ Although Confucianism is relatively open in terms of "equality in education", there are some similarities with the caste system in terms of the ordering of social hierarchies and the consolidation of identity roles. Marx proposed that both the caste system and the feudal class have similar forms of labour. See Timo Schmitz, 'Being Valued by Birth: A Comparison of Castes and Feudal Classes in India, Tibet, China, and Korea'. *Cultural Logic: A Journal of Marxist Theory & Practice*, 27, (2023). 95, 95.

⁵⁴ Art.13, ICESCR.

⁵⁵ In Western human rights theory, there is a concept of natural rights, rights that all individuals have equally regardless of social roles and relationships. See Ames Roger T, Chapter Three: A Narrative Conception of Human Nature in *Human Becomings: Theorizing Persons for Confucian Role Ethics* (State University of New York Press 2020).

⁵⁶ Yong Xia, Human Rights and Chinese Tradition (1992) in *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000*, Angle SC and Svensson M edited, (Taylor & Francis Group 2001) 372, 376.

Confucianism. In other words, inward-looking moral requirements and obligatory constraints can only rely on soft social feedback and people's inner self-reflection. The Confucian approach is a vision or ideology rather than something associated with a legal structure.

Nevertheless, Li argued that although there may be a distinction between the virtue-based morality of Confucianism and the rights-based morality of Liberalism, Confucianism's virtue-based thinking guides the operation of rights.⁵⁷ Li is conclusively right, and it only requires more unpacking. Confucianism emphasises one's intrinsic virtues, but the social order is not entirely dependent on the outward manifestation of one's intrinsic virtues. The maintenance of social order relies on a set of social norms known as 'Rites'. Rites are regarded as a form of customary law, the moral principles developed by Confucian sages and used by all members of society in their daily lives.⁵⁸ Unlike Western law, which requires enforcement organisations to be responsible for its realisation, ritual as a moral code encourages all members of society to return to 'benevolence', fostering integrity and morality towards others, i.e. a moral relationship of kind and mutual assistance between human beings. Conversely, immoral behaviour that is not righteous and not kind is intolerable and condemned in the community. In such a social order, human rights are realised in another way. This is evidenced in the practice of property institutions, promises and contracts that existed in traditional Chinese society.⁵⁹ Thus, it is more plausible that Confucianism is consistent with the idea of human rights, even without the use of the terminology.

The unique perspective of Confucianism can be seen as standing behind rights to create an atmosphere for their realisation. Despite the fact that there was no Chinese word that could be translated as 'right' until the nineteenth century, it is certain that the role of some Confucian ideas and institutions is thought to have partially overlapped with the

⁵⁷ Yong Li, 'Liang, Tao, Ed., Virtues and Rights: On Confucianism and Human Rights from Cross-Cultural Perspectives: Beijing: Zhongguo Shehui Kexue Chubanshe, 2016, 350 Pages' (2017) 16 *Dao* 457, 459.

⁵⁸ Yong Xia, Human Rights and Chinese Tradition (1992) in *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000* (Angle SC and Svensson M edited, Taylor & Francis Group 2001) 372, 378.

⁵⁹ Seung-hwan Lee, 'Virtues and Rights: Reconstruction of Confucianism as a Rational Communitarianism' (PhD, University of Hawai'i at Manoa) 1, 38.

meaning of right and may have served a similar function to that of right.⁶⁰ It has been suggested that the Confucian worldview, at least in some contexts, is compatible with first and second-generation human rights.⁶¹ Indeed, Confucian norms that emphasise personal virtue can promote the rights of all backgrounds. Because in the Confucian utopia described the principle of humanity prevails, where everyone has a proper share of the wealth and treats other people with respect and love.⁶² Although Confucianism does not talk about ‘human rights’, it advocates that people should be humane and help each other to live a good life.⁶³ This is not inconsistent with the human rights world that the Universal Declaration of Human Rights hopes to achieve, although the approach is different.

3.3.2. Virtue-based Philosophy

Confucianism is recognised as a virtue-based morality. Confucianism gives primary importance to virtue and morality.⁶⁴ The five main virtues, known as the Five Constant Regulations, include benevolence (*Ren*), righteousness (*Yi*), ritual (*Li*), wisdom (*Zhi*) and faithfulness (*Xin*).⁶⁵ Confucius lived in a time of war, in a world where the military was highly esteemed, but he instead instructed people in the ideals of humanity and valued moral relations above all else.⁶⁶ Virtue-based Confucianism holds that morality covers the largest dimension of the field of human behaviour from the perspective of theory.

⁶⁰ Stephen C. Angle, The Shift Toward Legitimate Desires in Neo-Confucianism in *Human Rights in Chinese Thought: A Cross-Cultural Inquiry* (1st edn, Cambridge University Press 2002) 74, 74.

⁶¹ Summer B. Twiss, A Constructive Framework for Discussing Confucianism and Human Rights in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 27, 42.

⁶² Li Yun in the Book of Rites, para 2, “The world became a family’s property. Rites and manners were established as a framework to define the relationship between ruler and subject, to make the relationship between father and son, siblings, husband and wife harmonious, to establish various institutions, and to divide fields and houses. Such a society would be called a prosperous society”. Translated from 《礼记·礼运》: “天下为家...以正君臣, 已笃父子, 以睦兄弟, 以和夫妇, 以设制度, 以立田里...是谓小康”.

⁶³ Wejen Chang, The Confucian Theories of Norms and Human Rights in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 117, 133.

⁶⁴ Seung-hwan Lee, ‘Liberal Rights or/and Confucian Virtues?’ (1996) 46 *Philosophy East and West* 367, 367.

⁶⁵ Five constant regulations are known in Chinese as Wuchang (including Ren, Yi, Li, Zhi, Xin).

⁶⁶ Julia Ching, Human Rights: A Valid Chinese Concept? In *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 67, 71.

Although some scholars emphasise the necessity of rights mechanism and argue that the Confucian ideal of a society based on virtue is unattainable for a long time,⁶⁷ according to Confucianism, at least in terms of ideological theory, all things in the life experience of human beings can be measured in terms of morality, and all possess moral significance.

The Confucian writing *Analects* does not deny the necessity of the law but has the intention of making it unnecessary by cultivating noble virtues in the people. In particular, in contrast to rights-based morality, which covers what is fixed and non-negotiable, the field of virtue-based morality is much larger and more diverse, with greater emphasis on self-cultivation.⁶⁸ Confucius said:

‘If the people are guided by legal rules and disciplined by penalties, they will only avoid being punished for their crimes but will not have a sense of shame. If the people are educated by morality and led by rituals, they will not only have a sense of shame but will also behave themselves.’⁶⁹

In the Confucian view, although virtue-based guidance is broad and does not have the enforcement and punitive function as law, it can fundamentally improve self-cultivation. Confucian philosophy is more like a moral guideline, suggesting moral aspirations that people should strive to achieve. In Confucian scholar’s writing, ‘people are similar in nature but grow differently by learning and practising’.⁷⁰ And the way to guide people with virtue so that they have a sense of shame is to be cultivated.

The virtue-based morality of Confucianism is motivated by human nature. Mencius believes that people are good by nature and have compassion and sympathy, which is as natural as water flowing downhill.⁷¹ It was thought before Confucius that only people of

⁶⁷ Chenyang Li, ‘Education as a Human Right: A Confucian Perspective’ (2017) 67 *Philosophy East and West* 37, 38.

⁶⁸ Seung-hwan Lee, ‘Liberal Rights or/and Confucian Virtues?’ (1996) 46 *Philosophy East and West* 367, 374.

⁶⁹ *Analects*, 2.3 Translated from “道之以政，齐之以刑，民免而无耻；道之以德，齐之以礼，有耻且格”

⁷⁰ *Analects*, 17.2 Translated from “性相近也，习相远也”

⁷¹ Daniel K. Gardner, Chapter 4. Variety within early Confucianism in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 48, 50-52.

noble birth could have benevolence (*Ren*).⁷² While Confucius believed that benevolence (*Ren*) was a universal virtue inherent in human nature, and that anyone who pursued it would become a noble person (*junzi*).⁷³ The Confucian doctrine intends to make virtue available to all because of the innate moral potential of human beings. It has been suggested that the potential of all people is inherently equal, but that Confucian values are attached more to virtuous achievement than to innate potential.⁷⁴

The virtue-based morality of Confucianism is promoted by self-cultivation. The goal of individual self-cultivation is to become a person with noble character (*junzi*)⁷⁵. Confucianism believes that human virtues are intrinsic in nature; all people, from rulers to citizens, have the innate moral capacity to develop the virtue of benevolence.⁷⁶ Moreover, Confucianism calls on individuals to become moral role models. Through the power of role models, it promotes others to cultivate their own morality.⁷⁷ By cultivating the virtue of individual benevolence, it achieves a large-scale humanistic approach, and the individual becomes the root of society.⁷⁸ Under the virtue-based Confucian doctrine, the people-oriented society is promoted through the widespread cultivation of benevolence and care.

Confucianism's robust doctrine of virtue is particularly evident in its emphasis on benevolence. Benevolence is often understood as caring and extended to the social order. Confucianism takes humanity as a starting point and advocates benevolence in the community, which is a belief that human dignity and equity should be well respected in different social relationships. For example, Confucianism is concerned with the well-being of the disadvantaged in society, by providing a minimum level of protection for the

⁷² Craig Williams, 'International Human Rights and Confucianism' (2006) 7 Asia-Pacific Journal on Human Rights and the Law 38, 48.

⁷³ Ibid.

⁷⁴ Irene Bloom, 'Human Nature and Biological Nature in Mencius' (1997) 47 Philosophy East and West 21, 22.

⁷⁵ *Junzi* means the noble person.

⁷⁶ Craig Williams, 'International Human Rights and Confucianism' (2006) 7 Asia-Pacific Journal on Human Rights and the Law 38, 48.

⁷⁷ Daniel K. Gardner, Chapter 2 The Individual and Self-cultivation in the teachings of Confucius in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 16, 16.

⁷⁸ Ibid, 20.

elderly, the sick, the disabled, the widowed and the orphaned.⁷⁹ On how such virtue-based Confucianism provides the resources and framework for human rights, Confucian virtue-based moralism can be said to be parallel to some positive human rights. Some scholar argued that Confucianism advances the pioneering moral equalism within the individual.⁸⁰

The Confucian ideal of *Ren* (benevolence) has often been interpreted as a form of moral conscience grounded in human relationships.⁸¹ This concept, while rooted in the Confucian tradition, embodies a universal concern for human dignity and empathy. As Confucius stated that '*Ren zhe, ai ren*' (The benevolent person loves others),⁸² and Mencius developed this further by asserting that 'The feeling of compassion found in all humans, which is the beginning of benevolence'.⁸³ These claims are grounded in common human nature rather than cultural contingency. In this sense, *Ren* is not only a culturally confined concept but also a humanity-based universal value. This resonates with the idea expressed in the Universal Declaration of Human Rights that 'all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'.⁸⁴ In this context, it has been suggested that the Philosophy Commission, composed of philosophers from diverse cultural backgrounds at UNESCO, including Chinese philosophers whose intimate knowledge of Confucianism,⁸⁵ provides a multicultural perspective to the Universal Declaration of Human Rights.⁸⁶ In terms of history and comparative culture, there is considerable overlap between the virtues cherished by

⁷⁹ Seung-hwan Lee, 'Virtues and Rights: Reconstruction of Confucianism as a Rational Communitarianism' (PhD, University of Hawai'i at Manoa) 1, 63.

⁸⁰ Sungmoon Kim, 'Confucianism, Moral Equality, and Human Rights: A Mencian Perspective: Confucianism, Moral Equality, and Human Rights' (2015) 74 American Journal of Economics and Sociology 149, 161.

⁸¹ Craig Williams, 'International Human Rights and Confucianism' (2006) 7 Asia-Pacific Journal on Human Rights and the Law 38, 43.

⁸² Confucius, *The Analects*, bk 12, ch 22 (trans DC Lau, Penguin Classics 1979).

⁸³ Mencius, *Mencius*, bk 2A, ch 6 (trans DC Lau, Penguin Classics 1970).

⁸⁴ Preamble of the Universal Declaration of Human Rights (1948), G.A. Res. 217A (III), U.N. Doc A/810. Art.1.

⁸⁵ The Chinese philosopher Luo Zhongshu was one of those who identified the sources of human rights in the Confucian tradition. See Williams C, 'International Human Rights and Confucianism' (2006) 7 Asia-Pacific Journal on Human Rights and the Law 38, 44.

⁸⁶ Claude Emerson Welch, 'A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights; The Universal Declaration of Human Rights: Origins, Drafting and Intent Book Reviews' (2002) 24 Human Rights Quarterly 287, 288.

Confucianism and the values that define modern consciousness of human rights: equity, equality, individual dignity and respect for the rights of others.⁸⁷ And yet UNESCO philosophers argue that multiculturalism is exaggerated.⁸⁸ Basic human values are inherently ‘common convictions’ despite being presented in different ways in practice. Based on commonalities in human nature, Irene Bloom has further explored the idea that common human morality has the potential to serve as the basis for human rights.⁸⁹ These arguments rather illustrate that, despite stemming from a different culture, the Confucian concept of benevolence is consistent with the fundamental values of human rights.

3.3.3. Duty-based Philosophy

In examining virtue-based Confucianism from the perspective of practice, virtue is reflected as an individual’s duties. In Confucianism, a noble person’s core pursuit is to fulfil the moral obligation to ‘cultivate one’s virtue, to harmonise one’s family, to govern one’s country wisely and to bring peace to the world’.⁹⁰ The five primary virtues, especially benevolence, are often practised in society as duties by governing roles, from a parent in a family, a teacher in a classroom, to a ruler in a community.⁹¹ Although the sense of duty is more evident in the Confucian tradition than the sense of right, it is argued that human rights and human duties are inseparable.⁹² Indeed, history shows that until the seventeenth century, European and English society gave as much weight

⁸⁷ Weiming Tu, ‘A Confucian Perspective on Human Rights’ in Wong Sin Kiong, *Confucianism, Chinese History and Society* (2012) (Co-Published with Department of Chinese Studies, National University of Singapore 2012) 1, 2.

⁸⁸ Craig Williams, ‘International Human Rights and Confucianism’ (2006) 7 *Asia-Pacific Journal on Human Rights and the Law* 38, 44.

⁸⁹ Irene Bloom, ‘Mencian Arguments on Human Nature (Jen-Hsing)’ (1994) 44 *Philosophy East and West* 19, 19.

⁹⁰ The Great Learning in the Book of Rites, para 2, “Those who wish to govern their country must first harmonize their families. Those who wish to harmonize their families must first cultivate their personalities.”

Translated from 《礼记·大学》.” 欲治其国者，先齐其家。欲齐其家者，先修其身。”

⁹¹ Haiming Wen and William K. Akina, ‘Human Rights Ideology as Endemic in Chinese Philosophy: Classical Confucian and Mohist Perspectives’ (2012) 22 *Asian Philosophy* 387, 389.

⁹² Weiming Tu, ‘Joining East and West: A Confucian Perspective on Human Rights’ *Harvard International Review*, Vol.20, 3 (1998), 44, 44.

to duties as to rights.⁹³ The ideal Confucian society is essentially a benevolent party that takes care of others as a duty, regardless of the family, community, and state.⁹⁴

In a family situation where Confucian morality demands filial obedience, filial piety is seen as an obligation to the elders of the family. Filial piety is not just about providing material comfort to your elderly parents, but more importantly, ‘to always have a pleasant countenance in their presence’.⁹⁵ Also, filial piety is a priority moral obligation. Confucianism believes that the greatest duty of all is to one’s parents.⁹⁶ Both Confucius and Mencius believed that in the event of a conflict, the care of elderly parents should take precedence. For example, Confucius argued that a son should cover up for his sheep-stealing father and vice versa.⁹⁷ However, this extreme approach only emphasises the importance of ethical propriety and filial piety in a particular context. Confucius also believed that filial piety was not blind obedience to one’s parents, while they should be dissuaded from misdeeds in a gentle way.⁹⁸ In short, it reflects the importance that most members of Confucian society place on taking responsibility for their families, especially caring for needy family members and elderly parents.

In this context, Confucian virtue largely depends on various roles, which is why individual duties are also known as role-dependent ethics.⁹⁹ Confucian moral relationships are defined as those between parents and children, rulers and subjects, husband and wife, older and younger siblings, between friends, and between colleagues. It has been argued that this seems to emphasise not only the hierarchy of society but also duty and mutual benefits.¹⁰⁰ In Confucian societies, people value the duties that come with such

⁹³ Julia Ching, *Human Rights: A Valid Chinese Concept?* In *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 67, 68.

⁹⁴ Haiming Wen and William K Akina, ‘Human Rights Ideology as Endemic in Chinese Philosophy: Classical Confucian and Mohist Perspectives’ (2012) 22 *Asian Philosophy* 387, 393.

⁹⁵ *Analects* 2.8, translated from ‘子夏问孝。子曰：“色难”’

⁹⁶ *Mencius* 4A.20

⁹⁷ *Analects* 13.18, translated ““父为子隐，子为父隐””

⁹⁸ Joseph Chan, “A Confucian Perspective on Human Rights for Contemporary China,” in *The East Asian Challenge for Human Rights*, ed. Joanne R. Bauer and Daniel A. Bell (New York: Cambridge University Press, 1999), 223–224.

⁹⁹ Justin Tiwald, ‘Confucianism and Human Rights’ in *Handbook of Human Rights* (Routledge 2012) Cushman T (ed), 244, 245.

¹⁰⁰ Julia Ching, *Human Rights: A Valid Chinese Concept?* In *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 67, 72.

interpersonal relationships. It is observed that in the highly populated countries of East Asia, peaceful, disciplined and prosperous societies show how the people maintain a sense of family virtue and social harmony.¹⁰¹ Thus, the virtues promoted by Confucianism are manifested in the importance Confucianism attaches to the performance of duties in one's role.

In traditional Confucianism, a sense of duty is more prominent than a sense of right.¹⁰² Compared to rights-based human rights in liberalism, which values freedom over goodness, Confucianism values being a benevolent noble person who is dedicated to fulfilling duties over claiming rights.¹⁰³ In other words, Confucianism discourages individual claims to rights.¹⁰⁴ It has been argued that a potentially confrontational relationship is created when rights are being claimed against other citizens.¹⁰⁵ It shows that self-assertion, in Confucian thinking, is not beneficial to maintaining social harmony. For example, family members often behave out of love or duties to their specific roles as parents, grandparents, children or siblings, rather than out of concern that other family members have rights and therefore claim rights against them.¹⁰⁶ It is believed that if the family operated in a rights-assertive mode, most of the unique values of the family would be undermined, and the same would be true for Confucian society.¹⁰⁷ As Justin says, a family in Confucian society that behaves in a pattern of asserting rights will lead to serious disfunction and render the family non-existent at all.¹⁰⁸ So, it seems that in Confucian society, virtue and ritual define the way people behave. To the extent that Confucianism emphasises family cohesion, community harmony and social order.¹⁰⁹

¹⁰¹ Ibid, 74.

¹⁰² Weiming Tu, 'A Confucian Perspective on Human Rights' in Wong Sin Kiong, *Confucianism, Chinese History and Society* (2012) (Co-Published with Department of Chinese Studies, National University of Singapore 2012) 1, 2

¹⁰³ Seung-hwan Lee, 'Liberal Rights or/and Confucian Virtues?' (1996) 46 *Philosophy East and West* 367, 367.

¹⁰⁴ Yong Li, 'Liang, Tao, Ed., *Virtues and Rights: On Confucianism and Human Rights from Cross-Cultural Perspectives*: Beijing: China Social Sciences Press, 2016, 350 Pages' (2017) 16 *Dao* 457, 459.

¹⁰⁵ Justin Tiwald, 'Confucianism and Human Rights' in *Handbook of Human Rights* (Routledge 2012) Cushman T (ed), 244, 244.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid,

¹⁰⁹ Weiming Tu, 'A CONFUCIAN PERSPECTIVE ON HUMAN RIGHTS' in Wong Sin Kiong, *Confucianism, Chinese History and Society* (2012) (Co-Published with Department of Chinese Studies, National University of Singapore 2012) 1, 2.

The deep underlying value of Confucianism's emphasis on virtue and duty is to achieve a harmonious society. For the sake of social harmony, Confucianism values personal benevolent virtues to achieve a harmonious society. People of virtue are more likely to be willing to compromise their personal interests, which in turn encourages a harmonious social order. Some people believed that the way that Confucianism encourages people to act out of a sense of morality and commitment to their neighbours, community elders and colleagues, rather than being threatened by mechanisms of claiming rights.¹¹⁰ However, this is also seen as an inherent problem with the Confucian system. Given the complex network of people in which each individual lives, some scholars have argued that the Confucian system lacked a safety net to ensure minimum moral standards when relationships break down and morality fails.¹¹¹ With that being said, despite the lack of institutional constraints or binding systems, it is argued that Confucianism provides a virtue-based approach to support the realisation of human rights.¹¹² This helps to explain that Confucianism advocates building a society of virtuous individuals with harmonious relations among its members.

Virtue-based Confucianism considers it a virtue to look after the needs and interests of others. Although some people criticize this case it inevitably weakens individual claims that Confucianism emphasises a virtue-based 'particular role ethics' and that this leaves no room for modern Western conceptions of the free and autonomous self,¹¹³ some scholars have the opposite argument that it is a stretch to suggest that individuals under Confucianism are determined solely by their social role.¹¹⁴ Moreover, it has been argued that duties advocated by the Confucian tradition and human rights are never an either-

¹¹⁰ Justin Tiwald, 'Confucianism and Human Rights' in *Handbook of Human Rights* (Routledge 2012) Cushman T (ed), 244, 244.

¹¹¹ Joseph Chan, 'A Confucian Perspective on Human Rights for Contemporary China', in Joanne Bauer and Danell Bell (eds) *The East Asian Challenge for Human Rights*, Cambridge University Press, Cambridge. 212, 217. See also, Williams C, 'International Human Rights and Confucianism' (2006) 7 Asia-Pacific Journal on Human Rights and the Law 38, 62.

¹¹² Craig Williams, 'International Human Rights and Confucianism' (2006) 7 Asia-Pacific Journal on Human Rights and the Law 38, 66.

¹¹³ Sungmoon Kim, 'Confucianism, Moral Equality, and Human Rights: A Mencian Perspective: Confucianism, Moral Equality, and Human Rights' (2015) 74 American Journal of Economics and Sociology 149, 150.

¹¹⁴ Justin Tiwald, 'Confucianism and Human Rights' in *Handbook of Human Rights* (Routledge 2012) Cushman T (ed), 244, 246.

or dilemma.¹¹⁵ As Eleanor Roosevelt says, human rights in a democracy are more than just civil and political rights, that human rights cannot be separated from duties, and that group rights are delicately compatible with individual rights.¹¹⁶ It has also been argued that virtue-based Confucianism complements the rights-based philosophy expressed in human rights.¹¹⁷ Despite the controversy surrounding Confucianism's emphasis on virtue and duty, there is a general consensus that the Confucian way of prioritising others' needs and interests is different from that of Western liberal democracies.

Overall, the virtue-based ideology and duties-fulfilling practise possessed by Confucianism illustrate the commonality of humanitarianism. It has been argued that, despite the superficial incommensurability of duties and human rights, a fair comparison and contrast in the practice of different cultures and social mechanisms is the intention and outcome of focusing on the humane treatment aspects.¹¹⁸ In examining the perspective of Confucianism, although not explicitly expressed in any terms of rights, Confucianism, through its emphasis on virtue, implicitly states the standard of the treatment of people; through its emphasis on the fulfilment of duties, society produces the same things that rights advocates seek. It is, therefore, possible to derive human rights values from the virtue-based obligatory behaviour of Confucianism.

3.3.4. Welfare duty of government

Virtue-based Confucianism believes that looking after the needs and interests of others is a virtue that must be possessed by rulers. Confucian philosophy of benevolence was extended to the political order, which was defined as a benevolent government

¹¹⁵ Yong Li, 'Liang, Tao, Ed., Virtues and Rights: On Confucianism and Human Rights from Cross-Cultural Perspectives: Beijing: Zhongguo Shehui Kexue Chubanshe, 2016, 350 Pages' (2017) 16 Dao 457, 459.

¹¹⁶ Eleanor Roosevelt, Black A and Merritt CH, Introduction in *The Moral Basis of Democracy* (Open Road Integrated Media, Inc 2016) 7, 8.

¹¹⁷ Yong Li, 'Liang, Tao, Ed., Virtues and Rights: On Confucianism and Human Rights from Cross-Cultural Perspectives: Beijing: Zhongguo Shehui Kexue Chubanshe, 2016, 350 Pages' (2017) 16 Dao 457, 460.

¹¹⁸ Haiming Wen and William K. Akina, 'Human Rights Ideology as Endemic in Chinese Philosophy: Classical Confucian and Mohist Perspectives' (2012) 22 Asian Philosophy 387, 389.

advocated by Mencius.¹¹⁹ Mencius believed that the virtue of a ruler was to realise benevolence and love the people as if they were his own family. For example, Mencius famously advised the King of Liang, “Love other people’s children as I love mine, and respect other elders as I respect the elderly in my family”.¹²⁰ In such a mode, Confucian virtue-based morality exhibits strong paternalism. Indeed since ancient times, there has been a tradition in China of calling officials who administered localities ‘parental officials’,¹²¹ and this corresponds to the Western view of Confucianism as paternalistic.¹²²

In the Confucian context, the ruler is authorised by the Mandate of Heaven, whose main duty is to look after the people through his superior virtue and ability. In dealing with the people’s well-being, rulers are considered to possess the virtue of benevolence. If rulers care for the people in a similar way to how parents care for their children, the rulers are considered to be competent. It has been argued that the human rights system can be implemented into Confucianism through this notion of the ‘Mandate of Heaven’, which is similar to natural rights.¹²³ Whilst Confucianism lacks institutional mechanisms to constrain the power of rulers, the Mandate of Heaven provides a source of clearly defined rights.¹²⁴ Accordingly, the social and political environment formed by the virtues within the community implicitly renders the rights in practice.

For this source of government obligation, there is the concept of Mandate of Heaven from the *Book of History*.¹²⁵ In Confucianism, Heaven is considered to be concerned with the living, and so a virtuous and benevolent person is given the role of ruler, committed to the welfare of the people as Heaven is.¹²⁶ Yet heaven will not act or respond on its own. The Book of History states that ‘Heaven sees through people’s eyes and hears

¹¹⁹ Julia Ching, Human Rights: A Valid Chinese Concept? In *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 67, 71.

¹²⁰ Mencius - (I) The King of Liang; Translated from 《孟子·（一）梁惠王》.

¹²¹ Zongli Tang, ‘Confucianism, Chinese Culture, and Reproductive Behavior’ (1995) 16 Population and Environment 269, 281.

¹²² May Sim, ‘A Confucian Approach to Human Rights’ (2004) 21 History of Philosophy Quarterly 337, 337.

¹²³ Craig Williams, ‘International Human Rights and Confucianism’ (2006) 7 Asia-Pacific Journal on Human Rights and the Law 38, 62.

¹²⁴ Ibid.

¹²⁵ Daniel K. Gardner, Chapter 3 Government in Confucian teachings in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 33, 45.

¹²⁶ Ibid, 46.

through their ears',¹²⁷ indicating that the legitimacy of governance ultimately depends on popular perception and consent. The ruler's obligation is not considered an end in itself, but a precondition for moral cultivation and social harmony. To uphold the Mandate of Heaven, rulers and their successors must never renounce virtue. If the ruler disregards or fails this obligation, he will eventually forfeit the reigning authority granted by the Mandate of Heaven.¹²⁸ In other words, Confucianism does not advocate passive obedience to authority. On the contrary, Mencius explicitly defended the right to rebel against tyrannical rulers, arguing that those who fail to uphold virtue and oppress the people no longer deserve the title of king. In this sense, the Mandate of Heaven is conditional and revocable. Furthermore, Confucian thinkings underscore that harmony should not be confused with uniformity; true harmony emerges from the respectful accommodation of difference, not from the suppression of dissent.¹²⁹ A virtuous government must thus demonstrate tolerance, especially toward diverse opinions, if it is to maintain legitimacy and avoid forfeiting the Mandate.

In this context, it is clear that traditional Confucian political ideas have always assumed a monarchy would rule human beings, and Confucianism clearly prefers benevolent rulers. Mencius also held an important point as it places the needs of the people above the ruler. If the king loses the people's hearts, theoretically the king's mandate from heaven can be lost.¹³⁰ Or to say Heaven will withdraw its mandate and they will lose the right to rule.¹³¹ The Mandate of Heaven is considered to be the basis of political ideology from the Zhou dynasty to the early twentieth century.¹³² Moreover, Confucianism as a tradition can easily be misinterpreted as unconditional obedience to rulers and communities.¹³³ The principle is exemplified in Confucian writing, that 'one should

¹²⁷ Ibid.

¹²⁸ Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 Critical Review of International Social and Political Philosophy 101, 104.

¹²⁹ Confucius said that 'The gentleman seeks harmony but not uniformity'. See Confucius, *The Analects*, translated by James Legge (Dover Publications 1971) bk 13, Ch 23.

¹³⁰ Craig Williams, 'International Human Rights and Confucianism' (2006) 7 Asia-Pacific Journal on Human Rights and the Law 38, 51.

¹³¹ Daniel K. Gardner, Chapter 3 Government in Confucian teachings in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 33, 46.

¹³² Ibid, 45.

¹³³ Craig Williams, 'International Human Rights and Confucianism' (2006) 7 Asia-Pacific Journal on Human Rights and the Law 38, 48.

follow righteousness, and not necessarily one's father'.¹³⁴ Mencius believed that subjects could advise leaders who they feel have deviated from the right path.¹³⁵ Mencius also believed that Heaven sees through people's eyes and hears through their ears. It is held to be an important point as it places the needs of the people above the ruler. If the king loses the people's hearts, theoretically the king's mandate from heaven can be lost.¹³⁶ Also, Confucius uses the expression 'harmony without conformity' to describe a society that reaches consensus but where diversity can exist, although such harmony is deemed difficult to achieve.¹³⁷ It is more plausible that Confucianism needs to be examined within context to understand its true value.

In addition to the Mandate of Heaven, from the point of view of their duties and obligations to society, there are welfare-based obligations of government. Besides possessing the virtues recognised by Heaven, a ruler should also have the ability to govern, which means, in practice securing people's basic means of livelihood and welfare. It has furthermore been argued that since human worth is presumed by the ability to fulfil our duties, then a powerful and influential person has more responsibilities and duties to ensure the welfare of others. As a corollary, the rulers are duty-bound and bear the responsibility of fulfilling the duty of care for the community and its people.¹³⁸ As Mencius said, the ruler is the one who has the heaviest duty to practise benevolence; the benevolence of ordinary people is care and concern for others; as a ruler, he should care for the welfare of all the people.¹³⁹ As such, the obligation to realise the benevolent government in the administration of the kingdom was shared by the ruler and the officials he appointed.¹⁴⁰

¹³⁴ Ibid, 59.

¹³⁵ D. W. Y. Kwok, 'On the Rites and Rights of Being Human' in Theodore de Bary and Tu Weiming (1998) *Confucianism and Human Rights*, Columbia University Press, New York 83, 88.

¹³⁶ Craig Williams, 'International Human Rights and Confucianism' (2006) 7 *Asia-Pacific Journal on Human Rights and the Law* 38, 51.

¹³⁷ William Theodore de Bary and Weiming Tu, Preface in *Confucianism and Human Rights*, Columbia University Press New York, (1998) 1, 8.

¹³⁸ Weiming Tu, 'Joining East and West: A Confucian Perspective on Human Rights' *Harvard International Review*, Vol.20, 3 (1998), 44, 49.

¹³⁹ Mencius, Book I, A7.

¹⁴⁰ Daniel K. Gardner, Chapter 3 Government in Confucian teachings in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 33, 40.

The obligation of rulers to care for the well-being of the people in Confucianism can be seen as an important feature of the Confucian view of human rights. It is argued that the commitment to disadvantaged groups is philosophically part of a social democratic theory that emphasises social and economic rights.¹⁴¹ While, Confucian ideas that ‘benevolent people tend to love others’ are heavily reflected in Confucian virtue, which has become a Confucian principle of virtue.¹⁴² In contrast to Western liberal societies consisting of abstract selves, where each individual is a free rational and autonomous chooser who is not interested in other people’s lifestyles and does not make decisions for others, and where the government does not take a paternalistic stance towards its citizens.¹⁴³ At the Confucian level of social organisation and civic governance, it is difficult for a ruler to be a credible ruler for all if it is likely to undermine the basic well-being of the people in terms of food, clothing and shelter, whether out of apathetic inaction or by accident.

In the same vein, Mencian Confucianism echoes that the primary obligation of government is to ensure people’s constant means of subsistence and basic material needs. Mencius is considered one of the greatest theorists of people-centred thinking, emphasising the ruler’s obligation to look after the welfare of the people as a means of ensuring a stable and prosperous state.¹⁴⁴ Mencius advocated benevolent governance, and the ruler of a benevolent government was considered to have a moral obligation to safeguard the material welfare of his people. Going further than the duty of benevolence, Mencius also believed that people could only enjoy life if they had enough basic supplies to meet their basic needs, so rulers should start by providing the people

¹⁴¹ Daniel A. Bell, Chapter 1 From Communism to Confucianism: Changing Discourses on China’s Political Future in *China’s New Confucianism: Politics and Everyday Life in a Changing Society* (Princeton University Press 2008) 16, 19.

¹⁴² Haiming Wen, Akina William K, ‘A Naturalist Version of Confucian Morality for Human Rights’ (2012) 22 *Asian Philosophy* 1, 2.

¹⁴³ Yong Li, ‘Liang, Tao, Ed., Virtues and Rights: On Confucianism and Human Rights from Cross-Cultural Perspectives: Beijing: Zhongguo Shehui Kexue Chubanshe, 2016, 350 Pages’ (2017) 16 *Dao* 457, 457.

¹⁴⁴ Joan Judge, The Concept of People’s Rights (Min Quan) in Late Qing in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 193, 194.

with means of subsistence so that they would have time to make good use of it.¹⁴⁵ As Mencius said,

‘The ordinary people will not have constant moral values without a constant means of livelihood. And when ordinary people lack a constant moral mind, they are vulnerable to self-abandonment, moral deviation and depravity. If they thus have been involved in a crime, to follow them up and have them punished, that is to entrap the people...Therefore, a benevolent wise ruler must regulate people’s livelihood and develop a welfare policy.’¹⁴⁶

The Well Field System was an important means deployed by Mencius to promote benevolent governance in China’s agricultural society. Mencius proposed the Well Field System, which included allowing productive use of land by individual families, and limiting farmers’ rights to the products of the land in order to ensure sufficient food for the non-farm members.¹⁴⁷ More specifically, there was state intervention to give non-farm members a certain share of the produce to ensure their basic means of subsistence.¹⁴⁸ This system established a fairly strict set of guidelines to determine the boundaries of land within the state, which is considered to ensure the basic material welfare of every member of the state.¹⁴⁹ Enabling people to earn a living is thus a concrete measure of benevolent government, making it possible for people to live in contentment and happiness. The means is widely regarded as the basis for the rapid economic development of China and the improvement in the material well-being of its people since then.¹⁵⁰

According to Mencius, first of all, he constantly underlined the necessity of providing food, shelter and means of livelihood for the people through dialogue or parables with

¹⁴⁵ Craig Williams, ‘International Human Rights and Confucianism’ (2006) 7 Asia-Pacific Journal on Human Rights and the Law 38, 51.

¹⁴⁶ Mencius - (I) The King of Liang; Translated from 《孟子·(一)梁惠王》.

¹⁴⁷ Daniel A. Bell, Confucian Constraints on Property Rights in *Confucianism for the Modern World* (Cambridge University Press 2003) 218, 225.

¹⁴⁸ Ibid, 234.

¹⁴⁹ Ibid, 225.

¹⁵⁰ Daniel A. Bell, Confucian Constraints on Property Rights in *Confucianism for the Modern World* (Cambridge University Press 2003) 218, 227.

the monarch. It is pointless to promote virtue if people worry about their next meal.¹⁵¹ Despite the government's responsibility to educate the people, it cannot carry out this task successfully if the people are severely deprived of the material needed to sustain their livelihoods.¹⁵² Beyond that, he also argued that a ruler who sought peace must at least make sure that the people were well-fed. When the people's livelihood and socioeconomic needs are guaranteed, the people will love the monarch, and the country will be prosperous and stable. If people are not well-fed, the government cannot ensure stability and peace. So, to speak, if the government deprives the people of their means of subsistence and fails to secure a material livelihood, it is possible to lead to internal disorder and fail to secure peace.

Based on the above description, what can be concluded is that in traditional Chinese political thinking, welfare was considered not only an obligation of the government but also a primary obligation.¹⁵³ The government provides a means of sustained and stable livelihood for the people through state intervention. And a stable livelihood will enable them to help each other in times of need.¹⁵⁴ Although Confucianism emphasises ensuring the material welfare of the people, some scholars argue that it does not mean becoming a babysitting government that takes care of every aspect of people's lives.¹⁵⁵ Next, the constant means of subsistence and welfare rights advocated by Mencius is not a right that can be claimed through legal institutions; it is about good governance and the measure or condition for achieving benevolent government. Given the Confucian view of human rights, some scholars interpreted that the worst thing a government can do to its people is to deprive them of their means of subsistence deliberately, for example, not feed them, not deal with the plague, and that governance would be the

¹⁵¹ Ibid, 224.

¹⁵² Joseph Chan, Chapter 10 Giving Priority to the Worst Off –A Confucian Perspective on Social Welfare in *Confucianism for the Modern World*. Bell D and others (Cambridge University Press 2003) 236, 245.

¹⁵³ Andrew J. Nathan, 4. *Sources of Chinese Rights Thinking* in Human Rights in Contemporary China (Columbia University Press 1986) Edwards RR, Henkin L and Nathan AJ, 125, 153-154.

¹⁵⁴ Joseph Chan, Chapter 10 Giving Priority to the Worst Off –A Confucian Perspective on Social Welfare in *Confucianism for the Modern World*. Bell D and others (Cambridge University Press 2003) 236, 237.

¹⁵⁵ Ibid.

worst violation of 'human rights' in Confucianism.¹⁵⁶ In turn, people who have confidence in governors believe that they will endure all kinds of hardships to put their welfare ahead of everything else.¹⁵⁷

Meanwhile, Mencius' emphasis on benevolence and welfare has been questioned, with some arguing that it was motivated solely by political pragmatism. In the theory of benevolent government, Mencius has stated that if a ruler well maintains the material welfare of the people, he will gain considerable loyalty from the people and thus generate a unified military force.¹⁵⁸ Therefore, scholars have debated with different views on the aim behind the theory of benevolent government advocated by Mencius, as to whether it was about kingship or morality. People who do not have material welfare to claim are treated as resources of the state; as long as the ruler meets the basic material needs of the people, the ruler thus wins people's trust and loyalty and maintains political stability and military sufficiency.¹⁵⁹

Nevertheless, some scholars have argued that it is an entirely different picture from the perspective of moral equality and human dignity. According to Confucianism, the means of subsistence and welfare were not primarily political in nature for the purpose of domination but essential to enable people to live a dignified and decent life and thus maintain morality. This life served as the socioeconomic basis for producing the fruits of domination.¹⁶⁰ Mencius' view was oriented towards the people, while kingship was only the result of going with the flow. It is believed that the proper exercise of the king's power would gain the trust of the people, while abuse of the king's power could expose him to the consequences of being overthrown.¹⁶¹

¹⁵⁶ Daniel Bell, Just War and Confucianism: Implications for the Contemporary World in *Beyond Liberal Democracy: Political Thinking for an East Asian Context* (Princeton University Press 2006) 23, 46.

¹⁵⁷ Daniel K. Gardner, Chapter 3 Government in Confucian teachings in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 33, 36.

¹⁵⁸ Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 Critical Review of International Social and Political Philosophy 101, 118.

¹⁵⁹ Ibid, 116.

¹⁶⁰ Sungmoom Kim, 'Confucianism, Moral Equality, and Human Rights: A Mencian Perspective: Confucianism, Moral Equality, and Human Rights' (2015) 74 American Journal of Economics and Sociology 149, 165.

¹⁶¹ William Theodore de Bary, Introduction in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 1, 8.

3.4. Confucianism on HRCC

China claims that human rights are limited by historical, social, economic and cultural conditions and are a process of historical development. In other words, the HRCC human rights approach is at least partially influenced by historical and cultural factors. Considering the historical and cultural factors of human rights in China, Confucianism, as the main traditional philosophy influencing Chinese culture, has had an impact on the way human rights are viewed, which subsequently has partially influenced Human Rights with Chinese Characteristics (HRCC). This section examines in turn whether the four features of the HRCC have been influenced by Confucian culture.

3.4.1. Confucianism's unique approach to human rights

Confucianism has influenced China's unique understanding and practice of human rights thus forming this HRCC feature of China's own human rights path. The White Paper on Human Rights in China states that 'human rights, as a process of historical development, are influenced and constrained by the history, culture and socio-economy of the country in which they are located'.¹⁶² In other words, China asserts that human rights are culture-specific. At the 1993 Vienna Conference, the representative of China went even further by explicitly stating that cultural characteristics based on different historical traditions and cultural backgrounds led to different understandings and practices of the human rights approach.¹⁶³ And under the influence of Confucianism, China's way of realising human rights has its own path. Unlike the Western mechanism of asserting rights, Confucianism places emphasis on virtues and duties, which leads to a harmonious social atmosphere and thus creates a social environment in which human rights are indirectly realised. Indeed, China is considered to be characterised by a culture that relies less on

¹⁶² The State Council Information Office of the PRC. "Human Rights in China", 1991. <<https://en.humanrights.cn/1991/11/30/800fc09d948848069d95f86433700d6d.html>> accessed 18 December 2024.

¹⁶³ Statement by Mr. Liu Huaqiu, at the World Conference on Human Rights at Vienna, 15 June 1993, see 'Selected Documents on Human Rights: Chinese and Asian Perspectives' (2002) 1 Chinese Journal of International Law 729, 737; see also Liu Huaqiu, 'Vienna Conference Statement (1993)', *The Chinese Human Rights Reader* (Routledge 2001).

rights than some countries.¹⁶⁴ This characteristic can be said to coincide with Confucianism's emphasis on the fulfilment of obligations rather than claims of rights. Despite the flaws of this traditional thinking as compared to the modern system, Confucianism does influence the unique understanding and practice of human rights in China, in terms of the social reality that China relies less on the assertion of rights than some countries, both at the judicial level and in terms of the psychology of the population.

Confucianism's unique perspective on human beings is reflected in the Chinese approach to human rights. The Universal Declaration of Human Rights states that all human beings are born equal in dignity and rights. Unlike the Universal Declaration of Human Rights, Confucianism views human beings as 'by nature close together, through practice set apart.'¹⁶⁵ Confucianism reflects a reality that recognises both the equality and the differences between human beings. It acknowledges commonalities but accepts differences. This unique perspective of Confucianism is well reflected in the emphasis on China's own path to human rights in the Chinese characteristics of human rights. The HRCC contains the benevolence and sense of humanity in Confucianism, and there is an intuitive belief in the equality of human beings, so it recognises the universal belief in human rights. However, the HRCC insists that China has its own path to human rights, just as Confucianism also recognises the existence of differences in the continuous development of human social activities. This corresponds to the HRCC, in which China recognises universality while emphasising its own path to human rights.

HRCC emphasises that China's own path to human rights cannot be separated from Confucianism. On the one hand, when modern China seeks to maintain its distinctive Chinese identity, it necessarily seeks out Chinese cultural traditions. Paltiel argues that when two conflicting values exist, in order to become full participants in modernisation,

¹⁶⁴ Alison W. Corner, *Confucianism and Due Process in Contemporary Chinese Political Discourse in Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming, 179, 179.

¹⁶⁵ *Analects*, 17.2. Translated from '性相近, 习相远'. Also see Bloom I, *Fundamental Intuitions and Consensus Statements: Mencius Confucianism and Human Rights in Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 94, 96.

rather than merely recipients of modern applications, the Chinese must find ways to reaffirm their own identity by linking current advanced ideas with China's distinctive past.

¹⁶⁶ In this sense, this is consistent with China's changing role in the international human rights community in proposing to take its own human rights path. In the conflict between Confucianism and Western liberalism, China accepts the universality of liberal human rights but also emphasises the cultural relativism that distinguishes its identity. Under a worldview in which universal human rights have become a prevailing and dominant ideology, China's engagement with human rights has inevitably triggered a reflective incorporation of traditional Chinese philosophy. The Chinese cultural tradition represented by Confucianism is China's philosophical endorsement in the international human rights system.

On the other hand, Confucianism based on virtues and duties is easy to unite the minds of the people to the line of the leaders. As obtained in the previous analyses of Confucianism, Confucianism emphasises personal virtues and obligations. From the perspective of duty, Confucianism can easily mould the common values of the society so that the people will support the path chosen by the government, regardless of whether it is political, economic or human rights. Singapore, another East Asian country that has been influenced by Confucianism, still actively supports paternalistic government and pursues a normative agenda emphasised by its leaders. The fact that Singapore has taken the lead in promoting Asian values also illustrates the fact that it is easy to form a unifying ideology under the influence of Confucianism.¹⁶⁷ When the distinctive 'rights' paradigm of Confucianism, with its emphasis on duties rather than rights claims, penetrates Chinese moral and political discourse, it is easier to develop a unifying ideology that shapes common values about human rights based on Chinese society.

3.4.2. Non-interference in Confucianism

¹⁶⁶ Jeremy Paltiel, *Confucianism Contested: Human Rights and the Chinese Tradition in Contemporary Chinese Political Discourse* in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming, 270, 274.

¹⁶⁷ Randall Peerenboom, *Confucian Harmony and Freedom of Thought: The Right to Think Versus Right Thinking* in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming, 234, 235.

The Confucian logic of benevolent rule does not support the establishment of the principle of non-intervention. Non-intervention is the position of the nationalist, emphasising the primacy of domestic jurisdiction. From the perspective of the nationalist advocate of non-intervention, no matter what a government does to its citizens, even if it violates individual rights, other governments have no right to intervene as long as the act takes place within the territorial boundaries of a state.¹⁶⁸ It sounds horrifying, but Confucianism does not need such a principle of confrontation at all. Confucianism contains a deep-rooted concept of benevolent government. According to the ground, the primary duty of the government is to maintain the well-being and interests of its people, and the government has the nature of being like a parent to the people. The existence of the government in the philosophy of Confucianism is entirely for the welfare of the people, and there is no need at all for such confrontation between the citizens and the government in defence of their own interests. Therefore, according to the logic of Confucianism, the idea of protecting the rights of the individual against infringement by the government does not arise, because the Confucian philosophy thinks about the relationship between the citizen and the government from a completely different dimension. Confucianism does not support the creation of principles like non-interference.

However, Confucianism is not unrelated to the principle of non-intervention advocated by HRCC. Reverse deduction from Confucianism's concept of pursuing harmony shows that Confucianism is against intervention. Confucius himself lived in the Zhou Dynasty, which was full of wars and turmoil. Therefore, Confucius' own philosophy rejected the idea of unifying and stabilising the country through disharmonious means such as military means or conflictual intervention, and instead advocated the establishment of a peaceful, harmonious and orderly society by means of giving benefits to the people and obtaining their endorsement. Confucianism would not have such a confrontational Western rights tradition, and this is not what Confucianism favours.

¹⁶⁸ Anthony D'Amato, 'There Is No Norm of Intervention or Non-Intervention in International Law Comment' (2001) 7 *International Legal Theory* 33, 35.

Although Confucianism does not directly contribute to HRCC's non-intervention principle, the non-intervention pursued by HRCC today is also indirectly justified by traditional Chinese thought. In ancient China, Chinese cultural traditions have always emphasised harmony within the family and the complexity of family matters, making it difficult for even impartial judges to adjudicate what is right and wrong within the family. The pursuit of harmony within the family relies on the morality and wisdom of the family members rather than on the intervention of outsiders or the judge's evaluation. In families, moralising is used more often to mitigate and solve problems than external judgement. Similarly, in Chinese culture, where the concept of family and state is blurred, the state is regarded as an extended family; or in other words, the state, as a family in a higher sense,¹⁶⁹ naturally rejects outside interference. Similar to the Confucian concept of the family that emphasises the distinction between inside and outside the family in Confucian society, Confucianism respects each other's political systems and cultural traditions at the state level, and does not easily intervene in the internal affairs of other states.

Therefore, despite the historical and cultural differences between Confucianism and the principle of non-intervention in modern international law, there are still some connections. Firstly, the diplomatic style of Confucianism, which emphasises harmony and morality, i.e., the role of virtue as a role model rather than intervention; and, secondly, the concept of internal and external separation in Confucianism, which advocates adherence to external boundaries at the level of the family and society and even at the level of the State. These two aspects reflect the non-interventionist character of Confucianism, which is somehow compatible with the principle of non-intervention in modern international law in terms of its practical effects.

3.4.3. Confucianism on Priority Economic Development

In Confucian societies, the promotion of economic development is necessary to achieve social harmony and ensure virtue in governance. In Confucian political

¹⁶⁹ Deyong Shen, 'Chinese Judicial Culture: From Tradition to Modernity Speech' (2011) 25 *BYU Journal of Public Law* 131, 141.

thinking, a central creed is '*min sheng*' (the people's livelihood). Good governance begins with ensuring that people's basic needs are met. Mencius famously argued that 'Only when people have a constant livelihood can they have a constant heart',¹⁷⁰ suggesting that economic stability is a prerequisite for moral and political order. Mencius also said that 'When the granaries are full, they will know propriety and moderation; when clothing and food are adequate, they will know honour and shame.'¹⁷¹ While Confucianism is not utilitarian in the modern economic sense, it views people's welfare—in terms of food, housing, employment, and security—as a moral obligation of the ruler. A government that ignores these needs loses its legitimacy. Bell argues that the functional equivalence of social and economic rights embodied in Confucianism suggests that the Western liberal tradition is probably not the only moral basis for the realisation of human rights values and practices.¹⁷² Bell's argument corroborates that Confucian governments view the meeting of people's needs as the moral basis of government legitimacy. While Confucian philosophical thought differs in its approach from the terminological expression of human social and economic rights, it pursues goals consistent with social and economic rights in its outcomes.

Welfare-based obligations of government are a fundamental part of Confucianism. This was particularly manifested in the HRCC in which the Chinese government places a high importance on the economic life and material foundation of the people. Confucianism, represented by Mencius, is considered to have a strong sense of public obligation and community orientation. According to Mencius' theory, rulers have an absolutely abiding responsibility to ensure that their people enjoy welfare and livelihood, and this safeguarding of people's basic needs can be interpreted as the chief obligation of any ruler. In the view of all the classical Confucian masters, from Confucius to Xunzi, the primary duty of government is to provide welfare benefits for its people and to advance

¹⁷⁰ Mencius, *The Works of Mencius*, translated by James Legge (Dover Publications 2003) bk 3, pt 1, Ch 4.

¹⁷¹ Mencius, *The Works of Mencius*, translated by James Legge (Dover Publications 2003) bk 6, pt 1, Ch 7.

¹⁷² Daniel Bell, Human Rights and "Value in Asia": Reflections on East-West Dialogues in *Beyond Liberal Democracy: Political Thinking for an East Asian Context* (Princeton University Press 2006) 52, 65.

their material well-being.¹⁷³ Modern Chinese scholars have continued to let Westerners know that economic welfare in China is not a modern concept, but a Confucian tradition that originates from Confucianism 2500 years ago.¹⁷⁴ The rapid industrialisation and modernity of East Asian countries are also attributed to the rulers being positively influenced by Confucianism.¹⁷⁵ There are even scholars who argue that Confucianism seems to explain the economic success of Confucian states that liberalism cannot predict by providing a new theoretical socio-economic framework.¹⁷⁶ In general, Confucianism has long recognised the pragmatic tradition of providing material and social welfare, and this tradition has influenced the Chinese government's perception of rights, which places a high value on the provision of welfare to the people as a governmental duty.

Confucian writing reflects the importance of economic and social guarantees, which is also reflected in the concern for the well-being of the needy and the disadvantaged in the community. It has been argued that even though the government does all sorts of things properly to provide for people's prosperity, there will always be people who cannot earn a living and have no family to rely on.¹⁷⁷ Confucian writings embody a strong commitment to the common welfare as part of the social ideal from a humanitarian perspective.

‘When the Great Way prevailed in the world, all mankind worked for the common good all old people live the natural length of their lives; all young people grow up in a proper way; all widows and widowers, dead orphans and childless

¹⁷³ Joseph Chan, Chapter 10 Giving Priority to the Worst Off –A Confucian Perspective on Social Welfare in *Confucianism for the Modern World*. Bell D and others (Cambridge University Press 2003) 236, 245.

¹⁷⁴ In the drafting process of the UDHR, this point is proposed by Chinese P.C. Chang to the early deliberations. See Welch Claude Emerson, ‘A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights; The Universal Declaration of Human Rights: Origins, Drafting and Intent Book Reviews’ (2002) 24 Human Rights Quarterly 287, 288; See also Craig Williams, ‘International Human Rights and Confucianism’ (2006) 7 Asia-Pacific Journal on Human Rights and the Law 38, 43.

¹⁷⁵ Daniel Bell and others, Introduction the Contemporary Relevance of Confucianism in *Confucianism for the Modern World* (Cambridge University Press 2003) 1, 3.

¹⁷⁶ Ibid, 2.

¹⁷⁷ Joseph Chan, Chapter 10 Giving Priority to the Worst Off –A Confucian Perspective on Social Welfare in *Confucianism for the Modern World*. Bell D and others (Cambridge University Press 2003) 236, 238-240.

people, the crippled and the sick are well cared for and subsidised; everyone has a job and a place to live of its own.¹⁷⁸

According to the Confucian writing, the Confucian ideal society is one that takes into account the well-being of others, the welfare of the community and the common good of the world. As Yu argued, Mencius implicitly constructs a systematic picture to realize the common welfare even for the 'worst off'.¹⁷⁹

The maintenance of the material welfare of the people in HRCC allows for explicit correspondence in Confucian writings. Confucianism emphasises the material welfare of the people. Material welfare is the most fundamental need of human nature. It is believed that all living things pursue to enhance their existence, avoiding harm to their lives through seeking material gain.¹⁸⁰ There is a Chinese idiom that says, 'Food is the God of the people'¹⁸¹. It is a metaphor for the fact that food is the most important thing for people, and it reflects the fact that people rely on food as a fundamental part of their survival. Confucian scholars have stressed the importance of people's constant means of subsistence and basic material needs. For example, Analects stated that 'Confucius went to Wei, and Ranyou drove the carriage. Confucius said, "What a large population!" Ranyou asked, "When there are so numerous people, what more can the ruler do for them?" Confucius said, "Make the people prosperous."' ¹⁸² According to the Analects, the obligation to guarantee people's basic means of subsistence takes precedence. Some scholars argued that the Confucian value of overriding material well-being was particularly suited to the agricultural society of the time.¹⁸³

¹⁷⁸ Chapter 9. in the Book of Rites, "Great Harmony and fairly Well-off."; Translated from 《礼记·礼运》节选自“大同与小篇”。

¹⁷⁹ Anthony C. Yu, 'Enduring Change: Confucianism and the Prospect of Human Rights' [2002] Human Rights Review 35, 86.

¹⁸⁰ Yu Feng, The Yellow Emperor Tradition as Compared to Confucianism in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 154, 156.

¹⁸¹ It is an idiom derived from a historical story, the first allusion to the idiom is from Si Ma Qian's 'The Records of the Grand Historian' (西汉·司马迁《史记·酈生陆贾列传》)。

¹⁸² Analects, 13.9; Translated from 子适卫, 冉有仆。子曰:“庶矣哉!”冉有曰:“既庶矣,又何加焉?”曰:“富之。”

¹⁸³ Daniel Bell, Confucian Constraints on Property Rights in *Confucianism for the Modern World* (Cambridge University Press 2003) 218, 234.

Even though today China has moved towards an industrial modernised society rather than being exclusively agricultural, the Confucian-influenced perception that economic safeguards are an important part of human rights carries over. Confucianism recognises that to lead a good human life, a person must have a share of social wealth, and that basic material things are particularly reflected in food, clothing and shelter, and such claim to wealth is known today as social and economic human rights.¹⁸⁴ Certainly, it is believed that the primary task of government, from a Confucian perspective, is to ensure the basic means of subsistence for its people, and this obligation takes precedence over civil and political rights.¹⁸⁵ In some ways, civil and political rights are seen as competing political interests that are less important than the obligation to guarantee the basic material benefits of the people.¹⁸⁶

Contemporary academics and scholars do not dismiss the value of Confucianism's view that the ruler has an overriding obligation to secure the basic means of subsistence and welfare. Some scholars explicitly agree,¹⁸⁷ although this value is not as prominent in the Western political tradition.¹⁸⁸ In Nathan's works, the Confucian writing reflects the idea that the welfare right is more important and pragmatically carries the vitality and loyalty of the people, a similar instrumentalist view that explains well why the right to subsistence and welfare is superior to the civil and political rights, although both rights can be deemed useful ways of generating public support.¹⁸⁹ It has been argued that as long as governments do their best to respect basic humanity, such as keeping people

¹⁸⁴ Wejen Chang, *The Confucian Theories of Norms and Human Rights in Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 117, 132.

¹⁸⁵ Daniel Bell, *Confucian Constraints on Property Rights in Confucianism for the Modern World* (Cambridge University Press 2003) 218, 234.

¹⁸⁶ Daniel Bell & Hahm Chaibong, *Introduction the Contemporary Relevance of Confucianism in Confucianism for the Modern World* (Cambridge University Press 2003) 1, 16.

¹⁸⁷ Haiming Wen and William K. Akina, 'Human Rights Ideology as Endemic in Chinese Philosophy: Classical Confucian and Mohist Perspectives' (2012) 22 *Asian Philosophy* 387, 404.

See also Sungmoon Kim, 'Confucianism, Moral Equality, and Human Rights: A Mencian Perspective: Confucianism, Moral Equality, and Human Rights' (2015) 74 *American Journal of Economics and Sociology*; Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 *Critical Review of International Social and Political Philosophy*; Daniel Bell, *Human Rights and "Value in Asia": Reflections on East-West Dialogues in Beyond Liberal Democracy: Political Thinking for an East Asian Context* (Princeton University Press 2006) 52, 64.

¹⁸⁸ For example, with Rawls's "lexical priority" for the first principle of justice that secures civil and political rights. For Confucianism, economic rights come first.

¹⁸⁹ Andrew J. Nathan, *4. Sources of Chinese Rights Thinking in Human Rights in Contemporary China* (Columbia University Press 1986) Edwards RR, Henkin L and Nathan AJ, 125, 154.

safe from hunger, torture or genocide, then it is the practice rather than the theory of human rights that matters.¹⁹⁰ Although Mencius' theory of benevolent government has been described as an instrumentalist in the context of traditional Chinese feudalism, the socioeconomic rights and the right to subsistence advocated by Mencius are widely agreed by scholars to be the most important human rights in Confucianism.

Confucianism's emphasis on people's livelihood and the government's welfare-based obligations has had a profound impact on HRCC. Even the East Asian countries influenced by Confucianism still use the socioeconomic development contained in the Confucian tradition as a spiritual resource for social identity.¹⁹¹ In particular, the Confucian featured tradition on material welfare is explored and applied to economic development, state-building and social stability.¹⁹² It can be seen in the context of the Chinese government's longstanding and open attitude to social and economic human rights and its efforts to improve the material conditions of its people in the twentieth century.¹⁹³ Bell suggests that the concern in Confucianism influenced East Asian legislators to be generally more intellectually and emotionally dedicated to equal forms of economic development to ensure one's fundamental means of subsistence.¹⁹⁴ Bell also believes that because of the overriding value of material welfare over all other rights, East Asian governments are concerned with the right to subsistence over civil and political rights.¹⁹⁵ It can be argued that this Confucian emphasis on socio-economic and subsistence rights has become an important value in HRCC.

¹⁹⁰ Daniel Bell, Chapter 2 War, Peace, and China's Soft Power in *China's New Confucianism: Politics and Everyday Life in a Changing Society* (Princeton University Press 2008) 34, 50-51.

¹⁹¹ Weiming Tu, 'A Confucian Perspective on Human Rights' in Wong Sin Kiong, *Confucianism, Chinese History and Society* (Co-Published with Department of Chinese Studies, National University of Singapore 2012), 18.

¹⁹² Weiming Tu, 'Joining East and West: A Confucian Perspective on Human Rights' *Harvard International Review*, Vol.20, 3 (1998), 44, 48.

¹⁹³ Summer B. Twiss, *A Constructive Framework for Discussing Confucianism and Human Rights in Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 27, 42.

¹⁹⁴ In the four "Confucian tigers" (Korea, Taiwan, Hongkong and Singapore), land has been expropriated and redistributed, thus contributing to the egalitarian form of subsequent economic development to ensure that the majority of civilians have access to publicly provided shelters. See Daniel Bell, *Culture and Egalitarian Development in Beyond Liberal Democracy: Political Thinking for an East Asian Context* (Princeton University Press 2006) 231, 242-243.

¹⁹⁵ Daniel Bell, Human Rights and "Values in Asia": Reflections on East-West Dialogues in *Beyond Liberal Democracy: Political Thinking for an East Asian Context* (Princeton University Press 2006) 52, 55.

3.4.4. Confucianism on collective interests

In Confucianism, human worth is closely related to the role of the individual in society. Confucianism is inherently conducted in the context of the community. People recognize that the Confucian social order is based on the theory of the purpose of the group.¹⁹⁶ It has been argued by Cheng that the virtues of Confucianism are grounded in the context of community relationships, where traditionally, virtue requires community roles to be realised and where technically isolated virtues do not generate associated rights.¹⁹⁷ However, such perceptions are considered to have no connection with 'specific roles in the social hierarchy by religion or aristocracy', since strictly speaking, they do not derive from 'duties and obligations to society' either.¹⁹⁸ According to Confucianism, an individual draws his identity and meaning of existence from his community membership.¹⁹⁹ In other words, there is a social structure based on different social roles, from marriage to family, to community.

The collective is dominant in Confucianism, which is manifested first and foremost in the family. Some scholars argue that China has inherited a tradition of collectivism practised for centuries under the traditional Confucian system, and that the family in particular is an area where collective interests are particularly dominant.²⁰⁰ The family, as the autonomous unit of Confucian society, usually has the final say, especially in major matters.²⁰¹ For example, family members should agree before making clinical decisions, unlike in Western societies where competent patients often have the final say on medical decisions.²⁰² For another instance, within the family, family elders choose partners for

¹⁹⁶ Anthony C. Yu, 'Enduring Change: Confucianism and the Prospect of Human Rights' [2002] *Human Rights Review* 35, 86.

¹⁹⁷ Chungying Cheng, (1989), "Chinese Metaphysics as Non-metaphysics: Confucian and Daoist Insights into the Nature of Reality," in *Understanding the Chinese Mind: The Philosophical Roots*, ed. Robert E. Allinson, Hong Kong: Oxford University Press. 167–208.

¹⁹⁸ Weiming Tu, 'Joining East and West: A Confucian Perspective on Human Rights' *Harvard International Review*, Vol.20, 3 (1998), 44, 49.

¹⁹⁹ Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 *Critical Review of International Social and Political Philosophy* 101, 107.

²⁰⁰ *Ibid.*

²⁰¹ Ruiping Fan, 'Self-Determination Versus Family-Determination: Two Incommensurable Principles of Autonomy,' (1997) *Bioethics*, Vol. 11, No. 3/4, 317.

²⁰² *Ibid.*

their offspring based on the long-term interests of the family.²⁰³ To some extent, the flourishing and suffering of the family as a whole makes the individual's interests inseparable from the family, serving within the framework of a broad collective community.²⁰⁴

Further, with the family as the unit, the rising areas where collective interests are particularly dominant are the community and society. It is believed that the family is the basic unit and microcosm of the nation, and the nation is an extension of the family.²⁰⁵ Melden also sees families as a way to explore the importance of community.²⁰⁶ The social hierarchy is more like the organic union of families, the elements that make up a whole society. In other words, the society under the Confucian ideal is an extended family. It is therefore not difficult to understand why some scholars argue that there is a strong paternalism at the social level under Confucianism.²⁰⁷ To some extent, the Chinese cultural tradition has not been clear about the boundaries between the individual, family and the state, and then the concepts of family and state are blurred. In Chinese, *Guo Jia* (country) is a word that becomes a combination of *Guo* (country) and *Jia* (family).²⁰⁸ In Zhao's remark that 'the individual is never above society, and the values of the individual are always in line with the responsibilities of society'.²⁰⁹ However, there is another voice not in this line. It has been suggested that in a way human rights and Confucianism share common ground.²¹⁰ As a human being "was born into a family and gradually expanded his connections from family to friends, colleagues and strangers", Melden argued that human beings are interconnected and that each moral subject needs the support of the other and the recognition of each other as moral subjects.²¹¹

²⁰³ Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 Critical Review of International Social and Political Philosophy 101, 107.

²⁰⁴ Ibid.

²⁰⁵ Zongli Tang, 'Confucianism, Chinese Culture, and Reproductive Behavior' (1995) 16 Population and Environment 269, 281.

²⁰⁶ Yong Li, 'Liang, Tao, Ed., Virtues and Rights: On Confucianism and Human Rights from Cross-Cultural Perspectives, Beijing: China Social Sciences Press, 2016, 350 Pages' (2017) 16 Dao 457, 459.

²⁰⁷ Ibid, 458.

²⁰⁸ Zongli Tang, 'Confucianism, Chinese Culture, and Reproductive Behavior' (1995) 16 Population and Environment 269, 281.

²⁰⁹ Anthony C. Yu, 'Enduring Change: Confucianism and the Prospect of Human Rights' [2002] Human Rights Review 35, 91.

²¹⁰ Yong Li, 'Liang, Tao, Ed., Virtues and Rights: On Confucianism and Human Rights from Cross-Cultural Perspectives, Beijing: China Social Sciences Press, 2016, 350 Pages' (2017) 16 Dao 457, 459.

²¹¹ Ibid.

Confucianism advocates the prioritisation of others because it sees the individual as deeply integrated into society. The Confucian philosophy expresses that individual fulfilment is subject to collective fulfilment. The prosperity of the collective will benefit the individual. 'In order to build ourselves up, we must help others to build themselves up; in order to expand ourselves, we must help others to expand themselves.'²¹² Robert Weatherley believes Confucian theory gives priority to collective interests because Confucianism sees the individual as a social member who relies on the community for his personal needs and interests.²¹³ It has also been argued that this consideration of community good is not altruism based on one's own spare or extra resources, but participation in others' things in the sense of empathy.²¹⁴ According to Confucianism, helping others is helping oneself, and the interests of others are beneficial to one's own interests. This starting point, which emphasises that individual interests are essentially linked to collective interests, can be said to echo HRCC's original intention of valuing collective interests.

HRCC's emphasis on collective good over individual interest is consistent with traditional Confucian virtues and obligations. Mencius believed that the individual is not superior to social existence, that the individual, society and politics are interrelated, and that the 'matrix of relationships' establishes the functioning of society.²¹⁵ Gong concluded from Confucian social thinking and practice that the individual is insignificant without a community, and that the meaning of an individual's life is defined by his peers and community.²¹⁶ It has therefore been argued that if the individual nature and soul are lacking, then the person in Confucianism is ultimately a shared commons, usually a

²¹² Analects, 6.30; Translated from "己欲立而立人，己欲达而达人".

²¹³ Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 Critical Review of International Social and Political Philosophy 101, 107.

²¹⁴ Weiming Tu, 'A Confucian Perspective on Human Rights' in Wong Sin Kiong, *Confucianism, Chinese History and Society* (Co-Published with Department of Chinese Studies, National University of Singapore 2012) 1, 15.

²¹⁵ Yong Li, 'Liang, Tao, Ed., Virtues and Rights: On Confucianism and Human Rights from Cross-Cultural Perspectives, Beijing: China Social Sciences Press, 2016, 350 Pages' (2017) 16 Dao 457, 458.

²¹⁶ Wenxiang Gong, 'The Legacy of Confucian Culture in Maoist China' (1989) 26 The Social Science Journal 363, 365.

collection of family experiences.²¹⁷ Through the discipline and guidance of Confucianism, the experiences carried by one's role make one constantly refined and meaningful.²¹⁸ In the Confucian perspective, the individual is an individual whose existence is contextual-based, meaning that everyone is seen as part of the different social roles that make up the whole society.

Confucianism's admiration for selflessness provides a philosophical social basis for the individual interest to give way to the collective interest in HRCC. In Confucianism, the ideal society admires selflessness and compromise. Confucianism's moral-based philosophy is similar to selfless individual behaviour. It has been mentioned in classical Confucian writing *Analects* that 'restraining one's selfish desires so that one's words and actions are in accordance with propriety is a virtue'.²¹⁹ According to Confucianism, selflessness is an honourable and noble form of virtue. A hero or an admired person in the eyes of Confucianism is not a person who is admired for his personal excellence, but a person who nobly gives up his personal interests for the greater good of society.²²⁰ Although the sense of self in Confucianism is considered incompatible with the human right to individual autonomy,²²¹ it is worthwhile to make clear that the selflessness promoted by Confucianism is not in complete contradiction with the individual's self. Weatherley argued that the sense of self is embedded in self-cultivation; specifically speaking, the development of the individual is promoted and encouraged within the framework of personal cultivation.²²² Moreover, it is believed that the sense of self is considered to be rooted in the interrelationship between the self and the collective, and in the harmony between human and nature.²²³ It can therefore be seen that

²¹⁷ David L. Hall & Roger T. Ames, Chapter 5 A Pragmatist Understanding of Confucian Democracy in *Confucianism for the Modern World*, Bell D and others, (Cambridge University Press 2003) 124, 152.

²¹⁸ Ibid.

²¹⁹ *Analects*, 12.1; Translated from “克己复礼为仁”.

²²⁰ Chung-ying Cheng, Transforming Confucian Virtues into Human Rights in in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming, 142, 145.

²²¹ Craig Williams, 'International Human Rights and Confucianism' (2006) 7 *Asia-Pacific Journal on Human Rights and the Law* 38, 38.

²²² Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 *Critical Review of International Social and Political Philosophy* 101, 110.

²²³ Weiming Tu, 'Joining East and West: A Confucian Perspective on Human Rights' (1998) *Harvard International Review*, 44, 48.

Confucianism does not deny self-consciousness, but promotes a selfless realm that encourages the prioritisation of the collective good.

Many voices question whether Confucianism is right to place so much emphasis on collective good and social order, especially in comparison to the social civilisation of ancient Greco-Roman social civilisation.²²⁴ Some have questioned the possibility that a strong emphasis on collective good might undermine people's critical thinking about the reality of their circumstances.²²⁵ There is a critical view that since conflicts of interest inevitably arise in human coexistence, traditional Confucianism leads to an overly moral approach compared to the Western approach of legally and realistically defending individual interests through litigation.²²⁶ Samuel Huntington pointedly expresses the Confucian culture's emphasis on the group over the individual, duties over rights, and authority over freedom, criticising the value as not beneficial to democracy.²²⁷ Besides, there is also an attempt to define this difference in terms of Asian values. It is argued that Asian people come from a tradition of community interest over individuality and therefore have distinctive values that are incompatible with individual autonomy.²²⁸

Yet some scholars do not seem to agree with the above lines. It has been argued that Confucian culture's perceived preference for fulfilling responsibilities, harmony, and networks between people and their families and societies does not necessarily pose a threat to the sense of rights.²²⁹ In Confucian traditions, the emphasis is on virtue and self-cultivation, socioeconomic welfare, and family and social order. It is also argued that

²²⁴ Albert H. Y. Chen, Chapter 11 Mediation, Litigation, and Justice—Confucian Reflections in a Modern Liberal Society in *Confucianism for the Modern World*, Bell D and others, (Cambridge University Press 2003) 257, 273.

²²⁵ Daniel Bell, Part 3 Education Chapter 7 A Critique of Critical Thinking in *China's New Confucianism: Politics and Everyday Life in a Changing Society* (Princeton University Press 2008) 149, 167.

²²⁶ Albert H. Y. Chen, Chapter 11 Mediation, Litigation, and Justice—Confucian Reflections in a Modern liberal Society in *Confucianism for the Modern World* (Cambridge University Press 2003) Ed. Bell D and others, 257, 273.

²²⁷ Robert L Bartley and Institute of Southeast Asian Studies (eds), *American Democracy in Relation to Asia in Democracy & Capitalism: Asian and American Perspectives* (Institute of Southeast Asian Studies 1993) 27, 38.

²²⁸ Craig Williams, 'International Human Rights and Confucianism' (2006) 7 *Asia-Pacific Journal on Human Rights and the Law* 38, 38.

²²⁹ Weiming Tu, 'A Confucian Perspective on Human Rights' in Wong Sin Kiong, *Confucianism, Chinese History and Society* (Co-Published with Department of Chinese Studies, National University of Singapore 2012) 1, 6.

this notion of a focus on community, in a similar way to the equivalence of ‘fraternity’²³⁰, is exactly what is lacking in modern Western economic and social thought.²³¹ Moreover, Confucian collectivism embodies a spirit of self-transcendence in humanism that mirrors some of the views of world religions. In Huston Smith’s *The World’s Religions*, it stated that ‘in shifting the centre of one’s empathic concern from oneself to one’s family one transcends selfishness. The move from family to community transcends nepotism.’²³² It can be seen that Confucianism offers a different perspective on human self-development.

HRCC’s concern for the collective interest and all of humanity is reflected by the pursuit of collective good and social harmony contained in Confucianism. Harmony has always been the ideal that Confucianism seeks to achieve after the cultivation of morality.²³³ Harmony has been seen as an important element in the development of traditional Confucianism since its origin to date. Former Prime Minister Wen Jiabao once referred to harmony as a positive Chinese tradition from Confucianism to contemporary times.²³⁴ At the same time, Bell argues that in some ways, the call for harmony is an implicit recognition that society may not be so harmonious.²³⁵ But this is precisely the point at which Confucianism’s call for harmony still has value between people, between nations, and between people and nature. Confucianism proposes the idea of ‘harmony above all’ and develops the principle of harmonising interpersonal relations, protecting the natural environment and ecological balance.²³⁶ Thus, the pursuit of harmony was not only for the care of all groups within the ancient Confucian social collective, but also in

²³⁰ In the French Revolution, liberty, equality and fraternity were the three fundamental virtues.

²³¹ Weiming Tu, ‘A Confucian Perspective on Human Rights’ in Wong Sin Kiong, *Confucianism, Chinese History and Society* (Co-Published with Department of Chinese Studies, National University of Singapore 2012) 1, 7.

²³² Huston Smith, Confucianism in *The world’s religions: Our great wisdom traditions*. Perfect Bound (HarperCollins Publishers, 1986). 154, 182.

²³³ Daniel K. Gardner, Chapter 2 The Individual and Self-cultivation in the Teachings of Confucius in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 16, 18.

²³⁴ Daniel Bell, Chapter 1 From Communism to Confucianism: Changing Discourse on China’s Political Future in *China’s New Confucianism: Politics and Everyday Life in a Changing Society* (Princeton University Press 2008) 16, 23.

²³⁵ *Ibid*, 24.

²³⁶ William Theodore de Bary and Weiming Tu, Preface in *Confucianism and Human Rights* (1998) Columbia University Press New York 1, 8.

consideration of the survival and development of future generations of mankind. These concepts are constantly reproduced in the HRCC.

3.5. Conclusion

Inspired by cultural relativity, when we look at HRCC in the light of Confucianism, we find that Confucianism can philosophically explain the origin of values in HRCC. Confucianism not only influenced Chinese culture but also inspired and guided political and economic aspects and guided China's foreign human rights policy. Some selective inheritance of Confucian culture can be seen in China's foreign human rights policy today. Confucianism has influenced the unique Chinese understanding and practice of human rights. Although Confucianism did not directly contribute to the establishment of the principle of non-intervention, Confucianism has explained the three features of the HRCC: China's unique path to human rights, its focus on socio-economic rights, and its collective interests.

Confucianism, based on virtue and duty, operates within a non-liberal dominant ethical outlook that does not rely on the notion of human rights based on liberalism. Although Confucianism does not conceptualise human rights, its inclusion of the moral code and the notion of a dignified and equal human person proves that Confucianism is compatible with human rights. The way in which Confucianism contains the idea of human rights without conceptualising them is ultimately an inward-looking philosophy based on an emphasis on duty, which relies on the active fulfilment of duties through an emphasis on personal morality and virtue, and achieves mutual care and reciprocity between people, which in turn leads to the realisation of rights, rather than passive mutual constraints to achieve social harmony. Unlike the Western rights model, which advocates self-defence and confrontation with other relationships in society, Confucianism pursues humanism by inwardly restraining oneself and emphasising obligations. Therefore, the unique 'rights' mode of Confucianism that stresses morality and duty, the ruler's obligation to care for the people and their well-being, and the importance of the collective, which corresponds to HRCC's emphasis on China's own path to human rights, economic and social development rights and collective interests.

Chapter 4: Human Rights in Marxism

4.0. Introduction

In terms of cultural relativity, Confucianism is by no means the only culture behind human rights in China. Or rather, Confucianism absolutely dominated the philosophical foundations of China until the nineteenth century. However, since the late Qing Dynasty, China has undergone remarkable cultural and political changes. China's cultural relativism is no longer entirely equated with traditional culture represented by Confucianism, but it also includes Marxism, which has influenced China's political, economic, and social development. In the absence of this philosophical pillar of Marxism, a truly rational study of China's human rights policy is not even possible. Unless we understand how China's human rights policy is constructed under the guidance of Marxism, we will never be able to understand the structure of human rights with Chinese characteristics.

This chapter on Marxism will demonstrate that Marxism has influenced the Chinese idea of rights and provided a philosophical underpinning for human rights with Chinese characteristics (HRCC). This chapter will be elaborated on and discussed in two main parts. The first part is part 4.1, which focuses on the rights perspective under Marxism. When Marxism entered China, it filled the gap of the apparent lack of a rights tradition in Confucianism and influenced the concept of rights in China. 4.1 looks at the evolution of the rights view from Marx to Soviet Marxism to Chinese Marxism. The second main part consists of four sections, 4.2, 4.3, 4.4 and 4.5, which correspondingly explain how Marxism influenced the four features of HRCC. Marxism is an important philosophical pillar in the formation of HRCC, which is reflected in the fact that Marxism has influenced the four features of HRCC, namely China's own human rights path, the emphasis on non-interference in sovereignty, the prioritisation of the right to economic and social development, and the privileging of the collective interest.

4.1. Marxism on Rights

The perspective of rights under Marxism has influenced the perception of rights in China. Since the founding of the new China in 1949, China has been a socialist country, and Marxism became the orthodox view of rights in China, and its influence on the human rights discourse in China is an inevitable result. However, it needs to be clear that the development of Marxism has been a long and winding road. The development of Marxism has gone through three important stages: Marx's own conception of rights (1818-1883), Soviet Marxism (1917), and Chinese Marxism (1949). Although today's Marxism's view on rights goes beyond Marx's theories, the development of Marxism's view on rights is inspired and guided by and constructed on the basis of Marx's theories. Briefly, the development of Marxism on human rights thought is a construct based on traditional Marxism, so a transitional explanation of Marxism is necessary. This means that Chinese Marxism inherits Marxist philosophy on the basis of Marx's theories. In turn, Chinese Marxism enriches Marxism. This section therefore examines the Marxist ideas on rights and takes a comprehensive look at Marxism on rights through the lens of the evolution of Marx, Marxism of Marxist countries (Soviet Marxism) to Chinese Marxism.

4.1.1. Marx's biography, key writings

Karl Marx (1818-1883) was a German philosopher, economist, and socialist revolutionary who developed the communist theory, which is considered to have played an important role in the idea of social and economic liberation.¹ Marx is best known for his published works *the Communist Manifesto* (1848) and *Das Kapital* (1867), both of which were important contributors to the socialist and communist movements. The foremost aspect of Karl Marx's thought was his critique of capitalism. Throughout his life, Marx engaged in a wide variety of research involving the natural sciences, the social sciences and human history. All of these elements were absorbed into his critique in an attempt to expose how their potential was diminished by being driven into serving capital.² In the

¹ Michael Heinrich, Preface in *Karl Marx and the Birth of Modern Society: The Life of Marx and the Development of His Work* (NYU Press 2019) 9, 9.

² Arkayan Ganguly, 'The Last Years of Karl Marx, 1881–1883: An Intellectual Biography' (2021) 49 Critique 441, 450.

case of Marx's ideas, some see Marx only in the context of the 19th century, such as Sperber. Sperber suggested that based on Marx's own time, the 'capitalism' referred to in his writings is not the contemporary version of capitalism.³ However, there is more of a dialectical historical view of Marxism based on historical continuity; for example, Fuchs and Monticelli indicate that Marx's scope is not limited to 19th-century capitalism, but that they can be fully applied to the analysis of 21st-century capitalism.⁴ Although Marx belongs to the distant past, Marx's ideas are extremely relevant to today's world.⁵ Marx has even been called a far-sighted prophet because his analysis predicted consumerism and globalised capitalism over a hundred years later.⁶ And when the global economic crisis hit, it was argued that this confirmed Marx's judgement.⁷ Objectively speaking, Marx's philosophical ideas have had a lasting impact on contemporary political society and human life.

One of the foundational works of Marx is the *Communist Manifesto*, which was authored by Karl Marx and Friedrich Engels⁸. A key area discussed in *the Communist Manifesto* is the historical development of class struggle. Marx asserted that all hitherto existing societies have a history of class struggles, where there has been in constant opposition between oppressor and oppressed. This class opposition was found in the bourgeois era in a simplified split between the bourgeoisie (the capitalist class) and the proletariat (the working class).⁹ Although in some ways the rise of the bourgeoisie and the development of capitalism fundamentally shaped society,¹⁰ the active oppression of the proletariat by the bourgeoisie persisted, from the discovery of America to the East Indian and Chinese

³ Jonathan Sperber, Introduction in *Karl Marx: A Nineteenth-Century Life* (W W Norton & Company 2013) 1, 4.

⁴ Christian Fuchs, 'Reflections on Sven-Eric Liedman's Marx-Biography "A World to Win: The Life and Works of Karl Marx"' (2018) 16 tripleC: Communication, Capitalism & Critique. Open Access Journal for a Global Sustainable Information Society 619, 621.

⁵ Sven-Eric Liedman, *The Great Project in A World to Win: The Life and Works of Karl Marx* (Verso Books 2018) 1, 2.

⁶ Jonathan Sperber, Introduction in *Karl Marx: A Nineteenth-Century Life* (W W Norton & Company 2013) 1, 2.

⁷ Ibid.

⁸ Friedrich Engels, a German philosopher and social scientist. Like Marx, Engels was a prominent figure in the development of socialist and communist theory.

⁹ Karl Marx, Friedrich Engels, *Bourgeois and Proletarians in The Communist Manifesto*. First Avenue Classics. Minneapolis, MN: First Avenue Editions, a Division of Lerner Publishing Group, 2018. 7, 7.

¹⁰ Capitalism gave an unprecedented boost to industry, navigation, and commerce.

markets, from the colonisation of America to the trade of the colonies.¹¹ As Marx said, class antagonisms are never eliminated but only constantly replace the old with new classes, new oppressive conditions, and new forms of struggle.¹²

Moreover, in *the Communist Manifesto*, Marx expresses his vision of a communist society. Looking at the relationship between economic structure and productive social relations, capitalism transforms productive social relations through the pursuit of profit and wealth accumulation. The capitalist class in any society uses its power to maintain control over the means of production. In contrast, the working class is exploited and oppressed.¹³ According to Marx, this transformation of productive social relations consequently led to the exploitation of the proletariat, as their labour power was commodified, and their value was reduced to simply an exchangeable product.¹⁴ In Marx's perspective, social relations with exploitation and oppression have internal contradictions. As a result of long-term internal contradictions, the working class will revolt, and capitalism will eventually collapse.¹⁵ Thus, Marx's ultimate vision of society was a new classless society. As Marx argued, the only way to eliminate oppressive relations and establish a genuinely just society was through revolution, where the working class took control of the means of production and established a socialist or communist system.¹⁶

Another critical work of Marxism is Karl Marx's *Das Kapital*. This work explores the operation of capitalism and the exploitation of labour in greater depth, manifesting the unequal and risky nature of capitalist exploitation of labour. *Das Kapital* introduces the notion of surplus value, which refers to the difference between the value of the goods

¹¹ Karl Marx, Friedrich Engels, *Bourgeois and Proletarians in The Communist Manifesto*. First Avenue Classics. Minneapolis, MN: First Avenue Editions, a Division of Lerner Publishing Group, 2018. 7, 8.

¹² Ibid, 7.

¹³ Karl Marx, Friedrich Engels, *The Communist Manifesto*. London: Penguin, 1967. Part I.

¹⁴ Karl Marx, Friedrich Engels, *Bourgeois and Proletarians in The Communist Manifesto*. First Avenue Classics. Minneapolis, MN: First Avenue Editions, a Division of Lerner Publishing Group, 2018. 7, 13.

¹⁵ Marx saw the bourgeoisie, although a weapon to defeat feudalism, as a weapon of self-destruction, because the bourgeoisie spawned the people who would use these weapons - the modern working class - the proletarians.

¹⁶ Laurence Cox and Gunvald Nilsen, *We Make Our Own History: Marxism and Social Movements in the Twilight of Neoliberalism* (Pluto Press 2015) 1, 7.

or services produced by workers and the wages they receive.¹⁷ Centrally, the value of goods is determined by the amount of labour involved in their production,¹⁸ and capitalists are able to generate profits by exploiting the surplus labour of workers.¹⁹ Marx argued that this surplus value was a source of profit for capitalists and that the exploitation of labour was a fundamental character of capitalism.²⁰ On the one hand, this 'exploitation' of surplus labour shows inequality because it implies that the dominated working class not only produces its own subsistence but also that of the ruling class.²¹ On the other hand, according to Marx, since surplus value, as a source of profit for capital, is inevitably unstable, then it infers that capitalism itself is unstable and prone to periodic crises of overproduction and underconsumption, which may lead to economic collapse. Therefore, Marx is highly critical of this operation of capitalism, which is characterised by labour exploitation, inequality, and risky conditions. Particularly, Marxism attempts to specify the views from the perspective of political economy in *Capital* that it was inevitable that the capitalist system would move from conflict to collapse.²²

4.1.2. Marx on 'rights'

Marx's view on rights is closely linked to Marx's political and economic thinking. Although Marx lived at a time when natural rights had already taken shape and human rights had already appeared in political movements in Britain, the US and France, human rights at that time were mainly confined to the political rights of the bourgeoisie rather

¹⁷ Karl Marx, Chapter VII the Labour-process and the Process of Producing Surplus-value of Part III the Production of Absolute Surplus Value in *Capital, Volume I: A Critique of Political Economy* (Courier Corporation 2011) 197, 197-200.

¹⁸ Karl Marx, Part I Commodities and Money in *Capital, Volume I: A Critique of Political Economy* (Courier Corporation 2011) 41, 47.

¹⁹ Karl Marx, Part III the Production of Absolute Surplus Value in *Capital, Volume I: A Critique of Political Economy* (Courier Corporation 2011) 197, 241.

²⁰ Postone offers a reinterpretation of Marx's analysis of capitalism, focusing on the concept of abstract labour and arguing that the development of capitalism is marked by the increasing domination of social life by abstract, quantifiable forms of labour. See Postone Moishe, *Toward a reconstruction of the Marxian critique: Capital in Time, Labor, and Social Domination: A Reinterpretation of Marx's critical theory*. Cambridge: Cambridge University Press, (1993). 263, 283-284.

²¹ Michael Heinrich, Alexander Locascio, Capitalism and Marxism in *An Introduction to the Three Volumes of Karl Marx's Capital* (2004) NYU Press. 13, 14.

²² Jinghao Zhou, Chapter Thirteen Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 177, 179.

than universal human rights in the modern sense. Although Marx did not explicitly discuss human rights, Marx's political economy ideas about capital and class can explain Marx's views on rights.

Marx's core theory was a critique of capitalism. Despite the spread of human rights, the human rights of the time were more individual-centred bourgeois political rights such as the right to property, the right to vote and freedom of speech; workers, peasants, women and colonial peoples were not taken into account, and human rights at the time were highly limited and did not equate to universal human rights in the modern senses of the word. And the original aim of Marx's theory was to overcome capitalism and thus liberate the proletariat from this imposed relationship of exploitation.

As human rights at the time were seen as an ideological construct to maintain the capitalist system,²³ it can be inferred that Marx had the opposite attitude towards human rights, which at the time were confined to the political rights of the bourgeoisie. Marx's emphasis on class struggle, exploitation and the fact that the working class should oppose the capitalist system has been echoed by many philosophers. The French Marxist philosopher Louis Althusser²⁴ argues that Marx revealed the power relations and exploitation inherent in capitalist society and that Liberal human rights are an ideological construct that helps to sustain the capitalist system.²⁵ According to Louis, Marx revealed the position of the worker and the proletarian in capitalism. Still, if the capitalist system exists, then the discourse of human rights may also be a hypocritical cover.

Marx's influence on political thinking lies not only in the sharp critique of capitalism but also in the call for a classless society based on communism. Marx envisioned a post-revolutionary society in which there would be great material abundance and no classes, and rights would eventually disappear. From a moral point of view, communism means that people are not exploited and oppressed and offered better possibilities for

²³ Louis Althusser, Ideology and Ideological State Apparatuses in Sharma A and Gupta A, *The Anthropology of the State: A Reader* (John Wiley & Sons 2009) 86, 91.

²⁴ Louis Althusser's work, based on Marx's far-reaching discussion of the critique of political economy, was very influential in this regard.

²⁵ Louis Althusser, Ideology and Ideological State Apparatuses in Sharma Aradhana and Gupta Akhil, *The Anthropology of the State: A Reader* (John Wiley & Sons 2009) 86, 91.

development. Communism means that capital is shared by all members of society rather than privately owned, inferring Marx's belief that people have an equal right to material things.

Although this is theoretically true, in the context of the real world socialism or communism was something idealised. In existing socialism, the state is considered to be an instrument of domination over society.²⁶ People in the socialist countries that currently exist in reality do not seem to be free from the influence of capital, or rather another monopoly of power. For example, Russia and China have directed their economies towards maximum material output while retaining the structure of a market economy with public ownership. Additionally, from an economic point of view, a communist society means that the mode of production is not based on exchange.²⁷ In contrast to capitalism, socialism or communism would lead to an alternative mode of distribution. It implies that labour-value, traditional commodities and money no longer exist,²⁸ or rather carried out in a conscious and structured way by society.²⁹ True communism is difficult to achieve without its corresponding social and economic preconditions. The Marxian political ideal of communism may require a higher stage of social development to be achieved.³⁰

Despite the gap between Marx's political ideal and rights realities, the influence of Karl Marx's view on rights has been enormous. Marx's view on rights, though only a vision, is about the proletariat having a fairer, more just and classless difference-free future in society. Marx's critique of the bourgeois economic system and his ideal political thought play a role in the constitution of human identity, especially for the proletariat. Karl Kautsky (1854-1938) tended to explain the world in terms of formulas consisting of a few elements and modular Marxist terminology. Although Karl Kautsky's Marxism affirmed

²⁶ Rosa Luxemburg, The Russian Revolution in *The Rosa Luxemburg Reader* (NYU Press 2004) 281, 307.

²⁷ Michael Heinrich, Alexander Locascio, Communism—Society Beyond the Commodity, Money, and the State in *An Introduction to the Three Volumes of Karl Marx's Capital* (NYU Press 2004) 219, 220.

²⁸ Ibid, 221.

²⁹ Ibid, 221.

³⁰ Ibid, 223.

the value of workers and proletarians, this tendency to explain human beings in terms of economic interests was also considered 'crude economism'.³¹ Louis believes that Marxism reveals the reality of human rights, and he argues that the current Western discourse on human rights masks the power relations and exploitation inherent in capitalist society.³² Marxism exposes the capitalist method of value extraction production as being against humanity and nature, but Louis' research also reveals that the capitalist mode of production will not fundamentally change. The ideas about Marxism on human rights - whatever the view and assessment - are essentially based on this Marx's worldview of the struggle against capitalism and the liberation of all oppressed people. Although the content on political economy is quite abstract, Marxism's extensive critique of capitalism has led to reflections on the values and rights of human beings, which have provided some perspective on human rights.

4.1.3. Soviet Marxism on Rights

At its core, Marxism seeks to make sense of and transform the relationship between the individual, class and economy in society. The rights framework that has developed around this core is distinct from Western liberal human rights, and this is reflected in the general emphasis on the enjoyment of individual rights in relation to the class position of the individual in the ideology of Marxist countries. Individual rights in Marxism, at the constitutional level of Marxist countries, belong only to proletarian citizens like workers and peasants.³³ One of the representatives of this was Marxism-Leninism, which became very influential after 1914. In part, Lenin tended to simplify further within the framework of a continuation of Marxism; in part, Lenin himself was very influential and highly confident in his understanding of Marxism.³⁴ As declared in Article 9 of the Constitution of the Soviet Republic 'This Constitution is designed for the transitional period in which it now finds itself to establish the dictatorship of the proletariat and the poor peasants

³¹ Michael Heinrich, Alexander Locascio, Capitalism and Marxism. In *An Introduction to the Three Volumes of Karl Marx's Capital* (2004) NYU Press. 13, 24.

³² Althusser Louis, Ideology and Ideological State Apparatuses in Sharma A and Gupta A, *The Anthropology of the State: A Reader* (John Wiley & Sons 2009) 86, 91.

³³ Robert Weatherley, Marx, Marxism and Human Rights in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 83, 84.

³⁴ Michael Heinrich and Alexander Locascio, Capitalism and Marxism. In *An Introduction to the Three Volumes of Karl Marx's Capital* (2004) NYU Press. 13, 25.

in urban and rural areas, in the form of a strong soviet government, in order to crush the bourgeoisie once and for all, to abolish the exploitation of man by man, and to build up socialism without classes and without state power.³⁵ Soviet Marxism sees the ruling party as the representative of the proletariat. The Marxist state's right view must be centred around the will of the proletariat.

The Marxist view of rights in the state differs from that in Marx's political ideal. Although Marxism is primarily concerned with class struggle and overthrowing the capitalist system, the discussion is no longer limited to capital as Marxism is widely circulated. Also, Marxist state ideology usually prioritises socio-economic rights and collective interests, which means that in practice social and economic rights usually take precedence over civil and political rights, and collective interests often take precedence over individual interests and tend to be subordinate. Unlike Marx's vision of a post-revolutionary, classless society in which the people are so materially enriched that their rights eventually disappear, the social reality that Marxist revolutionary leaders usually face is one of economic decay and hostility from both inside and outside the state. The Marxist state therefore needs rights that favour a form of centralised state administration and rapid socio-economic development.

As Marxism has been further continued, Marxism on human rights has become further influential and sophisticated. This is reflected in the fact that the constitutions of all Marxist-Leninist countries provide for welfare rights.³⁶ Marxism is not the only Marx's doctrine. Although it is embodied in the critique of capital and political economy, there are perspectives related to the rights of the human person that are not limited to capital, capitalism or communism. As Hudis puts it, Marx's vision of a socialist and communist world does not simply deny capitalism but emphasises positive alternatives for developing human potential and creativity.³⁷ What is positive about Hudis's statement is that political economy is not simply an affirmation or a denial. The constant productive

³⁵ Robert Weatherley, Marx, Marxism and Human Rights in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 83, 91.

³⁶ Robert Weatherley, Right Thinking in the People's Republic of China in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 101, 123.

³⁷ Peter Hudis, Marx's Concept of the Alternative to Capitalism, (Leiden: Brill, 2012) 207, 215.

revolution in social development and the reality of more efficient machines increasingly replacing human labour have forced people to think more about Marxist human rights from multiple perspectives.

4.1.4. Chinese Marxism on Rights

China chose Soviet Marxism. (Emergence and evolution of Marxism on Chinese Characteristics) Marxism is an intellectual tradition and political ideology that has served China well since the twentieth century. Since the late 1910s and 1920s, Chinese intellectuals realised that China needed a new and robust order to deal with the new world order.³⁸ The May Fourth Movement, a new cultural movement that sought to replace the Confucian tradition, was a landmark event in establishing a new order in China. Traditional Confucian values were replaced because they were seen at the time as the root cause of the nation's weakness.³⁹ The leaders of the May Fourth Movement, Chen Duxiu and Li Dazhao, turned to the 1917 Russian Revolution and the writings of Karl Marx and made Marxism the core of their intellectualism. In 1921, Chen and Li founded the Chinese Communist Party.⁴⁰ It is fair to say that the philosophy of Karl Marx underpins the legitimacy of the Chinese Communist Party in power.⁴¹ Just as contemporary American capitalism has been guided and shaped by neoliberalism since the 1960s, China's trajectory in Asia is undoubtedly tied to Chinese Marxism discourse.⁴²

The rise and evolution of the Chinese Marxism not only eradicated traditional Confucianism, which was an obstacle to progress, but also seemed to be the ideal path for China's Communist Party.⁴³ It is no accident that Marxism took root and then

³⁸ Daniel K. Gardner, Epilogue: Confucianism in the twentieth and twenty-first centuries in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 112, 112.

³⁹ Ibid.

⁴⁰ Ibid, 114.

⁴¹ Daniel Bell, Introduction in *China's New Confucianism: Politics and Everyday Life in a Changing Society* (Princeton University Press 2008) 9, 17.

⁴² Michael A Peters and others, 'Contemporary Chinese Marxism: Social Visions and Philosophy of Education – An EPAT Collective Project' (2022) 54 *Educational Philosophy and Theory*, 1550, 1550.

⁴³ Following Marxist-Leninist doctrines as a matter of course, the communists completely abolished the old legal system of the Nationalist government, because they believed the old legal system protected only the interests of the bourgeoisie and feudal landlords and repressed the great masses of the working people.

developed in China. It has been argued that two significant events, the 1917 Russian Revolution and the 1919 May Fourth Movement, made Marxism sweep through China.⁴⁴ Additionally, Lenin was a representative of second-generation Marxism, and his interpretation of Marxism was considered neo-Marxist and aimed at dissolving the existing order and establishing authoritarian regimes.⁴⁵ The Chinese Marxism that emerged from Marxism's coming to China is believed to have inherited the authoritarian character of Marxism-Leninism.⁴⁶ From a historical-political perspective, it has been argued that, forced by the world situation during the Cold War, China as an East Asian country had to choose between Marxism and Capitalism, the two paths to modernity, to join the world order.⁴⁷ Marxism-Leninism was seen as meeting just the proper requirements in the ideological market to uproot traditional culture but simultaneously opposed imperialism.⁴⁸

What exactly is Marxism in the eyes of China? From political considerations, Marxism gave legitimacy to the Chinese polity. Tu argues that operational principles derived from the political practice and legal systems cannot confer legitimacy on the state and that the prevailing orthodoxy of Sinicised Marxism-Leninism is the source of legitimacy for China.⁴⁹ Some scholars suggested that when Marxism was first introduced into China as a practical approach to solving political, economic and social problems, but in the post-Mao era, it was merely an ideological and legitimising means from the perspective of the regime.⁵⁰ Although the Chinese Communist Party in the post-Mao era was concerned with its own legitimacy and retained Marxism-Leninism as its official guiding principle, with economic development as a priority agenda, the CCP continued to adapt Marxism

See Jianfan Wu, 'Building New China's legal System' in J.R. Oldham (ed.), *China's Legal Development* (Armonk, New York: M. E. Sharpe, Inc., 1986) 1, 1-4.

See also Wu Edward, 'Human Rights: China's Historical Perspectives in Context' (2002) 4 *Journal of the History of International Law* 335, 336.

⁴⁴ Jinghao Zhou, Chapter Thirteen Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 177, 180.

⁴⁵ Milorad M. Drachkovitch, ed., *Marxist Ideology in the Contemporary World: Its Appeals and Paradoxes* (New York: Pall Mall Press, 1966), xiv.

⁴⁶ Jinghao Zhou, Chapter Thirteen Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 177, 180.

⁴⁷ Daniel Bell and others, Introduction: The Contemporary Relevance of Confucianism in *Confucianism for the Modern World* (Cambridge University Press 2003) 1, 2.

⁴⁸ Weiming Tu, 'Cultural China: The Periphery as the Centre' (1991) 120 *Daedalus* 1, 24.

⁴⁹ *Ibid*, 16.

⁵⁰ Andrian Chan, Introduction in *Chinese Marxism* (Continuum 2003) 1, 5-6.

to the local context and developed the theory of socialism with Chinese characteristics in practice.⁵¹

The Chinese view of human rights is argued to have deep theoretical and practical roots in Marxism-Leninism and Mao Zedong Thought.⁵² Indeed, the development of foreign theories in China is difficult to isolate from the local Chinese cultural tradition. In such a case, some people questioned Mao's practice as a challenge to the Marxist idea, which is that developed industrial capitalism was a prerequisite for the socialist revolution, as the context of the Chinese revolution did not match Marx's expectations. With this being said, Chinese revolutionaries were deeply influenced by traditional culture and knew how to mobilise the masses of peasants in a Chinese context.⁵³ Chinese revolutionaries Mao Zedong and Liu Shaoqi adopted Confucian cultural tradition elements to build a distinctive Chinese version of Marxism.⁵⁴ When Mao and Liu speak about the ideology of Chinese Marxism in detail, they inevitably incorporate aspects of Confucianism as a historical legacy.⁵⁵ As Mao once said, despite being a Marxist himself, he needs to balance historicism because New China is the product of the development of generations of history from Confucius to Sun Yat-sen, and the revolution has to summarise and learn from the valuable historical experience, not tamper with history.⁵⁶ Mao has been described as an eclectic Marxist in the sense that Marxism contains elements of Chinese philosophical heritage at the same time.⁵⁷ It is conclusive that Chinese Marxism combines the historical heritage of China.

Marxism was a theoretical and practical guide to the revolution during the leadership of Mao Zedong.⁵⁸ Mao agreed with Marx's argument that 'knowledge begins with practice,

⁵¹ Ibid, 5.

⁵² Edward Wu, 'Human Rights: China's Historical Perspectives in Context' (2002) 4 *Journal of the History of International Law* 335, 335.

⁵³ Jinghao Zhou, Chapter Thirteen Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 177, 183.

⁵⁴ Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 *Critical Review of International Social and Political Philosophy* 101, 105.

⁵⁵ Ibid.

⁵⁶ Brugger Bill, and David Kelly. Introduction in *Chinese Marxism in the Post-Mao Era*. Stanford University Press, 1990. 1, 3.

⁵⁷ Weatherley Robert, Introduction in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 1, 6.

⁵⁸ Adrian Chan, Introduction in *Chinese Marxism* (Continuum 2003) 1, 1.

theoretical knowledge is acquired through practice and must be tested by practice only'.⁵⁹ The importance of practice is evident from the fact that Mao Zedong insisted that the truth of Marxism must be combined with the local features of the nation and accorded its national form before it can work and that it cannot be a formula applied subjectively.⁶⁰ Of course, the emphasis on practice in Chinese Marxism also continues the importance of Marx's anti-universal materialist dialectics. Theoretical ideas can only be judged in practice, and human rights theory is no exception.

Marxism as an ideological tool finally led to the triumph of the communist revolution, that is, the establishment of New China in 1949. Meanwhile, Chinese Marxism brought with it authoritarianism. Marxism became the official ideology enshrined in the Constitution. Mao's thoughts were the beginning of Chinese Marxism, written into the constitution, and Mao became the sole leader of the new China, combining many important powers.⁶¹ Since the late 1930s, Mao has been considered to have initiated the application of Marxism–Leninism in China, and his influence continued at least until the 1970s.⁶²

Chinese Marxism in the post-Mao era emphasises more on practice. China was poor and isolated under Mao, enjoying a self-sustaining and self-dependent economy free from foreign Capital.⁶³ Whereas Deng saw the country's return to production and development as the main conflict that needed to be addressed. In order to pave the way for economic reform, Deng's new movement reinterpreted Mao's policy decisions.⁶⁴ Marxism in the post-Mao era was less philosophical, and Chinese Marxism shifted to an economy-centred development model. Some see the reinterpretation of Mao's Marxism

⁵⁹ Tom Rockmore, 'Marx, Chinese Marxism and Poverty' (2021) 17 *Journal of Global Ethics* 42, 51.

⁶⁰ Zedong Mao, *Selected Works of Mao Tse-tung* (Beijing: Foreign Language Press, 1965), vol. 3, pp. 153-155.

⁶¹ Jinghao Zhou, Chapter Thirteen Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 177, 184.

⁶² Tom Rockmore, 'Marx, Chinese Marxism and Poverty' (2021) 17 *Journal of Global Ethics* 42, 50.

⁶³ Jinghao Zhou, Chapter Thirteen Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 177, 184.

⁶⁴ Gordon White, *Economic Reform and Ideological Decay: The Decline of Ideocracy in Riding the Tiger: The Politics of Economic Reform in Post-Mao China* (Stanford, Calif.: Stanford University Press, 1993) 147, 158.

as a very contrasting reversal of direction from one extreme to the other end.⁶⁵ Deng Xiaoping once used an analogy to illustrate his idea and express his pragmatic argument that ‘it was not the colour of a cat that mattered, but whether it could catch a mouse.’⁶⁶ Although it seems to be a slightly utilitarian statement, it is a new interpretation of Marxism to start from practice, to understand the driving force of social development and in turn to test the truth.

Post-Mao Marxism was refined and enriched with Chinese characteristics. As the pragmatic leader of economic reform, Deng wanted the Communist Party to remain in power on the one hand; on the other, he wanted the Chinese people to become rich.⁶⁷ Although it is a fact that such economic reforms were considered to have deviated from classic Marxism,⁶⁸ the Communist Party considered the holding up of socialism with Chinese characteristics as well as reform and opening up to be the great and correct Marxism.⁶⁹ Moreover, some Chinese reinterpretations of Marxism are constantly being proposed. According to Hu’s Marxist view of the people, it should be people-centred, with a strong connection between the Party and the people.⁷⁰ Based on historical experience, Hu believes that advanced Marxism should keep pace with the times and guide new social practices with evolving theories.⁷¹

Since the founding of the People’s Republic of China in 1949, when the Chinese Communist Party came to power, it was inevitable that the right to state orthodoxy in China would take on a more Marxist dimension.⁷² Like the ideology of Chinese Marxism,

⁶⁵ Jinghao Zhou, Chapter Thirteen Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 177, 185.

⁶⁶ Jinghao Zhou, Chapter Eighteen the Future of China: Undemocratic Chins Can’t Rule the World in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 255, 259.

⁶⁷ Jinghao Zhou, Chapter Thirteen Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 177, 185.

⁶⁸ Ibid.

⁶⁹ From Hu Jintao’s speech at a meeting commemorating the 90th anniversary of the Founding of the Communist Party of China.

‘Full Text of Hu Jintao’s Speech at CPC Anniversary Gathering - China.Org.Cn’

<http://www.china.org.cn/china/CPC_90_anniversary/2011-07/01/content_22901507.htm> last accessed 10 September 2024.

⁷⁰ Ibid.

⁷¹ Ibid,

⁷² Robert Weatherley, Introduction in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 1, 3.

Chinese Marxism has developed ideas about rights with Chinese characteristics.⁷³ It was pointed out that Marxism has influenced the way of thinking of many people in mainland China, and they still embrace some Marxist principles.⁷⁴ The opposite is also true. Rather than saying that Chinese Marxism has had a huge impact on Chinese human rights thinking, it is more accurate to say that Marxism has been able to continue to grow because it is suited to the sensitive social conditions of Chinese culture.⁷⁵

Moreover, Marxism thus guides the distinctive path of China's future human rights policy. While international law is widely agreed to exist between States in general, there is no consensus between socialist states and bourgeois states on the existence of common standard scientific norms of international law, especially those relating to deep socio-cultural causes such as human rights.⁷⁶ For the exposition of the origins of human rights, there seems to be no reason why communist China should not consider deeper social and cultural causes in the sense of accepting Marxism as a doctrine. It is argued that the importance of Marxism in China can be compared to the significance of democracy in the West, especially in North America. In spite of the seeming drift of the relevant practices, Marxism in China, like democracy, provides the grounds and support for efforts to improve the lives of the majority.⁷⁷

4.2. Marxism on Own Path

4.2.1. Marx on Own Path

The foundations of Marx's theory do not coincide with the foundations of the universality of human rights. Whenever it comes to Marx's theory, it is impossible to avoid the dialectics. Dialectics is considered to be a scientific approach to the development of nature, human society and ideas. Dialectics sounds abstract but can be

⁷³ Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 Critical Review of International Social and Political Philosophy 101, 105.

⁷⁴ John Makeham, Introduction in 'NEW CONFUCIANISM: A CRITICAL EXAMINATION' (PALGRAVE MACMILLAN 2003) 1, 7.

⁷⁵ Jamie Morgan, 'Contemporary China, Anachronistic Marxism?' (2004) 36 Critical Asian Studies 65, 77.

⁷⁶ Hungdah Chiu, 'Communist China's Attitude Toward International Law' (1966) 60 American Journal of International Law 245, 260.

⁷⁷ Robert Ware, 'Reflections on Chinese Marxism' (2013) 27 Socialism and Democracy 136, 136.

summarised in the simple fact that everything depends on everything else, as well as being in a status of interplay.⁷⁸ It can be said that Marx took a dialectical approach to everything, including the human nature. However, back to the Declaration of Independence of 1776, the universality of human rights means that all people have equal rights.⁷⁹ In other words, the universality of human rights refers to the rights to which man is entitled as a human being. This is completely contrary to Marx's dialectical approach to human rights. Marx's theory was looking at human rights dialectically and not absolutely because of the simple fact that a human being is a human being.

Marx saw human beings as having a social nature rather than a universal nature. Marx disagreed with an unchanging and universal human nature.⁸⁰ Marx believed that the environment of human existence is a community, and man is a species within it.⁸¹ Marx's understanding of human nature is similar to Aristotle's definition of human beings: a human being is by nature a political creature.⁸² The reason for this understanding of human nature is that, there is a close bond of interest between human beings. Human beings as members of society are in no way similar to the atoms that make up society, since atoms are characterised by self-sufficiency and autonomy, whereas human beings live in the reality of society with all its needs.⁸³ In this sense, Marx viewed human beings as having a social nature rather than a universal nature, which manifests in the fact that they cannot be separated from the social environment in which they live.

Marx's view that the human right is closely linked to the mode of production rather than an inalienable birthright. For Marx, the claim that human rights are universal throughout the capitalist structure is disconnected from reality. An important element in the

⁷⁸ Michael Heinrich and Alexander Locascio, The Object of Critique in the Critique of Political Economy in *An Introduction to the Three Volumes of Karl Marx's Capital* (2004) NYU Press. 29, 37.

⁷⁹ Lord Hoffmann, The universality of human rights. *Judicial Studies Board Annual Lecture*, (2009). 19, 19.

⁸⁰ Jinghao Zhou, Chapter Thirteen Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 177, 178.

⁸¹ Karl Marx, 'On the Jewish Question', in David McLellan (ed.), *Karl Marx: Selected Writings*. Oxford: Oxford University Press, (1977a) 46, 46.

⁸² Werner Hamacher and Ronald Mendoza Jesús, 'On the Right to Have Rights: Human Rights; Marx and Arendt' (2014) 14 CR: The New Centennial Review 169, 169.

⁸³ Justine Lacroix, 'Should a Marxist Believe in Human Rights?'. *Arguing about justice: Essays for Philippe Van Parijs*, Presses universitaires de Louvain, 2010. 261, 262.

relationship between capital and labour is that in a market economy human labour is turned into a commodity.⁸⁴ Also, Marx argued that the capitalist mode of production is characterised by a 'boundless thirst for surplus labour'.⁸⁵ This demand for surplus labour means that capital tries to make the most of the commodity, namely the value of labour. Moreover, competition between capitalists forces each capitalist to use his right as a purchaser of labour to make the most of the human labour he buys. The consequence then is that the health and longevity of the labour force is not the thing that capital considers. Under the capitalist structure, Marx could hardly endorse human rights are universal and inalienable.

Still, Marx acknowledged the reality without making a moral condemnation of individual capitalists. In Marx's view, capitalists are not responsible for this. Anyone, including capitalists and labourers, is part of the functioning of capitalism. Capitalists also only follow the rationality imposed on them by economic relations within the limits of their personality.⁸⁶ Instead, Marx called it a 'right against right'.⁸⁷ Connected with Marx's view, the rights of capitalists as purchasers of commodities violated the personal rights of labourers as commodities, and this clash of rights was the result of the capitalist structure. This is a full denial of the universality of human rights for all human and equal rights. Human rights in Marx's eyes are not absolutely universal or equal for all. Individuals as labourers, human rights in Marx's eyes are determined by the mode of production, which contradicts the principle of universality of human rights.

The above analysis shows that Marx viewed human rights from a dialectical perspective and that human rights are relative and not absolutely universal. Although Marx's statement 'Proletarians of the world, unite'⁸⁸ seems to be advocating a universal goal of

⁸⁴ Mohinder Kumar, 'Karl Marx, Andrew Ure and the Question of Managerial Control' (1984). *Social Scientist*, 63, 67.

⁸⁵ Michael Heinrich and Alexander Locascio, The Capitalist Process of Production. In *An Introduction to the Three Volumes of Karl Marx's Capital* (2004). NYU Press. 99, 102.

⁸⁶ Michael Heinrich and Alexander Locascio, The Fetishism of Social Relations in Bourgeois Society. In *An Introduction to the Three Volumes of Karl Marx's Capital* (2004). NYU Press. 179, 185.

⁸⁷ Michael Heinrich and Alexander Locascio, The Capitalist Process of Production. In *An Introduction to the Three Volumes of Karl Marx's Capital* (2004). NYU Press. 99, 103.

⁸⁸ Edward Taborsky, 'The class struggle, the proletariat, and the developing nations'. *The Review of Politics*, 29(3), (1967). 370, 370.

struggle, an understanding of Marx's historical materialism in depth will find that he did not advocate a 'one-size-fits-all' revolutionary path. On the contrary, he believed historical materialism, which holds that human history and development in every society including class struggle and social change, must be based on its specific historical conditions and material basis.⁸⁹ According to Marx's theory, it can be concluded that human beings are a social species and therefore human rights cannot be considered in isolation from social and economic factors. Human rights are affected proportionally by the social environment and economic realities in which they are situated. For instance, the rich and powerful have different access to resources and receive other interests than the poor and marginalised, and many rights are almost difficult to describe as universal. In this sense, human rights are considered to be relative rather than universal, as demonstrated by the fact that human rights cannot be spoken of independently of the social circumstances and economic conditions in which they are situated. Overall, Marx is critical of the universality of human rights and argues that human rights must be understood in the context of social and economic conditions.

4.2.2. Marxism on Own Path

Marxists believe that human rights are not universal but historically contingent, as they depend to a large extent on social and economic conditions. In other words, implementing many rights depends on 'the availability of resources'.⁹⁰ Accordingly, it is concretely reflected in Clifford Bob's exploration of the social construction of human rights in the context of globalisation. He argued that the free trade and multinational cooperation generated by globalisation threaten the environment of local countries, destroying local security and even violating the labour rights of local people.⁹¹ Bob's research is a good example of how the implementation of human rights is often influenced by the power dynamics of global capitalism, proving that human rights depend on social and economic conditions.

⁸⁹ Michael Baur, Marx on historical materialism. *Gale Research Philosophy Series 1 and 2 (Internet Library Reference Database)* (2017), 1, 1.

⁹⁰ Christopher MJ Boyd, 'Can a Marxist Believe in Human Rights?' (2009) 37 *Critique* 579, 584.

⁹¹ Clifford Bob, Globalization and the Social Construction on Human Rights Campaigns in *Globalization and Human Rights*, edited by Brysk A, (University of California Press 2002) 133, 144.

Marxists hold that human rights are not natural or universal but result from historical and social conditions. If Marxists had this view, it means that human rights are constructed and contested, rather than inherent or inalienable in human nature. One example of human rights arising from concrete historical struggles and social movements is the struggle against colonialism and imperialism. Costas Douzinas argues that the global human rights regime emerged in the context of decolonisation. He argues that the liberal notion of human rights as universal and ahistorical fails to explain the historical and continuing legacy of colonialism and imperialism.⁹² Frantz Fanon, in his work for the Black Revolution, argues that decolonisation allows the colonised to become truly human. Yet, this transformation cannot be attributed to a universal force of nature but rather to the struggle for national liberation and social and economic justice.⁹³ Overall, Marxism argues that human rights must take into account historical and social realities, as evidenced by the global economic structure of exploitation and inequality.

Marxists' view of human rights is influenced by Marx himself, who pursued the ideal of a communist society. Therefore, in the eyes of Marxists, human rights are the liberation struggle of the oppressed, especially taking into account social and economic factors. The legal phenomenon and philosophical theory of natural rights as human beings do not seem to be the main concern of Marxists. However, it is worth underscoring that Marx believed in the intrinsic moral significance of mankind. Although Marxism questioned the universality of human rights,⁹⁴ it is affirmed that an entity has rights. As Leopold puts forward, in a broad sense, affirming that an entity has rights is to say that it enjoys an independent ethical status.⁹⁵ Marxists' defence against the elimination of human rights is mainly aimed at the level of political struggle against colonialism,

⁹² Costas Douzinas, Chapter 8 Human Rights: Values in a valueless world? In *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Routledge-Cavendish 2007) 174, 195.

⁹³ Frantz Fanon, *The Wretched of the Earth*. Trans. Richard Philcox. (New York: Grove Weidenfeld Press. 1963) 7, 102.

⁹⁴ Robert Weatherley, Human Rights in Western Liberal Thinking in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 13, 35-36.

⁹⁵ Justine Lacroix, 'Should a Marxist Believe in Human Rights?'. *Arguing about justice: Essays for Philippe Van Parijs*, Presses universitaires de Louvain, 2010. 261, 262.

hegemony and oppression. In other words, the elimination of human rights is, in the eyes of Marxists, an unethical act of the oppressor.

4.2.3. Chinese Marxism on Own Path

The Chinese Marxist view of human rights continues and develops Marx's foundational doctrine with regard to the historical and social nature of rights. Marx's and Marxist views of human rights famously critiqued the liberal conception of human rights as abstract and individualistic which detached from material conditions and class relations. Marxism sees human rights as historically determined by a particular network of social or power relations, whereas the liberal concept of 'natural' human rights is non-historical and non-social.⁹⁶ Lenin criticised the universality of human rights under capitalism as concealing their class character.⁹⁷ Although Marx's discourse on freedom and humanity emphasises the value and dignity of persons, neither Marx nor Marxists consider human rights in an absolute and context-free manner, but rather place humans dialectically within society. In other words, Marxism does not reject human rights as such; rather it rejects the ahistorical and depoliticized framing of rights typical in liberal discourse. As Weatherley said, Marx questioned the unity of the idea of human rights because it showed that the debate on human rights was not only between 'developed' and 'developing' countries or between East and West.⁹⁸

The Chinese Marxist human rights view builds on this tradition by affirming the social embeddedness of human beings and the dialectical relationship between the individual and the collective. While liberal theory posits the individual as autonomous and pre-social, Marx—and later Marxists—insisted that human beings can only develop fully through and within a community. Marxists such as Stalin argued that human beings are not only social animals but can only develop as individuals within a community; socialism did not deny nor abstract individual interests, but merely combined them with the

⁹⁶ Sylvia Chan, 'Li Zehou and New Confucianism' in *New Confucianism: A Critical Examination*, Makeham John, (Palgrave Macmillan 2003) 105, 122.

⁹⁷ Shiping He, 'On the Quadruple Qualities of Marxist Thought on Human Rights Academic Monograph' (2021) 20 *Journal of Human Rights* 95, 104.

⁹⁸ Robert Weatherley, Human Rights in Western Liberal Thinking in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 13, 35-36.

community's interests.⁹⁹ The Chinese Marxist approach does not reject individual rights but situates them within the broader framework of collective well-being, economic development, and social transformation.¹⁰⁰ Thus, the Chinese Marxist human rights framework is not a departure from Marxist orthodoxy, but a contextualized application of its core principles to China's own historical conditions and developmental stage. It maintains the Marxist dialectical view that human rights are dynamic, evolving with changes in nature, society, and human activity. As the Chinese scholar Wang argues, a person separated from society is merely an abstract person¹⁰¹—echoing Marx's and Marxists' contextualised notions of the historical and social nature of human rights whose essence lies in communal and social life.

Marxism believes that rights are granted to individuals by the state and society and are enshrined in the laws and constitutions of Marxist party states; this is quite different from the liberal tradition, which sees human rights as innate rights.¹⁰² China is consistent with Marxism on this point in its understanding of the sources of human rights. Human rights in China are the product of Chinese social practice and have been written into the Constitution in line with social development. In March 2004, an amendment to the Constitution of the People's Republic of China was adopted at the Second Session of the Tenth National People's Congress, in which 'the State respects and safeguards human rights' was enshrined in Article 33 of China's Constitution.¹⁰³ It is worth noting that although the constitutionalisation of human rights is common, the underlying principles embodied differ. Because in the same article, it stated that 'every citizen shall enjoy the rights prescribed by the Constitution and the law and must fulfil the obligations prescribed by the Constitution and the law'.¹⁰⁴ This signifies that China continues the Marxist idea that rights are granted by the laws and constitution of the country, while

⁹⁹ Joseph Stalin, Interview Between Joseph Stalin and H. G. Wells in *Marxism vs. liberalism*. PRISM: Political & Rights Issues & Social Movements, (1935), 6, 10.

¹⁰⁰ Joseph Stalin, Interview Between Joseph Stalin and H. G. Wells in *Marxism vs. liberalism*. PRISM: Political & Rights Issues & Social Movements, (1935), 6, 10.

¹⁰¹ Bill Brugger and David Kelly, Chapter 6 The Importance of Humanism in *Chinese Marxism in the Post-Mao Era* (Stanford University Press 1990) 139, 162.

¹⁰² Weatherley Robert, Marx, Marxism and Rights in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 83, 84.

¹⁰³ Selected Important Documents since the 16th National Congress (Part 1). Beijing: Central Party Literature Press, 2005, p. 890.

¹⁰⁴ Art.33, the Constitution of the PRC, 2004.

focusing on the fulfilment of the obligations associated with the claiming of rights. As a socialist country, China's Constitution is seen more as a political programme representing a symbol of state policy and values.¹⁰⁵ The stipulation of human rights in the Constitution reflects China's ongoing commitment to redeeming the nominal guarantees of human rights, while at the same time formally carrying forward the Marxist conception of rights.

Disparities in the perception of the source of rights explain the non-universality of Marxism. Western liberal scholar Gregory Vlastos has proposed that human rights are rooted in the basic moral values of human beings as inherent in every human being.¹⁰⁶ In comparison, Marxism holds that rights are similar to those granted to individuals by the state or society; in other words, social relations between people are the source of due rights.¹⁰⁷ The non-universality of the Marxist view of human rights is manifested in the fact that, in contrast to the liberal tradition, which sees human rights as inborn rights, the Marxist view of human rights is closely linked to external factors. This interpretation has led to some of the rights recognised and valued by Marxism, such as social and economic rights, not being considered human rights by some Western liberal theorists.

While there is division among Western liberal scholars as to the exact content of human rights,¹⁰⁸ some Western liberal scholars hold a negative view on whether socio-economic rights are fundamental human rights. According to one of Cranston's 'criteria' for human rights, universality, he believes that human rights should be rights for everyone in all circumstances and can be a universal duty to be claimed by everyone.¹⁰⁹ In this vein, the social and economic rights valued by the Marxist view of human rights are not human rights in Cranston's eyes but, at most, the rights of citizens in a state.¹¹⁰ More specifically, economic and social rights are determined by welfare provisions related to governments

¹⁰⁵ Ann Kent, 'Waiting for Rights: China's Human Rights and China's Constitutions, 1949-1989' (1991) 13 *Human Rights Quarterly* 170, 182.

¹⁰⁶ Robert Weatherley, Marx, Marxism and Rights in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 83, 92.

¹⁰⁷ Buyun Li, Human Rights: Three Existential Forms (1991) in Angle SC and Svensson M, *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000* (Taylor & Francis Group 2001) 333, 338.

¹⁰⁸ Robert Weatherley, Human Rights in Western Liberal Thinking in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 13, 23.

¹⁰⁹ *Ibid.*, 26.

¹¹⁰ *Ibid.*

and do not have the universality that everyone in all situations possesses, for example, people living in less developed countries without sufficient material and economic resources. If one follows Cranston, it makes no sense to demand social and economic rights from a state that cannot provide its people with the means to realise their social and economic rights. However, according to Marx, these countries are doing a poor job of safeguarding human rights.

The non-universality of the Marxist view of human rights is also manifested in the need to integrate human rights theory with social practice. Marxist human rights thought is practice-oriented, grounded in practical materialism, and advocates that human rights originate in social practice.¹¹¹ Marx explicitly criticised the separation of theory and practice in the *Eleventh Thesis on Feuerbach*.¹¹² According to Marx's insistence on the inseparability of theory and practice, then human rights theory and social practice cannot be considered separately. Based on different social realities, human rights theory cannot be used universally as a formula. It has been suggested that Marxism has never been standardised, as since Marx's leave in 1883, Marxism has often been an intense theoretical struggle between powerful intellectuals,¹¹³ which is therefore interpreted in a wide variety of forms.¹¹⁴ For example, under Marxist guidance, China claims that it is taking a path toward human rights development that is in line with its national conditions.¹¹⁵

The Chinese perspective on human rights reflects the Marxist non-universality of human rights. The Marxist-influenced Chinese approach emphasises that rights arise and develop in a socio-historical context and are practical and pragmatic instead of universal. China's human rights development is widely regarded as a product of the Sinicisation of Marxist human rights thought.¹¹⁶ The development of Chinese Marxism based on Marxism-Leninism is a unique form that takes into account the Chinese national realities.

¹¹¹ Shiping He, 'On the Quadruple Qualities of Marxist Thought on Human Rights Academic Monograph' (2021) 20 *Journal of Human Rights* 95, 95.

¹¹² Tom Rockmore, 'Marx, Chinese Marxism and Poverty' (2021) 17 *Journal of Global Ethics* 42, 51.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*, 53.

¹¹⁵ Shiping He, 'On the Quadruple Qualities of Marxist Thought on Human Rights Academic Monograph' (2021) 20 *Journal of Human Rights* 95, 95.

¹¹⁶ *Ibid.*

In the context of the social reality of poverty in China in the post-Mao era, Chinese Marxism has followed its own version of the Marxist development model, which has been supplemented by Deng Xiaoping,¹¹⁷ which is more practical than theoretical, being considered as pragmatic as China itself.¹¹⁸ While some scholars have argued from a practical perspective that China uses Marxist terminology as a tool to construct human rights.¹¹⁹ It is also argued that Marxism has provided China with a new way of thinking about human rights that uses Marxism to explore the local context rather than essentialising people.¹²⁰ These insights offer a unique perspective on the naturalised otherness of China and the non-universality of human rights.¹²¹

4.3. Marxism on Non-intervention

4.3.1. Marx on Non-intervention

Marx did not explicitly express that he was for non-intervention. However, Marx was not only concerned with the economic dimension, but also with the national governance and international relations above the economy. Marx's discussion was not distant from that of the dominant state of his time. In particular, Marx believed that capital would continue to expand,¹²² and the 'economic structure was the true basis of the legal and political superstructure' of a state.¹²³ Thus, the profit-seeking model of capital would ultimately result in the interference of developed capitalist states in other states. With this outlined, Marx condemned this economic relationship of the expanding capitalist pursuit of profit. Marx condemned this capitalist exploitation in other countries. This economic exploitation potentially leads to the interference of state action that falls within the 'superstructure of economic structure'¹²⁴.

¹¹⁷ Tom Rockmore, 'Marx, Chinese Marxism and Poverty' (2021) 17 *Journal of Global Ethics* 42, 48.

¹¹⁸ *Ibid.*, 51.

¹¹⁹ Robert Weatherley, The Discourse of Rights in Late Qing and Republic China in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 65, 74.

¹²⁰ Petrus Liu, 'Queer Human Rights in and against China: Marxism and the Figuration of the Human' (2012) 30 *Social Text* 71, 84.

¹²¹ *Ibid.*

¹²² Kenneth Smith, The Development of the Capitalist Mode of Production in *Karl Marx's 'Capital': A Guide to Volumes III* (Anthem Press 2021) 15, 31.

¹²³ Michael Heinrich and Alexander Locascio, State and Capital in *An Introduction to the Three Volumes of Karl Marx's Capital* (2004). NYU Press. 199, 200.

¹²⁴ *Ibid.*

Marx believed that capital would continue to expand.¹²⁵ In *Capital*, Marx argued that there was a general extension of the capital-wage labour relation.¹²⁶ He believed that the persistent capitalist pursuit of interests would cross national boundaries, from the domestic level to the international level.¹²⁷ When monopoly capital cannot find sufficient value in its own country, it is assumed that capital will export not only goods but also capital to other countries.¹²⁸ In this sense, the capitalist economy's production mode moves from extracting surplus value from one's own country to appropriating most of the surplus value of other countries in the world market. This appropriation of a large part of the surplus value of other countries has also been described as the parasitic character of capital.¹²⁹ Such an expression, parasitism, not only confirms the fact of the expansion of capital, but also vividly describes the form of that expansion.

Marx's thinking argued that the state's behaviour was rooted in the economic structure. Different schools of thought have different views on whether the economic model is independent of the state. The view of neoclassical economists would separate the state from the economy, seeing the state as an actor with its own goals independent of economic relations. They argue that the state operates independently, driven by its own goals and interests, which may or may not be consistent with economic factors, such as James Buchanan¹³⁰ However, Marx's theory holds that the state is intrinsically linked to economic relations and that the state is an instrument used by the ruling class to maintain control over the means of production. In other words, the economy serves the interests of the dominant class. Marx stated that 'economic structure was the true basis

¹²⁵ Kenneth Smith, *The Development of the Capitalist Mode of Production in Karl Marx's 'Capital': A Guide to Volumes III* (Anthem Press 2021) 15, 31.

¹²⁶ Lucia Pradella, 'Imperialism and Capitalist Development in Marx's Capital' (2013) 21 *Historical Materialism* 117, 124.

¹²⁷ Marx indicates there is the need of a constantly expanding market for its products chases the bourgeoisie over the whole surface of the globe. See Marx K, Engels F, *Bourgeois and Proletarians in The Communist Manifesto*. First Avenue Classics. Minneapolis, MN: First Avenue Editions, a Division of Lerner Publishing Group, 2018. 7, 10.

¹²⁸ Michael Heinrich and Alexander Locascio, *State and Capital in An Introduction to the Three Volumes of Karl Marx's Capital* (2004). NYU Press. 199, 214.

¹²⁹ *Ibid.*

¹³⁰ James Buchanan's main argument is that markets do produce consistent choices, and that markets are not at all in the realm of collective choice. See Buchanan JM, 'Social Choice, Democracy, and Free Markets' (1954) 62 *Journal of Political Economy* 114, 114.

of the legal and political superstructure' of a state.¹³¹ To put it another way, Marx argued that states behaviour was rooted in the economic structure. What Marx emphasised is that the political and legal behaviour could not be taken into their own hands but must always be examined in the context of economic relations. Connected with this, capitalist states act out of structural changes in capitalism within those states, and those state policies provide for the possibility of capital expansion.

Combined with the above Marx's perspective, if capital seeks the expansion of profit this economic relationship will continue to exploit the value of labour in other countries. Although this interference is caused by the accumulation of capital, which belongs to the economic dimension, this economic exploitation has the potential to interfere with state action. This expansion of monopoly capital carried out by the developed capitalist countries could further lead to the carving up of the world. It was considered that the First World War was an inevitable consequence of such economic relations.¹³² As the capitalist mode of production enters a country with a different social form and becomes dominant, the old hierarchies and feudal relations of that country, together with its political or religious identity, are shaken up or even collapsed.¹³³ As Marx described the consequences of the rise of the bourgeoisie in his 1848 Communist Manifesto, 'the bourgeoisie, wherever it has got the upper hand, has put an end to all feudal, patriarchal, idyllic relations... In one word, for exploitation, veiled by religious and political illusions, it has substituted naked, shameless, direct, brutal exploitation.'¹³⁴ From this perspective, despite the exploitation that existed in the social patterns before the bourgeoisie arrived, the establishment of capitalism made domination and exploitation more transparent. Compared to bourgeois society, other social forms were primitive or underdeveloped, and the expansion of capital promoted the development of science, technology and social civilisation, but this sense of superiority could not conceal the fact of interference.

¹³¹ Michael Heinrich and Alexander Locascio, State and Capital in *An Introduction to the Three Volumes of Karl Marx's Capital* (2004). NYU Press. 199, 200.

¹³² *ibid*, 214.

¹³³ Michael Heinrich and Alexander Locascio, The Fetishism of Social Relations in Bourgeois Society in *An Introduction to the Three Volumes of Karl Marx's Capital* (2004). NYU Press. 179, 179.

¹³⁴ Karl Marx, Friedrich Engels, Bourgeois and Proletarians in *The Communist Manifesto*. First Avenue Classics. Minneapolis, MN: First Avenue Editions, a Division of Lerner Publishing Group, 2018. 7, 9.

Thus, although Marx never explicitly argued against interference, when interference arises from capital in economic relations, it implies intervention by the state. As it is believed that capital would continue to expand over the globe,¹³⁵ Marx had always condemned this economic relationship of the capitalist pursuit of profit. While this interference in capital expansion is caused by the accumulation of capital that belongs to the economic dimension, this economic exploitation has the potential to lead to the interference of state action. This is because Capitalist states act out of structural changes in capitalism within those states, and those state policies provide for the possibility of capital expansion.¹³⁶ This is therefore the argument between Marx and intervention as above.

4.3.2. Marxism on Non-intervention

Non-intervention, in the eyes of Marxism, is a positive principle for human rights. Although Marxism does not directly address the relationship between non-interference and human rights, the Marxist ideas on imperialism and colonialism can shed light on this issue.¹³⁷ It has been argued that imperialism and colonialism are manifestations of capitalist exploitation, with imperialist states using their economic and military power to extract resources and labour from colonised countries.¹³⁸ Lenin specified that the capitalists were driven to 'seize as much land of all kinds in all places as possible considering the potential sources of raw materials and worrying about being left behind'.¹³⁹

Following the logic embodied in the Marxist case against post-colonialism and the silencing of the post-colonial world, colonialism, as a manifestation of the extension of 'capital', could result in colonised people's exploitation or forced labour and the violation

¹³⁵ Ibid, 10.

¹³⁶ According to Marx's theory, the economic structure is the true foundation of a country's legal and political superstructure'.

¹³⁷ Fanon's stretched Marxism and Anghies's 'dynamic of differences' help to make sense of imperialism's relationship to sovereignty.

¹³⁸ Neil Stammers, 'Human Rights and Power' (1993) 41 Political Studies 70, 78-79.

¹³⁹ Vladimir Lenin, *Gesammelte Werke. Bd. I: 1893 bis 1905*. Erster Halbband, Berlin: Dietz Verlag. (1972), 100.

of their human rights.¹⁴⁰ If the imperialist powers intervene, whether through military force or economic coercion, then the human rights of the people of the intervened country will be furthered and their exploitation and oppression will be perpetuated.¹⁴¹

Some may use economics to label Marxism and criticise it for measuring human rights in terms of trade in international relations. However, the validity of such a critique is not convincing unless one assumes a complete separation of economics and politics.¹⁴² Marxism is not just about economism; the ideological framework does not exist as a matter of course. Thus, from a Marxist perspective, non-intervention can be seen as a way of respecting the sovereignty of colonial countries and avoiding the imposition of an imperialist economic system on them.

It is worth noting that while the USSR has always been critical of imperialism and colonialism, its practice of promoting “world revolution” embodied a double nature of both liberation and control. On the one hand, the Soviet Union supported the liberation of anti-colonial struggles under the flag of international proletarian solidarity; on the other hand, it often imposed its own ideological and organisational models on revolutionary movements. The early development of the Chinese Communist Party (CCP) fully reflects this contradictory complexity. Founded under the guidance of the Comintern, the CCP's early organisational structure and ideological orientation were heavily influenced by Soviet Marxism. However, the CCP later gradually moved away from Soviet orthodoxy, and began to develop a revolutionary path that was tailored to China's national conditions - most notably Mao Zedong's

¹⁴⁰ Nikita Dhawan, ‘Marxist Critique of Post-colonialism’ (2018) *Krisis Journal for Contemporary Philosophy*, Issue 2, 105, 105.

¹⁴¹ This is because Capitalism’s desire for profit is unlimited. New relationships of inequality, domination and exploitation continue to emerge in global society.

See William I. Robinson, ‘Global Capitalism: Crisis of Humanity and the Specter of 21st Century Fascism’ *he World Financial Review*, 14, 15.

See also Robert Knox, ‘Valuing Race? Stretched Marxism and the Logic of Imperialism’ (2016) 4 *London Review of International Law* 81, 112.

See also Hilferding Rudolf, *Finance Capital: A Study of the Latest Phase of Capitalist Development* (Routledge & Kegan Paul, 1981) 335.

¹⁴² Alexander Kirchberger, ‘Marx, Ideology, and International Relations’ (2002) *Studies om Social and Political Thought* 6, 1, 7.

revolutionary strategy based on peasants from the countryside to the city.¹⁴³ This historical trajectory suggests that Soviet support for anti-colonial revolution was never ideologically neutral. Nonetheless, the Marxist critique of imperialism and colonialism put forward by Lenin and others provides a valuable framework for understanding the principle of non-intervention.

From this perspective, non-intervention is not merely a principle of international law, but a political necessity to respect the sovereignty of former colonial States and to prevent the imposition of external systems of economic and political hegemony. In Marxist thought, the defence of sovereignty is increasingly linked to the protection of citizenship and, by extension, of human rights. The politicisation of life in modern democratic theory links human rights and sovereignty. In the classical world, there was a separation between natural life and political life.¹⁴⁴ However, modern political thought has dissolved the traditional distinction between natural life and politics, which is the source of the traditional and transcendent legitimacy of the state and the basis of modern democracy, justifying state power on the grounds of the protection of the life of the citizen.¹⁴⁵ In particular, post-Marxism¹⁴⁶ sheds light on the relationship between sovereignty and human rights. In Arendt's writing 'The Decline of the Nation-State and the End of the Rights of Man', she argues that the legal right to human rights depends on the political community to which one belongs, and that human rights cannot offer practical guarantees if one is deprived of the right to citizenship.¹⁴⁷

Marxists may see non-intervention as a way of respecting the sovereignty of colonial states and avoiding the perpetuation of their exploitation. In short, although Marx did

¹⁴³ Jinghao Zhou, Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013), 177, 183.

¹⁴⁴ In the classical world bare life appeared in the idea of natural life (zoe), which was relegated to a domestic sphere (oikos) devoted to its care and reproduction and opposed to the political life of public speech and action (bios politikos) that took place in the polis. See McLoughlin Daniel, 'Post-Marxism and the Politics of Human Rights: Lefort, Badiou, Agamben, Rancière' (2016) 27 *Law and Critique* 303, 312.

¹⁴⁵ Daniel McLoughlin, 'Post-Marxism and the Politics of Human Rights: Lefort, Badiou, Agamben, Rancière' (2016) 27 *Law and Critique* 303, 312.

¹⁴⁶ Post-Marxism is a diverse set of theories that emerged in the late 20th century, which seek to update Marxist theory in light of new social, political, and economic conditions. In particular, the Soviet Union had its own Marxist-Leninist ideology that influenced its views on sovereignty and human rights.

¹⁴⁷ *Ibid*, 313.

not directly emphasise the relationship between non-intervention and human rights, his ideas on imperialism and colonialism may provide a framework for understanding the issue.

4.3.3. Chinese Marxism on Non-intervention

Historically, absolute sovereignty was advocated by the Soviet-led socialist states.¹⁴⁸ The People's Republic of China's firm stand for absolute state sovereignty is thought to have been learnt by it from the Soviet Union in the 1950s.¹⁴⁹ This argument is sound because it is manifested in the fact that the ideas for sovereignty put forward by the Chinese government are remarkably similar to those of the former Soviet Union and its communist allies in Eastern Europe.¹⁵⁰

In Chinese terminology, *zhu quan* (sovereignty) is a right. *Zhu* means to be in charge, and *quan* means power and authority. Therefore, *Zhu Quan* means the nation's right to control its own situation. Conversely, losing this right means that a state cannot exercise any other right.¹⁵¹ Moreover, it is believed that sovereignty is a right in itself because it is equated with the inalienable right to freedom; once people have been conquered, ruled and exploited by an alien race, it constitutes a denial of fundamental human rights.¹⁵² Sovereignty is a prerequisite for human rights because it guarantees the exercise of human rights, as human rights are considered to happen only in the context of the self-determination of people.¹⁵³

¹⁴⁸ Jennifer Noe Pahre, 'The Fine Line between the Enforcement of Human Rights Agreements and the Violation of National Sovereignty: The Case of the Soviet Dissidents' (1984) 7 *Loyola ILA. Int'l & Comp. I.J.* 323, 335-340.

See also Farrokh Jhabvala, 'The Soviet-Bloc's View of the Implementation of Human Rights Accords' (1985) 7 *Hum. Rts. Q.* 461, 466-477.

¹⁴⁹ Edward Wu, 'Human Rights: China's Historical Perspectives in Context' (2002) 4 *Journal of the History of International Law* 335, 366.

¹⁵⁰ Farrokh Jhabvala, 'The Soviet-Bloc's View of the Implementation of human Rights Accords' (1985) 7 *Hum. Rts. Q.* 461, 487.

¹⁵¹ Roland Boer, 'The Chinese Marxist Approach to Sovereignty and Human Rights' in Roland Boer, *Socialism with Chinese Characteristics* (Springer Singapore 2021) 165, 175.

¹⁵² *Ibid.*, 174.

¹⁵³ *Ibid.*

Many scholars widely agree that sovereignty is the premise of China's Marxist view of human rights.¹⁵⁴ In the context of China's recent history, Wan firmly believes that sovereignty is the basis of any other right and that only the integrity of sovereignty can guarantee the full exercise of human rights. When a country loses its sovereignty, its citizens are like slaves, with no way to enjoy their rights.¹⁵⁵ Boer proposes that China's approach to human rights is a Marxist approach premised on anti-colonial sovereignty, in other words, the principle of non-interference in other states.¹⁵⁶ He believes that the Marxist approach to human rights has a distinctive contribution because the preconditions for non-interference lead to a core right of socio-economic welfare that gives rise to a range of other rights; but at the same time, he argues that this approach is not well known in some other parts of the world.¹⁵⁷

This approach to the right of sovereignty implies a firm rejection of hegemony. As part of the communist struggle against capitalism and imperialism, the Soviet Union was a major supporter of anti-colonial struggles around the world, supporting sovereignty in an anti-colonial context.¹⁵⁸ In the 1950s, the Soviet Union introduced the Declaration on the Granting of Independence to Colonial Countries and Peoples. It was adopted on December fourteenth 1960, and the League of Asian and African States authorised its version.¹⁵⁹ Despite the abstention of some former/current colonial powers,¹⁶⁰ the Declaration was ratified by the vast majority of UN Member States.¹⁶¹ After a historical period of anti-colonial struggle, China embraced this Soviet anti-hegemonic and anti-colonial influence of sovereignty, believing that only when sovereignty is exercised can the people's rights be genuinely realised.

¹⁵⁴ Q. H. Wan, *The History and Logic of Chinese Human Rights View with Chinese Characteristics*. (Human Rights 2017) 5, 33-52; Jiang K, *Sinification and Construct of Marxist Approach to Human Rights*. (West China Journal 2018) 11, 34-38; Wu F, *Innovative Human Rights View with Chinese Characteristics in a New Era* (Theory Monthly 2018) 12, 13-19.

¹⁵⁵ Dongxin Shu, 'The Chinese Marxist Approach to Human Rights' (2022) 12 *Open Journal of Philosophy* 342, 350.

¹⁵⁶ Roland Boer, 'The Chinese Marxist Approach to Sovereignty and Human Rights' in Roland Boer, *Socialism with Chinese Characteristics* (Springer Singapore 2021) 165, 165.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*, 174.

¹⁵⁹ *Ibid.*

¹⁶⁰ The Dominican Republic also abstained, under pressure from the United States.

¹⁶¹ General Assembly resolution 1514 (XV): 'Declaration on the Granting of Independence to Colonial Countries and Peoples', 14 December 1960.

At the same time, this idea of the right of sovereignty implies non-interference. Territorial integrity is an important feature in defining sovereignty. The United Nations General Assembly has stated that 'any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations'.¹⁶² Under the influence of the Soviet Union's push for a United Nations declaration defining sovereignty and China's external affairs on sovereignty and peace, Chinese diplomacy promoted the Five Principles of Peaceful Coexistence.¹⁶³ In many treaties, China has incorporated the Five Principles of Peaceful Coexistence as the guiding principle in its mutual relations with other states.¹⁶⁴ Thus, non-interference as a core principle appears constantly in Chinese foreign policy. The non-interference principle is evident in the way China cooperates with a number of developing countries today. It is considered to be different from the Western pre-colonial understanding, not interfering in the affairs of other countries but developing local economies and improving the lives of local people, such as the One Belt One Road initiative, the Shanghai Cooperation Organisation, and the BRICS countries.¹⁶⁵

Chinese Marxism claims that sovereignty, is a foundational prerequisite for other rights, including human rights. The sovereignty dimension is one of the differences between Western liberalism and Chinese Marxism on the issue of human rights. Western concepts largely understand the source of human rights from theological theory. Sovereignty is not the source of human rights, which contradicts the inalienability and universality of human rights as defined by Western liberalism.¹⁶⁶ While on the other hand, the Western liberal tradition's emphasis on universal human rights, on civil and political rights, is

¹⁶² Ibid.

¹⁶³ Enlai Zhou, Five principles for peaceful coexistence (31 December 1953). In *Selected works of Zhou Enlai*, (Beijing: Foreign Languages Press, 1989) vol. 2:128. The contents are: (1) mutual respect for sovereignty and territorial integrity, (2) mutual nonaggression, (3) non-interference in each other's internal affairs, (4) equality and mutual benefit, and (5) peaceful coexistence.

¹⁶⁴ China and India, Burma, Pakistan, Cambodia, the Russian Federation, Afghanistan, Nepal, and so on.

¹⁶⁵ Roland Boer, 'The Chinese Marxist Approach to Sovereignty and Human Rights' in Roland Boer, *Socialism with Chinese Characteristics* (Springer Singapore 2021) 165, 176.

¹⁶⁶ John O'Manique, 'Universal and Inalienable Rights: A Search for Foundations' (1990) 12 *Human Rights Quarterly* 465, 498.

somehow seen as a move that disregards the sovereignty of the state.¹⁶⁷ Unlike Western liberalism's denial of the contribution of sovereignty to human rights, the Chinese Marxist approach to human rights emphasises human rights in the context of historical and social practices. In the context of modern Chinese history, sovereign independence is a convincing social condition necessary for the realisation of human rights, as foreign countries had used military force against China's territorial integrity and political independence. In other words, being conquered by force by other countries not only undermines sovereignty, but also causes more suffering to the people. Interference usually does not bring better democracy and living conditions to the people. The sovereignty advocated by Chinese Marxism is in line with the interests of individuals.

Chinese Marxism on human rights emphasises the non-interference principle as sovereign independence is a prerequisite for the realisation of human rights. State Councillor Dai Bingguo stated¹⁶⁸ the importance of national security and sovereignty. He explained, 'China's first core interest is to maintain its basic system and national security; the second is national sovereignty and territorial integrity; and the third is sustained and stable economic and social development. "¹⁶⁹ Although the people are not the fundamental beneficiaries of non-interference, and although the benefits of non-interference are more in line with sovereignty as a national interest, human rights are indirectly guaranteed.¹⁷⁰ There can be no full human rights without independent sovereignty. Although non-interference in national security, internal affairs and sovereignty is not a determining condition, it is a prerequisite. Human rights have the prerequisites for their realisation when a man has independent sovereignty. Accordingly, national security and sovereign independence confer guarantees for the implementation of human rights.

¹⁶⁷ Dongxin Shu, 'The Chinese Marxist Approach to Human Rights' (2022) 12 *Open Journal of Philosophy* 342, 350

¹⁶⁸ He spoke during the 2010 Strategic and Economic Dialogue at the joint press conference of the second round between China and the United States

¹⁶⁹ 'Closing Remarks for U.S.-China Strategic and Economic Dialogue' (*U.S. Department of State*) <[//2009-2017.state.gov/secretary/20092013clinton/rm/2009a/july/126599.htm](https://2009-2017.state.gov/secretary/20092013clinton/rm/2009a/july/126599.htm)> last accessed 19 September 2024.

¹⁷⁰ Louis Henkin, 'Human Rights and State Sovereignty Sibley Lecture/Keynote Address' (1995) 25 *Georgia Journal of International and Comparative Law* 31, 33.

4.4. Marxism on Priority Economic Development

4.4.1. Marx on Priority Economic Development

The process of economic development is closely linked to human behaviour in life. The economic development in Marx's vision is broadly divided into three areas: in the production sphere where goods are produced and services provided; in the circulation sphere where goods and services are exchanged with money; and in the consumption sphere where individuals consume goods and services in order to survive.¹⁷¹ In such an economic process, circulation involves only trading or transactions and is therefore considered to be a pure economic field.¹⁷² However, both the sphere of production and the sphere of consumption are related to human rights. The production sphere is related to the social rights of people to learn technology and to work, while the consumption sphere is related to the rights of people to subsistence and development. It can be concluded that in most aspects of economic development, there is a close connection with human life and rights.

Marx believed that economic form took precedence over human behaviour. In Marx's eyes, both capitalists and labourers are personifications of economic relations, or masks of different identities with different economic characters.¹⁷³ When it comes to specific reasons, a person's behaviour follows a specific rationality, and economy forms the rational basis.¹⁷⁴ A person, whether a commodity owner or a capitalist, behaves in accordance with a specific rationality. The consequence of applying this way of thinking is, as people behave in accordance with this particular rationality, they continually reinforce the preconditions of the economic form. So, the economy determines the human rational basis, and human behaviour constantly reinforces such an economic approach to everything. Marx made no bones about the fact that economics determines everything. As coined by Marx, 'rights can never take precedence over the economic

¹⁷¹ Michael Heinrich and Alexander Locascio, Capital, Surplus Value, and Exploitation in *An Introduction to the Three Volumes of Karl Marx's Capital* (2004). NYU Press. 81, 82.

¹⁷² Ibid, 83.

¹⁷³ Karl Marx, (2004). Capital: Volume I. United Kingdom: Penguin Books Limited. 179.

¹⁷⁴ Michael Heinrich and Alexander Locascio, Capital, Surplus Value, and Exploitation in *An Introduction to the Three Volumes of Karl Marx's Capital* (2004). NYU Press. 81, 88.

forms of society and the cultural developments to which they are subject'.¹⁷⁵ Although Marx's position highly simplifies this complex world, Marx's emphasis on the economic form is not misplaced; instead, his stance shows the importance of economic development over human behaviour. Therefore, despite the fact that human life is closely linked to economic development, in Marx's formulation, he made no bones about economic forms must be analysed first, and human behaviour discussed afterwards.

Marx emphasised economic development, but this cannot be said to have been well thought through. The inherent manufacturing conditions of materials, whether capitalist or communist, can be environmentally destructive and hazardous to health under industrial methods of production. But Marx seems to have avoided this point. In his writings, Marx didn't express a view on such issues. He merely emphasised the need to distinguish between 'the increase in productivity due to the development of the social process, and the increase in productivity due to the exploitation by the capitalists'.¹⁷⁶ Marx only criticised the exploitative economic development of capitalists but took no position on the potentially destructive nature of industrial development. Marx was therefore blamed for merely criticising the shell of capitalism but looking positively at the process of economic development itself.¹⁷⁷ This emphasis on economic development was not well thought out.

Although the concept of human rights was not a well-established concept at the time Marx was writing, Marx hinted at a social theory that focused on social and economic rights in his later writings. While the modern concept of rights arose out of social relations of production in the form of the value of human labour, and private rights emerged with the capitalist mode of production.¹⁷⁸ Marx expected human beings to be liberated from constraints and to develop freely, especially beyond material production, thus freeing them from the control of "alienated" production.¹⁷⁹ This implies, conversely, that if one loses control over one's labour, and labour is commodified, then it leads to

¹⁷⁵ Karl Marx, (2010), *Later Political Writings*, Cambridge: Cambridge University Press. Pp. 214-215.

¹⁷⁶ Karl Marx, (2004). *Capital: Volume I*. United Kingdom: Penguin Books Limited. 547.

¹⁷⁷ Michael Heinrich and Alexander Locascio, *The Capitalist Process of Production in An Introduction to the Three Volumes of Karl Marx's Capital* (2004). NYU Press. 99, 117.

¹⁷⁸ David Fasenfest, 'Marx, Marxism and Human Rights' (2016) 42 *Critical Sociology* 777, 778.

¹⁷⁹ Luis Kutner, 'The Human Rights of Karl Marx' (1979) 55 *North Dakota Law Review* 39, 48.

poverty and deprivation of rights for the working class. Marx's ideas sought to reform economic and social conditions in favour of the poor, although not a comprehensive alternative to liberal human rights theory, were considered a source of critique of human rights.¹⁸⁰ In the context of capital, Marx brings us the knowledge that capital is never just money or commodities, but an uninterrupted movement in pursuit of infinite appreciation.¹⁸¹ It is believed that the exploitation in capitalist relations of production is seen as inherently incompatible with the full realisation of the full range of human rights in Marx's theory.¹⁸² It can therefore be argued that Marx's critique of the capitalist mode of production and even desire to be replaced underpins his desire for fairness and justice in social and economic rights.

4.4.2. Marxism on Priority Economic Development

In Marx's work, 'man' is firmly embedded in the material conditions of existence, and this is exactly what is meant by economic and social rights, something that Marxism criticised as being indifferent or even missing from the declarations and many major constitutions.¹⁸³ For Marx, it was the material rather than the spiritual aspect of reality that was at stake.¹⁸⁴ In an ideological sense, it reflects the importance Marx attached to satisfying people's material needs in a post-revolutionary social order.¹⁸⁵ According to Marx, rights are supposed to be 'adjudicators' between competing claims to material resources, but material scarcity can make rights less necessary as adjudicators.¹⁸⁶ Therefore, the fundamental values of social and economic rights, such as the rights to food, housing, work, medical care, and education, are necessary preconditions for the practice of formal rights.¹⁸⁷ Therefore, Marx sees the struggle for human rights as inseparable from the struggle for social and economic justice. Seemingly, Engles

¹⁸⁰ Brad R. Roth, 'Retrieving Marx for the Human Rights Project' (2004) 17 *Leiden Journal of International Law* 31, 31.

¹⁸¹ Michael Heinrich and Alexander Locascio, *Capital, Surplus Value, and Exploitation in An Introduction to the Three Volumes of Karl Marx's Capital* (2004). NYU Press. 81, 89.

¹⁸² George G. Brenkert, 'Marx and Human Rights' (1986) 24 *Journal of the History of Philosophy* 55, 56.

¹⁸³ Darren J. O'Byrne, 'Marxism and Human Rights: New Thoughts on an Old Debate' (2019) 23 *The International Journal of Human Rights* 638, 642.

¹⁸⁴ Luis Kutner, 'The Human Rights of Karl Marx' (1979) 55 *North Dakota Law Review* 39, 44.

¹⁸⁵ Robert Weatherley, *Marx, Marxism and Rights in The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 83, 97.

¹⁸⁶ *Ibid*, 83.

¹⁸⁷ Eric Engle, 'Human Rights According to Marxism' (2008) 65 *Guild Practitioner* [iii], 249, 252.

complemented this by pointing out that political freedom does not secure individual freedom.¹⁸⁸

The Marxist view of human rights continues Marx's belief that rights are highly dependent on material. Marxist theory holds that human rights depend on the social and economic conditions in which they are practised. Such as O'Byrne argued on Marxism and human rights that social and economic conditions are the core factors that reflect basic human needs and shape the way people live and interact with each other.¹⁸⁹ In this view, rights are not abstract or innate but deeply rooted in material reality. In other words, there is a fundamental difference between the recognition of rights in formal terms and the actual material conditions required for their fulfilment. For example, although the right to education is universally recognised as a human right, it cannot be truly realised in situations of social disorder, lack of schools and qualified teachers.

While social and economic conditions determine the distribution of wealth and power in society. In particular, economic systems, such as capitalism, are responsible for creating and continuing inequalities between different groups of people.¹⁹⁰ In this Marxist view, economic systems such as capitalism produce and sustain structural inequality by allowing the means of production, such as land, factories and capital, to be concentrated in the hands of a few. This ownership structure determines both how resources are distributed and the conditions under which rights are realised, often reducing working class rights to the nominal or unfulfilled.¹⁹¹ Marxism therefore

¹⁸⁸ David Fasenfest, 'Marx, Marxism and Human Rights' (2016) 42 *Critical Sociology* 777, 778.

¹⁸⁹ Darren J. O'Byrne, 'Marxism and Human Rights: New Thoughts on an Old Debate' (2019) 23 *The International Journal of Human Rights* 638, 640.

See also Marcel H. Herpen, 'Marx and Human Rights: Analysis of an Ambivalent Relationship Cicero Foundation Great Debate Paper No. 12/07 (2012), 11.

¹⁹⁰ For example, Thomas Piketty's analysis of wealth and income inequality in capitalist societies argues that the rate of return on capital in capitalist societies tends to outpace economic growth, leading to the accumulation of wealth among the already wealthy and the perpetuation of inequality.

See Thomas Piketty, '*Capital in the Twenty-First Century: A Multidimensional Approach to the History of Capital and Social Classes: A Multidimensional Approach to the History of Capital and Social Classes*' (2014) 65 *The British Journal of Sociology* 736, 742.

¹⁹¹ Considered only in the context of exchange relations these individuals are abstract individuals and are considered formally equal.

See George G. Brenkert, 'Marx and Human Rights' (1986) 24 *Journal of the History of Philosophy* 55, 68.

argues that the struggle for human rights is inseparable from the struggle for socio-economic transformation. Rights are not merely moral entitlements; they depend on the elimination of exploitative economic structures and the achievement of equitable conditions for all.

Marxism's view of a meaningful theory of human rights places emphasis on social and economic rights. Marxist theorists argue that the exercise of formal rights is often vague and impractical for those who lack the material means to exercise them. As O'Byrne apologised to George Bernard Shaw¹⁹², one 'cannot talk about 'human rights' with people whose eyes are full of hunger and who only want to fill their stomachs'.¹⁹³

Marxism is very concerned with the social and economic conditions that may violate the foundations of human rights. This also helps to explain why Marxist theories often criticise bourgeois conceptions of human rights, which tend to prioritise individual freedom and formal equality over social and economic rights. Because liberal theory was thought to presume the absolute doctrine of individualism and the certainty of material shortage, from which presumptions arose the foundations of capitalism.¹⁹⁴ In practice, Soviet Marxist-Leninist theory emphasised the importance of social rights and considered them essential to building socialism. The Soviet Union signed international human rights treaties but tended to view human rights through the lens of socialist ideology, emphasising economic and social rights rather than civil and political rights.¹⁹⁵ Although it is argued that the discourse of human rights is most often shaped by the interests of the dominant social and economic systems,¹⁹⁶ human rights are not just about guaranteeing noble individualistic civil and political freedoms.¹⁹⁷

¹⁹² Shaw was a strong advocate for political rights, including the right to vote and the right to free speech.

¹⁹³ Darren J. O'Byrne, 'Marxism and Human Rights: New Thoughts on an Old Debate' (2019) 23 *The International Journal of Human Rights* 638, 642.

¹⁹⁴ *Ibid*, 643.

¹⁹⁵ Congyan Cai, 'The Rise of China and the Strategy of Universality of International Law' (2021) 3 *China International Strategy Review* 154, 159.

¹⁹⁶ Marx saw all thought as a superstructure of the human economic condition, and his stand was that the religion, social customs, art and form of government of a nation were merely a reflection of its economic system. See Luis Kutner, 'The Human Rights of Karl Marx' (1979) 55 *North Dakota Law Review* 39, 44. See also Paul O'Connell, 'Human Rights: Contesting the Displacement Thesis' (2018) 69 *Northern Ireland Legal Quarterly* 19, 35.

¹⁹⁷ Christopher MJ Boyd, 'Can a Marxist Believe in Human Rights?' (2009) 37 *Critique* 579, 585.

The economic explanations Marx observed in the class shed light on self-sufficiency and true democratic freedom in contemporary society.¹⁹⁸ Although the post-revolutionary society Marx depicted was quite different from the type of society those Marxian revolutionary leaders¹⁹⁹ faced in reality,²⁰⁰ it is the fact that the Marxist state's view of rights is marked by a general emphasis on socio-economic or welfare rights.²⁰¹ The Marxist view of a meaningful theory of human rights emphasises material as manifested in social and economic rights today, in contrast to the traditional Western liberal view²⁰². However, rather than Marxism posing a challenge to the dominant theory of human rights, it is necessary to focus on the place of social and economic rights in human rights. Rockmore would not consider Marx's view of rights in the Western model to be a critique, arguing that Marx, himself a Westerner, understood profoundly the inalienable rights conferred on human beings under the Western model, and that his notion of the discontinuity of rights was intended to justify the fundamental transformation of revolution and development in modern Western society.²⁰³ It has also been argued that Marxism does not seek to deal a knock-out blow to the whole concept of human rights, but the need to develop a set of values that protect human dignity and rights in a globalised world order has become more urgent than ever.²⁰⁴

4.4.3. Chinese Marxism on Priority Economic Development

Marxism's social and economic impact in the 20th century may be significant. Private ownership leads to the alienation of labour, which in turn leads to the alienation of humans. Confronting the dilemma of human development in a capitalist society, the classic Marxist authors put forward the proletarian concept of human rights and used it

¹⁹⁸ Luis Kutner, 'The Human Rights of Karl Marx' (1979) 55 North Dakota Law Review 39, 58.

¹⁹⁹ such as Lenin and Mao Zedong

²⁰⁰ Robert Weatherley, Marx, Marxism and Rights in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 83, 89.

²⁰¹ Ibid, 97.

²⁰² Many traditional Western liberals insist that the true concept of human rights only includes civil and political rights, although Western liberal scholars also do not agree on some of the basic components of human rights in all respects. See Weatherley Robert, Human Rights in Western Liberal Thinking in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 13, 14.

²⁰³ Tom Rockmore, 'Hegel and Chinese Marxism' (2019) 7 Asian Studies 55, 69.

²⁰⁴ Tony Evans, Introduction in *Human Rights in the Global Political Economy: Critical Processes*, LYNNE RIENNER PUBLISHERS, 2011, 1, 3.

to guide the proletarian revolution and socialist construction towards the full development of humanity.²⁰⁵ Due to the direct influence of Marxism, it is an undisputed fact that socialism had a major impact on the world during the communist movement of the mid-20th century.²⁰⁶ More than a dozen socialist countries in Europe and Asia formed a strong socialist camp, which considerably shook the rival capitalist world and forced some developed capitalist countries to reform or improve by introducing socialist planned economies and welfare policies,²⁰⁷ for example, improving the welfare situation to alleviate the conflict between the labour side and the capital side.²⁰⁸

It should be pointed out that the concern for the material welfare of human beings is one of the cores of Marxist thought. Although Marx did not mention the term welfare rights, he did attach great importance to satisfying material needs, especially in his vision of a post-revolutionary society. Unlike Cranston, who argued that socio-economic rights lacked universality,²⁰⁹ Marxism demonstrates the inter-embeddedness of economic and social influences on human rights. Hegel²¹⁰ strongly emphasises ‘material welfare’, a task that the state has come to ensure.²¹¹ In this light, the Marxist approach offers the idea of human rights that prioritises the needs of the material conditions of subsistence. And these needs and demands are seen as economic and social rights.²¹² Socio-economic welfare, as a ‘positive right’, reflects what Hegel called the ‘right to life’ in terms of subsistence, free from poverty, work and socio-economic benefits.²¹³ Other scholars, along with Marx, have argued that socio-economic rights are included in the context of

²⁰⁵ Shiping He, ‘On the Quadruple Qualities of Marxist Thought on Human Rights Academic Monograph’ (2021) 20 *Journal of Human Rights* 95, 99.

²⁰⁶ Huiming Jin, Chapter 1: Marxism and Its Great Significance in the Contemporary World in *Marxism and Socialism with Chinese Characteristics* (First edition, Cengage Learning Asia Pte Ltd 2017) 1, 16.

²⁰⁷ *Ibid.*

²⁰⁸ Huiming Jin, Chapter 2: Marxist Outlook on Epochs and Features of the Contemporary Epoch in *Marxism and Socialism with Chinese Characteristics* (First edition, Cengage Learning Asia Pte Ltd 2017) 29, 63.

²⁰⁹ Cranston’s view is that a human right should be the right of every individual in all situations.

²¹⁰ Hegel is a forerunner of Marx and Engels.

²¹¹ Domenico Losurdo, *Hegel and the freedom of the moderns*. Translated by Marella Morris and Jon Morris. (Durham: Duke University Press 2004) 69, 89.

Georg Wilhelm Friedrich, *Berliner Schriften (1818–1831)*. In *Werke*, Frankfurt am Main: Suhrkamp 1986. Vol. 11. 109.

²¹² Dongxin Shu, ‘The Chinese Marxist Approach to Human Rights’ (2022) 12 *Open Journal of Philosophy* 342, 355.

²¹³ Domenico Losurdo, *Hegel and the freedom of the moderns*. Translated by Marella Morris and Jon Morris. Durham: Duke University Press 2004. 186.

human rights, with Rodney Peffer arguing that welfare rights satisfy the material needs we need to function as human beings and amount to basic human needs.²¹⁴

The realisation of human rights is not only about freedom and autonomy, but also about the right to development. The right to development, as a comprehensive human right, incorporates the rights to subsistence, economic, social and cultural rights into a holistic perspective, which is in line with the Marxist idea of human liberation, which is centred on the economic foundation, and is also highly compatible with China's people-centred concept of development.

Human rights and freedom, as perceived by Marxism, are closely linked to the economic structure of society. As Marx proposed, 'rights cannot go beyond the economic structure of society and the socio-cultural development under the constraints of the economic structure'.²¹⁵ This means that the realisation of human freedom and rights must depend on the development of material productive forces. Marx had criticised the alienation of human beings by private property in capitalist society and advocated the liberation of human beings through the elimination of private ownership. It has been argued that Marx's anthropomorphism of Capital and labour as mutually opposing abstract forces is based neither on the nature of man nor the structure of Capital but on the position of moral equality in the human age.²¹⁶ Marxist scholars have emphasised the fundamental role of the abolition of private ownership and the development of productive forces as part of the conditions for realising proletarian human rights, and the economic dimension is part of this.²¹⁷ On this basis, development is not only economic growth, but also a historical process of getting rid of alienation and realising the full and free development of human beings. Understood from this perspective, the 'right to development' is the institutionalised expression of human freedom and liberation.

²¹⁴ Robert Weatherley, Human Rights in Western Liberal Thinking in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 13, 25.

²¹⁵ Karl Marx and Friedrich Engels, *Selected Works of Marx and Engels*, vol. 3 (Beijing: People's Publishing House, 1995), 305.

²¹⁶ Petrus Liu, 'Queer Human Rights in and against China: Marxism and the Figuration of the Human' (2012) 30 *Social Text* 71, 75.

²¹⁷ Shiping He, 'On the Quadruple Qualities of Marxist Thought on Human Rights Academic Monograph' (2021) 20 *Journal of Human Rights* 95, 111.

Most Marxist countries attach considerable importance to economic rights. The prominent place of welfare rights in Marxist thought was established in the 1936 Soviet Constitution, which was one of the first constitutions to deal extensively with welfare rights and set out the provisions of welfare rights before civil and political rights.²¹⁸ Accordingly, Marxism is more concerned with material human welfare than civil and political rights. It is also argued that the emphasis on welfare rights has more to do with the situation of mass poverty that prevails in Marxist countries, such as the Soviet Union and China, where people had material needs that urgently needed to be met in the post-revolutionary social order.²¹⁹ In such circumstances, the ruling Marxist parties have no choice but to focus on the urgent task of social and economic development to guarantee their people's socio-economic rights.²²⁰ Certainly, official Soviet sources believe that the achievements of the socialist economy, particularly in industry, provided the material basis for the Soviet people to enjoy their welfare rights.²²¹

The ground-level logic of China's and the Soviet Union's prioritisation of welfare is the same. After the founding of New China, China implemented socialist transformation to lay the institutional foundation for the subsistence and development of the vast population. Specifically speaking, it is manifested in the elimination of private ownership of the means of production and hence eliminating the class roots of human exploitation.²²² This was seen as a fundamental solution to the issue of people's democratic rights.²²³ In China, however, the right to subsistence is not the bottom line of human rights, but the basis for the fulfilment of the right to higher development. China's practice of the 'right to development' is embodied in a series of policy projects ranging from poverty alleviation, regional development, universal education to medical

²¹⁸ Robert Weatherley, Marx, Marxism and Rights in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 83, 97.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid, 98.

²²² Weiyun Xiao, Haocai Luo, Xieying Wu, How Marxism Views the Human Rights Question (1979) in Angle SC and Svensson M, *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000* (Taylor & Francis Group 2001) 281, 285.

²²³ Ibid.

coverage.²²⁴ Deng Xiaoping's assertion that 'poverty is not socialism'²²⁵ and the emancipation of productive forces through development is a realistic expression of the right to development.

While China went on to learn from the Soviet experience, the traditional Marxist concerns for the material welfare of human beings are partly reflected in China's emphasis on socio-economic rights. The Chinese Marxist approach to human rights views socio-economic welfare as a core human right. In line with the Soviet constitutional tradition, the Chinese Constitution also stipulates a wide range of welfare rights, including the right to social security, education, work, health care, and so on.²²⁶ China has also introduced a series of policies to improve socio-economic well-being, such as Reform and Opening up and the Fight against Poverty.²²⁷ To this day, China's Marxist view of human rights continues to place socio-economic welfare as a core right, as illustrated by the coherent series of policies that China has successively launched. The Chinese government has introduced a series of policies based on promoting social and economic welfare, such as the Belt and Road Initiative and minority nationalities policy.²²⁸

Evidently, China links Marxism to the fight against poverty, especially economic poverty.²²⁹ As a famous Chinese reformer and leader of Reform and Opening-up, Deng Xiaoping proposed that "poverty is not socialism; socialism means eliminating poverty. We must keep up with the times, which is our reforms' purpose."²³⁰ In this regard, Chinese Marxism has contributed to the overcoming of poverty. Over the past 30 years, China has helped some 600 million people, equivalent to 70% of the world's poor, to be

²²⁴ Dongxin Shu, 'The Chinese Marxist Approach to Human Rights' (2022) 12 Open Journal of Philosophy 342, 351.

²²⁵ Xiaoping Deng. Selected Works of Deng Xiaoping (People's Publishing House. 1993). Vol. 3.

²²⁶ Robert Weatherley, Rights in the People's Republic of China in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 101, 121.

²²⁷ Dongxin Shu, 'The Chinese Marxist Approach to Human Rights' (2022) 12 Open Journal of Philosophy 342, 351.

²²⁸ Roland Boer, 'The Chinese Marxist Approach to Sovereignty and Human Rights' in Roland Boer, *Socialism with Chinese Characteristics* (Springer Singapore 2021) 165, 166.

²²⁹ Tom Rockmore, 'Marx, Chinese Marxism and Poverty' (2021) 17 Journal of Global Ethics 42, 42.

²³⁰ Xiaoping Deng. Selected Works of Deng Xiaoping (People's Publishing House. 1993). Vol. 3.

lifted from the one-dollar-a-day poverty line currently set by the World Bank.²³¹ In the rest of the world, the number of people living in poverty has increased in some regions, while the proportion of people living below the poverty line in China has been reduced by almost half before 2004.²³² Despite the fact that poverty and inequality still exist, China has made impressive progress in lifting the poorest people out of poverty.

In some views, the Chinese Marxist human rights approach to Marx's economic and social welfare seems inadequate. Although economic factors are considered to be the starting point for the realisation of equal human rights,²³³ it has been suggested that Marxist advocacy of economic priority and socialist redistribution are only manifestations, the basic premise of which is the value of human labour as the basis of social justice.²³⁴ Marx's view of human rights is not only closely related to the economic aspects of human rights but also comprehensive in its exploration of the improvement of human social relations. Marx was committed to freeing humanity from oppression, not only economic poverty but also non-economic and developmental forms.²³⁵ It is therefore not surprising that it is argued that China is to be praised for overcoming economic poverty, but that the goal of making a human being a fully developed human being, as Marxism expects, is still a long way off.²³⁶

Although Marxism suggests that the spread and promotion of human rights awareness depend on a reliable economic base, some of the debate revolves around China's economic reforms to improve the material well-being of its people. Some argue that China focused on economic development, but not in the way that Marx originally thought of the transition from capitalism to communism, instead solving economic

²³¹ Tom Rockmore, 'Marx, Chinese Marxism and Poverty' (2021) 17 *Journal of Global Ethics* 42, 44.

²³² Shaohua Chen and Martin Ravallion, "Absolute poverty measures for the developing world, 1981–2004" (Development Research Group, World Bank, 2007). *Proceedings of the National Academy of Sciences of the USA*, vol. 104, 43. 16757, 16757.

²³³ Jingsheng Wei, Human Rights, Equity, and Democracy in Angle SC and Svensson M, *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000* (Taylor & Francis Group 2001) 253, 255.

²³⁴ Petrus Liu, 'Queer Human Rights in and against China: Marxism and the Figuration of the Human' (2012) 30 *Social Text* 71, 84.

²³⁵ Tom Rockmore, 'Marx, Chinese Marxism and Poverty' (2021) 17 *Journal of Global Ethics* 42, 47.

²³⁶ *Ibid*, 44.

problems within the framework of capitalism.²³⁷ Some counter-argued that although China is beyond what classical Marxism could have foreseen, some believe that the global environment is evolving rapidly and that China is not dogmatically faithful to Marx and analysing it to become practical.²³⁸ In addition, an in-depth assessment of China's unique social reality was dedicated. Considering the country's vast size, the uneven development of different regions, and the difficulty of overcoming extremism and separatism, it is an ideal approach to concentrate measures to ensure socio-economic welfare.²³⁹

In conclusion, the importance that Marxist thought places on the material welfare of human beings has influenced the contemporary China's view of human rights in terms of socio-economic rights, specifically in terms of the right to subsistence and the right to development. It is difficult to agree that Wei's view that the basic welfare rights in contemporary China, namely the right to subsistence and the right to food, clothing and housing, are human rights, is a fallacy.²⁴⁰ Wei believes that feudal slave owners and Nazis also meet such conditions by providing food and shelter, but the reality of Marxist human rights is a completely different situation. The right to subsistence and the right to development as priority areas for the protection of basic human rights in China. Even with the introduction of market mechanisms after reform and opening up, China still emphasises that the fruits of development are shared by the people, a concept that is reflected in the people's right to improve their living conditions through development. The CCP has explicitly listed the 'right to development' as a basic human right in several national human rights action plans, stressing that development is the key to achieving people's happiness.²⁴¹ In State discourse, letting the people live a good life has become a source of legitimacy for governance, and the right to

²³⁷ Ibid, 53.

²³⁸ Robert Ware, 'Reflections on Chinese Marxism' (2013) 27 *Socialism and Democracy* 136, 159.

²³⁹ Roland Boer, 'The Chinese Marxist Approach to Sovereignty and Human Rights' in Roland Boer, *Socialism with Chinese Characteristics* (Springer Singapore 2021) 165, 181.

²⁴⁰ Jingsheng Wei, Prison Letter (1991) in *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000*, Angle SC and Svensson M edited, (Taylor & Francis Group 2001) 343, 350.

²⁴¹ The State Council Information Office of the PRC. "Seeking Happiness for People: 70 Years of Progress on Human Rights in China", 2019. accessed 18 February 2025; The State Council Information Office of the PRC. "Fifty Years of Professor of China's Human Rights" (February 2, 2000), Part VI. accessed 18 February 2025.

development is not only a right, but also a State responsibility and political commitment.

4.5. Marxism on Priority Collective Interests

4.5.1. Marx on Priority collective interests

Marx criticised some individual-centred forms of rights. In the early days, Marx spoke out against the right to promote the interests of specific individuals and criticised the nature of rights as ultimately selfish.²⁴² Marx saw man as a species or social being, observing that human beings are needy beings because every human being is designed to depend on external things and other people to help meet his needs.²⁴³ In Marx's view, there are inherent conflicts between individual liberal choice and collective outcome.²⁴⁴ In a particular context, Marx was an outspoken critic of Western human rights.²⁴⁵ He believed that human rights, as set out in the French Declaration, are essential rights that separate people from each other. Specifically, rights encourage self-interest and self-centeredness. When everyone pursues private interests, individuals become unconcerned with each other's well-being and the community as a whole, and communities undoubtedly become divisive and fragmented.²⁴⁶

Marx's work demonstrates his advocacy for more community rights and his desire for a community of interest. In his major work on Marxism, *Das Kapital (Capital)*, Marx argued that social relations shape human history, and therefore, he encouraged the right to allow people to fulfil human relations.²⁴⁷ He welcomed citizens' rights in favour of the community, such as participation in shaping the public will and the free exchange of

²⁴² Justine Lacroix, 'Should a Marxist Believe in Human Rights?'. *Arguing about justice: Essays for Philippe Van Parijs*, (Presses universitaires de Louvain, 2010) 261, 262.

²⁴³ Luis Kutner, 'The Human Rights of Karl Marx' (1979) 55 *North Dakota Law Review* 39, 57.

²⁴⁴ Jinghao Zhou, Chapter Thirteen Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 177, 179.

²⁴⁵ The remaining Western scholars who completely reject the idea of human rights are Jeremy Bentham, Edmund Burke, and Alasdair MacIntyre.

See Robert Weatherley, Human Rights in Western Liberal Thinking in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 13, 14.

²⁴⁶ *Ibid.*

²⁴⁷ Zhou Jinghao, Chapter Thirteen Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 177, 178.

ideas and opinions.²⁴⁸ He believed that only when each individual was integrated into the whole of humanity could a man be completely free, society be perfect, and the 'ultimate expression of man' be realised.²⁴⁹ Although it was put forward that Marx did not fully take into account the complexity behind the community's interests being both compatible and divergent,²⁵⁰ it was his belief that a certain social environment is conducive to the realisation of human rights.²⁵¹ Pennock argues that Marx was somewhat pessimistic about communities of interest because Marx believed that communities of interest could not be realised unless private ownership was not used as a tool of production.²⁵² Although Pennock considers Marx's view as an uncertain and distant vision, he merely expresses his personal perspective in assessing Marx's ideals. Returning to rationality, Marx expresses a desire to do so. As Marx stated, only 'in the higher stages of communist society...the limited horizon of bourgeois rights can be completely transcended'.

Although Marx criticised some types of human rights, Marx's hostility was not aimed at the idea of rights. Notably, Marx did not condemn the results of rights, such as freedom of expression and freedom of association, nor did he deny that individuals have rights to these benefits. What he criticised was simply the way rights have been understood and practised by the modern state.²⁵³ Marx lived at a time when, although human rights were universal, they were more often the result of bourgeois individual-centred political rights such as the right to vote, freedom of speech, and the right to property. Marx's condemnation of human rights was based precisely on the limitations of human rights at that time, which allowed people to exercise their rights selfishly and in isolation from their fellow human beings and communities.²⁵⁴ Instead, Marx argued for community-

²⁴⁸ Robert Weatherley, Human Rights in Western Liberal Thinking in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 13, 35.

²⁴⁹ Joseph Cropsey, Karl Marx in *History of Political Philosophy*, Strauss L and Cropsey J ed., (University of Chicago Press 2012) 703-704.

²⁵⁰ James Chowning Davies, *Human Nature in Politics: The Dynamics of Political Behavior* (John Wiley & Sons Inc 1963) 234, 241.

²⁵¹ Jinghao Zhou, Chapter Thirteen Marxism and Maoism in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 177, 178.

²⁵² James Roland Pennock, Chapter III Individualism and Collectivism in *Democratic Political Theory* (Princeton University Press 2015) 59, 88.

²⁵³ Justine Lacroix, 'Should a Marxist Believe in Human Rights?'. *Arguing about justice: Essays for Philippe Van Parijs*, Presses universitaires de Louvain, 2010. 261, 264.

²⁵⁴ *Ibid*, 262.

based collective rights and interests because Marx's perspective was that human capacities, talents and values, were especially embodied in the community. According to Marx's view of human rights, the existing foundations of human rights fail to properly evaluate the value of community and citizens; rather, they undervalue them.²⁵⁵

4.5.2. Marxism on Priority Collective Interests

Continuing Marx's view of rights, Marxists underline the importance of community or collective human rights as a fundamental component of achieving social and economic justice. The dominant Western conception of human rights relies logically on natural law, a belief that makes human rights, regardless of the specific provision on which they are based, belong to the individual rather than to any entity, such as the social collective and the state. Lacroix put forward the view that human rights gave rise to what we today call 'social atomism'.²⁵⁶ In contrast, Marxism emphasises the importance of collective human rights. Marxism believes that the value of the individual is related to the individual as part of the 'whole' of the community because whether the basic approach to human life is progressive can only be measured by the ability of human beings to control the natural and social conditions in which they live.²⁵⁷ Rather than critique some types of rights, Marxism is a model of political life that calls for community and collective civic values that allow for the full realisation of humanity. The model advocated by Marxism is considered highly relevant to the internationally certified human rights 'third generation' of collective rights and minimum conditions for social prosperity.²⁵⁸ Therefore, Marxist theorists believe that achieving collective human rights²⁵⁹ is essential for the creation of a genuinely equalist society.

Marxism provides a distinctive approach to human rights theory that emphasises the importance of collective rights and social justice. Raya Dunayevskaya developed the idea

²⁵⁵ Ibid, 264.

²⁵⁶ Ibid, 262.

²⁵⁷ Leszek Kolakowski, 'Marxism and Human Rights' (1983) 112 *Daedalus* 81, 92.

²⁵⁸ Brad R. Roth, 'Retrieving Marx for the Human Rights Project' (2004) 17 *Leiden Journal of International Law* 31, 46.

²⁵⁹ Collective human rights refer to the rights of communities, rather than just individuals, ranging from rights relating to labour, housing, health care and education.

of ‘humanism’ in Marxism. She argues that Marxism provides a framework to understand human rights as collective rights based on the struggle for social justice.²⁶⁰ Based on the relationship between capitalism and human rights, the discourse of human rights is a product of the global capitalist system. However, Marxism’s view of human rights pays more attention to the structural conditions that lead to economic and political inequality. Certainly, in the struggle for rights, the human rights of the Marxist struggle are community rights and interests. If we are radical, the form of human rights in Marxism is not necessarily a collection of individual rights, because after all, in the Marxist ideal of a communist state, there are no oppressors or oppressed, and in a classless society where capital has been eliminated, individual rights become dispensable.²⁶¹ According to Brasil and Urquiza, individual rights are dispensable, but rights belonging to entities such as social communities and the state are still necessary. Therefore, it is concluded that Marxism pays more attention to collective rights.

4.5.3. Chinese Marxism on Priority Collective Interests

Marx had a unique view of the relationship between an individual person and the social community. Community is considered a fundamental and non-substitutable component of a good human life.²⁶² In the Marxist understanding of the relationship between the individual, the community and the state, he did not place the individual above the state.²⁶³ Instead, Marxism sees the individual as a species in society.²⁶⁴ It has been argued that individuals are collective in nature, both in their self-cultivation and virtue ethics and in their relationship with family and society.²⁶⁵

²⁶⁰ Raya Dunayevskaya, Chapter 2 A New Continent of Thought in *Philosophy and Revolution: From Hegel to Sartre, and from Marx to Mao* (Lexington Books 2003) 47, 53.

²⁶¹ Guilherme Maciulevicius Mungo Brasil and Antonio Hilario Aguilera Urquiza, ‘Would There Be Marxist Human Rights?’ [2023] *Seven Editora* 313, 323.

²⁶² Allen E. Buchanan, *Assessing the Communitarian Critique of Liberalism*. *Ethics* 99, (1989). 852, 852.

²⁶³ Dongxin Shu, ‘The Chinese Marxist Approach to Human Rights’ (2022) 12 *Open Journal of Philosophy* 342, 347.

²⁶⁴ Robert Weatherley, ‘Human Rights in China: Between Marx and Confucius’ (2000) 3 *Critical Review of International Social and Political Philosophy* 101, 106.

²⁶⁵ Dongxin Shu, ‘The Chinese Marxist Approach to Human Rights’ (2022) 12 *Open Journal of Philosophy* 342, 345.

Chinese Marxism on the individual's rights is consistent with the Marxist perception and sees that individual rights are contained in the collective interests. Mao believed that the individual is a 'product' of society, and it is difficult to separate the individual from society; emotions, goals, interests, skills and knowledge are all formed in society.²⁶⁶ According to Mao, the realisation of individual rights depends on the collective good. In some ways, the safeguarding of the collective interest takes precedence over the realisation of individual rights.

Marxism emphasises collective interests. Marxism and the communist movement have always aimed primarily at achieving the socio-economic welfare of all people, especially the vast majority of urban and rural workers.²⁶⁷ This class-based conception of rights was first drafted in the *Communist Manifesto*, and when Engels was asked about the first measures to be taken after the establishment of democracy, he believed it was to ensure the subsistence of the proletariat.²⁶⁸ Chinese Marxism refers to the workers and farmers as the majority of society's proletariat class. From the perspective of the rural masses, Xi Jinping has mentioned promoting the reform of the rural collective property rights system and safeguarding the property rights and interests of the rural masses in order to strengthen the collective economy.²⁶⁹ The Communist Party of China considers itself to represent the vast majority of the Chinese people.²⁷⁰

However, the meaning and priority of collective rights in China have undergone significant transformation over time. The earlier revolutionary phase of collective ownership and egalitarian redistribution has evolved into a development-oriented approach, where collective interests are increasingly articulated through the concepts like 'common prosperity'. Mao began using the term 'common prosperity' since almost

²⁶⁶ Donald J. Munro, 1977. *The Concept of Man in Contemporary China*. Ann Arbor: University of Michigan Press. 143-156.

²⁶⁷ Roland Boer, 'The Concrete Conditions of Human Rights: Western and Chinese Approaches' (2022) 12 *International Critical Thought* 237, 243.

²⁶⁸ Karl Marx, Friedrich Engels, *Marx and Engels Collected Works*, Moscow: Progress Publishers 1976. vol. 5, 19, 102.

²⁶⁹ Jinping Xi, 'Secure a Decisive Victory in Building a Moderately Prosperous' Delivered at the 19th National Congress of the Communist Party of China October 18, 2017, pp.28.

²⁷⁰ Winberg Chai, 'The Ideological Paradigm Shifts of China's World Views: From Marxism-Leninism-Maoism to the Pragmatism-Multilateralism of the Deng-Jiang-Hu Era' (2003) 30 *Asian Affairs: An American Review* 163, 163.

the mid-1950s.²⁷¹ As Boer argued that socialism seeks not only to provide for the necessities of life, such as clothing, food, drink, and shelter for all, but ultimately, common prosperity.²⁷² Yet under Deng Xiaoping, the emphasis shifted to allowing some people and regions to become prosperous first, with the eventual goal of uplifting all. This shift marked a departure from radical collectivism to pragmatic developmentalism, which prioritised economic growth as a precondition for broader social welfare. A famous statement made by Deng is that socialism should not be poor but should lead to the improvement of the material and spiritual lives of the vast majority of people.²⁷³ In this light, collective rights have become increasingly tied to the right to development. Since Xi Jinping was elected General Secretary of the Communist Party of China in 2012, he has reintroduced the theme of common prosperity agenda, which represents a recalibration of collective interests, not as rigid equality but as fairer redistribution within the framework of socialist modernisation. He asserted that ‘common prosperity is a fundamental principle of Chinese socialism, which is why we must ensure that all people share the fruits of development fairly and move steadily towards common prosperity’.²⁷⁴

This shift has affected China’s human rights discourse. Collective rights are no longer defined solely by class struggle or ownership, but by equitable access to economic opportunities, social services and development. Xi’s global vision of human rights extends this logic to the international sphere, which is known as the ‘community with a shared future for humankind’,²⁷⁵ advocating for more balanced global development and mutual respect for diverse models. The evolving concept of collective rights or interests

²⁷¹ Zedong Mao, “Speech at a Symposium on the Socialist Transformation of Capitalist Industry and Commerce 1955.” [In Chinese.] In *The Collected Works of Mao Zedong*. (Beijing: People’s Publishing House 1999). vol. 6, 493, 496.

²⁷² Roland Boer, ‘The Concrete Conditions of Human Rights: Western and Chinese Approaches’ (2022) 12 *International Critical Thought* 237, 244.

²⁷³ Xiaoping Deng, “We Can Develop a Market Economy under Socialism (26 November 1979).” In *Selected Works of Deng Xiaoping*, (Beijing: Foreign Languages Press 1995). vol. 2, 235, 235.

²⁷⁴ Jinping Xi, “Study, Disseminate and Implement the Guiding Principles of the 18th CPC National Congress (November 17, 2012).” In *Xi Jinping: The Governance of China*, (Beijing: Foreign Languages Press 2018). vol. 1, 6, 14.

²⁷⁵ Alexandr V. Semenov and Anatoly Tsvyk, ‘The Community of a Shared Future for Humankind Concept in China’s Foreign Policy Strategy’ (2019) 63 *Mirovaia ekonomika i mezhdunarodnye otnosheniia* 72, 72.

Hong Liu and Yuxuan Zhang, ‘Building a Community of Shared Future for Humankind -- an Ethnological Perspective’ (2018) 2 *International Journal of Anthropology and Ethnology* 7, 7.

in China reflects a broader reconceptualization of human rights that emphasises stability and development over adversarial liberal individualism.

The official view of the Chinese Marxist approach to human rights is that the realisation of the collective interest is a prerequisite for the real exercise of individual rights. Mao Zedong declared on the founding of the People's Republic of China that 'the great collective power of the masses had lifted China out of desperate poverty and that a new, independent, democratic, peaceful, united and strong China was to be created.'²⁷⁶ As Yang and Zhuang stated in the Communist Party's official theoretical journal *Qiushi* (Seeking Truth), 'Socialist collectivism firmly asserts that the interests of the state, society and the nation take precedence over the rights of the individual' and 'the rights of the individual can only be fully realised on condition that the collective interest is secured'²⁷⁷ Also, Chen stated in *Qiushi* that 'in a socialist society, any individual development and the enjoyment of individual rights can only take place within the collective.'²⁷⁸

The Chinese Marxist View of human rights tended to emphasise the collective interest over the individual interest of the society. While recognising the universality of human rights protection, China attaches more importance to its people's 'collective rights and development rights' than to 'individual rights'.²⁷⁹ In particular, the right to subsistence is considered to be the most crucial right for which the Chinese people have long struggled.²⁸⁰ Notably, a focus on collective rights does not mean a total disregard for individual rights. For example, in his research, Gerald Chan identifies one of the trends in China's international relations as moving from collectivism to a slightly greater degree of individualism, allowing more room for individual creativity in learning and

²⁷⁶ Zedong Mao, "Long Live the Great Unity of the Chinese People! (30 September 1949)." In *Selected Works of Mao Tse-Tung*, (Beijing: Foreign Languages Press 1977). vol. 5, 19, 21.

²⁷⁷ Zhongbo Yang and Yichun Zhuang, 'Ping Yi Ge Ren Zhu Yi Wei He Xin De Jia Zhi Guan' (An appraisal of individualism as a core value concept'). (1991) *Qiushi* (Seek Truth), 15, 7-13, 24.

²⁷⁸ Xianda Chen, 'She Hui Zhi Du Yu Ren Quan' ('The social system and human rights'). (1992) *Qiushi* (Seek Truth), 7, 19-23.

²⁷⁹ Keyuan Zou, Chinese Approach to International Law in *China's International Relations in the 21st Century: Dynamics of Paradigm Shifts*, Daojiong Zha, Weixing Hu, Gerald Chan, (University Press of America, 2000) 171, 184.

²⁸⁰ *Ibid*, 185.

encouraging individual development.²⁸¹ In such a case, individual development is encouraged without conflict with the public interest. Nevertheless, from the national perspective, the government emphasises patriotism and collectivism and the promotion of public morality, especially the fulfilment of moral obligations in the family and in society.²⁸²

4.6. Conclusion:

Marxism, as the philosophical underpinning of human rights with Chinese characteristics (HRCC), explains all the features of human rights with Chinese characteristics. From the perspective of cultural relativity, Marxism provides an alternative philosophical support for human rights culture in China. Marx's traditional theories, developed through the development of the Marxist state under Soviet Marxism, were immensely inspirational to China at a time when it was fraught with internal social struggles and external oppression. Building on the moral and ethical guidance provided by Confucianism, Marxism filled the gap in Confucianism, which was notably lacking in the heritage of rights. Marxism's evolving view of rights from Marx to Soviet Marxism to Chinese Marxism has influenced the concept of rights in China. By assessing the transition from traditional Marxism to Chinese Marxism Human Rights with Chinese Characteristics (HRCC), we find that Marxism is connected intricately and closely to each of the features of HRCC. In the context of Chinese Marxism, China's foreign human rights policy has its own human rights path. The core human right is the socio-economic right to development. Sovereign independence and non-interference are prerequisites for the realisation of socio-economic rights. The ultimate goal of developing socio-economic rights is for the collective common good.

Within the framework of Marxism, the Marxist view of rights corresponds highly to the discourse of HRCC. Firstly, Marx had a dialectical perspective on the nature of human beings and rights; in other words, the implementation of human rights needs to be in

²⁸¹ Gerald Chan, "International Studies in China: Origins and Development," *Issues & Studies* 33(2) (1997), 40, 64.

²⁸² Jinping Xi, 'Secure a Decisive Victory in Building a Moderately Prosperous' Delivered at the 19th National Congress of the Communist Party of China October 18, 2017, pp.38.

the context of social conditions; the Marxist state advocates the interrelationship between rights and class identity, and usually individual rights are granted to the proletariat; Marxism, unlike the liberal tradition, does not consider human rights to be inherent rights, and HRCC inherits the dialectical and relative perspective of Marxism in determining the realisation of human rights, advocating that China has its own path to human rights, that human rights are social and historical in nature, and that human rights must be based on the specific material conditions of each society. Second, traditional Marxism critically argues that human rights are constrained by capitalism, and further ideas of Soviet Marxism on imperialism and colonialism can provide an initial framework for the principle of non-interference in human rights, which is in line with the principle of non-interference in sovereignty advocated by HRCC. Thirdly, the bourgeois view of human rights, which tends to prioritise individual freedom and formal equality over the collective and economic rights of society, has often been criticised by Marxism. Marx believed that human rights depended to a large extent on social and economic conditions, and that the struggle for human rights was inseparable from the struggle for social and economic justice; the Marxist state ideology prioritises socio-economic rights, and the HRCC fully carries over this Marxist feature. Fourthly, the ethical foundation of human rights in Marxism is based on the class status of the proletariat, which belongs to the people; the Marxist state ideology gives priority to the collective interest; this is highly consistent with HRCC's focus on the collective interest. Thus, Marxism explains China's different understanding of human rights and all the features of HRCC.

Chapter 5: HRCC is a Combination of Confucianism and Marxism

5.0. Introduction

The previous chapters described the fundamental sources of China's distinctive human rights discourse and approach to human rights based on cultural relativism, which we call human rights with Chinese Characteristics (HRCC). Distinctive Chinese human rights are reflected in the fact that China has its own human rights path, the importance of non-interference, the priority of economic development, and the emphasis on collective interests. The Chinese human rights discourse, which is inconsistent with the mainstream Western position on human rights, turns this topic into a broader discussion of the universality of human rights and cultural relativism. Cultural relativism inevitably coexists with universality and is an issue that undoubtedly deserves to be considered in the practical application of universal human rights at the international level.

A key dimension of this divergence lies in the emphasis on collective rights over individual rights. In the Chinese context, the rights of the community, nation, or state are often prioritized above the rights of individuals, particularly when individual freedoms are perceived to threaten social stability or developmental goals. This collective orientation contrasts with liberal human rights traditions that treat individual autonomy and personal liberty as the foundation of rights.¹ The HRCC model often frames rights as contingent upon responsibilities and collective harmony, rather than as inherent entitlements held by individuals. While this approach may align with cultural values of social harmony and Confucian ethics, it raises important normative questions about the status of individual agency, dissent, and protection from state overreach. Specifically, although Asian values, similarly emphasizes order, harmony, and economic development, it does not fully explain the particular features of HRCC, which is deeply embedded in China's philosophical context. The tension between individual and collective rights is thus central to understanding the challenges HRCC poses to universal

¹ Xinyuan Dai and Lucie Lu, 'Beyond Liberal Narratives: China and the International Human Rights Order' (2025) 101 *International Affairs* 459, 462.

human rights frameworks, especially where collective goals are invoked to justify limitations on civil and political rights. In the context of Asian values, they do not persuasively contribute to making sense of HRCC.

The best way to understand China's distinctive approach to human rights is to explain the logic behind it through its deep philosophical underpinnings. Two philosophies have historically influenced the formation of China's view of human rights, namely Confucianism and Marxism. Confucianism has been the dominant ideology in Chinese history and society since 87 B.C.E. Due to its supportive nature for rule, Confucianism has been established as the basis of state ideology and education of officials since the time of Emperor Wu of the Han Dynasty.² Although Chinese society has a long history, governance has not been static, especially when the Chinese social system fundamentally changed from a feudal system to a modern political system. In the 19th century, Western political ideas, including democracy, were introduced to China, and in the middle of the 20th century, a new China was established under the guidance of Marxism. While Confucianism and Marxism stem from fundamentally different intellectual traditions---one rooted in ancient moral philosophy, the other in modern materialist dialectics, there has emerged a degree of philosophical and ideological convergence in how they shaped China's official human rights discourse. Rather than suggesting direct historical continuity, this refers to an evolving synthesis in which values such as collective wellbeing and obligations of the states to the people are reinforced across both traditions. As reflected in Chapters 3 and 4, this convergence is particularly visible in the formulation of Human Rights with Chinese Characteristics (HRCC). Chapter 3 concludes that the distinctive Confucian model of 'rights' with its emphasis on morality and responsibility, the obligation of rulers to take care of the people and their well-being, and the importance of the collective correspond to HRCC's advocacy of China's own path to human rights, the right to economic and social development, and the collective good. Chapter 4 draws out that Marxism influences all the features of Human Rights with Chinese Characteristics (HRCC), particular in its class-based and developmental emphasis. Therefore, this analysis argues that Confucianism and Marxism are

² Ines Kämpfer, Chinese Religions and Their Values in 'Chinese Traditional Values and Human Rights An Empirical Study Among Students in Shanghai' University of Fribourg (2006) 17, 30.

intertwined in historically specific ways, and together shaped China's evolving human rights narrative.

More importantly, regarding the view of human rights, both philosophies remain as entities that influence China's perception of human rights, and both work together with HRCC. Therefore, this chapter will explain how Confucianism and Marxism work together as entities to influence China's human rights policies; in other words, why the combination of Confucianism and Marxism, rather than one alone, can best explain HRCC. It is worth noting that there is a degree of consensus between Confucianism and Marxism on the ideas of rights, for example, in terms of welfare rights and collective interests. Nevertheless, consistency is only part of the picture of rights view between Confucianism and Marxism; the two are, after all, two different philosophies, and thus the inconsistencies between them should not be ignored. It is not well thought through to conclude that Confucianism and Marxism together constitute the HRCC solely on the basis of their consistency, but at best, it can only be described as an attempt to find common ground between the two philosophies in the context of the HRCC.

Therefore, the main objective of this chapter is to explain HRCC as an organic combination of the two philosophies of Confucianism and Marxism, i.e. the combination of Confucianism and Marxism jointly influencing the HRCC; this chapter contains two main sections, Section 5.1. first analyses the consistency of the two philosophies between Confucianism and Marxism in terms of HRCC; despite the consistency of the two philosophies, they are irreplaceable for each other. Then, considering that Confucianism and Marxism are, after all, two different philosophies, the coexistence of inconsistency between Confucianism and Marxism cannot be ignored in the context of demonstrating that the organic combination of the two philosophies formed HRCC. Moreover, if the inconsistencies and even oppositions between Confucianism and Marxism can coexist and work together in the Chinese approach to human rights, that would be a true combination. Section 5.2., therefore, analyses the inconsistencies between Confucianism and Marxism from the rights perspective and explains how Confucianism and Marxism can coexist and play a joint role in HRCC in the light of conflicting perceptions.

Although many have noted that both philosophies, Confucianism and Marxism, in discussions on human rights in China are based on cultural relativism, current research perspectives have mainly emphasised and ultimately attributed to one of the philosophies. For example, Edward Wu argues that Chinese conceptions of human rights are rooted in Marxism-Leninism and Mao Zedong Thought.³ While Robert Weatherley, a representative of those attributed to Confucianism, argues that while on the surface, Chinese conceptions of human rights are clearly based on Marxism, Chinese Marxism is merely an alternative concept to China's deep-rooted Confucian tradition.⁴ According to Robert Weatherley's view, many views with a Confucian cultural background seem to be able to be expressed in a Marxist-Leninist package. For example, the community, which in traditional Chinese ideology means the collective, is largely a group of people whose interests coincide with those of the proletariat as emphasised by Marxism.⁵ Weatherley believed that the Chinese peasants, influenced by Confucianism, understood benevolent governance that took into account the interests of the people and therefore could easily accept the Leninist terminology of the Dictatorship of the Proletariat.⁶ According to Weatherley, another way of putting it, the peasants, who were generally poorly educated, readily accepted state policies precisely because the essence of Confucianism remained the same but in a different Marxist expression.

I cannot fully agree with the view that Marxism is a complete replacement for Confucianism, nor can I fully agree that human rights with Chinese characteristics (HRCC) is a Confucian core clothed in Marxist garb. On the contrary, I argue that Confucianism and Marxism, two philosophies with somewhat similar and consistent ideas but essentially quite different philosophies, are integrated and coordinated in HRCC; in other words, HRCC are a combination of Confucianism and Marxism functioning together.

³ Edward Wu, 'Human Rights: China's Historical Perspectives in Context' (2002) 4 *Journal of the History of International Law* 335, 335.

⁴ Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 *Critical Review of International Social and Political Philosophy* 101, 119.

⁵ Gilbert Rozman, Chapter 7 *Center-local Relations Can Confucianism Boost Decentralization and Regionalism in Confucianism for the Modern World* (Cambridge University Press 2003) Bell D and others, 181, 192.

⁶ Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 *Critical Review of International Social and Political Philosophy* 101, 104.

Although as Robert Weatherley proposes there is a degree of coherence between Confucianism and Chinese Marxism, suggesting a Confucianism-dominated relationship,⁷ it somehow overlooks China's ability to unify opposites. This ability is frankly unconventional and often puzzling. In Hsiung's view, the fabled Chinese ability to blend inconsistent elements in their thinking is exemplified by the facts: i.e. China ended the Marxist class struggle, but the Constitution of China still refers to adherence to Marxism.⁸ At the same time Hsiung assesses this ability as inconceivable, just as that people outside China are often confused about the techniques China has used to combine a largely free market with a socialist state structure and produce a record of rapid growth.⁹ In the same vein, this ability to reconcile old and new, and even opposing ideas, is reflected in China's foreign human rights policy, where human rights with Chinese Characteristics (HRCC) also integrate, and coordinate Confucianism, based on old tradition, with the relatively new Marxism from the West. This has been demonstrated by the dual philosophical foundations of HRCC, bringing Confucianism and Marxism into symbiotic play, i.e., I argue that HRCC is an organic combination of Confucianism and Marxism, and that the two jointly play a role.

5.1. HRCC Between Confucianism and Marxism

Based on the consistency between Confucianism and Marxism in explaining HRCC, the main objective of this section is to further explore whether the two philosophies can replace one another because of their consistency, making HRCC rely on only one of them. Confucianism and Marxism share a certain degree of commonality in their rights conceptions, particularly in their focus on socio-economic rights and collective interests. Yet Confucianism has certain limitations in today's China as a socialist state, and the importance of Marxism does not need to be overstated. With that being said, for the application of rights, Marxism cannot replace the role of Confucian intellectual culture in HRCC. The discussion illustrates that neither Confucianism nor Marxism can be

⁷ Ibid.

⁸ James Chieh Hsiung, *China into Its Second Rise Myths, Puzzles, Paradoxes, and Challenge to Theory*, Scientific Publishing Company. (2012), 199, 238.

⁹ Ibid.

replaced by the other in HRCC, and that HRCC cannot rely on either Confucianism or Marxism alone.

5.1.1. Consistency

Through the discussion in Chapters 3 and 4, we realise that Confucianism and Marxism influence the Chinese human rights perceptions, and thus the formation of human rights with Chinese characteristics (HRCC), respectively. For HRCC, Confucianism has directly influenced three features of HRCC, namely the Chinese government's distinctive way of human rights that emphasises duties and obligations and prioritises social and economic rights related to welfare and collective interests. Marxism influences almost all of the four rights features of HRCC. What is noteworthy is that the two philosophies are in some ways strikingly consistent. The consistency between Confucianism and Marxism on the characteristics of China's human rights policy is particularly reflected in the emphasis on socio-economic rights and collective interests. As Robert Weatherley has suggested and presented a certain extent of coherence between Confucianism and Chinese Marxism.¹⁰ Bell has acknowledged in public that the interpretation of the Confucian tradition parallels closely to the socialist ideals defended by Karl Marx and others.¹¹

One of the most strikingly consistent features of the two philosophies is the high value placed on social and economic rights, especially welfare rights. In Confucianism, material welfare is above all else. Confucianism is a highly realistic philosophy, and the reason why survival and welfare are fundamental to Confucianism is that there is no point in pursuing morality and harmony under the social order if people are worried about their next meal.¹² Mencius' theory of benevolent government has also analysed this issue. The government is obliged to safeguard the people's most basic means of survival and

¹⁰ Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 Critical Review of International Social and Political Philosophy 101, 104.

¹¹ Daniel Bell, Introduction in *China's New Confucianism: Politics and Everyday Life in a Changing Society* (Princeton University Press 2008) 9, 12.

¹² Daniel Bell, Chapter 9 Culture and Egalitarian Development: Confucian Constraints on Property Rights in *Beyond Liberal Democracy: Political Thinking for an East Asian Context* (Princeton University Press 2006) 231, 238.

material well-being, and the welfare of the people is the ruler's primary duty and highest pursuit. If the basic material survival is violated, immoral behaviour can be justified.¹³ In Confucianism, basic material survival guarantees human dignity and decency and is therefore seen as the basis of all human rights. In a similar vein, Marxism places huge emphasis on the reformation of the material environment. Marxism showed great concern for the quality of life of the proletariat and protested with a sense of justice and sympathy against their unjust exploitation.¹⁴ Marxism's emphasis on the material conditions of the proletariat is reflected in the control and security of the means of production through communism in the socio-political sphere. This was best demonstrated in the rural areas of China. Marxism brought great changes to the rural areas at the beginning of New China, especially the economic liberation of the farmers who had been oppressed under China's feudal land system.¹⁵ However, in contrast, the object of Marxism's concern is more explicit and targeted, referring to the proletariat, whereas Confucianism does not distinguish between the people as a class. Moreover, Marxism and Confucianism differ in their methodological approach in focusing on material and subsistence conditions, with Marxism starting from economic theory and Confucianism from morality. Although the two philosophies are different in terms of the objects they focus on and the logic of their methods, they are united in their concern for the socio-economic rights of human beings, especially welfare rights.

Influenced by Confucianism and Marxism, the Chinese public has long viewed State-guaranteed welfare, such as supplemental benefits as housing, employment, education and health care, as the cornerstone of human dignity and justice.¹⁶ This fits with the government's concept of HRCC, which emphasises collective well-being and material sufficiency over civil and political freedoms. Indeed, China's rapid economic growth over the past four decades has had a profound impact on the public's conception of human

¹³ Sungmoon Kim, 'Confucianism, Moral Equality, and Human Rights: A Mencian Perspective' (2015) 74 *The American Journal of Economics and Sociology* 149, 166.

¹⁴ Luis Kutner, 'The Human Rights of Karl Marx' (1979) 55 *North Dakota Law Review* 39, 45.

¹⁵ Xingxing Zhang, Chapter 5 the Relationship between Modern Neo-Confucianism and Marxism on the Mainland Following 1949 in *Selected Essays on the History of Contemporary China* (BRILL 2015) 93, 97.

¹⁶ Qin Gao, Introduction in *Welfare, work, and poverty: Social assistance in China*. Oxford University Press. (2017). 1, 8.

rights, further reinforcing a developmentalist philosophy based on economic and social rights. However, as economic growth slows and China moves towards a post-industrial society, particularly with the rise of a well-educated and economically stable middle class, expectations of human rights may begin to shift. Citizens who have achieved a basic standard of living may increasingly demand greater judicial transparency, legal accountability, digital privacy, and personal freedom. Against this context, China's human rights discourse may come under increasing pressure to move beyond its developmental paradigm, which focuses solely on socio-economic rights, and to incorporate a broader perspective on human rights in order to better reflect the changing realities of society and the complexity of individual and collective needs.

Another notable consistent feature of these two philosophies is the strong emphasis they place on collective rights, which together contributes to HRCC's emphasis on the collective. Confucianism emphasises collective interests. Confucian political philosophy expresses a people-centred concept, that is, the people are the root of the State and the main body of politics. In Confucian political philosophy, the people as a group are a political collective, not a subsidiary property of the state, but independent. In particular, the importance of the people's collective can be compared with that of 'Heaven', and can correspond to Heaven's authority, reflecting the ruler's fulfilment of Heaven's mandate, or even representing it.¹⁷ Similarly, Marxism is concerned with oppressed collectives. This is because Marxism sees the means of production in the hands of a very small number of people, whereas the proletariat represents the vast majority of the population of the community. The goal of the oppressed collective to be free from oppression is also the greatest goal of Marxism, which is the ultimate elimination of exploitation, oppression and conflict brought about by class.¹⁸ However, in contrast, Marxism is concerned with the oppressed collective, whereas Confucianism sees the people as a social subject with a political group identity. In addition, Confucianism embodies the idea that society is an organic whole, the interests of the people, the nation and the state are the same, and if they are not then collective rights take

¹⁷ Sangjin Han. 'Confucianism and human rights.' in *Confucianism in Context: Classic Philosophy and Contemporary Issues, East Asia and Beyond*, Chang Wonsuk & Leah Kalmanson ed. (State University of New York Press, 2010), 121, 121.

¹⁸ Luis Kutner, 'The Human Rights of Karl Marx' (1979) 55 North Dakota Law Review 39, 51.

precedence over individual rights, whereas Marxism is not concerned with the collective side ultimately obtaining justice, but rather with the formation of a classless society as a whole. It can be seen that Confucianism and Marxism have different ultimate aims in their respective emphasis on collective rights. Despite their ultimate goals being the opposite of each other, both philosophies share an emphasis on collective rights, which is even reinforced by the combination of Chinese cultural traditions and Marxist concepts. The idea that society as an organic whole has collective rights over individuals, that people exist for the State and not vice versa, and that rights derive from the State and do not have any absolute value, have been themes in China since ancient times to the present day.¹⁹ The combination of Confucianism and the Marxist emphasis on collective rights created such a view.

The coherence between Confucianism and Marxism in the HRCC illustrates that the two philosophies share something essentially similar in their understanding of rights. HRCC values collective interests over individual interests. This preference for the collective did not suddenly emerge as Marxism became the national ideology after the establishment of New China; on the contrary, this tradition of valuing collective interests has been practised for centuries by the Confucian system. Particularly, Article 51 of the 1982 Constitution stipulates that ‘the exercise of the freedoms and rights of the citizens of the People’s Republic may not infringe upon the interests of the state, society and the collective.’²⁰ Such emphasis on the collective interest has long been reflected in traditional Chinese Confucian thinking. There is a famous saying that ‘Wealth and power without righteousness are like floating clouds to me’.²¹ Confucianism emphasises personal responsibility over personal benefit, which serves to realise the collective interests of society and the nation. In this sense, Article 51 of the Constitution comes close to the original ideas derived from traditional Confucianism, while expressing them in the language of Marxist-style rights.

¹⁹ Marina Svensson, Chapter Three Culture and Human Rights: Between Universalism and Relativism in *Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 53.

²⁰ Art.51, PRC Constitution 1982.

²¹ Pinghua Sun, ‘Chinese Discourse on Human Rights in Global Governance’ (2015) 1 Chinese Journal of Global Governance 192, 203.

It is widely recognised that Confucianism and Marxism show consistency in contrast. Weatherly's work contributes directly to this by comparing the position of human rights in China between Confucianism and Marxism. Weatherly argues that certain features of Chinese rights developed out of the Confucian tradition, though the articulation of rights was expressed with the help of Marxist language.²² There is some truth in Weatherley's view. Perhaps it is precisely because the profound ideas embedded in human rights policy come from the familiar traditional culture that people are very receptive to taking them for granted. Yet Weatherly's view implies a primary-secondary relationship between the two philosophies, i.e., the belief that Confucianism has always been dominant based on the order in which the two philosophies appeared in Chinese history. Although Marxist rights discourse constructs the specific content of human rights in China, the connotation is inherited from Confucianism. Without commenting on Weatherly's view of the dominance of Confucianism over Marxism, his view confirms the consistency of the two philosophies.

While both Confucianism and Marxism converge on prioritizing welfare rights and collective interests, this consistency goes beyond a superficial alignment of values. Both systems frame rights instrumentally—Confucianism in service of social harmony, and Marxism in the service of class emancipation and communal ownership. In both traditions, rights are not abstract entitlements held against authority, but context-dependent and subordinate to overarching ethical or political goals. This shared instrumentalist approach constitutes a deeper normative alignment.

5.1.2. Limitations of Confucianism and Importance of Marxism

Confucianism represents traditional Chinese culture. The reference value of traditional culture in contemporary human rights policy is limited. If using cultural traditions as a normative method is judged in modern contexts, such societies may have a problem in defining what is just and right. Before societies were governed by statutes representing the power of the State, many traditional societies relied on cultural rituals and customs

²² Robert Weatherley, 'Human Rights in China: Between Marx and Confucius' (2000) 3 Critical Review of International Social and Political Philosophy 101, 104.

representing traditional ideas to keep social order. Culture itself is edifying, and although there is no law, with cultural traditions as the norm, this does not affect the functioning of the social order. While cultural traditions are based on a consensus, traditions are not always inherently benevolent or humane. For example, in India, the historical practice of sati, where widows were expected or even forced to immolate themselves on their husband funeral pyre. And this ceremonial tradition once regarded as a sacred duty in some communities, despite its cruelty by modern standard.²³ Such cultural traditions of rituals and ceremonies are very cruel according to modern civilisation. Despite this, the society at that time cared more about this cultural tradition than about the cruelty. This reveals that one of the potential problems with using cultural traditions as a normative approach is that it is difficult to define what is just and right. By the standards of modern political civilisation, societies with these traditions are societies without law and order. By the standards of modern human rights, cultures with sacrifices and rituals such as these are flagrant violations of human rights. It is debatable what cultural-historical factors alone as a defining conception of human rights mean for international human rights, as we discuss in Chapter 2 on the relativism of human rights.

Confucianism cannot be used as a separate theoretical basis. Culture, as a large and general interpretive domain, can be referenced to arrive at different and even contradictory views. In particular, Confucianism encompasses various schools of thought and rich traditions, and one can find arguments supporting authoritarianism as well as principles supporting democracy, even for the same issue. For example, Mencius famously said '*Min wei gui, She ji ci zhi, Jun wei qing*' which means that 'the people are most important, the land and grain are secondary, and the ruler is the least important.'²⁴ This maxim discusses the order of importance of the three political subjects, which emphasises the principal position of the people, denies the divine right of the ruler, and advocates that the people should take precedence over the ruler. Some understand this method of rule, in which all political decisions must be people-centred, as potentially

²³ Lata Mani, 'Contentious Traditions: The Debate on Sati in Colonial India' *Cultural Critique* (1987) 119, 140. See also Xiaotong Fei, Chapter 8 Rule of Ritual in Hamilton GG and Zheng W, *From the Soil: The Foundations of Chinese Society* (University of California Press 1992) 94, 96.

²⁴ Mencius – Dedication; Translated from 《孟子·尽心》 '民为贵，社稷次之，君为轻'.

democratic.²⁵ This people-centred thinking can, to some extent, be referred to as the embryonic form of democracy in China. However, conversely, it has been argued that this is a purposeful authoritarian idea of ruling, and that the promotion of the well-being of the people is essentially about rulers being able to stabilise power rather than ordinary people enjoying autonomy and participation in the rule.²⁶ With regard to the people-oriented issues in Confucianism, rights theorists may have different ways of drawing on Confucianism contextually, which in turn leads to two widely differing perspectives. This example is not to criticise Confucianism for being unclear or to explore how the nature of Confucianism should be properly understood in the context; rather, this example is meant to illustrate that Confucianism is open and inclusive, and that theorists may find different answers within the philosophical categories of Confucianism. The broad and context-focused nature of Confucianism makes it difficult to be the sole philosophical methodology for HRCC. Thus, explaining human rights only in terms of Confucianism is not that helpful.

Moreover, the limitations of Confucianism are reflected in its tension with the principles of modern political civilisation and human rights. Although Confucianism's emphasis on internal moral cultivation and rational ethics was coherent within the context of traditional Chinese imperial governance, it remained largely disconnected from the notion of external universal moral standards. The concept of universal rights for all people regardless of gender, class and social status is absent in classic Confucian texts.²⁷ Instead, Confucian ethics is grounded in a hierarchical order that assigns individuals roles and responsibilities according to age, gender, and social positions. For example, in the family hierarchy, fathers are considered superior to sons, and husbands to wives. In broader political structures, rulers are positioned above ministers, just as elders are above juniors.²⁸ In each case, the interests and authority of the more powerful party are

²⁵ Viren Murthy, 'The Democratic Potential of Confucian Minben Thought' (2000) 10 *Asian Philosophy* 33, 33.

²⁶ Tianjian Shi and Jie Lu, 'The Shadow of Confucianism the Meanings of Democracy' (2010) 21 *Journal of Democracy* 123, 125.

²⁷ Marina Svensson, Chapter Three Culture and Human Rights: Between Universalism and Relativism in *Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 54.

²⁸ Robert Weatherley, Chapter 2. Rights, Human Rights and Chinese Confucianism in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 37, 39.

given precedence. Such hierarchy relations, while aimed at promoting social harmony, imply unequal moral and political standing and are contrary to contemporary understanding of universal human rights. This ethical political structure, which underpinned much of imperial Chinese governance, came under increasing criticism after the fall of the Qing Dynasty, as reformers and revolutionaries sought to build a more equal society. It was argued that despite the fact that non-hierarchical concepts of human equality can be found in Confucianism, the hierarchy that Confucianism essentially entails was considered to have no place in the progressive society of modern China.²⁹ Therefore, while Confucianism remains an important part of Chinese cultural heritage, developing a robust human rights discourse in China requires engagement with global theories built in modern constitutional and liberal traditions.

Confucianism and Marxism rest on fundamentally different ontologies. Confucianism presumes a stable moral order derived from tradition and ritual hierarchy, whereas Marxism sees history as a dialectical process driven by class struggle and material contradictions. These diverging views produce conflicting understandings of human agency: the Confucian subject is a moral actor situated in familial and ritual relations, while the Marxist subject is shaped and constrained by structural production. In this light, a tension is revealed between the Confucian tradition, which reveals a moralistic will, and Marxism, which emphasises social structures.

To simply put, Confucianism represents the old traditional approach, which is incapable of solving some of the new problems. The huge changes that took place in Chinese society introduced new problems, and the old approach represented by Confucianism's moral system was of limited effectiveness. This brings us to the Qing Dynasty, which was the last imperial governed dynasty in China. At a time when Britain was undergoing a new industrial revolution and was desperate to find markets for its products, the Qing Dynasty was still a self-sufficient, mainly agricultural feudal society. The national power gap between the late Qing and the Western powers was obvious. Against this background, the Western powers forcibly opened the Chinese market, and under the

²⁹ Elena Ziliotti, 'Questions for Hierarchical Confucianism' (2022) 84 *The Review of Politics* 329, 330.

impact of the West, late Qing China suffered from colonisation struggling to seek national survival, and the importance of traditional Confucianism was seriously questioned.³⁰ In the old Chinese society, the traditional Confucian governance of 'rites' could effectively cope with life problems, and the social order could be maintained by the Confucian moral system. However, no matter how effective the Confucian governance of 'benevolence' and 'rites' was in the past, if the social environment changes, it is not possible to cope with new problems effectively in accordance with the old methods. Traditional Confucian thinking was even considered by radical reformers as the main obstacle preventing China from becoming a modern nation.³¹ The fierce rejection of traditional culture may have been a stress response to the social turmoil, but one thing is certain: in a rapidly changing society, the validity of traditional culture cannot be guaranteed. Although it has been studied that the behavioural patterns of the Chinese people have retained a Confucian style after political changes and globalisation,³² at that time for society the old approach represented by Confucianism could hardly solve the problems of the new society. Society as a whole needs the power of a new pattern to discipline everyone and to maintain a new order.

Marxism is the new direction of political culture in the new China. China's current political system is constructed on the basis of modern political products--Marxism. Western political thought was introduced to China in the nineteenth century, and at the beginning of the twentieth century, China was weakened by external and internal problems, and urgently needed to establish a new order to deal with the world by means of Western ideology.³³ The educated elite of China at that time were exposed to Western ideas of democracy and the rule of law, as well as social theories such as Marxism and anarchism. Democracy and science were hailed as liberating forces at the time.³⁴

³⁰ Robert Weatherley, Chapter 3 The Discourse of Rights in Late Qing and Republican China in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 65, 65.

³¹ Peter Zarrow, Citizenship and Human Rights in Early Twentieth-Century Chinese Thought: Liu Shipei and Liang Qichao in 'Confucianism and Human Rights' edited by Bary T and Tu W, (Columbia University Press 1998) 209, 212.

³² Tomasz Slezia, 'The Influence of Confucian Values on Modern Hierarchies and Social Communication in China and Korea: A Comparative Outline' (2014) 8 *Kritike: An Online Journal of Philosophy* 207, 207.

³³ Daniel K. Gardner, Epilogue: Confucianism in the twentieth and twenty-first centuries in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 112, 112.

³⁴ Liu Kang, 'Subjectivity, Marxism, and Culture Theory in China' [1992] *Social Text* 114, 114.

Whereas in the same period, the Russian Revolution of 1917 turned Chinese intellectuals to Marxism, which was used as the core ideology to lead the May Fourth Movement of 1919, which later led to the founding of China's Communist Party (CCP). When the new China was founded in 1949, Marxism-Leninism, an entirely different set of political and ethical concepts, was formally introduced into the governance of the CCP.³⁵ In order to get rid of the dilemma of political division and economic underdevelopment, the CCP followed the doctrines of Marxism-Leninism and completely abolished the old system of the National Government, which protected the interests of the bourgeoisie and feudal landlords.³⁶ Li Dazhao, a Marxist Chinese pioneer of the time, once remarked that Marxism had played a great role in the Chinese nation's campaign against imperialism, and had also promoted China's national revolution.³⁷ It can be said that Marxism has provided a new direction for the political culture of the new China.

Marxism is the new philosophical foundation of Chinese society and culture. Marxism gives the Chinese social culture a new philosophy. China's current political system is based on modern political products, such as the rule of law and the party system, rather than on traditional ideologies. From the end of the nineteenth century, influential social groups in China pushed for great social change, especially since the May Fourth Movement, providing a new guiding ideology based on Marxism that sought to replace Confucianism. In the early twentieth century, the Chinese elite was intent on reorienting Chinese culture and policy by deliberately undermining many traditional Confucian values and embracing Western political thought.³⁸ Under the influence of Western ideas of democracy and the rule of law, Marxism, as a source of truth, legitimacy and ideological authority, has replaced the position of the 'Mandate of Heaven' in Confucianism and has become a 'new philosophy' as a provider of ideas for people's lives and politics.

³⁵ Daniel K. Gardner, Epilogue: Confucianism in the twentieth and twenty-first centuries in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 112, 114.

³⁶ Edward Wu, 'Human Rights: China's Historical Perspectives in Context' *Journal of the History of International Law* 4.2 (2002) 335, 336.

³⁷ Maurice Meisner, 'The Despotism of Concepts: Wittfogel and Marx on China' (1963) 16 *The China Quarterly* 99, 101.

³⁸ Jinghan Zeng, Chapter Three: Understanding Popular Legitimacy in China from a Western Perspective in *The Chinese Communist Party's Capacity to Rule: Ideology, Legitimacy and Party Cohesion* (Springer 2015) 46, 67.

Marxism marked Chinese orthodox rights. Marxism greatly influenced early Chinese thinking on rights. New China's view of rights is seen as clearly borrowing from or imitating the Soviet view of rights.³⁹ Since the founding of New China in 1949, China has been a socialist country. While, according to Marx's vision, rights would eventually disappear in the advanced stage of communist society, i.e., in a materially rich and classless society. However, post-revolutionary China was still at a stage where scarcity of material resources led to competing rights, and in the early years of the new China, it constructed a system of rights and continued to search for the role of rights under Marxism.⁴⁰ On the one hand, one of the most striking features of Marxist ideology concerning rights is the interrelation between rights and social class. This means that in the Constitution, individual rights are granted only to those citizens defined as proletarians and not to members of the bourgeoisie.⁴¹ According to Marxism, the orthodox state rights in China exhibit Marxist features, particularly in the class struggle principle. Evidently, initially communists were open to the broader working and peasant classes and the intellectuals.⁴² China's expression of rights is based on Marxism, and the constitutional commitments have a class-struggle flavour. On the other hand, another important feature of the Marxist ideology of rights is that rights are derived exclusively from the constitutions and laws formulated by the Party-State,⁴³ which is contrary to the Western concept of natural rights. Since 1954, when China's first Constitution was established, most human rights principles have been enshrined therein. By the same token, although over time as society has developed, certain rights have been retained and certain rights have been subtracted, human rights have always been explicitly enshrined in the four constitutions of post-1949 China, in keeping with the Marxian approach to rights. Despite the fact that the Constitution has a special section on human rights and that individual rights should be respected, civil rights have always been

³⁹ Robert Weatherley, Chapter 5 Rights Thinking in the People's Republic of China in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 101, 102.

⁴⁰ Robert Weatherley, Chapter 4 Marx, Marxism and Rights in 'Marx, Marxism and Rights' in Robert Weatherley, *The Discourse of Human Rights in China* (Palgrave Macmillan UK 1999) 83, 83.

⁴¹ Ibid, 84.

⁴² David M. Kotz, 'The State of Official Marxism in China Today' (2007) 59 *Monthly Review* 58, 61.

⁴³ Robert Weatherley, Chapter 4 Marx, Marxism and Rights in 'Marx, Marxism and Rights' in Robert Weatherley, *The Discourse of Human Rights in China* (Palgrave Macmillan UK 1999) 83, 92.

‘acquired’ in the form of state grants. The above two aspects show that the orthodox concept of rights in China bears the imprint of Marxism.

Marxism has consequently had a significant impact on the expression of rights in China. Despite the influence of Confucianism on HRCC, which is discussed in Chapter 3, Confucianism is not a key factor in the language of rights expression in HRCC because Confucianism never conceptualised human rights. Instead, the new philosophy of Marxism brought about the expression of rights, including human rights. Chinese rights theorists and government publications have articulated the fundamental path of rights in a range of areas, as well as detailing the government’s approach, which in combination with China’s Constitution is considered the ‘modern orthodox’ expression of rights in China.⁴⁴ As a socialist country, although culture and national conditions are prominent in China’s view of human rights, the output of China’s view of human rights is expressed through a Marxist discourse that is consistent with the socialist state subject. China’s view of rights is dialectically historical. Svensson has argued that perhaps evidence of the inherent moral resources in support of human rights can be found in Confucianism, but that Confucianism’s articulation of rights is empty and uninformative, and that instead it is important to look to Western rights discourse for inspiration in the debate about human rights, rather than attempting to refer to the tradition to express a different view of human rights.⁴⁵ This statement is relatively accurate; although most Chinese perceptions of human rights are unconsciously based on traditional values, the Confucian articulation of rights has limited relevance to HRCC. For many Chinese today, the Confucian tradition is alien to the Chinese at the level of rights discourse, even more distant than Western liberal discourse or Marxism.

5.1.3. Can Marxism Replace Confucianism in HRCC?

⁴⁴ Robert Weatherley, ‘Human Rights in China: Between Marx and Confucius’ (2000) 3 Critical Review of International Social and Political Philosophy 101, 102.

⁴⁵ Marina Svensson, Chapter Three Culture and Human Rights: Between Universalism and Relativism in *Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002) 47, 56.

With regard to human rights with Chinese characteristics (HRCC), due to the lack of a rights mechanism, Confucianism has only directly influenced two features of the HRCC, namely the government's prioritisation of socio-economic rights and collective interests. Marxism, on the other hand, influences all the rights features of HRCC. Does this mean that Marxism may replace the importance of Confucianism in HRCC? Can Marxism then completely replace the role played by Confucianism in Chinese human rights thinking?

Despite the entry of Marxism into China, the influence of Confucianism remains. Since the concept of rights entered China in the mid-nineteenth century, Confucianism has fused with foreign ideas of rights in the course of history. In the late nineteenth and early twentieth centuries, Confucianism further evolved from the divine right of kings to sovereignty. This shift in Confucianism is thought to have been driven by the radical elements in China at the time, abandoning the notion of kingship as espoused by imperial Confucianism evolving into the modernised essence of sovereignty over the people.⁴⁶ Relationships between individuals, communities, and nations have been reshaped. In Weatherley's words, the Chinese way of interpreting rights has been modified by Western liberal thought.⁴⁷ Today's Chinese Constitution stipulates that the People's Republic of China respects and guarantees the human rights of its citizens,⁴⁸ provided that in exercising their freedoms and rights, they do not harm the interests of the state, society, or the collective.⁴⁹ Objectively speaking, the concept of the rights of the individual has been present in Chinese thought since the end of the nineteenth century, but the idea of the individual against the state has always been absent from these rights, even in today's Chinese Constitution. This cannot be said to be a coincidence. This compels one to combine and attribute the influence of the benevolent theory of governance in Confucianism. In Confucianism, government is a role akin to that of a parent taking care of the people, and confrontation is a consciousness that is impossible and unnecessary to exist.⁵⁰

⁴⁶ Peter Zarrow, *Citizenship and Human Rights in Early Twentieth-Century Chinese Thought*: Liu Shiwei and Liang Qichao in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming, 209, 209.

⁴⁷ Robert Weatherley, Human Rights in Western Liberal Thinking in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 13, 36.

⁴⁸ Art.33 of PRC's Constitution.

⁴⁹ Ibid, Art.51.

⁵⁰ See *Sub-section 3.3.2. Non-interference in Confucianism* in Chapter 3

The influence of Confucianism has always been there. In other words, Confucianism has not become obsolete and has been influencing Chinese rights thinking since ancient times. Confucianism has been the most robust thinking system in Chinese history for ruling the country and stabilising the society. As the dominant cultural tradition for thousands of years, Confucianism has influenced Chinese social culture from ancient times to the present. It was regarded as the dominant ideology of the Imperial Chinese State for millennia, from the time of Emperor Wu of the Han Dynasty (141-87BCE) to the fall of the Imperial Chinese State in 1912.⁵¹ The fundamental values of Confucianism remain deeply rooted in China today. 'Benevolence' is regarded as a capacity possessed by human beings which refers to the demonstration of benevolence and love. 'Ritual' is held up as a basic normative etiquette, referring to manners and respect for social norms.⁵² In particular, harmony is crucial in Chinese culture. Confucianism stresses 'harmony but difference', 'harmony but not subordination', and 'harmony with others by way of rites'. Under the influence of Confucianism, Chinese people are considered to be generally well-mannered, group-oriented, and focused on harmonious and reciprocal relationships.⁵³ Even as China was brought into the modern world by Western political and economic expansion, the influence of Confucianism on Chinese ideology remained. With China's reform and opening up and the deepening process of globalisation, Confucianism's emphasis on harmony in the coexistence of different things is particularly reflected in China's foreign policy. Chinese President Xi's speech at the United Nations in Geneva on 'Work Together to Build a Community of Shared Future for Mankind',⁵⁴ in which he called for key terms such as 'Peace and Development', a community of mankind, a common response to threats and global challenges, and a win-win operation, can still be traced back to the fundamental values of Confucianism in the pursuit of harmony.

⁵¹ Daniel K. Gardner, Chapter 1 Confucius (551-479) BCE and His Legacy: An Introduction in *Confucianism: A Very Short Introduction* (Oxford University Press 2014) 1, 7.

⁵² Xiaohong Wei, Qingyuan Li, 'The Confucian value of harmony and its influence on Chinese social interaction.' *Cross-Cultural Communication* 9, no. 1 (2013) 60, 61.

⁵³ Ibid, 60.

⁵⁴ Full Text: Speech by Xi Jinping at the United Nations Office at Geneva - China.Org.Cn' <http://www.china.org.cn/chinese/2017-01/25/content_40175608.htm> last accessed 19 September 2024

Marxism has historically been more applicable in small-scale societies or highly developed technological societies, whereas Confucianism has played a significant role in structuring large-scale societies like China's. The Marxian ideal of communism would be a distribution in which not only everyone is free to contribute their labour, but also the basic needs of the individual are fully met. It is not denied that such an ideal of human rights may be achieved in the future, but such a utopian society may be limited to a particular form of society, such as a small community state with such a goal, or an extremely advanced and sophisticated high-technology society in which no labour is required but only machines can be used to make the society work.⁵⁵ The Marxist ideal of a society in which all authority relations are eliminated and Confucianism's ultimate goal of pursuing harmony, although opposing in means but not in conflicting in results, it is difficult to achieve the extreme results that Marx notably sought in the Chinese context. On the contrary, Confucianism originates from large-scale societies, which are usually faced with the realities of social inequality or economic inequality. Confucianism starts from such a social reality, accepting from the very beginning the realistic setting that unequal rights relations will exist in large-scale societies, which is closer to the Chinese context.

The realization of Marxism has historically incorporated elements of Confucianism, indicating an ongoing interaction between the two philosophies. In the case of China today, China's social form at this stage is not adequate for individuals to freely contribute their labour and fully satisfy their needs. While the ideal of communism may be the ultimate goal, the current society needs Confucianism to harmonise interpersonal relationships, human society and human-nature relations. If one understands such a starting point of Confucianism, it is not difficult to understand why the economic policy of China's reform and opening up is to ultimately achieve the goal of 'common prosperity' in a way that 'let some people and some regions get rich first' and help other people and other regions step by step.⁵⁶ From the perspective of addressing the reality of poverty in China, Confucianism, as a philosophy of harmonising social rights, allows

⁵⁵ Robert J. Van der Veen and Philippe Van Parijs, 'A Capitalist Road to Communism' (1986) 15 *Theory and Society* 635, 636.

⁵⁶ Michael Dunford, 'The Chinese path to common prosperity.' *International Critical Thought* 12.1 (2022), 35, 35.

for the temporary development of social inequality to support the ultimate goal of economic equality. It is undeniable that Marxism, as the new philosophy guiding political thought, provides the ultimate human rights goal, but China uses culture to provide guidance for politics and economics, combining Western methods with history and culture, which are used to address human rights problems. De Bary considered this 'Western method for Chinese use' approach as reformism, which seeks to adopt Western methods while still adhering to Chinese essence. And Confucianism is the essence as well as the criterion, used to judge the acceptability of Western methods when China is inevitably placed in the process of modernisation.⁵⁷ Thus, Marxism cannot completely replace Confucianism in Chinese human rights thinking; instead, it needs to be considered in the integration of Confucianism in its application.

The interplay between Marxism and Confucianism is reflected in the fact that the use of Marxism for rights cannot be effectively established when divorced from the social and cultural traditions under Confucianism. Historical and traditional cultural aspects are therefore indispensable to the discussion of human rights in China. Although the philosophy of Confucianism is founded on moral principles, it is considered to be clearly lacking in the concept of rights, and the Marxist discourse of rights fills the gap. However, in the case of China, if only rights were concerned with operating on this piece of land, special side effects could also occur in Chinese society. Not only would the atmosphere of 'benevolence' (*Ren*) and 'rites' (*Li*) created by Confucianism would be undermined, but a rights-centred order of the rule of law would not be effectively established. This is because the defence of rights cannot only rely on a number of legal provisions and the enforcement mechanism of the law but also goes to see how the people of the land apply and enforce them.⁵⁸ Arguably, it is necessary for the implementation of human rights policies to take into context the current structure of society and the ideological values of the people. Although at the present stage, China has come a long way on the road to modernisation, the profound cultural tradition of Confucianism still influences the people's thinking. It is therefore necessary for China's human rights policy to

⁵⁷ William Theodore De Bary, Preface in *Confucianism and human rights*. William Theodore De Bary, and Weiming Tu, eds. Columbia University Press (1998) 4, 8.

⁵⁸ Xiaotong Fei, Gary G. Hamilton, and Wang Zheng. A Rule of Ritual in *From the Soil: The Foundations of Chinese Society*. University of California Press, (1992) 94, 94.

incorporate historical and traditional cultural factors. In other words, history and traditional culture are indispensable to the discussion of human rights in China.

The interaction between Marxism and Confucianism can be observed in the way that foreign values often undergo adaption to align with local cultural traditions when introduced into society. On the one hand, foreign values are not formulas that can be directly copied or applied. The transmission of foreign values is enriched by a country's history and culture. As Chen has demonstrated through the study of the relationship between Marxism and Chinese traditional culture, China's excellent traditional culture has promoted the further development of Marxism.⁵⁹ On the other hand, it is sometimes difficult to avoid the limitations of applying foreign values while ignoring a country's history and culture. For example, when critical speech meets Confucianism, the exercise of criticism needs to be based on harmony. Perhaps from a Western individualistic and liberal standpoint, criticism belongs to freedom of speech, often combined with an equalitarian view of civil and political rights. However, Confucianism's focus on harmony would consider the rationality of criticism in terms of common purpose and outcome. In Chinese culture, disharmonious critical accusations are not considered to be effective and helpful but rather rude or malicious. This is believed to be the reason why China often ignores sharp criticism from Western politicians and human rights organisations.⁶⁰ It is undeniable that China needs to adopt 'Western' values such as social democracy, freedom, human rights and the rule of law, but at the same time, these values need to be adapted to China's culture to be effective.⁶¹

In a nutshell, the interaction between Marxism and Confucianism demonstrates that Marxism cannot replace Confucianism as the only element to be considered for HRCC. Confucianism and Marxism arose in different times and contexts. The two philosophies resonate with certain rights perspectives, and their influence on China's human rights perceptions is consistent in some respects, particularly with regard to socio-economic

⁵⁹ Lixin Chen, 'Relationship of Marxism in China and Chinese Traditional Culture' in 3rd International Conference on Education, Management, Arts, Economics and Social Science (ICEMAESS 2015) (Atlantis Press 2015) 1133, 1133.

⁶⁰ Daniel A. Bell, 'Reconciling Socialism and Confucianism? Reviving Tradition in China' (2010) 57 *Dissent* 91, 94.

⁶¹ *Ibid*, 93.

and collective values, which coincide with the HRCC's emphasis on socio-economic rights and collective interests. This coincides with HRCC's 'emphasis on socio-economic rights' and 'emphasis on collective interests'. At the same time, there are significant differences that cannot be ignored, which also reflect Marxism's significant and distinctive influence on HRCC. Marxism is based on a traditional Confucian society. Based on the influence of cultural relativism on the concrete implementation of human rights, the application of Marxism in Chinese society needs to incorporate Confucianism. Although Marxism has not completely replaced Confucianism in human rights policy, it has given another dimension of clarity to social development and the concept of rights, completing the transformation of China's concept of human rights from traditional to modern. It is more like the two philosophies co-exist in a complementary relationship in the development of human rights thinking in China. Therefore, the roles of both philosophies in HRCC are mutually irreplaceable.

5.2. Confucianism and Marxism Jointly Influence HRCC

Section 5.1. starts from consistency and concludes that the roles of Confucianism and Marxism in HRCC are mutually irreplaceable with each other, and it can already be demonstrated that there is a co-existence between the two philosophies in HRCC, and that both influence HRCC. Despite the fact that Confucianism and Marxism share some commonalities in the ideas of rights, Confucianism and Marxism are, after all, two different philosophies. The inconsistency between Confucianism and Marxism cannot be ignored when arguing that the organic combination of the two philosophies forms HRCC. It is necessary to be thoughtful about the inconsistency. Therefore, based on the inconsistency between Confucianism and Marxism in the rights discourse, the main purpose of this section is to further explore how these two philosophies coexist and form HRCC regardless of inconsistency or contradiction. Moreover, if the contradictions or even oppositions between Confucianism and Marxism can coexist and work together to build the HRCC, that would be a true combination.

5.2.1. Inconsistency

Confucianism and Marxism are originally philosophies of different times and cultural backgrounds. The consistency between the two is as consensual as coincidence, and the differences between the two are rather not rare in existence. In other words, while there is limited coherence between Confucianism and Marxism on the idea of rights, there are many inconsistencies. In the research on the philosophical underpinnings of HRCC, it is important not to merely look for limited common ground while ignoring the vast differences. Within the HRCC context, inconsistencies between the two philosophies are evident. For example, Marxism distinctively contributes to the two features that China has its own path on human rights and the non-interference principle.

Marxism has inspired “its own path” for HRCC. Marxism has pioneered a unique path in China, reflected in the emphasis on practice in the post-Mao era. Marxists argue that human rights are not universal but historically contingent, as they depend heavily on social and economic conditions.⁶² Mao agreed with Marx’s arguments, in particular, that ‘knowledge begins with practice, theoretical knowledge is acquired through practice and must then be tested by practice’.⁶³ The importance of practice is reflected in Mao’s insistence that the truths of Marxism must be combined with the characteristics of the nation and given a national form in order to be useful, rather than being subjectively applied formulas. Moreover, Deng even brought this into full play and extended it. Although the economy in Mao’s time was self-sufficient and free from foreign capital, China was poor and isolated. Deng was trying to revive production and develop the economy, as emphasised by Marxism.⁶⁴ Practically, the economic reforms programmed by Deng opened up the capitalist international economy. Although in such a way as to raise the fundamental question of whether the state was communist or capitalist,⁶⁵ Deng expressed that ‘it is not the colour of the cat that counts, but whether it can catch the mouse’.⁶⁶ Although this analogy seems to be pragmatic and utilitarian, it does not

⁶² Christopher MJ Boyd, ‘Can a Marxist Believe in Human Rights?’ (2009) 37 Critique 579, 584.

⁶³ Zedong Mao, ‘On contradiction’, in *Selected Works of Mao Tse-tung* (Beijing: Foreign Languages Press, 1967), vol.1.

⁶⁴ Maria Hsia Chang, The Thought of Deng Xiaoping. *Communist and Post-Communist Studies*, 29(4), (1996). 377, 377.

⁶⁵ Michael Yahuda, ‘Deng Xiaoping: The Statesman’ (1993) 135 The China Quarterly 551, 551.

⁶⁶ Jinghao Zhou, Chapter Eighteen the Future of China: Undemocratic Chins Can’t Rule the World in *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013) 255, 259.

deviate from the Marxist emphasis on starting from practice. Instead of keeping Marxism on the shelf, he applied it to solving the biggest problem facing the people - poverty. Thus, under the guidance and inspiration of Marxism, China has gradually opened up the Chinese way of practice by insisting on practice as a new interpretation of the test of truth, which is particularly reflected in the human rights policy.

Marxism has pointed to the principle of 'non-interference' for HRCC. Non-interference in sovereignty is considered a prerequisite for social stability and economic development. Controversially, the contribution of sovereignty to human rights is not universally recognised. The post-Westphalian phase viewed universal human rights as inherent and inalienable rather than sovereignly granted. This contradicts the understanding of atheist holders of secularised reliance on sovereign constitutions and even moral systems.⁶⁷ Historically, absolute sovereignty was advocated by the socialist countries represented by the Soviet Union.⁶⁸ The Soviet Union was a major proponent of anti-colonial struggles around the world, supporting sovereignty in an anti-colonial context. China's firm stance on absolute sovereignty is thought to have come from the Soviet Union.⁶⁹ This is evidenced by the fact that New China advocated the foreign policy of the Five Principles of Peaceful Coexistence soon after its establishment. Mutual non-interference continues to appear as a core principle in China's foreign policy, guiding its relations with other countries.⁷⁰ Boer suggests that China's approach to human rights is a Marxist one premised on anti-colonial sovereignty.⁷¹ Boer's argument is compelling. Considering China's history as a semi-colony, historical experience is one aspect, but Marxism more directly provides the philosophical basis for opposition to imperialist expansion and intervention. In addition to favouring sovereign integrity, the non-

⁶⁷ John O'Manique, 'Universal and Inalienable Rights: A Search for Foundations' (1990) 12 Human Rights Quarterly 465, 471.

⁶⁸ Jennifer Noe Pahre, 'The Fine Line between the Enforcement of Human Rights Agreements and the Violation of National Sovereignty: The Case of the Soviet Dissidents' (1984) 7 Loyola ILA. Int'l & Comp. I.J. 323, 335-340.

⁶⁹ Edward Wu, 'Human Rights: China's Historical Perspectives in Context' *Journal of the History of International Law* 4.2 (2002) 335, 336.

⁷⁰ Enlai Zhou, Five principles for peaceful coexistence (31 December 1953). In *Selected works of Zhou Enlai*, (Beijing: Foreign Languages Press, 1989) vol. 2:128. The contents are: (1) mutual respect for sovereignty and territorial integrity, (2) mutual nonaggression, (3) non-interference in each other's internal affairs, (4) equality and mutual benefit, and (5) peaceful coexistence.

⁷¹ Roland Boer, 'The Chinese Marxist Approach to Sovereignty and Human Rights' in Roland Boer, *Socialism with Chinese Characteristics* (Springer Singapore 2021) 165, 165.

interference principle also contributes to economic development. As Boer argued, the Marxist approach to human rights has a unique contribution because the precondition of non-interference leads to a core right of socio-economic well-being, from which a range of other rights emerge.⁷² Although the debate on the contribution of sovereignty to human rights has been controversial and influenced by Marxism, non-interference in sovereignty has been consistently recognised as a prerequisite for the realisation of human rights in China's human rights policy.

The reason why Marxism can distinctively contribute to the two features of China having its own path on human rights and the non-interference principle is that, compared to the inadequacy of Confucianism, which merely represents a cultural tradition but has no rights paradigm, Marxism has a distinctive rights expression. Before rights entered China, the Chinese understanding of 'rights' was not based on classical liberal doctrine, as Western human rights are, but on Confucianism. During the period of Confucius and Mencius, Confucianism advocated a ruler with high morals as well as the divine right of the ruler, and did not have the concepts of sovereignty and non-interference. Confucianism's emphasis on the value of 'benevolence' is seen as an inward-looking, passive way of responding to the world. Unlike Confucianism's moral imperative for ren and its assertion of harmony, Marxism brings a dialectical and confrontational approach. Marxism's distinctive approach to rights is reflected not only in the assertion of the rights of the proletariat, but also in the opposition to imperialism and interference in internal affairs brought about by the expansion of capital.

5.2.2. A Combination of Two

Facing the influence of Confucianism and Marxism on the contribution of human rights discourse in China inspires further exploration of the primary and secondary nature of the two philosophies readily. Although some literature on Chinese human rights discourse notes either Confucianism or Marxism, the current literature mainly emphasises or ultimately attributes to one of the philosophies. Looking at ideological

⁷² Ibid.

and political considerations, it would be more likely to argue that the Chinese view of human rights is a result of Marxism. As Edward Wu argues Chinese human rights discourse is rooted in Marxism-Leninism and Maoism.⁷³ Since China is a socialist country, it makes sense that on a literal theoretical level, the human rights view is largely dominated by Marxism, although Peerenboom doesn't consider Marxism to be an ideology that is perfectly friendly to human rights.⁷⁴

Looking from the cultural roots, it would be more likely that the Chinese human rights view is a result of Confucianism. Tu argues that the adequate development of human rights ultimately requires the internalisation of Western human rights thinking into one's own cultural tradition.⁷⁵ According to Tu, traditional culture, represented by Confucianism, remains the dominant receiving subject of human rights values, while Western liberal values add critical reflection to this subject. Another case in point is Robert Weatherley, who once studied China's human rights discourse from a historical and ideological perspective, arguing that on the surface, China's ideology of rights as a socialist state was influenced by Marxism, especially Soviet Marxism, but that this ideology of rights was merely a continuation of the Confucian tradition, and that the essence of China's human rights discourse is Confucianism adopted the Marxist expression of rights.⁷⁶

According to Weatherley, the influence of Confucianism is deep in the core and deep in the essence, with Marxism providing a linguistic wrapper as a foreign value, but Confucianism remains a dominant part of HRCC, even leading to an ongoing Confucianisation of the rights discourse as well. I appreciate Weatherley's close look at the cultural roots of Confucianism dominating the rights discourse in Chinese society, which is valuable in thinking about the importance of distinctive historical and cultural

⁷³ Edward Wu, 'Human Rights: China's Historical Perspectives in Context' (2002) 4 *Journal of the History of International Law* 335, 335.

⁷⁴ Randall P. Peerenboom, 'What's Wrong with Chinese Rights: Toward a Theory of Rights with Chinese Characteristics' (1993) 6 *Harvard Human Rights Journal* 29, 47.

⁷⁵ Weiming Tu, 'A Confucian Perspective on Human Rights' in Wong Sin Kiong, *Confucianism, Chinese History and Society* (Co-Published with Department of Chinese Studies, National University of Singapore 2012) 1, 19.

⁷⁶ Robert Weatherley, *Rights Thinking in the People's Republic of China* in *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999) 101, 102.

relativities. However there does not seem to be sufficient consideration of the conflict between Confucianism and Marxism. This is because a close examination of Confucianism and Marxism will reveal that some ideas are antagonistic. This also inspires me, based on the seriousness of human rights discourse in China, to focus not only on the consistency but also on the inconsistency between the two philosophies. Because only when the inconsistencies and even contradictions and oppositions in the relationship are clarified as coexisting can it be called a true combination.

Rather than functioning in isolation, the two philosophies, Confucianism and Marxism, are selectively blended in HRCC to construct a legitimating discourse that is both rooted in Chinese tradition and aligned with modern developmental ideology. In official rhetoric, Confucian notions of benevolent governance are often invoked alongside Marxist references to social justice and class equality, thereby producing a hybrid justification for state-led rights provision. This strategic synthesis allows the Chinese state to frame its human rights narrative as culturally authentic and ideologically coherent.

While some consistency between Confucianism and Marxism with respect to the features of HRCC is very valuable, it is not feasible to ignore the philosophical inconsistencies, or even contradictory features, between Confucianism and Marxism. Marxism's rights rely on class struggle, but Confucianism advocates the realisation of rights in a harmonious environment. This inconsistency is even contradictory and antagonistic in nature. Confucianism is inward-looking self-regulation, while Marxism is outward-looking fight and assertion. Confucianism advocates benevolence as passive and fatalistic, while Marxism encourages assertive and confrontational behaviour. But why do these two seemingly opposing philosophies still work together organically to promote human rights in China?

I think the answer has something to do with China's ability to allow two opposites to coexist. This is now reflected in many other areas in China, particularly the economy, source of law, state governance and political system. A striking example is China's economy, which is a combination of two opposing economies, the State-dominated economy and the free market economy. China actively encourages the market, but at

the same time, it plays the role of the State in not allowing financial interests and speculative competition to affect social stability. China is not isolated from the mainstream of the international economy, but it maintains an economic coexistence of the two opposing economic systems to promote economic development. This mixed system has made the US government troublesome, and it regrets its decision to once support China's accession to the World Trade Organisation.⁷⁷ China's mixed economy, which relies on a free market system and allows the State to participate in economic life, is perhaps the reason why the right to development has been criticised by the liberal paradigm.⁷⁸ Based on the remarkable phenomenon of the Chinese economic system solving practical problems that could not be solved by solely relying on the free market, this co-existence of the socialist state subject and the free market has been described by Nolan as a unique Chinese 'third way'.⁷⁹ Relying on Western free-market theories that fail to explain the phenomena of the Chinese economy, Nolan suggests that even if he did not entirely make sense of it, he thought it looked amazing that the Chinese way is a complete philosophy of specific methods combined with a moral system.⁸⁰

China has also exercised the ability to allow two opposites to co-exist in its source of law. While Western media and academic literature tend to focus on international concerns about the human rights situation in China, there is little interest outside of China in changes to China's domestic legal system. It is well known the differences between the Chinese and Anglo-American legal traditions, and China is usually regarded as a civil law country, i.e. it does not recognise any binding precedents. In this context, however, China has allowed judgment cases to be used as precedent for case guidance since 1985.⁸¹ Such a guiding case method, although far from a mature jurisprudential system, is quite flexible in comparison with the legal traditions of civil law countries. Also, over the past few years China has created the world's largest free-access database of court

⁷⁷ Daniel CK Chow, 'The Myth of China's Open Market Reforms and the World Trade Organization' (2019) 41 *University of Pennsylvania Journal of International Law* 939, 939.

⁷⁸ Pitman Potter, 'Human Rights Protection: The Role of Institutional Capacity and Selective Adaptation' (2019) 14 *Journal of Human Rights* 59, 73.

⁷⁹ Peter Hugh Nolan, 'China at the Crossroads' (2005) 3 *Journal of Chinese Economic and Business Studies* 1, 18.

⁸⁰ *Ibid.*

⁸¹ Lu Xu, Chapter 4 The Emerging Case Law System in *Chinese Legal Reforms: Transformations in a Decade* (BRILL 2024) 94, 102.

judgments.⁸² Although today China is still criticised for lacking the Western standard of the rule of law in whatever new or different approach it takes, it is a fact that China has established the world's largest database of court judgments,⁸³ and that such a database, which is free of charge to access, is an efficient tool to meet the needs of a developing society. China's own civil law system also allows for the emergence of a case law system, a unique approach to the rule of law in which these two opposites coexist, with Chinese characteristics as well.

In addition, China's implementation of 'one country, two systems' also illustrates China's ability to unify opposites in terms of political systems. Socialism in mainland China and capitalism in Hong Kong and Macao are two completely different systems. Based on the colonial background of Hong Kong and Macao, the Central Government of China supports a high degree of autonomy for Hong Kong and Macao and adopts a policy of non-interference in the economic, political and cultural affairs of the region. Strictly speaking, China is not the only country in the world that has adopted one country, two systems, as there are many countries in the world that have also innovated in the integration of multiple systems, such as Quebec in Canada and Scotland in the United Kingdom. Although there are differences in these regions that are different from the systems of the countries they are in, it is only to a certain extent that they have different systems, but still follow the political system or the constitutional framework of the country they are in. However, the legal, economic and social systems of mainland China, Hong Kong and Macao are different from, or even opposite to, the socialist system of mainland China. According to Hualing Fu, The Constitution applicable to mainland China has no direct effect on Hong Kong, and even the Chinese People's Congress, which is the supreme body of state power, is expressly excluded from application to Hong Kong.⁸⁴ Whether or not 'one country, two systems' is a means of transition,⁸⁵ this unique way of

⁸² Lu Xu, Introduction: A Decade of Transformation of Chinese Law in The Emerging Case Law System in *Chinese Legal Reforms: Transformations in a Decade* (BRILL 2024) 1, 3.

⁸³ Hualing Fu, Supremacy of a Different Kind: The Constitution, the NPC and the Hong Kong SAR in *Hong Kong's Constitutional Debate: Conflict Over Interpretation*, edited by Johannes MM Chan, H. L. Fu, and Yash Ghai. (Hong Kong University Press, 2000) 97, 97.

⁸⁴ *Ibid*, 108.

⁸⁵ According to Article 5 of Basic Law, the socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.

allowing two completely different social systems to co-exist does represent China's harmonisation of two opposing systems. China has maintained the liberal political labelling of Hong Kong and Macao by keeping their systems unchanged and allowing Hong Kong and Macao to have a different kind of system, which is inconsistent with the system of mainland China. This unique approach of allowing two different social systems to co-exist in a legitimised ideology has been described by Scott as the 'myth of legitimisation'.⁸⁶

China has not been secretive about this ability to allow two opposites to coexist, as reflected in its state governance and political system. The principle of China's political system is democratic centralism, which is enshrined as a core official organisational principle in Article 2 of the 1954 Constitution and Article 3 of the 1982 Constitution.⁸⁷ Mao used a dialectical approach to interpret this principle as 'without democracy there can be no proper centralism'.⁸⁸ According to Mao, the two opposites of democracy and centralism coexist, with centralisation based on democracy and democracy guided by centralisation. The West often uses the expression 'transformational' to describe this complex mechanism of moving towards democracy.⁸⁹ What Angle calls 'transformational' can be understood as unstable and temporary. Indeed, democracy is more dichotomous from a Western liberal perspective; how can democracy be centralised, and how can centralisation be called democracy? However, the democratic centralism practised in China is compatible with the two conflicting principles of being both democratic and centralised.

Back to our theme of human rights, human rights with Chinese characteristics (HRCC) also combine two quite different philosophies - Confucianism from the old traditional culture and Marxism from the West. Considering the sources, it is no secret that Marxism is a product of Western civilisation. Marxism-Leninism is a purely Western ideology that would have had absolutely nothing to do with China or any other non-Western cultural

⁸⁶ Ian Scott, 'One Country, Two Systems': The End of a Legitimizing Ideology? (2017) 39 *Asia Pacific Journal of Public Administration* 83, 83.

⁸⁷ Guangbin Yang, Still a Century of the Chinese Model? Exploring Dimensions of Democratic Centralism (2016) 1 *Chinese Political Science Review* 171, 180.

⁸⁸ *Ibid.*, 178.

⁸⁹ Stephen C. Angle, 'Decent Democratic Centralism' (2005) 33 *Political Theory* 518, 518.

tradition. Although the two philosophies' understanding of human rights is in some ways consistent with each other, particularly with regard to socio-economic rights and collective rights, the consistency is only a small one; to some extent even, some doctrines of Marxism are principally incompatible with the Chinese cultural values, in particular, Marxism's advocacy of class struggle is in direct conflict with the Confucian social philosophy of promoting harmony in the society.⁹⁰ China has exercised its ability to unite opposites, combining traditional culture with the values introduced by the Western world, making the combination of Confucianism and Marxism possible.

Although Marxism is a foreign value imported into China from the West, the fact that it is generally recognised today as being in line with China's institutional and substantive requirements.⁹¹ This point confirms China's ability to unify Western values with traditional cultural thinking. Since the legitimacy of Marxism is not the focus of this essay, in brief, the post-Mao CCP, being concerned with its own legitimacy, retained Marxism-Leninism as its official ideology, but did not carry the shackles of the economic limitations of Marxist theory. It may be one-sided if Marxism is seen as only a means of legitimacy in the post-Mao era. Realistically, Marxism has interacted with China's modern social development, adding 'communism' to the traditional Chinese social philosophy, 'seeking truth from facts' to the ruling party, and blending well with Confucianism's people-oriented approach.⁹² Marxism took up well the reality of China's socio-political transformation in those days and blended and developed well with traditional Chinese culture, responding to the fact that Marxism met the institutional and substantive requirements of China.

Moreover, despite the conflicting ideas of Confucianism and Marxism, those conflicts pale into insignificance in light of the relative commonality of the fact that neither philosophy is in any way a theory of natural rights. Kant believed that Chinese civilisation differed from Western civilisation in that the Chinese did not really believe in God, nor

⁹⁰ John F. Copper, Chapter 2 Humanist Ethics in Chinese History in *Human Rights in Post-Mao China*. (Taylor & Francis Group 1985) 9, 16.

⁹¹ There is a lot of literature on the Sinicisation of Marxism, such as Li Peng, Localization of Marxism in China: History, theory and the challenge. *J. Pol. & L.* 11 (2018).

⁹² Lixin Chen, 'Relationship of Marxism in China and Chinese Traditional Culture' (Atlantis Press 2015) 1133, 1137.

did they take religion seriously.⁹³ Marxism also considers the atheism of rights, being granted by the state, limited by the state, and dependent on the level of socio-economic development. Unlike the Western liberal paradigm of human rights, which is based on the inalienable rights people are born with, Confucianism's sensitivity to social conditions and Marxism's historical materialism reached unity at this point. In other words, Marxism's instrumental nature of law and Confucianism's pragmatic nature are philosophically combinable. As Peeronboom argues, it is only the absolute universal non-historical discourse of rights and traditional Chinese cultural philosophies that are incompatible and difficult to combine.⁹⁴

In summary, therefore, Confucianism and Marxism together influenced China's unique historical and cultural climate and the environment of socialist development, resulting in the formation of the HRCC. China's capability to unify opposing sides on human rights has been largely ignored. This ability is more specifically, China's ability to allow two opposites to co-exist. It is often difficult for people outside of China to understand this ability to combine things that are otherwise incompatible, which can be two ideas, old and new, or two things that are inherently contradictory and opposed to each other. In the area of human rights in China, China combines elements of both Confucianism and Marxism. In addition, there are the rule of law with Chinese characteristics, democratic centralism, and the 'one country, two systems' policy, which we have already listed concrete examples as proof of China's approach to creating combinations. Indeed, this capability or approach is unconventionally puzzling. Just as foreigners are often puzzled as to what exactly is China's technique for combining the socialist state body with a mostly free market.⁹⁵ This capability to combine and reconcile opposites has led to the second rise of China since the 1980s, and China has set many precedents not found in the Westphalian system, which is why it is often portrayed as a myth, a puzzle and a paradox.⁹⁶

⁹³ Congyan Cai, Evolution of China's State Identity in *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (Oxford University Press 2019) 46, 64.

⁹⁴ Randall P. Peerenboom, 'What's Wrong with Chinese Rights: Toward a Theory of Rights with Chinese Characteristics' (1993) 6 *Harvard Human Rights Journal* 29, 57.

⁹⁵ James Chieh Hsiung, Chapter 8 China's Second Rise: Challenge to World Order or International Relations Theory in *China into Its Second Rise Myths, Puzzles, Paradoxes, and Challenge to Theory*, Scientific Publishing Company. (2012), 199, 238.

⁹⁶ *Ibid*, 199.

Conclusion: Understanding HRCC in the Philosophical Way

China has a population of about one-fifth of all humanity in the world, and being both a socialist country and a developing country, the implementation of universal human rights in China would make human rights more universal in a realistic sense. Yet such a state has been constantly accused of being a human rights violator over the past few decades. China gave its more comprehensive official human rights view in the 1991 White Paper on Human Rights in China. It believes that human rights fall within the scope of national sovereignty, and human rights content varies according to 'historical background, social system, cultural tradition, and economic development; and the right to subsistence is the primary human right over and above other rights. On the one hand, China explicitly endorses the language of human rights in its national documents, but on the other hand, China has a relativist view of human rights, particularly regarding the perception and implementation of human rights. In contrast, in the Western human rights framework, China's human rights policy is outside the mainstream.

China's changing role since joining the international human rights system is also noteworthy. From being a resistant responder to a learner and an adaptor, China has become more and more vocal about human rights on the international stage. Xi gave a speech in Geneva on a community of shared future of all humanity and proposed peaceful development. Moreover, At the international level, there's a growing awareness that China's foreign human rights policy seems to be on its own way. For example, China carries out its human rights foreign policy in Africa. In Ethiopia, China built infrastructure and improved its railway system, road system, and communication system to improve local people's life quality. The Ethiopian prime minister talked about China's commitment to socio-economic development; although China's approach would pedal its influence in the disadvantaged states, the influence did not include intervention in their domestic affairs. So, China is perceived to be implementing human rights policies in its own way rather than following the West's formula.

Regarding China's different approach to human rights, after reading through and systematically examining three areas, i.e. China's political statements in documents and speeches, China's engagement with human rights treaty bodies and China's documents towards UN's Universal Periodic Review, I can demonstrate that there are four characteristics of China's human rights policy 1) China has its own path in human rights in line with its national realities; 2) China emphasises the non-interference principle, ensuring sovereign independence and stability; 3) China always prioritizes social and economic development; 4) China values the common interests of collective human rights. The four aspects that make China's human rights different are what I call 'Human Rights with Chinese Characteristics (HRCC)'.

This locates the discussion in a wider debate between universalism & relativism. The 1948 Universal Declaration of Human Rights is the foundational document of universal human rights. Its first article states that 'all human beings are born free and equal'. Although there is agreement on the content of the UDHR, it was not easy for the framers to agree on a common set of fundamental human rights principles. This is because the fundamental principles that guide human rights are philosophical issues, very culture-related and metaphysical. Although the contents are based on the 'notion of good', the concept of good is inevitably abstract and there is no absolute uniformity in how to achieve the good. This is not to say there are no shared moral values among different human cultures, but rather, there are different ways of understanding the equal dignity and rights of human beings in different cultural contexts. So, there's the fact that behind the universality of human rights, there is also relativity that cannot be agreed upon.

When we face up to cultural relativism, one special version of cultural relativism or one representative topic of cultural conflict between the East and the West is 'Asian Values', which is led by Singapore, Malaysia, Indonesia and China. The three main arguments they put forward are: first, they questioned the applicability of Western standards, which means how extent to universal human rights are appropriate to Asian cultures; second, they argued that Asia was not ready for universal human rights and that priority should be given to development; last but not least they rejected double standards and the use of human rights as a justification for interference in internal affairs. Will Asian Values

help to understand HRCC? No. In Asian values, we see economic and political objectives as being at the heart of the debate rather than culture, and **it is** not representative of Asia as the name suggests. Asia is not a single entity; diverse cultures are ignored; moreover, specific regional values are questioned to exist, and Asia is not an entire region that can be characterised by a set of values.

The formation of HRCC involves the interplay of multiple elements, and a comprehensive understanding of HRCC requires looking at it from multiple perspectives. However, philosophical underpinnings are the origin that influenced the emergence and formation of HRCC. This is why I elaborate HRCC from a philosophical perspective - factual analyses of the features of HRCC from two cultural philosophies that have profoundly influenced China's distinctive human rights views, namely Confucianism and Marxism.

Confucianism is based on virtue and duty. While Confucianism did not contain any rights terminology nor did it conceptualise human rights, it contained moral norms and the idea of human rights with dignity and equality. Confucianism is an inward-looking philosophy based on an emphasis on virtue and duty, which relies on the active fulfilment of obligations through personal morality and virtue rather than passive mutual constraints, ultimately leading to mutual care and reciprocity among human beings, and consequently to the realisation of rights to achieve social harmony. Confucianism's emphasis on morality and duty, on the obligation of rulers to care for their people and their well-being, and on the collective good have influenced China's view of human rights, which then shaped HRCC.

Moreover, Marxism has simultaneously influenced the formation of HRCC. Originating in the West and advocating liberation struggles for the oppressed, Marxism is in fact inferred to be an alternative human rights norm based on informal legal forms and guided by concrete political action for social transformation. Although Marxism is not a mainstream value in the Western world, it has further developed and flourished in Chinese social practice, particularly influencing and contributing to Chinese human rights discourse. Marxism's dialectical historical materialist perspective has led HRCC to emphasise its own human rights path. Marxism's perspective of opposing imperialism

and colonialism has firmly grounded HRCC's non-interference principle. Marxism's articulations according to socio-economic conditions as determinants of rights and collective rights as the basis for social and economic justice have influenced China's human rights discourse, in line with HRCC's prioritisation of socio-economic rights and collective interests.

The best way to understand China's distinctive approach to human rights is to explain the logic behind it through its profound philosophical underpinnings. Based on the influence of Confucianism and Marxism on HRCC, the final chapter constructs an instructive framework for understanding the ways in which the two philosophies have influenced HRCC. This framework examines both the consistency and inconsistency of the two philosophies in HRCC, discussing the limitations of Confucianism and the importance of Marxism, in other words, why Confucianism can be one of the components in explaining HRCC rather than the only one. As well as the irreplaceability of Confucianism, i.e. a dialectical discussion of why Marxism cannot replace Confucianism as the only element influencing the HRCC. Therefore, it can be concluded that HRCC is jointly composed of two philosophies, Confucianism and Marxism. Although Confucianism, based on traditional Chinese culture, and Marxism, from the West, arose in different times and social contexts, and even have conflicting and opposing ideas, the developmental history of Chinese society illustrates China's ability to unify opposites; in other words, the approach to make two opposites coexist and work. This is also true of Chinese human rights policy, where Confucianism and Marxism work together as entities that influence the HRCC.

The originality of this paper is to explain that the philosophical underpinning of HRCC is a combination of Confucianism and Marxism, i.e., both Confucianism and Marxism are entities that work together to influence HRCC. My approach is to provide a philosophically underpinned perspective for understanding human rights with Chinese characteristics and to understand why China's foreign human rights policy does not follow the Western formula. It takes an innovative approach by systematically sorting out three aspects of China's official political statements, China's engagement with human rights treaty bodies and the Universal Periodic Review (UPR), and analysing

examples to summarise that China's human rights policy with Chinese characteristics is characterised by four features that are distinguished from the prevailing international human rights norms. They are: 1) China has its own path in human rights in line with its national realities; 2) China emphasises the non-interference principle, ensuring sovereign independence and stability; 3) China always prioritizes the right to subsistence and development; 4) China values the common interests of collective human rights. Despite the universality of human rights, there is cultural relativity behind the universality that cannot be agreed upon, which is an important factor affecting the application of universal human rights. Based on the impact of cultural relativity on the practical application of human rights policies in China, this paper constructs a framework for understanding HRCC, consisting of both Confucianism and Marxism. By analysing and demonstrating the philosophical underpinnings of both Confucianism and Marxism, it can be concluded that the combination of Confucianism and Marxism can make sense of HRCC well. My methodology dissects China's distinctive human rights policy from its philosophical underpinnings. Based on the influence of the philosophical underpinnings on HRCC, this work comes to the original contribution of concluding that HRCC is a combination of Confucianism and Marxism. This work provides a new perspective on the holistic view of international human rights, which is beneficial for understanding the conflict between the Chinese notion of human rights and the Western notion of human rights as a philosophical rather than a political conflict.

Final Thought

Confucianism and Marxism were originally two different philosophies, but they met and merged in the land of China. They collaborated to co-create China's unique historical and cultural atmosphere and socialist development context, which in turn co-shape HRCC. The formation of human rights policies involves the interaction of multiple elements, and a comprehensive understanding of the HRCC requires viewing it from multiple perspectives. However, philosophical underpinnings are the origin of the influence and shaping of human rights thinking with Chinese characteristics. This is why I want to unpack HRCC from a philosophical perspective fundamentally. Although I use a philosophical approach to unpack HRCC, it does not mean that the formation of human

rights policy should only be attributed to the words and deeds of certain philosophers such as Confucius, Mencius and Marx. If the social policies of a certain era accept and quote the words and deeds of certain philosophers, it is mainly because these ideas reflect the general views of society. Considering the multidimensional and dynamic nature of human rights policy, in particular, the development of emerging technologies and the transformation of social values, will constantly trigger a review of absolute universal human rights. However, Confucianism and Marxism are valuable to the current era because they do not view the development of human rights from an unchanging perspective due to Confucianism's sensitivity and pragmatism towards social conditions and Marxism's essentially dialectical materialism and instrumental nature. The combination of Confucianism and Marxism can explain HRCC well, and the ideas expressed in these two philosophies are also the ideologies that are needed by HRCC.

There may be the worry that human rights with Chinese characteristics (HRCC) are not static, so will the validity of the philosophical underpinnings for interpreting human rights with Chinese characteristics last? It is true that China's understanding of human rights is not static. China's attitude towards human rights has evolved from initial criticism to adaptation and now to proactive engagement. Then the human rights policy with Chinese characteristics cannot be static either. China views human rights through the lens of development and change, and as society develops and evolves, so does the interpretation of human rights. Nevertheless, the advantage of using this philosophical framework to explain human rights is that the depth and breadth of the philosophies themselves are constantly enriched and extended. In fact, Confucianism and Marxism are also two philosophies within a developmental perspective, where values and beliefs do not stay the same forever but are constructed by social development and evolve over time and through contact with other cultures. Confucianism is open and inclusive and has been perpetuated over the past 2,000 years by a variety of schools of thought that have continued to take the best and remove the dross. Marxism has also evolved and enriched from the original theories of Marx himself. Broadly speaking, Confucianism provides profound cultural relativism in traditional thought, while Marxism brings more cultural relativism in political and economic thought. While Marxism brings the rights perspective and expression of rights to HRCC, Confucianism provides an irreplaceable

philosophical foundation for interpretive analyses. Together, Confucianism and Marxism support HRCC. Both philosophies are entities in HRCC and work together. Thus, HRCC is an organic combination of Confucianism and Marxism.

Bibliography

Primary Sources:

International Treaties & Conventions:

Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945)
1 UNTS XVI.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or
Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465
UNTS 85.

Convention on the Elimination of All Forms of Discrimination Against Women (adopted
18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2
September 1990) 1577 UNTS 3.

Convention on the Rights of Persons with Disabilities (adopted 13 December 2006,
entered into force 3 May 2008) 2515 UNTS 3.

International Convention on the Elimination of All Forms of Racial Discrimination
(adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195.

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered
into force 23 March 1976) 999 UNTS 171.

International Covenant on Economic, Social and Cultural Rights (adopted 16 December
1966, entered into force 3 January 1976) 993 UNTS 3.

Organization of African Unity (now the African Union), African Charter on Human and
Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520
UNTS 217.

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27
January 1980) 1155 UNTS 331.

United Nations Documents:

Bangkok Declaration, UN Doc A/CONF.157/ASRM/8.

Final Declaration of the Regional Meeting for Asia of the World Conference on Human rights (Bangkok Declaration) for the reparations for the World Conference on Human rights of 1993 in accordance with General Assembly resolution 46/116 of 17 December 1991.

Vienna Declaration and Programme of Action (adopted 25 June 1993, UNGA A/CONF.157/23)

Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217 A(III), UN Doc A/810).

UN General Assembly, ‘Declaration on the Right to Development’ (UNGA Res 41/128, 4 December 1986, UN Doc A/RES/41/128).

UN General Assembly, ‘Proclamation of Tehran, Final Act of the International Conference on Human Rights’ (UN Doc A/CONF.32/41, 1968).

UN Human Rights Council, ‘Draft Resolution on Human Rights and Climate Change’ (UN Doc A/HRC/35/L.33/Rev.1, 20 June 2017).

UN Committee Against Torture, ‘Concluding Observations on the Fourth Periodic Report of China’ (UN Doc CAT/CO/CHN/4, 2008)

UN Committee Against Torture, ‘Concluding Observations on the Fifth Periodic Report of China’ (UN Doc CAT/C/CHN/CO/5, 2016)

UN Committee on Economic, Social and Cultural Rights, ‘Initial Report of China’ (UN Doc E/1990/5/Add.59, 4 March 2004).

UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the Second Periodic Report of China, including Hong Kong, and Macao, China (UN Doc Ec.12/CHN/CO/ 2, June 13, 2004).

UN Committee on Economic, Social and Cultural Rights, ‘Concluding Observations on China’s Initial Report’ (UN Doc E/C.12/1/Add.107, 13 May 2005).

UN Committee on Economic, Social and Cultural Rights, ‘Second Periodic Report of China’ (UN Doc E/C.12/CHN/2, 2010)

UN Committee on Economic, Social and Cultural Rights, ‘Initial Report of China’ (UN Doc E/1990/5/Add.59, 2003).

UN Committee on Economic, Social and Cultural Rights, ‘Second Periodic Report of China’ (UN Doc E/C.12/CHN/2, 2010).

UN Committee on Economic, Social and Cultural Rights, ‘Third Periodic Report of China’ (UN Doc E/C.12/CHN/3, 2019).

- UN Committee on the Rights of the Child, ‘Concluding Observations on China’s Initial Report’ (UN Doc CRC/C/15/Add.56, 7 June 1996).
- UN Committee on the Rights of the Child, ‘General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child’ (UN Doc CRC/GC/2003/5, 27 November 2003).
- UN Committee on the Rights of the Child, ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of China’ (UN Doc CRC/C/CHN/CO/3-4, 2013).
- UN General Assembly, ‘International Bill of Human Rights’ (UNGA Res 217 A (III), 10 December 1948) UN Doc A/810.
- UN General Assembly Resolution 41/128 (4 December 1986).
- UN General Assembly Resolution 60/251 (15 March 2006).
- UN Human Rights Council. ‘National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1’ (UN Doc. A/HRC/WG.6/4/CHN/1, 2009).
- UN Human Rights Council, ‘Report of the Human Rights Council on its Eleven Session’ (UN Doc A/HRC/11/37, 2009).
- UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review**China’ (UN Doc A/HRC/11/25*, 2009).
- UN Human Rights Council. ‘National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21’ (UN Doc. A/HRC/WG.6/17/CHN/1, 2013).
- UN Human Rights Council. ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21’ (UN Doc. A/HRC/WG.6/31/CHN/1, 2018).
- United Nations Watch, ‘Written Statement to the UN Human Rights Council’ (UN Doc A/HRC/45/NGO/123, 2020).

Secondary Sources:

Books

- Alford CF, *Narrative, Nature, and the Natural Law: From Aquinas to International Human Rights* (Palgrave-Macmillan 2010).
- Ames RT, *Human Becomings: Theorizing Persons for Confucian Role Ethics* (State University of New York Press 2020).
- Angle SC and Svensson M, *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000* (Taylor & Francis Group 2001).
- Angle SC, *Human Rights in Chinese Thought: A Cross-Cultural Inquiry* (1st edition, Cambridge University Press 2002).
- Bartley RL, *Democracy & Capitalism: Asian and American Perspectives* (Institute of Southeast Asian Studies 1993).
- Bary WT, *Asian Values and Human Rights: A Confucian Communitarian Perspective, Asian Values and Human Rights* (Harvard University Press 2000).
- Bary WT, *Confucianism and human rights*. Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming (1998).
- Bell D, *China's New Confucianism: Politics and Everyday Life in a Changing Society* (Princeton University Press 2008).
- Bell D, *Beyond Liberal Democracy: Political Thinking for an East Asian Context* (Princeton University Press 2006).
- Bell D, *Confucianism for the Modern World* (Cambridge University Press 2003).
- Brugger B and Kelly D, *Chinese Marxism in the Post-Mao Era* (Stanford University Press 1990).
- Bruun O and Jacobsen M, *Human rights and Asian values: Contesting national identities and cultural representations in Asia*. (2003) Routledge.
- Cai C, *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (Oxford University Press 2019).
- Chan A, *Chinese Marxism* (A&C Black 2003).
- Chan G, *China's Compliance in Global Affairs: Trade, Arms Control, Environmental Protection, Human Rights* (World Scientific Pub 2006).
- Charvet J and Kaczynska-Nay E, *The Liberal Project and Human Rights: The Theory and Practice of a New World Order* (Cambridge University Press 2008).
- Charvet J, *A critique of freedom and equality*. Cambridge University Press. (1981).
- Ching J, *Mysticism and Kingship in China: The Hearts of Chinese Wisdom*. Cambridge: Cambridge University Press. (1997).

- Chang Kyung-Sup, 4. The Anti-Communitarian Family? Everyday Conditions of authoritarian Politics in South Korea in *Communitarian Politics in Asia* (Routledge 2004).
- Clarke DC, *China's Legal System: New Developments, New Challenges* (Cambridge University Press 2008).
- Cox L and Nilsen G, *We Make Our Own History: Marxism and Social Movements in the Twilight of Neoliberalism* (Pluto Press 2015).
- Cropsey J, Karl Marx in Strauss L and Cropsey J, *History of Political Philosophy* (University of Chicago Press 2012).
- Davies JC, *Human Nature in Politics: The Dynamics of Political Behaviour* (John Wiley & Sons Inc 1963).
- Deng X, *Selected Works of Deng Xiaoping Voume 2* (Beijing: Foreign Languages Press 1995).
- Deng X. *Selected Works of Deng Xiaoping Volume 3* (People's Publishing House. 1993).
- Douzinias C, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Routledge-Cavendish 2007).
- Drachkovitch M, *Marxist Ideology in the Contemporary World: Its Appeals and Paradoxes* (New York: Pall Mall Press, 1966).
- Dunayevskaya R, *Philosophy and Revolution: From Hegel to Sartre, and from Marx to Mao* (Lexington Books 2003).
- Edwards RR, Henkin L and Nathan AJ, *Human Rights in Contemporary China* (Columbia University Press 1986).
- Evans T, *Human Rights in the Global Political Economy: Critical Processes*, LYNNE Rienner Publishers, (2011).
- Fanon F. *The Wretched of the Earth*. Trans. Richard Philcox. (New York: Grove Weidenfeld Press. 1963).
- Fei X, *From the Soil: The Foundations of Chinese Society*, translated by Hamilton GG and Zheng W, (University of California Press 1992).
- Foot R, *Rights Beyond Borders: The Global Community and the Struggle over Human Rights in China* (OUP Oxford 2000).
- Fung Y, *History of Chinese Philosophy*, vol. 2, tr. by Derk Bodde, (Princeton University Press 1953).
- Gardner DK, *Confucianism: A Very Short Introduction* (Oxford University Press 2014).

- Gleddon MA, 'A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights' Random House Trade Paperbacks, Toronto, (2002).
- Heinrich M and Locascio A, *An Introduction to the Three Volumes of Karl Marx's Capital* (NYU Press 2004).
- Heinrich M, *Karl Marx and the Birth of Modern Society: The Life of Marx and the Development of His Work* (NYU Press 2019).
- Hilferding R, *Finance Capital: A Study of the Latest Phase of Capitalist Development* (Routledge & Kegan Paul, 1981).
- Hsiung H and Hsiung JC, *China into Its Second Rise Myths, Puzzles, Paradoxes, and Challenge to Theory* (Scientific Publishing Company 2012).
- Hsiung J, *Human Rights in East Asia: A Cultural Perspective*. Paragon House. (1985).
- Hudis P, *Marx's Concept of the Alternative to Capitalism*, (Leiden: Brill, 2012).
- Jin H, *Marxism and Socialism with Chinese Characteristics* (First edition, Cengage Learning Asia Pte Ltd 2017).
- Kagan RC, *Taiwan's Statesman: Lee Teng Hui and Democracy in Asia* (Naval Institute Press 2014).
- Kent A, *Between Freedom and Subsistence: China and Human Rights* (Hong Kong: Oxford University Press, 1993).
- Kent A, *China, the United Nations, and Human Rights: The Limits of Compliance* (University of Pennsylvania Press 2013).
- Kent A, *Human rights in the People's Republic of China: national and international dimensions*. Peace Research Centre, Research School of Pacific Studies, Australian National University, (1990).
- Kohn L, *Daoism: a contemporary philosophical investigation*. Routledge, (2019).
- Lenin V, *The Collected Works of Lenin, vol. 39* (Beijing: People's Publishing House, 1986).
- Liedman SE, *World to Win: The Life and Works of Karl Marx* (Verso Books 2018).
- Losurdo D, *Hegel and the freedom of the moderns*. Translated by Marella Morris and Jon Morris. (Durham: Duke University Press 2004).
- Luxemburg R, *The Russian Revolution in The Rosa Luxemburg Reader* (NYU Press 2004).
- Makeham J, *New Confucianism: A Critical Examination* (Palgrave Macmillan 2003).
- Mao Z, *Selected Works of Mao Tse-tung Vol.1* (Beijing: Foreign Languages Press, 1967).

- Mao Z, *Selected Works of Mao Tse-tung Vol.3* (Beijing: Foreign Language Press, 1965).
- Mao Z, *Selected Works of Mao Tse-Tung Vol.5*, (Beijing: Foreign Languages Press 1977).
- Mao Z, *The Collected Works of Mao Zedong Vol. 6* (Beijing: People's Publishing House 1999).
- Marx K, Engels F, *Selected Works of Marx and Engels Vol. 3* (Beijing: People's Publishing House, 1995).
- Marx K, *Later Political Writings*, Cambridge: Cambridge University Press (2010).
- Marx K, *Capital, Volume I: A Critique of Political Economy* (Courier Corporation 2011).
- Marx K, Engels F, *The Communist Manifesto*. First Avenue Classics. Minneapolis, MN: First Avenue Editions, a Division of Lerner Publishing Group, (2018).
- Marx K, Engels F, *Marx and Engels Collected Works Vol.5*, Moscow: Progress Publishers 1976.
- Marx K, Engels F, *The Communist Manifesto*. London: Penguin, 1967.
- Marx K, *Capital: Volume I*. United Kingdom: Penguin Books Limited. (2004).
- Munro D.J, *The Concept of Man in Contemporary China*. Ann Arbor: University of Michigan Press, (1977).
- Pennock JR, *Democratic Political Theory* (Princeton University Press 2015).
- Peters A, *Beyond Human Rights: The Legal Status of the Individual in International Law* (Cambridge University Press 2016).
- Postone M, *Time, Labor, and Social Domination: A Reinterpretation of Marx's critical theory*. Cambridge: Cambridge University Press, (1993).
- Rigby S. H, *Engels and the Formation of Marxism: History, dialectics and revolution*. Manchester University Press, (2024).
- Sommerville C. J, *The Secularization of Early Modern England: From Religious Culture to Religious Faith*. Oxford University Press, USA. (1992).
- Sperber J, *Karl Marx: A Nineteenth-Century Life* (W W Norton & Company 2013).
- Stacey J, *Unhitched: Love, marriage, and family values from West Hollywood to Western China* (Vol. 7). NYU Press, (2011).
- Svensson M, *Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield Unlimited Model 2002).
- Talbott W, *Which Rights Should Be Universal?* (Oxford University Press 2005).
- Weatherley R, *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Springer 1999).

- Weissbrodt DS and Vega C de la, *International Human Rights Law: An Introduction* (University of Pennsylvania Press 2007).
- Xi J, *Xi Jinping: The Governance of China*, (Beijing: Foreign Languages Press 2018).
vol. 1.
- Xu L, *Chinese Legal Reforms: Transformations in a Decade* (BRILL 2024).
- Xue H, *Chinese contemporary perspectives on international law history, culture and international law* The Hague: Hague Academy of International Law. (2012).
- Yao X, *An Introduction to Confucianism* (Cambridge University Press 2000).
- Zeng J, *The Chinese Communist Party's Capacity to Rule: Ideology, Legitimacy and Party Cohesion* (Springer 2015).
- Zhang X, *Selected Essays on the History of Contemporary China* (BRILL 2015).
- Zhao D, *The Confucian-Legalist State: A New Theory of Chinese History* (Oxford University Press 2015).
- Zhou E, *Selected works of Zhou Enlai*, (Beijing: Foreign Languages Press, 1989) vol. 2.
- Zhou J, *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books 2013).

Contributions to edited books

- Althusser L, Ideology and Ideological State Apparatuses in Sharma A and Gupta A, *The Anthropology of the State: A Reader* (John Wiley & Sons 2009) 86.
- Bloom I, Fundamental Intuitions and Consensus Statements: Mencius Confucianism and Human Rights in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 94.
- Bob C, Globalization and the Social Construction on Human Rights Campaigns in *Globalization and Human Rights*, edited by Brysk A, (University of California Press 2002) 133.
- Buultjens R, 'Human rights in Indian political culture.' in *The Moral Imperatives of Human Rights: A World Survey* (1980) Kenneth W. Thompson ed., 109.
- Chan J, "A Confucian Perspective on Human Rights for Contemporary China," in *The East Asian Challenge for Human Rights*, ed. Joanne R. Bauer and Daniel A. Bell (New York: Cambridge University Press, 1999), 223.
- Chan J, Chapter 10 Giving Priority to the Worst Off –A Confucian Perspective on Social Welfare in *Confucianism for the Modern World*. Bell D and others (Cambridge University Press 2003) 236.

- Chan S, Li Zehou and New Confucianism in 'New Confucianism: A Critical Examination' Makeham J, (PALGRAVE MACMILLAN 2003) 105, 122.
- Chang W, Confucian Theory of Norms and Human Rights in *Confucianism and Human Rights*, Edited by Wm. Theodore de Bary and Tu Weiming, Columbia University Press New York. (1998) 117.
- Chen A, Chapter 11 Mediation, Litigation, and Justice—Confucian Reflections in a Modern Liberal Society in *Confucianism for the Modern World*, Bell D and others, (Cambridge University Press 2003) 257.
- Cheng C, Transforming Confucian Virtues into Human Rights: A Study of Human Agency and Potency in Confucian Ethics in *Confucianism and Human Rights*, Edited by Wm. Theodore de Bary and Tu Weiming, Columbia University Press New York. (1998) 142.
- Ching J, Human Rights: A Valid Chinese Concept? In *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 67.
- Cheng C, (1989), "Chinese Metaphysics as Non-metaphysics: Confucian and Daoist Insights into the Nature of Reality," in *Understanding the Chinese Mind: The Philosophical Roots*, ed. Robert E. Allinson, Hong Kong: Oxford University Press. 167.
- Corner A, Confucianism and Due Process in Contemporary Chinese Political Discourse in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming, 179.
- Dai R, 'China and International Human Rights Law' in Ignacio De La Rasilla and Congyan Cai (eds), *The Cambridge Handbook of China and International Law* (1st edn, Cambridge University Press 2024) 261.
- Dallmayr F, "Asian Values" and Global Human Rights, in *Theories of Rights*, edited by C.L.Ten (Routledge 2006) 173.
- David L. Hall & Roger T. Ames, Chapter 5 A Pragmatist Understanding of Confucian Democracy in *Confucianism for the Modern World* Bell D and others, (Cambridge University Press 2003) 124.
- Feng Y, The Yellow Emperor Tradition as Compared to Confucianism in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 154.

- Hall D & Ames R, Chapter 5 A Pragmatist Understanding of Confucian Democracy in *Confucianism for the Modern World*), edited by Bell D and others, (Cambridge University Press 2003), 124.
- Hopgood S, Human Rights on the Road to Nowhere in Snyder J and Vinjamuri L, *Human Rights Futures* (Cambridge University Press 2017) 283.
- Huang M, An Initial Inquiry into the Contemporary Theory of Human Rights and Fundamental Freedoms (1976) in *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000*, Angle SC and Svensson M edited, (Taylor & Francis Group 2001) 247.
- Huang Z, 'The Right to Development: The Chinese Perspective' (2010) in F. Bestagno and L. Rubini (eds.), *Challenges of Development: Asian Perspectives*, 34.
- Judge J, The Concept of People's Rights (Min Quan) in Late Qing in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 193.
- Kedzia Z, Mainstreaming Human Rights in The United Nations in *International Human Rights Monitoring Mechanisms*, edited by Gudmundur A, & others (Brill Nijhoff, 2009). 231, 232.
- Kwok D.W.Y, On the Rites and Rights of Being Human in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 83.
- Li B, Human Rights: Three Existential Forms (1991) in Angle SC and Svensson M eds, *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000* (Taylor & Francis Group 2001) 333.
- Liu Q, Moving in the Right Direction: China's Irreversible Progress Towards Democracy and Human Rights (1999) in *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000*, Angle SC and Svensson M edited, (Taylor & Francis Group 2001) 436.
- Marx K, 'On the Jewish Question', in David McLellan (ed.), *Karl Marx: Selected Writings*. Oxford: Oxford University Press, (1977a) 46.
- Marx K, *Karl Marx: Selected Writings*, David McLellan (ed.), (Oxford: Oxford University Press 1977) 346.
- Paltiel J, Confucianism Contested: Human Rights and the Chinese Tradition in Contemporary Chinese Political Discourse in *Confucianism and Human Rights*

- (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming, 270.
- Peerenboom R, Confucian Harmony and Freedom of Thought: The Right to Think Versus Right Thinking in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming, 234.
- Pils E, Rule-of-Law Reform and the Rise of Rule by Fear in China in *Authoritarian Legality in Asia: Formation, Development and Transition*, edited by Chen W and Fu H (Cambridge University Press 2020) 90.
- Rozman G, Chapter 7 Center-local Relations Can Confucianism Boost Decentralization and Regionalism in *Confucianism for the Modern World* (Cambridge University Press 2003) Bell D and others, 181.
- Ruskola T, 'A Reader's Guide to Legal Orientalism' in *Special Issue: Trajectories of Chinese*, edited by Thomas Coendet (Ancilla Iuris, 2021) 147.
- Ruskola T, Introduction: Legal Orientalism in *Legal Orientalism: China, The United States, and Modern Law* (Cambridge: Harvard University Press, 2013) 1.
- Tiwald J, 'Confucianism and Human Rights' in *Handbook of Human Rights* (Routledge 2012) Cushman T (ed), 244.
- Tu W, 'A Confucian Perspective on Human Rights' in Wong Sin Kiong, *Confucianism, Chinese History and Society* (Co-Published with Department of Chinese Studies, National University of Singapore 2012).
- Department of Chinese Studies, National University of Singapore 2012) 1.
- Tu W, Epilogue: Human Rights as a Confucian Moral Discourse in *Confucianism and Human Rights*, Edited by Wm. Theodore de Bary and Tu Weiming, Columbia University Press New York. (1998) 297.
- Twiss S, A Constructive Framework for Discussing Confucianism and Human Rights in *Confucianism and Human Rights* (1998) Columbia University Press New York, Edited by Wm. Theodore de Bary and Tu Weiming 27.
- Wei J, Human Rights, Equity, and Democracy in *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000*, edited by Angle SC and Svensson M, (Taylor & Francis Group 2001) 253.
- Wei J, Prison Letter (1991) in *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000*, edited by Angle SC and Svensson M, (Taylor & Francis Group 2001) 343.

- White G, *Economic Reform and Ideological Decay: The Decline of Ideocracy in Riding the Tiger: The Politics of Economic Reform in Post-Mao China* (Stanford, Calif.: Stanford University Press, 1993) 147.
- Xia Y, Human Rights and Chinese Tradition (1992) in *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000* (Angle SC and Svensson M edited, Taylor & Francis Group 2001) 372.
- Xia Y, Human rights and Chinese tradition. In P.R. Baehr, et al. (Eds.), *Human rights: Chinese and Dutch perspectives*. The Netherlands: Kluwer Law International. (1996). 77.
- Xiao W, Luo H, Wu X, How Marxism Views the Human Rights Question (1979) in Angle SC and Svensson M, *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000* (Taylor & Francis Group 2001) 281.
- Yong X, Human Rights and Chinese Tradition (1992) in *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000*, Angle SC and Svensson M edited, (Taylor & Francis Group 2001) 372.
- Zarrow P, Citizenship and Human Rights in Early Twentieth-Century Chinese Thought: Liu Shipei and Liang Qichao in *Confucianism and Human Rights* edited by Bary TW and Tu W, (Columbia University Press 1998) 209.
- Zou K, Chinese Approach to International Law in *China's International Relations in the 21st Century: Dynamics of Paradigm Shifts*, Daojiong Zha, Weixing Hu, Gerald Chan, (University Press of America, 2000) 171.

Translated Books

The Great Learning in the Book of Rites, para 2, “Those who wish to govern their country must first harmonize their families. Those who wish to harmonize their families must first cultivate their personalities.” Translated from 礼记·大学 ‘欲治其国者，先齐其家。欲齐其家者，先修其身。’

Articles

Adem S, ‘China in Ethiopia: Diplomacy and Economics of Sino-Optimism’ (2012) 55 *African Studies Review* 143.

- Adibeik A, Representation of burka banning in France as represented in British and Persian Newspapers. (2012). In *Papers from the 7th Lancaster University Postgraduate Conference in Linguistics & Language Teaching 2012*. 3.
- Angle SC, 'Decent Democratic Centralism' (2005) 33 Political Theory 518.
- Arinanto S, 'Human Rights in Context of the Historical Non-aligned Countries' Debates on Universalism and Cultural Relativism, and Current Human Rights Development in Indonesia' (2021) 7 Indonesian Journal of International Law, 479.
- Barr MD, 'Lee Kuan Yew and the "Asian Values" Debate' (2000) 24 Asian Studies Review 309.
- Beitz C, 'What Human Rights Mean' (2003) 132 Daedalus 36.
- Bell DA & Chaibong H, Introduction the Contemporary Relevance of Confucianism in *Confucianism for the Modern World* (Cambridge University Press 2003) 1.
- Bell DA, 'Reconciling Socialism and Confucianism? Reviving Tradition in China' (2010) 57 Dissent 91.
- Bendix R and Fisher LH, 'The Perspectives of Elton Mayo' (1949) 31 The Review of Economics and Statistics 312.
- Besson S, 'The Bearers of Human Rights' Duties and Responsibilities for Human Rights: A Brown C, 'Universal Human Rights: A Critique' (1997) 1 The International Journal of Human Rights 41.
- Besson S, 'The Bearers of Human Rights' Duties and Responsibilities for Human Rights: A Quiet (R)evolution?' (2015) 32 Social Philosophy and Policy 244.
- Bloom I, 'Human Nature and Biological Nature in Mencius' (1997) 47 Philosophy East and West 21.
- Bloom I, 'Mencian Arguments on Human Nature (Jen-Hsing)' (1994) 44 Philosophy East and West 19.
- Boer R, 'The Chinese Marxist Approach to Sovereignty and Human Rights' in Roland Boer, *Socialism with Chinese Characteristics* (Springer Singapore 2021) 165.
- Boer R, 'The Concrete Conditions of Human Rights: Western and Chinese Approaches' (2022) 12 International Critical Thought 237.
- Boyd CMJ, 'Can a Marxist Believe in Human Rights?' (2009) 37 Critique 579.
- Brasil GMM and Urquiza AHA, 'Would There Be Marxist Human Rights?' [2023] Seven Editora 313.
- Brenkert GG, 'Marx and Human Rights' (1986) 24 Journal of the History of Philosophy 55.

- Brown C, 'Universal Human Rights: A Critique' (1997) 1 *The International Journal of Human Rights* 41.
- Buchanan JM, 'Social Choice, Democracy, and Free Markets' (1954) 62 *Journal of Political Economy* 114.
- Buchanan, A. Assessing the Communitarian Critique of Liberalism. *Ethics* 99, (1989) 852.
- Cerna CM, 'Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts' (1994) 16 *Human Rights Quarterly* 740.
- Chai W, 'The Ideological Paradigm Shifts of China's World Views: From Marxism-Leninism-Maoism to the Pragmatism-Multilateralism of the Deng-Jiang-Hu Era' (2003) 30 *Asian Affairs: An American Review* 163.
- Chang M, The Thought of Deng Xiaoping in *Communist and Post-Communist Studies*, 29(4), (1996). 377.
- Chen D, 'Explaining China's Changing Discourse on Human Rights, 1978–2004' (2005) 29 *Asian Perspective* 155.
- Chen J, The Transformation of Chinese Law: From Formal to Substance, 37 *Hong Kong L.J.* 689 (2007) 736.
- Chen L, 'Relationship of Marxism in China and Chinese Traditional Culture' in 3rd International Conference on Education, Management, Arts, Economics and Social Science (ICEMAESS 2015) (Atlantis Press 2015) 1133.
- Chen S and Ravallion M, "Absolute poverty measures for the developing world, 1981–2004" (Development Research Group, World Bank, 2007). *Proceedings of the National Academy of Sciences of the USA*, vol. 104, 43.
- Chen X, 'She Hui Zhi Du Yu Ren Quan' ('The social system and human rights'). (1992) *Qiushi (Seek Truth)*, 7.
- Chen Y-J, 'China's Challenge to the International Human Rights Regime Around the World on One Belt, One Road: Foreign Capital Competition, Human Rights, and Development in the Twenty-First Century' (2018) 51 *New York University Journal of International Law and Politics* 1179.
- Chesterman S, 'Can International Law Survive a Rising China?' (2020) 31 *European Journal of International Law* 1507.
- Chi F, Wei Y, 'The value Orientation of Human Rights Rule of Law Thought in Socialism with Chinese Characteristics', *Ningxia Social Science* (2023).

- Chiu H, 'Communist China's Attitude Toward International Law' (1966) 60 *American Journal of International Law* 245.
- Chow DCK, 'The Myth of China's Open Market Reforms and the World Trade Organization' (2019) 41 *University of Pennsylvania Journal of International Law* 939.
- Copper JF, Humanist Ethics in Chinese History in *Human Rights in Post-Mao China*. (Taylor & Francis Group 1985) 9.
- D'Amato A, 'There Is No Norm of Intervention or Non-Intervention in International Law Comment' (2001) 7 *International Legal Theory* 33.
- Dalton RJ and Ong N-NT, 'Authority Orientations and Democratic Attitudes: A Test of the "Asian Values" Hypothesis' (2005) 6 *Japanese Journal of Political Science* 211.
- Dana WF, 'Declaration of Independence' (1899) 13 *Harvard Law Review* 319.
- Davis MC, 'Human Rights in Asia: China and the Bangkok Declaration Symposium: East Asian Approaches to Human Right. Selected Panellists from the 1995 Annual Meeting of the American Society of International Law' (1995) 2 *Buffalo Journal of International Law* 215.
- De Graaff, N. & Van Apeldoorn, B. (2018) US–China relations and the liberal world order: contending elites, colliding visions? *International Affairs*, 94(1), 113.
- De Varennes F, 'The Fallacies in the "Universalism Versus Cultural Relativism" Debate in Human Rights Law' (2006) 7 *Asia-Pacific Journal on Human Rights & the Law* 67.
- De Varennes F, *Asia-Pacific human rights documents and resources*. (1998). Brill. Volume 1, Kluwer Law International, The Hague, p. 1.
- Deshpande M, 'History of the Indian Caste System and Its Impact on India Today' [2010] *Social Sciences* 1.
- Deyong S, 'Chinese Judicial Culture: From Tradition to Modernity Speech' (2011) 25 *BYU Journal of Public Law* 131.
- Dhawan N, 'Marxist Critique of Post-colonialism' (2018) *Krisis Journal for Contemporary Philosophy*, Issue 2, 105.
- Donnelly J, 'The Relative Universality of Human Rights' (2007) 29 *Human Rights Quarterly* 281.
- Du M, 'History and Theory of International Law - A Chinese Theory of International Law by Zhipeng He and Lu Sun' (2021) 11 *Asian Journal of International Law* 392.

- Dunford M, 'The Chinese path to common prosperity.' *International Critical Thought* 12.1 (2022), 35.
- Engle E, 'Human Rights According to Marxism' (2008) 65 *Guild Practitioner* [iii], 249.
- Engle K, 'Culture and Human Rights: The Asian Values Debate in Context Millenium Issue: Shaping the Parameters of International Law in the New Millennium' (1999) 32 *New York University Journal of International Law and Politics* 291.
- Englehart NA, 'Rights and Culture in the Asian Values Argument: The Rise and Fall of Confucian Ethics in Singapore' (2000) 22 *Human Rights Quarterly* 548.
- F. Jhabvala, 'The Soviet-Bloc's View of the Implementation of Human Rights Accords' (1985) 7 *Human Rights Quarterly*. 461.
- Fan CC, 'China's Eleventh Five-Year Plan (2006-2010): From "Getting Rich First" to "Common Prosperity"' (2006) 47 *Eurasian Geography and Economics* 708.
- Fan R, 'Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia' (2003) 33 *Journal of Contemporary Asia* 420.
- Fan R, 'Self-Determination Versus Family-Determination: Two Incommensurable Principles of Autonomy,' (1997) *Bioethics*, Vol. 11, No. 3/4, 317.
- Fasensfest D, 'Marx, Marxism and Human Rights' (2016) 42 *Critical Sociology* 777.
- Franck TM, 'Is Personal Freedom a Western Value?' (1997) 91 *American Journal of International Law* 593.
- Freeman M, 'Human Rights, Democracy and "Asian Values"' (1996) 9 *The Pacific Review* 352.
- Fuchs C, 'Reflections on Sven-Eric Liedman's Marx-Biography "A World to Win: The Life and Works of Karl Marx"' (2018) 16 *triple C: Communication, Capitalism & Critique. Open Access Journal for a Global Sustainable Information Society* 619.
- Ganguly A, 'The Last Years of Karl Marx, 1881–1883: An Intellectual Biography' (2021) 49 *Critique* 441, 450.
- Gearey A, 'Boaventura De Sousa Santos: If God Were a Human Rights Activist Book Reviews' (2015) 42 *Journal of Law and Society* 660.
- Gerald Chan, "International Studies in China: Origins and Development," *Issues & Studies* 33(2) (1997), 40.
- Ghai Y, 'Universalism and Relativism: Human Rights as a Framework for Negotiating Interethnic Claims Symposium - State and Federal Religious Liberty Legislation: Is It Necessary - Symposium - A Roundtable on Constitutionalism, Constitutional

- Rights &(and) Changing Civil Society: Universal Rights and Cultural Pluralism' (1999) 21 Cardozo Law Review 1095.
- Glendon MA, 'Knowing the Universal Declaration of Human Rights' 73 Notre Dame Law Review (1997), 1153.
- Goh G, 'The 'ASEAN Way': Non-Intervention and ASEAN's Role in Conflict Management' (2003) 3, Stanford Journal of East Asian Affairs (2003) 113.
- Goldman M, 'China's Anti-Confucian Campaign, 1973-74' [1975] The China Quarterly 435.
- Gong W, 'The Legacy of Confucian Culture in Maoist China' (1989) 26 The Social Science Journal 363.
- Greer S, Universalism and Relativism in the Protection of Human Rights in Europe: Politics, Law and Culture in Human Rights Between Law and Politics: The Margin of Appreciation in Post-National Contexts, Bloomsbury Publishing Plc, (2017) 17.
- Hamacher W and Jesús RM, 'On the Right to Have Rights: Human Rights; Marx and Arendt' (2014) 14 CR: The New Centennial Review 169.
- Hamdan A, Women and education in Saudi Arabia: Challenges and achievements. (2005). *International Education Journal*, 6(1), 42.
- Han S, Confucianism and human rights. *Confucianism in Context: Classic Philosophy and Contemporary Issues, East Asia and Beyond*, (2011). 89.
- Hanusch M, 'African Perspectives on China–Africa: Modelling Popular Perceptions and Their Economic and Political Determinants' (2012) 40 Oxford Development Studies 492.
- Hassoun N, 'Review of On Human Rights' (2012) 109 The Journal of Philosophy 462.
- He S, 'On the Quadruple Qualities of Marxist Thought on Human Rights Academic Monograph' (2021) 20 Journal of Human Rights 95.
- Hegel, G.W.F. *Berliner Schriften 1818–1831*. In *Werke*, Frankfurt am Main: Suhrkamp 1986. Vol. 11. 109.
- Henkin L, 'Human Rights and State Sovereignty Sibley Lecture/Keynote Address' (1995) 25 Georgia Journal of International and Comparative Law 31.
- Herlin-Karnell E, 'The Interdependence of Human Rights, Peace and Law. Some Reflections on Relativism and Human Rights. A Theory of Pluralist Universalism by Claudio Corradetti' [2022] *Etica & Politica/ Ethics & Politics*, XXIV, 427.

- Herpen MH, 'Marx and Human Rights: Analysis of an Ambivalent Relationship Cicero Foundation Great Debate Paper No. 12/07 (2012), 11.
- Hill DW, 'Avoiding Obligation: Reservations to Human Rights Treaties' (2016) 60 *Journal of Conflict Resolution* 1129.
- Hoffmann, L. (2009). The universality of human rights. *Judicial Studies Board Annual Lecture 19*, 19.
- Hogemann ER, 'Human Rights beyond Dichotomy between Cultural Universalism and Relativism' [2020] *The Age of Human Rights Journal* 19.
- Hohfeld WN, 'Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1917) 26 *The Yale Law Journal* 710.
- Hood R, 'Abolition of the Death Penalty: China in World Perspective' (2009) 1.
- Hoover J, 'Rereading the Universal Declaration of Human Rights: Plurality and Contestation, Not Consensus' (2013) 12 *Journal of Human Rights* 217.
- Human Rights Watch, *Paying the Price: Worker Unrest in Northeast China* (New York: Human Rights Watch, Aug 2002), Vol 14, No. 6 (C).
- Ibhawoh B, 'The Right to Development: The Politics and Polemics of Power and Resistance' (2011) 33 *Human Rights Quarterly* 76, 77.
- Inboden R, and Chen T, 'China's Response to International Normative Pressure: The Case of Human Rights.' *The International Spectator* 47, no. 2 (2012), 45, 46-48.
- Iwamoto DK and Liu WM, 'The Impact of Racial Identity, Ethnic Identity, Asian Values, and Race-Related Stress on Asian Americans and Asian International College Students' Psychological Well-Being' (2010) 57 *Journal of Counselling Psychology* 79.
- J.N. Pahre, 'The Fine Line between the Enforcement of Human Rights Agreements and the Violation of National Sovereignty: The Case of the Soviet Dissidents' (1984) 7 *Loyola ILA. Int'l & Comp. I.J.* 323.
- Jiang K, *Sinification and Construct of Marxist Approach to Human Rights*. (West China Journal 2018) 11.
- Johnston AI, 'The Failures of the "Failure of Engagement" with China' (2019) 42 *The Washington Quarterly* 99.
- Joshi DK, 'The Other China Model: Daoism, Pluralism, and Political Liberalism' (2020) 52 *Polity* 551.
- Kang L, 'Subjectivity, Marxism, and Culture Theory in China' [1992] *Social Text* 114.

- Kapur A, 'Asian Values v. The Paper Tiger: Dismantling the Threat to Asian Values Posed by the International Criminal Court' (2013) 11 *Journal of International Criminal Justice* 1059.
- Kent A, 'China's International Socialization: The Role of International Organizations' (2002) 8 *Global Governance: A Review of Multilateralism and International Organizations* 343.
- Kessler CS, 'The Abdication of the Intellectuals: Sociology, Anthropology, and the Asian Values Debate — or, What Everybody Needed to Know about "Asian Values" That Social Scientists Failed to Point Out' (1999) 14 *Sojourn: Journal of Social Issues in Southeast Asia* 295.
- Kim S, 'Confucianism, Moral Equality, and Human Rights: A Mencian Perspective: Confucianism, Moral Equality, and Human Rights' (2015) 74 *American Journal of Economics and Sociology* 149.
- Kirchberger A, 'Marx, Ideology, and International Relations' (2002) *Studies on Social and Political Thought* 6, 1.
- Knox R, 'Valuing Race? Stretched Marxism and the Logic of Imperialism' (2016) 4 *London Review of International Law* 81.
- Kolakowski L, 'Marxism and Human Rights' (1983) 112 *Daedalus* 81.
- Kotz DM, 'The State of Official Marxism in China Today' (2007) 59 *Monthly Review* 58.
- Kumar M, Karl Marx, Andrew Ure and the question of managerial control. (1984). *Social Scientist*, 63.
- Kutner L, 'The Human Rights of Karl Marx' (1979) 55 *North Dakota Law Review* 39.
- Lacroix J, 'Should a Marxist Believe in Human Rights?'. *Arguing about justice : Essays for Philippe Van Parijs*, Presses universitaires de Louvain, 2010. 261.
- Langguth G, 'Asian Values Revisited' (2003) 1 *Asia Europe Journal* 25.
- Lee M. Y. K, Religion, human rights and the role of culture. (2011). *The International Journal of Human Rights*, 15(6), 887, 888.
- Lee S, 'Liberal Rights or/and Confucian Virtues?' (1996) 46 *Philosophy East and West* 367.
- Lewis MK, 'Why China Should Unsign the International Covenant on Civil and Political Rights' (2020) 53 *Vanderbilt Journal of Transnational Law* 131.
- Li C, 'Education as a Human Right: A Confucian Perspective' (2017) 67 *Philosophy East and West* 37.

- Li P, Localization of Marxism in China: History, theory and the challenge. *J. Pol. & L.* 11 (2018).
- Li Y, 'Liang, Tao, Ed., Virtues and Rights: On Confucianism and Human Rights from Cross-Cultural Perspectives, Beijing: China Social Sciences Press, 2016, 350 Pages' (2017) *Dao: a Journal of Comparative Philosophy*, 16(3), 457.
- Liu H and Zhang Y, 'Building a Community of Shared Future for Humankind -- an Ethnological Perspective' (2018) 2 *International Journal of Anthropology and Ethnology* 7.
- Liu H, Part V. 1949-1975 in 'Vienna Conference Statement (1993)', *The Chinese Human Rights Reader* (Routledge 2001) 390.
- Liu H, 'On Building Theoretical System of Human Rights with Chinese Characteristics Interviews' (2011) 10 *Human Rights* 6.
- Liu P, 'Queer Human Rights in and against China: Marxism and the Figuration of the Human' (2012) 30 *Social Text* 71.
- Liu H, 'Statement by HE Liu Huaqiu, Head of the Chinese Delegation, at the World Conference on Human Rights at Vienna, 15 June 1993'. *Selected Documents on Human Rights: Chinese and Asian Perspectives*, Chinese Journal of International Law 1 (2002).
- MacMillan M, *Paris 1919: Six months that changed the world.* (2003) Random House Trade Paperbacks 37.
- Mahbubani K, 'The Pacific Way Essay' (1995) 74 *Foreign Affairs* 100.
- Mauzy DK, 'The Human Rights and "Asian Values" Debate in Southeast Asia: Trying to Clarify the Key Issues' (1997) 10 *The Pacific Review* 210.
- McLoughlin D, 'Post-Marxism and the Politics of Human Rights: Lefort, Badiou, Agamben, Rancière' (2016) 27 *Law and Critique* 303.
- Meisner M, 'The Despotism of Concepts: Wittfogel and Marx on China' (1963) 16 *The China Quarterly* 99, 101.
- Morgan J, 'Contemporary China, Anachronistic Marxism?' (2004) 36 *Critical Asian Studies* 65.
- Murthy V, 'The Democratic Potential of Confucian Minben Thought' (2000) 10 *Asian Philosophy* 33.
- Neier A, 'Social and economic rights: A critique.' *Human Rights Brief* 13(2), (2006), 1, 3.

- Nolan PH, 'China at the Crossroads' (2005) 3 Journal of Chinese Economic and Business Studies 1, 18.
- O'Byrne DJ, 'Marxism and Human Rights: New Thoughts on an Old Debate' (2019) 23 The International Journal of Human Rights 638.
- O'Connell P, 'Human Rights: Contesting the Displacement Thesis' (2018) 69 Northern Ireland Legal Quarterly 19, 35.
- O'Manique J, 'Universal and Inalienable Rights: A Search for Foundations' (1990) 12 Human Rights Quarterly 465.
- Peerenboom RP, 'What's Wrong with Chinese Rights: Toward a Theory of Rights with Chinese Characteristics' (1993) 6 Harvard Human Rights Journal 29.
- Perrin A, 'Human Rights and Cultural Relativism, the "Historical Development" Argument and Building a Universal Consensus' (2005) Academia.Edu 1.
- Peters MA and others, 'Contemporary Chinese Marxism: Social Visions and Philosophy of Education – An EPAT Collective Project' (2022) 54 Educational Philosophy and Theory 1550.
- Piketty T, '*Capital in the Twenty-First Century: A Multidimensional Approach to the History of Capital and Social Classes: A Multidimensional Approach to the History of Capital and Social Classes*' (2014) 65 The British Journal of Sociology 736.
- Pogge Thomas, 'The First United Nations Millennium Development Goal: A Cause for Celebration?' (2004) 5 Journal of Human Development 377, 379.
- Pollis A, Schwab P, & Koggel C. M, Human rights: A western construct with limited applicability. (2006). *Moral issues in global perspective. Vol. 1: Moral and political theory*, 1.
- Pongonis K, 'Review of Between Freedom and Subsistence: China and Human Rights' (1997) 19 Human Rights Quarterly 218.
- Potter P, 'Human Rights Protection: The Role of Institutional Capacity and Selective Adaptation' (2019) 14 Journal of Human Rights 59.
- Potter PB, 'China and the International Legal System: Challenges of Participation*' (2007) 191 The China Quarterly 699.
- Pradella L, 'Imperialism and Capitalist Development in Marx's Capital' (2013) 21 Historical Materialism 117.
- Robinson WI, 'Global Capitalism: Crisis of Humanity and the Specter of 21st Century Fascism' *he World Financial Review*, 14.

- Robison R, (1996). The Politics of 'Asian Values'. *The Pacific Review*, 9(3), 309.
- Rockmore T, 'Hegel and Chinese Marxism' (2019) 7 *Asian Studies* 55.
- Rockmore T, 'Marx, Chinese Marxism and Poverty' (2021) 17 *Journal of Global Ethics* 42.
- Roosevelt E, Black A and Merritt CH, Introduction in *The Moral Basis of Democracy* (Open Road Integrated Media, Inc 2016) 7, 8.
- Roth BR, 'Retrieving Marx for the Human Rights Project' (2004) 17 *Leiden Journal of International Law* 31.
- Samuel H, The clash of civilizations. *Foreign Affairs*, 72(3), (1993). 22.
- Scott I, "'One Country, Two Systems': The End of a Legitimizing Ideology?" (2017) 39 *Asia Pacific Journal of Public Administration* 83.
- Semenov AV and Tsvyk A, 'The Community of a Shared Future for Humankind Concept in China's Foreign Policy Strategy' (2019) 63 *Mirovaia ekonomika i mezhdunarodnye otnosheniia* 72.
- Sen A, *Human Rights and Asian Values: 16th Morgenthau Memorial Lecture on Ethics and Foreign Policy* (Carnegie Council on Ethics and International Affairs 1997) 7.
- Sewpaul V, 'Challenging East–West Value Dichotomies and Essentialising Discourse on Culture and Social Work' (2007) 16 *International Journal of Social Welfare* 398, 405.
- Shany Y, 'The Universality of Human Rights: Pragmatism Meets Idealism' Hebrew University of Jerusalem Legal Studies Research Paper Series No. 18-29 (2018).
- Shen F and Tsui L, 'Revisiting the Asian Values Thesis: An Empirical Study of Asian Values, Internet Use, and Support for Freedom of Expression in 11 Societies' (2018) 58 *Asian Survey* 535.
- Shi T and Lu J, 'The Shadow of Confucianism the Meanings of Democracy' (2010) 21 *Journal of Democracy* 123.
- Shinn DH, 'Ethiopia and China: Two Former Empires Connect in the 20th Century' (2014) 8 *International Journal of Ethiopian Studies* 149.
- Shu D, 'The Chinese Marxist Approach to Human Rights' (2022) 12 *Open Journal of Philosophy* 342.
- Sim M, 'A Confucian Approach to Human Rights' (2004) 21 *History of Philosophy Quarterly* 337.

- Simon S.C. Tay, *Human Rights, Culture, and the Singapore Example*, (1996) 41 *McGauL L.J.* 743.
- Singh AK, 'Paradox between Universalism of Human Rights and Relativism of Culture: A Case Study of Honour Killings in India' (2020) 4 *Journal of Southeast Asian Human Rights* 253.
- Sleziak T, 'The Influence of Confucian Values on Modern Hierarchies and Social Communication in China and Korea: A Comparative Outline' (2014) 8 *Kritike: An Online Journal of Philosophy* 207.
- Smith H, *The World's Religions*. San Francisco: Harper San Francisco, (1991) pp. 182, 193, and 195.
- Smith K, *The Development of the Capitalist Mode of Production in Karl Marx's 'Capital': A Guide to Volumes III* (Anthem Press 2021) 15.
- So AY, "'One Country, Two Systems" and Hong Kong-China National Integration: A Crisis-Transformation Perspective' (2011) 41 *Journal of Contemporary Asia* 99.
- Sceats S, Breslin S, *China and the International Human Rights System*. (Chatham House 2012).
- Spina N, Shin DC and Cha D, 'Confucianism and Democracy: A Review of the Opposing Conceptualizations' (2011) 12 *Japanese Journal of Political Science* 143.
- Stammers N, 'Human Rights and Power' (1993) 41 *Political Studies* 70.
- Summers M, 'Social Control and Social Response: Enforced Disappearance as a Human Rights Abuse.' *Webster University Righting Wrongs A Journal of Human Rights*, Vol.2(2), (2012) 1.
- Sun M, Lu H, 'China and the Special Procedures of the UN Human Rights Council: Is China Cooperative and Can They Work Better with Each Other?' (2020) 42(2) *Human Rights Quarterly*, 357.
- Sun P, 'Chinese Discourse on Human Rights in Global Governance' (2015) 1 *Chinese Journal of Global Governance* 192.
- Tang Z, 'Confucianism, Chinese Culture, and Reproductive Behavior' (1995) 16 *Population and Environment* 269.
- Taylor C, 'Conditions of An Unforced Consensus on Human Rights' To be presented at Bangkok Workshop, (Beogradski krug, 1996), 4, 5.
- Thompson MR, 'Whatever Happened to "Asian Values"?' (2001) 12 *Journal of Democracy* 154.

- Thorat S and Newman KS, 'Caste and Economic Discrimination: Causes, Consequences and Remedies' (2007) 42 *Economic and Political Weekly* 4121.
- Tu W, 'Cultural China: The Periphery as the Center' (1991) 120 *Daedalus* 1.
- Tu W, 'Joining East and West: A Confucian Perspective on Human Rights' *Harvard International Review*, Vol.20, 3 (1998), 44.
- Van der Veen RJ and van Parijs P, 'A Capitalist Road to Communism' (1986) 15 *Theory and Society* 635.
- Wan M, 'Human Rights Lawmaking in China: Domestic Politics, International Law, and International Politics' (2007) 29 *Human Rights Quarterly* 727.
- Wan Q, *The History and Logic of Chinese Human Rights View with Chinese Characteristics*. (Human Rights 2017) 5.
- Wen H and Akina WK, 'A Naturalist Version of Confucian Morality for Human Rights' (2012) 22 *Asian Philosophy* 1.
- Wu F, *Innovative Human Rights View with Chinese Characteristics in a New Era* (Theory Monthly 2018) 12.
- Ware R, 'Reflections on Chinese Marxism' (2013) 27 *Socialism and Democracy* 136.
- Weatherley R, 'Human Rights in China: Between Marx and Confucius' (2000) 3 *Critical Review of International Social and Political Philosophy* 101.
- Webster T, 'Ambivalence and Activism: Employment Discrimination in China' (2011) 44 *Vanderbilt Journal of Transnational Law* 643.
- Webster T, 'China's Human Rights Footprint in Africa' (2012) 51 *Columbia Journal of Transnational Law* 626.
- Wei X, and Li Q, 'The Confucian value of harmony and its influence on Chinese social interaction.' *Cross-Cultural Communication* 9, no. 1 (2013) 60.
- Welch CE, 'A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights; The Universal Declaration of Human Rights: Origins, Drafting and Intent Book Reviews' (2002) 24 *Human Rights Quarterly* 287.
- Welzel C, 'The Asian Values Thesis Revisited: Evidence from the World Values Surveys' (2011) 12 *Japanese Journal of Political Science* 1.
- Wen H and Akina WK, 'Human Rights Ideology as Endemic in Chinese Philosophy: Classical Confucian and Mohist Perspectives' (2012) 22 *Asian Philosophy* 387.
- Wheeler R, 'The United Nations Commission on Human Rights, 1982–1997: A Study of "Targeted" Resolutions*' (1999) 32 *Canadian Journal of Political Science/Revue canadienne de science politique* 75.

- Williams C, 'International Human Rights and Confucianism' (2006) 7 *Asia-Pacific Journal on Human Rights and the Law* 38.
- Wood E, *The Origin of Capitalism*. London: Verso, (2002).
- Woodman S, 'Human Rights as Foreign Affairs: China's Reporting under Human Rights Treaties Chinese Law' (2005) 35 *Hong Kong Law Journal* 179.
- Wu E, 'Human Rights: China's Historical Perspectives in Context' *Journal of the History of International Law* 4.2 (2002) 335.
- Wu J, 'Building New China's legal System' in J.R. Oldham (ed.), *China's Legal Development* (Columbia Journal of Transnational Law Vol.22, 1983) 1.
- Yahuda M, 'Deng Xiaoping: The Statesman' (1993) 135 *The China Quarterly* 551.
- Yang G, 'Still a Century of the Chinese Model? Exploring Dimensions of Democratic Centralism' (2016) 1 *Chinese Political Science Review* 171.
- Yang Z, & Zhuang Y, 'Ping Yi Ge Ren Zhu Yi Wei He Xin De Jia Zhi Guan' (An appraisal of individualism as a core value concept'). (1991) *Qiushi (Seek Truth)*, 15.
- Yen YM, 'The Formation of the ASEAN Intergovernmental Commission on Human Rights: A Protracted Journey' (2011) 10 *Journal of Human Rights* 393.
- Yu AC, 'Enduring Change: Confucianism and the Prospect of Human Rights' [2002] *Human Rights Review* 35.
- Yu X, 'State Legalism and the Public/Private Divide in Chinese Legal Development' (2014) 15 *Theoretical Inquiries in Law* 27.
- Zechenter EM, 'In the Name of Culture: Cultural Relativism and the Abuse of the Individual' (1997) 53 *Journal of Anthropological Research* 319.
- Zeng Y and Hesketh T, 'The Effects of China's Universal Two-Child Policy' (2016) 388 *The Lancet* 1930.
- Zhang YB and others, 'Harmony, Hierarchy and Conservatism: A Cross-Cultural Comparison of Confucian Values in China, Korea, Japan, and Taiwan' (2005) 22 *Communication Research Reports* 107.
- Ziliotti E, 'Questions for Hierarchical Confucianism' (2022) 84 *The Review of Politics* 329.
- Zwart T, 'Contesting Through Compliance: How China Can Gain More Support for Its Human Rights Positions' (2017) 3 *Chinese International Law Review*, 3.

Zwolinski M, 'The Libertarian Nonaggression Principle' (2016) 32 Social Philosophy and Policy 62.

Command papers and Law Commission reports

Asian Human Rights Commission, 'AHRC's Human Rights Day Statement, December 10, 2000' (*Asian Human Rights Commission*) <<http://www.humanrights.asia/news/ahrc-news/AS-02-2000/>>.

National Human Rights Action Plan of China (2016–2020) (August 2016).

National Human Rights Action Plan of China (2009–2010) (April 13, 2009).

Permanent Mission of the People's Republic of China to the UN, 'Remarks by Ambassador Dai Bing at the Side Event of the Group of Friends in Defense of the Charter of the United Nations on the Negative Impact of Unilateral Coercive Measures on Human Rights' on 12 October 2022 <http://un.china-mission.gov.cn/eng/hyyfy/202210/t20221013_10782627.htm>.

Permanent Mission of the People's Republic of China to the UN, 'The Overwhelming Majority of the United Nations Member States Oppose the Interference in China's Internal Affairs in the Name of Human Rights' <http://un.china-mission.gov.cn/eng/hyyfy/202211/t20221101_10794920.htm>.

The State Council Information Office of the PRC. "Human Rights in China", 1991. <<https://en.humanrights.cn/1991/11/30/800fc09d948848069d95f86433700d6d.html>>.

The State Council Information Office of the PRC. "White Paper 1992: Tibet – Its Ownership and Human Rights Situation", 1992. <http://ie.china-embassy.gov.cn/eng/z/t/ChinasTibet/201404/t20140409_2540521.htm>.

The State Council Information Office of the PRC. "The Progress of Human Rights in China", 1995. <<http://www.china.org.cn/e-white/phumanrights19/index.htm>>.

The State Council Information Office of the PRC, 'Progress in China's Human Rights Cause in 1998-China Human Rights', 1998. <<https://en.humanrights.cn/1999/04/30/6c67e28cc45f48529eb2dc3bc7a630e7.html>>.

The State Council Information Office of China, Human Rights Situation in China, 1999. <<https://en.humanrights.cn/1999/04/30/6c67e28cc45f48529eb2dc3bc7a630e7.html>>.

- The State Council Information Office of the PRC. “Progress in China’s Human Rights Cause in 2000”, 2001. <http://qa.china-embassy.gov.cn/eng/zt/zfbps/200207/t20020709_1603785.htm>.
- The State Council Information Office of the PRC, “White Paper: Fifty Years of Progress of China’s Human Rights” (February 2, 2000), Part VI. <<http://www.china.org.cn/e-white/3/index.htm>>.
- The State Council Information Office of the PRC. “China’s Progress in Human Rights in 2009”, 2010. <http://www.china.org.cn/government/whitepaper/node_7101466.htm>.
- The State Council Information Office of the PRC. ‘China’s Peaceful Development’, 2011. <https://english.www.gov.cn/archive/white_paper/2014/09/09/content_281474986284646.htm>.
- The State Council Information Office of the PRC. “Progress in China’s Human Rights in 2012”, 2013. <http://www.npc.gov.cn/zgrdw/englishnpc/news/Focus/2013-05/22/content_1795820.htm>.
- The State Council Information Office of the PRC. “Progress in China’s Human Rights in 2013”, 2014. <https://english.www.gov.cn/archive/white_paper/2014/08/23/content_281474982986564.htm>.
- The State Council Information Office of the PRC. “Progress in China’s Human Rights in 2014”, 2015. <https://english.www.gov.cn/archive/white_paper/2015/06/08/content_281475123202380.htm>.
- The State Council Information Office of the PRC, Introduction in National Human Rights Action Plan of China (2012-2015). <http://www.china.org.cn/government/whitepaper/node_7156850.htm> accessed 18 February 2025.
- The State Council Information Office of the PRC, “The Right to Development: China’s Philosophy, Practice and Contribution”, 2016. <https://english.www.gov.cn/archive/white_paper/2016/12/01/content_281475505407672.htm>.
- The State Council Information Office of the PRC. “Development of China’s Public Health as an Essential Element of Human Rights”, 2017. <https://english.www.gov.cn/archive/white_paper/2017/09/29/content_281475894089810.htm>.
- The State Council Information Office of the PRC. ‘Full Text: Progress in Human Rights over the 40 Years of Reform and Opening Up in China’, 2018. <https://english.www.gov.cn/archive/white_paper/2018/12/13/content_281476431737638.htm>.

The State Council Information Office of the PRC. “Seeking Happiness for People: 70 Years of Progress on Human Rights in China”, 2019. ‘<http://english.scio.gov.cn/2019-09/23/content_75235239.htm>.

The State Council Information Office of the PRC. “Moderate Prosperity in All Respects: Another Milestone Achieved in China’s Human Rights”, 2021. <http://english.scio.gov.cn/whitepapers/2021-08/12/content_77689144_3.htm>.

The State Council Information Office of the PRC, The Communist Party of China and Human Rights Protection – A 100-Year Quest, June 2021. <http://english.scio.gov.cn/whitepapers/2021-06/24/content_77584416.htm>.

The U.S. Government Publishing Office, ‘H.R.114 - 119th Congress (2025-2026): Responsible Path to Full Obamacare Repeal Act’ (1 March 2025) <<https://www.congress.gov/bill/119th-congress/house-bill/114>>.

Doctoral Dissertations

Kämpfer I, Chinese Religions and Their Values in ‘*Chinese Traditional Values and Human Rights an Empirical Study Among Students in Shanghai*’ University of Fribourg (2006) 17.

Lee S, ‘Virtues and Rights: Reconstruction of Confucianism as a Rational Communitarianism’ (PhD, University of Hawai’i at Manoa, 2022) 1.

Websites

Chinese President Xi Jinping delivered a speech at the United Nations in Geneva, with a “Work Together to Build a Community of Shared Future for Mankind” theme. Full Text: Speech by Xi Jinping at the United Nations Office at Geneva - China.Org.Cn’ <http://www.china.org.cn/chinese/2017-01/25/content_40175608.htm>.

Nations Member States Oppose the Interference in China’s Internal Affairs in the Name of Human Rights’ <<http://un.china-mission.gov.cn/eng/hyyfy/202211/t2022110110794920.htm>> accessed 4 May 2024.

OHCHR, ‘Treaty Bodies Treaties’ <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=36&Lang=EN>.

‘Statement by H. E. Ambassador Qiao Zonghuai, Head of the Chinese Delegation, on Organization of Work (Item 3) at the 57th Session of the Commission on Human R

ights Permanent Mission of the People's Republic of China to the UN' <http://un.china-mission.gov.cn/eng/chinaandun/socialhr/rqwt/200103/t20010320_8417939.htm>.

The World Bank in China, 'Overview' (*World Bank*) <<https://www.worldbank.org/en/country/china/overview>>.

'United Nations Treaty Collection' <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=en#top>.

World Economy Forum (2021) *President Xi Jinping's Speech at Davos Agenda is Historic Opportunity for Collaboration*. Available at: <https://www.weforum.org/press/2021/01/president-xi-jinping-s-speech-at-davos-agenda-is-historic-opportunity-for-collaboration/>.

'Xi Jinping Attends the Conference Marking the 50th Anniversary of the Restoration of the Lawful Seat of the People's Republic of China in the United Nations and Delivers an Important Speech' <http://newyork.china-consulate.gov.cn/eng/xw/202110/t20211025_9982432.htm>.