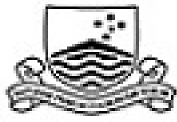

Power, Rights and Duties in Chinese History

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Studies

POWER, RIGHTS AND DUTIES IN CHINESE HISTORY*

Wang Gungwu

Of the three words, power, rights and duties in the title of my lecture the word rights is of central interest. I am concerned with how it relates to duties on the one hand and to power on the other at various periods of Chinese history. In particular, the question of whether the ancient Chinese only knew of duties but had no notion of rights is more than a semantic problem and deserves to be re-examined in the light of modern developments. This is relevant to the issue of how modern ideas of political, legal, civil and human rights were introduced into China and how they have influenced China's modernization.

The lecture concentrates on an historical approach to the subject. By this I mean I do not start out with the fundamentalist position as found in the Universal Declaration of Human Rights by the United Nations General Assembly. This position is one that has developed very rapidly in the West during the past two hundred years and the terms human rights and civil rights are now more potent than the earlier terms legal rights or political rights. The former two are evoked beyond particular communities and states to cover the freedom of all individuals as human beings and to justify degrees of international intervention unknown in the past. Obviously, the word rights used in this sense in the Universal Declaration would not have appeared in traditional societies and it would be anachronistic to try to apply it directly to the judgment of traditional China. It is better limited to judgments on China today and for that we would need to talk primarily about contemporary moral and political philosophy.

Also, by an historical approach, I mean that I do not start out with the ideological position that rights are merely functions of social class, that human progress comes in successive stages and that one's rights

* "Power, Rights and Duties in Chinese History" was delivered as the Fortieth Morrison Lecture at the Australian National University on 19 September 1979.

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at a later stage of history are superior to those at an earlier stage. This is a position that also came out of the West during the past hundred years and one that has been an inspiration to several kinds of radical nationalist, antitraditionalist and revolutionary movements. It has encouraged the view that the past is outworn and degenerate and must be replaced with a present that has a glorious future. The rights of classes that have been successively overthrown, therefore, are of no intrinsic interest and one can only condemn today the lack of rights for the people in traditional China.

The fundamentalist approach has been used to judge, even condemn, contemporary China by both foreigners and the Chinese themselves and this will continue to be so used. The ideological approach is used to judge and condemn traditional China in order to underline revolutionary progress and this, too, will continue. Both approaches pertain to action and are invaluable for the purpose of arousing moral fervour and encouraging dedication to some higher social goal. This lecture does not do that. Its historical approach was chosen for the modest and contemplative purpose of explanation, in the belief that we are still a long way from understanding China and the Chinese people and that continued efforts at explanation will help improve our understanding. It is with that in mind that I shall be paying special attention to some of the earliest Chinese ideas about rights in relation to duties and powers.

Let me begin, however, with a more recent, but highly relevant, event and also a few words about G.E. Morrison, the man we are honouring tonight. The event I refer to is the movement that started on May Fourth, 1919. I am reminded that this year is the sixtieth anniversary of that movement by the hundreds of commemorative articles published in China, Taiwan and Hong Kong, written by people from the political left and the right as well as the centre.[1] Although there is no agreement in the articles as to why the movement was significant, there is general agreement that two kinds of political rights were brought to the fore during the course of the student demonstrations that spread throughout the country at that time: these were China's sovereign rights and democracy or popular rights; in Chinese, *zhuquan* translating sovereignty and *minquan* or *minzhu* translating democracy.

When the demonstrations took place, George Morrison was no longer in China and he did not live to see the results of the May Fourth Movement as a literary, political revolution or, as some might say, "the first cultural revolution" in China. But Morrison was intimately involved in the Chinese efforts at the Peace Conference in Paris; and it was China's failure to regain its sovereignty over Shandong province from Japan that started the May Fourth Movement on its way. My colleague, Dr Lo Hui-min, who gave

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the Morrison Lecture three years ago, has published Morrison's criticisms and corrections of the draft of the case China was to present.[2] Although they did not save the Chinese from defeat in the end, his concern for China's rights was probably no less passionate than that of the Chinese patriots of the time. And although the issue of sovereign rights was uppermost in Paris, the idea of rights as a matter of importance for China was eventually to have much wider ramifications. The articles which commemorate the Movement on its sixtieth birthday this year make no bones about the fact that democratic rights remain one of the central issues for all Chinese everywhere.

The common character expressing rights in the words for sovereignty and democracy is *quan*. This had been influenced by Japanese usage, especially in the word *minquan* for democracy (or droit civil), which was the subject of intense debate early in the Meiji period. During the debate, human rights (*renquan*) and natural rights (*tianfu renquan*) were also given close scrutiny, but with the failure of the liberal movement in Japan in the 1880s this latter part of the debate did not seem to have influenced the Chinese. I believe that the general word for rights in the abstract, *quanli*, also followed Japanese usage, although W.A.P. Martin's translation of Wheaton's *Elements of International Law* in 1864 had used the word about five years before it appeared in official use in Japanese. Significantly the word was first used in the context of national rights and sovereignty and this remained the dominant use for the next two generations.[3]

In 1919, this *quan* for rights had been fiercely debated in China for over twenty years. The general word *quanli* had also come into common usage. Certainly, among the intelligentsia, there had been a growing consciousness of the idea of rights, as found in modern Western books of law, history and philosophy from the end of the nineteenth century. The idea was not always expressed in terms of *quanli*. More specific rights were identified as freedom and equality, even the autonomy of the individual, and the best-known writers who discussed these rights ranged from Yan Fu (Yen Fu) and Kang Youwei (K'ang Yu-wei) to Tan Sitong (T'an Ssu-t'ung), Liang Qichao (Liang Ch'i-ch'ao) and Sun Yat-sen; I should add, not always favourably nor necessarily with understanding. All the same, they and their contemporaries had come to recognize something new called rights for which there was no equivalent word in classical Chinese. Hence the acceptance of the term *quanli* which combines the characters *quan* meaning power, influence and privilege (among other things) and *li* meaning profit and benefits. This was not a new combination and in early texts the word simply had the literal meaning of power and profit (or, in some cases, "to give consideration to what is profitable").[4] Used in this sense, *quanli* was often used in contrast to the Confucian ideal of *renyi* meaning benevolence and righteousness. In many later texts, power and profit was simply a

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shorthand reference to the Legalist philosophy which Confucians devoted so much time to attacking.[5] We must keep this in mind when we observe the use of *quanli* to translate a modern political and legal concept of rights. Since Confucian rhetoric came to be the dominant moral, social and political language of discourse for most of the two thousand years up to 1900, the use of the word would remind the Chinese elites of their opposition to key Confucian ideals. This might have made the idea of rights sound more radical and progressive and thus appealed to young twentieth century activists in an atmosphere that became increasingly anti-Confucian, but it might also have condemned the idea to disapprobation for many others.

This brings me to the concept of duties. We have just seen that there was certainly no word in the classical texts equivalent to rights. The interesting thing is that the same translators who had to use *quanli* to convey the abstract idea of rights also could not find an accepted classical word that would satisfactorily translate the abstract concept of duties. The word they settled for was *yiwu* which combines the character *yi* meaning righteous with *wu* meaning essential action or task.[6] It would seem to me that this tells us three things. If there was no general word for duties in early China, we should not expect one for rights but must look elsewhere for words which represented specific kinds of rights or at least implied the idea of rights. Secondly, the many words which described what seem to have been specific duties have been easy to identify, but apparently not the words which describe or imply specific rights. And, finally, not least, the word *yiwu* chosen to translate duties, unlike the word *quanli* for rights, fits in well with Confucian rhetoric; in fact, the character *yi*, which means righteousness but also has as one of its meanings a particular sense of moral duty, represents one of the great Confucian virtues. Thus, by using *yiwu* for duties, the modern word starts out by being easily approved of by the established elites. But this was not necessarily an advantage. Because it was not specific and was used to encourage a new public-spiritedness or civic-consciousness not in fact familiar to traditional Chinese,[7] the conventional quality of *yi* probably explains why, in modern times, less attention was paid to the word for duties than to the more contrary and challenging word for rights. Of course, a simpler explanation may be that the Chinese had just had too much talk about duties throughout their history and not enough about rights.

One more general comment before I turn to Chinese history. The picture of a China in which great stress was laid on duties to the neglect of rights does not seem to square with our observation of other civilized societies in which the idea of rights is something that has been articulated in response to the stress on duties. The more duties are emphasized the greater the need to define the rights commensurate with the duties demanded. If this

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was not so in traditional China, we would have even more reason to try and explain why a society which clearly underlined the importance of duties for thousands of years did not seem to have developed a matching concern for rights. But we might also have to consider on the one hand if duties and rights are necessarily separable concepts and on the other if China's apparent failure to give them equal weight was a weakness in the development of its state and society.

Not all the reformers and revolutionaries at the beginning of the twentieth century attacked the central tenets of the Confucian state but those who did attacked the two specific but absolute duties expected of all Chinese, that of loyalty to the ruler (*zhong*) and that of filial piety to one's parents (*xiao*). Both ruler and father were symbols of an absolute authority which had to be overthrown if China were to undergo the radical reforms it so badly needed. The stress here must be placed on the two as symbols. Loyalty to the ruler was easy to attack, especially since the ruler was Manchu and the ruling house in obvious decay. Hence the readiness to establish a republic in 1911 and, even more striking, the refusal to allow Yuan Shikai (Yüan Shih-k'ai) to restore the monarchy in 1915. On the other hand, loyalty itself was not attacked; the same degree of loyalty seems to have been demanded by the fervent nationalists for the state itself. Similarly, filial piety was not attacked where it concerned caring for one's own family. It was attacked because it was absolute and thus permitted no rights to the young and the women in the family, because it was so demanding that all other human relationships had to be subordinated to it and, not least, because it was tied so closely to the idea of absolute loyalty to the state.

Whatever else may be uncertain, there was no doubt that loyalty and filial respect were the duties par excellence in traditional China. Through legal codes and handbooks of family instructions, through education and indoctrination, the need to be loyal and filial had been drummed into every child's head. And backing the injunctions were threats of severe punishments, in the name of the emperors and by the hand of the fathers themselves. Because the duties were expressed in such absolute terms, there seems to have been no room to discuss what might have been the rights of the subject and of the son. As a result, a large body of modern vernacular literature and social thought concentrated on the evils perpetrated on the Chinese people by the insistence on these duties and led many to conclude that the Chinese simply never had the idea of rights. The image of a society in which people had no rights, when placed in contrast to modern Western societies in which both political and individual rights were openly spelt out, was probably the single most important reason why so many of the young students early this century were ready to reject the whole Confucian moral system altogether.[8]

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Yet there were reservations. Again and again came the plea not to throw out the crying baby with the dirty bathwater. Analogies with the West were used to defend the Chinese tradition: a sort of Confucian Protestantism calling for a return to the pre-imperial books was one example; similarities with the Renaissance revival of Greek and Latin classics was another. In short, there was a sustained campaign to try and depict the evils of imperial Confucianism as corruption and degeneration of what had been fundamentally sound.[9] Was this true where the promotion of restrictive duties and the neglect of basic rights were concerned? Indeed, it may be argued that some ideas about rights were implicit in the two prominent duties. When sons had the duty to be filial, one may say that fathers had the right to expect filial piety. When subjects had the duty to be loyal, the ruler obviously had the right to expect loyalty. Then in return, sons could be said to have had the right to expect their fathers to do their duty and be righteous and protective and their mothers also to be loving and caring. Similarly, subjects had the right to expect their ruler to perform his duty and be benevolent, enlightened, righteous and to observe the proper rites. The key relationships were, of course, expressed in terms of specific duties, that is, specified duties from below to be reciprocated by specified duties from above, but this was thought to have been in the natural and therefore moral order of things. Granted that hierarchies of the ruler-subject father-son variety existed, did it matter much if the rhetoric used referred only to duties rather than to rights? What was important was that the duties were reciprocal and by being reciprocal implied the presence of rights.

There are three ideas here that need to be looked at more closely in Chinese history, the idea of hierarchy, the idea of reciprocity and the idea of implicit rights. All three are interwoven, with the idea of hierarchy the oldest and most significant; it may have been rooted in the ancient religion of the Shang dynasty in the second millenium BC. The Shang rulers were keenly religious at all levels. At the public level was the worship of *di* or *shangdi*, the high god with universalist claims. At a lower level, the worship was private and particularist and consisted of the worship of one's own ancestors. Both kinds of worship were common in ancient religions, but what was possibly unique to China was the way the two levels of worship were closely associated if not actually interdependent. The Shang dynasty was succeeded by the Zhou (Chou) and the Zhou rulers changed the name of the god to a less anthropomorphic one called *tian* (heaven), but the combined worship of *tian* and the ruler's ancestors continued. Some degree of reciprocity existed as the ruler derived benefits from his god and his ancestor, but both pertained only to the ruling house itself. It is still not clear how these hierarchical relationships involving the ruler were translated into the later generalized ruler-subject and father-son relationships. There were probably two steps needed. The first was when ancestor

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worship determined the son's relationship with his father as future ancestor. Then, the benefits of *tian*-worship for the ruler were treated as similar to the benefits of loyalty-to-ruler for the subject. The point here is that the idea of above-below relationships was seen as a natural extension of these two and was later to justify an elaborate hierarchy of social and political relationships.[10]

You realize, of course, that in talking about reciprocity and reciprocal rights, I am talking about unequal reciprocity in a hierarchical structure. In short, duties and implicit rights were between unequals not between equals, and therefore the shares of both duties and rights were also necessarily unequal and this was implicit in the very concept of reciprocity.[11] These two stages of adapting an ancient religious faith and practice to the later secular view of loyalty to ruler and filial piety to father probably did not happen much before Confucius in the sixth century BC. By the time Confucius spoke of the two relationships, it is significant that the context was political. Confucius was asked about government. He answered simply, "when the ruler is ruler and the subject is subject, when the father is father and the son is son, there is government".[12] The juxtaposition of both ruler-subject and father-son here emphasized the reciprocity which depended on both performing their duties but which also suggested some implicit rights. This question of implicit rights becomes clearer in two other quotations.

Firstly, when he was asked how the ruler should employ his subject and how the subject should serve the ruler, Confucius said, "The ruler should employ his subject according to the rules of propriety (*li*); the subject should serve his ruler with loyalty (*zhong*)".[13] Thus the subject's rights were expressed in terms of the rules of propriety due to him, and the ruler's rights in terms of the subject's loyalty which he could expect. At this point, propriety and loyalty were not simply duties; they were also implicitly rights in a given reciprocal relationship. Others during this period would say that these rights might also be found in the ruler acting benevolently or righteously. Another statement by Confucius is even more explicit in linking duties and rights causally. When he was asked how the people may be made to revere and be loyal to the ruler, he said, "Approach them with dignity, and they will respect you. Show piety towards your parents and kindness towards your children and they will be loyal to you."[14] Here the relationship is direct and almost conditional: the ruler's right to loyalty depended on his fulfilling his own duties by being filial to his parents and kindly towards his people.

Confucius was less explicit about the reciprocity in the father-son relationship probably because he saw the biological ties as natural and moral. This was left to other texts, like the *Book of History* and the *Zuo Commentary on the Spring and Autumn Annals*, where they spoke of the Five Norms.

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These seem to have referred to a set of interlocking relationships which laid the foundations for the most stable family system in the world; they were as follows:

> The father is righteous and protective;
> the mother is loving and caring;
> the elder brother is fraternal;
> the younger brother is respectful;
> and the son is filial.[15]

And Mencius in the fourth century BC was to spell it out even more clearly when he explained how an ancient sage king appointed a minister of education to teach the people about human relationships thus:

> Affection between father and son; righteous conduct between ruler and subject; distinction between husband and wife; proper order between the old and the young; and trust between friends.[16]

Again, all the key words like righteous and protective, loving and caring, filial, and even affection, distinction, proper order and trust, seem to describe specific duties when taken separately, but when they are taken together as hierarchy of reciprocal relationships, they also imply rights which flow from the duties performed.

Soon after Mencius, a keener sense of social distinctions seems to have arisen which influenced the idea of rights and duties which went along with such distinctions. I refer to the increasing use of the concept of *fen* (distinctions) in the third century BC, notably by Xun Zi (Hsun Tzu), the third of the great Confucian philosophers, and by some of the Legalists who were influenced by him. Xun Zi said, "The early rulers hated disorder, hence devised rites and righteousness to maintain the necessary distinctions, to nurture people's desires and to assure the supply of things that people seek".[17] He then linked these distinctions to something like rights and duties which went far beyond those connected with ruler-subject father-son. Let me quote a part of his essay on "The Rich Country":

> If people leave their positions and do not serve each other, there will be poverty; if the people are without social divisions, there will be strife. Poverty is an affliction, strife a calamity. To eliminate affliction and avert calamity, there is no method so good as clarifying social distinctions, thereby causing people to form a social group . . .

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> Work is what people dislike; gain and profit is what they like. When the duties of office and the tasks of the occupations lack clear distinctions, people will find it difficult to carry on their work, and will be beset by strife over profit and gain . . . Therefore wise men have introduced social distinctions.[18]

Xun Zi saw the need to regulate these distinctions and strongly advocated the application of rites (*li*) or the rules of proper conduct to ensure that rights and duties were matched along the lines of social distinctions. His contemporaries, some of whom were influenced by him, agreed about the need to regulate the distinctions but saw that he had moved away from the natural and moral order of things that Confucius and Mencius assumed. Xun Zi was already speaking about assigned rights and duties, assigned from above (by wise men, of course) and confirmed and stratified by proper rites and rules. It was an ominous development, for the next step followed easily: that the social distinctions and the rights and duties which accompanied them be regulated by law (*fa*) (that is, by rewards and punishments not by the rule of law) and be maintained by the ruler's power (*quan*).[19]

If the idea of hierarchy was seen as no longer natural and self-regulatory, one would expect either a reaction against the idea itself or a desire for more explicit definitions of rights and duties. The Confucians refused to allow the idea to be regarded as unnatural. The classic doctrine of the mandate of heaven outlined by Mencius has often been taken to mean that he saw that men had a right to rebel.[20] He outlined the view at a very high level of abstraction and assumed that the mandate was a self-regulating process set into motion when the son of heaven failed in his duties which stopped only when the mandate was placed into the hands of the next ruler. Exactly how this came about was determined by heaven in its own way. When rebellion against the failed ruler did occur, it was really thrust upon the rebels as a heavensent and therefore moral duty. There was thus no right to rebel. The history of the Chinese empire shows that no such right was ever recognized; the only justification was success which was all the proof needed that the natural order was self-regulating, as Confucian rhetoric continued to affirm.

I have so far singled out Confucius and his disciples as bearers of tradition. Their impact on later Chinese history was, of course, to be enormous. But they were not alone in talking about hierarchical duties with implicit rights. Others were more sceptical about what these duties meant and what good they would do. As usual, in *Lao Zi (Lao Tzu)* this was expressed as a paradox: the duties of loyalty and filial piety were not natural and only came about when people lost sight of the Way, that is, "when the great Way fell into disuse".[21] Thus there would be loyal subjects when the state was benighted and filial children when the family was in disarray; in short, they

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were not duties for good times. Zhuang Zi (Chuang Tzu), too, was suspicious of anything that was derived from superior-inferior relationships. In his delightful way, he came closest to breaking away from the kin-based rhetoric of rights and duties. From time to time, he conveyed a sense of the individual's right to free himself from hypocrisy and corruption.[22] But this was never explicitly stated. Indeed, he saw no reason to, because he did not accept the Confucian view of the hierarchy of things as natural. He therefore said little about duties and, in the context of an increasingly dominant Confucian rhetoric later on, his ideas were not developed and made no contribution to the idea of rights. Both his later Taoist admirers and the far more influential Buddhists were contained and hemmed in by imperial concerns and the restrictive Confucian style of discourse on such subjects. In the end, even the freedom and right to worship and to dissent which they had enjoyed for a few centuries were regulated by imperial officials and steadily circumscribed.[23]

There were other schools of thought which rejected the Confucian views of hierarchy. None of them, not even the Mohists – the followers of Mo Zi (Mo Tzu) who spoke refreshingly of universal love, who thought there were gods and spirits superior to one's ancestors and who even hinted at a right to material benefits, or bluntly, to profit (a very un-Confucian idea) – not even they could challenge the Confucian hold on the imperial government.[24] And failing that, all schools of thought and the ideas they might have developed became increasingly subordinated to the demands and needs of that government.

We come once again to imperial government. My excursion to an earlier period was to see if the defenders of the glorious Chinese tradition in the twentieth century were right, that the fundamental ideas they needed were all there in the ancient past, that they had been obscured or trampled upon by the brutal masters of the empire for two thousand years. What was now needed, to use the earlier metaphor, was to wipe the baby clean and let him grow. I believe it is understandable why the defenders looked so fondly at the ancients, and not merely for nostalgic, psychological or chauvinistic reasons. The pre-imperial centuries were illuminated by brilliant thinkers with varied and potentially fertile ideas; the imperial period, despite the great influence of Buddhism coming from outside and transforming the intellectual and religious scene, was narrowing and inhibiting. It was tragic that the Confucians, who had been part of a liberating and stimulating force earlier on, came to symbolize the imperial regime. It was doubly tragic because, in supporting that regime, they had allowed their moral and dignified rhetoric to be abused by a self-seeking despotic system.

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How did this affect the question of rights and duties? I have already suggested that Xun Zi influenced the Legalists on this point. *The Book of Lord Shang* (largely a third century BC work) actually had a chapter on the fixing of standards (that is, rights and duties according to social distinctions). It also says in another place, "if law is established, rights and duties are made clear and self-interest does not harm the law, then there is orderly government".[25] This idea of law, of course, had nothing to do with the rule of law and did not, therefore, lead to the development of anything comparable to the modern understanding of legal rights. Although there were hints that everyone was subject to the laws laid down by the ruler, the stress laid on the ruler rather than on the law was crucial. Indeed, these laws must be seen in the context of a manipulative court, of severe punishments and of the cynical use of terror, all of which were necessary in the eyes of Han Feizi (Han Fei Tzu), the leading Legalist philosopher (of the third century BC). They were necessary in order to bring about unity and stability and ultimately the kind of state whose ruler "does nothing and yet accomplishes everything."[26] The Legalists' only contribution to the idea of rights was a mockery which could not be further from that of legal rights. This was their totally new concept of the ruler's right to absolute power. The right was not some divine right, nor Mencius' mandate of heaven. This right was independent and quite distinct from the kinds of implicit rights embodied in reciprocal duties that were already traditional by that time. There were, in fact, no duties essential to this right except the duty to preserve the ruler's absolute power. The laws, primarily rules governing rewards and punishments, were the instruments to this end.

There still was no word for rights, simply various words for power and authority explicitly stated as belonging to the successful ruler. And here is where the word power in the title of this lecture comes in. I am speaking of a power supported by laws and by administrative skills as well as by armed strength. The word for this power used in *The Book of Lord Shang* was *quan*, a word derived from the use of measures and standards, but extended to mean power and authority as well as the right to that power. This brings us back to where we began, to the key modern word used to translate rights as in sovereign, monarchical, popular, civic and human rights, the same word *quan*. It is a most versatile word and power was obviously only one of its meanings. To use *quan* for rights reveals a particular attitude towards the idea of rights which is contrary to Western usage. As I understand it, most of the uses of the word "rights" in the West have the

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connotation of something absolute and universal derived from the phrase "natural rights". This connotation is missing in the word *quan*. The power and authority it stands for have to be grasped; it is the handle or lever which, when used effectively, gives its user the right to act. When the Legalists used *quan* as (to quote one of them) "the standards fixed by the ruler alone",[27] the word served as the basis for the ruler's right to total power.

What have the Legalists to do with the twentieth century? They had been responsible for the unification of China but also for producing the first great tyrant, for burning books and murdering the intelligentsia; for the latter, they have been officially condemned for two thousand years. Of course, several ideas and institutions, including the ruler's right to absolute power, survived into the following Han dynasty and remained key parts of the imperial system thereafter. But it was Confucianism that became the state ideology, and it recreated the elaborate hierarchy of status and office that Confucians thought was characteristic of the ideal Zhou government. This hierarchy was not decorative or simply a sop to human vanity. It was regarded as natural to man and essential to social harmony and it was properly regulated by the use of *li* (rites). And, from the point of view of rights and duties, the Confucians restored to this hierarchy the idea of reciprocal duties with implicit rights which interlocked all levels from top to bottom. Insofar as these duties were expressed through rites and ceremonies which tied the ruler to his ministers, they could act as something of a check on the ruler's right to absolute power.[28]

But the legacy of the right to absolute power remained strong. Although not directly acknowledged by the Confucians, who would not have used words like *quan* to describe this right, it reappeared eventually under a Confucian cloak through the use of the word *zhong* for a subject's absolute loyalty to which the ruler had a right. And by combining this loyalty with filial piety and raising them both above all other moral qualities and duties, later Confucians surrendered a key tenet in Confucius' philosophy. For Confucius had stressed the reciprocal nature of both loyalty and filial piety and even suggested that loyalty to the ruler was conditional on the ruler himself acting properly, by being himself filial and kind. But, of course, Confucius was reported to have said many other things besides. He had juxtaposed the two relationships of ruler-subject and father-son and suggested another causal link between loyalty and filial piety. For example, the famous quotation from Yu Zi approved by Confucius confirmed the link: "Few who are filial and fraternal would want to offend their superiors; and when they do not like to offend their superiors, none would be fond of stirring up disorder".[29] From this, it was easy to argue that filial sons tend to make loyal subjects and that an orderly empire should pay special attention to filial piety to ensure that

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the people behave loyally. By the end of the Han dynasty, the *Classic of Filial Piety* attributed to Confucius had come to be regarded as the classic that brought together the primary source of wisdom. And the *Classic* linked loyalty directly to filial piety and could say, in relation to the three thousand crimes subject to Five Punishments of ancient times, that no crime was greater than that of being unfilial.[30]

This was but the beginning. A few centuries later, the law would permit parents to kill a disobedient and disrespectful son as the ruler might execute rebellious subjects and the master a slave who resisted punishment.[31] The duties of filial piety and loyalty thus became no longer reciprocal and rights no longer implicit. In practice, it was tantamount to saying that these duties were absolute and unconditional. The more often the two duties were causally linked, the more the ruler could demand not only loyalty from his subjects but also that all fathers produce filial sons who were then likely to be loyal subjects. In this way, whatever autonomy the family might have had was eroded and a major safeguard against the ruler's absolute power was eventually removed. In the end, the *Classic of Filial Piety* received the personal endorsement of Tang emperors and, by the Song dynasty, it was given a companion *Classic of Loyalty* (attributed to the Han dynasty). The two duties had become so absolute that it could be asserted that "Even if the ruler does not act like a ruler, the subject may not but act like a subject; even if the father does not act like a father, the son may not but act like a son"[32] – something contrary to the spirit of Confucius and the values of true Confucians.

The picture of a civilization where all those below – the great majority – had only duties, and the only rights were found among the small minority who held power above, emerged gradually as a form of despotism over several centuries. It would, however, be true to say that the conditions for despotic rule worsened fairly steadily from the Han to the Tang and more rapidly after the Tang, with despotism reaching new heights during the Ming and Qing dynasties. But, although this story has been told many times, there is no agreed explanation as to why it happened. It is interesting how many scholars would say that it had never been that bad, because China continued to produce fine literature, beautiful art, subtle and sophisticated philosophy through those centuries. Some would add economic and technological innovations to that list. Others would point to the ultimate check on despotism: the rebellions of the politically inert peasant masses. But there was no impact here on the articulation of rights, for the rebels who succeeded only replaced one despotic house with another. It never seemed to have occurred to any Chinese ruler that the system could be changed or that he could rule without having to be a despot himself. Indeed, so many of the Confucian literati were willing to serve the new house that it is no wonder that the question never arose.

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Yet others would note how some of the Confucian literati themselves had become conscious of the great abuses of power at the expense of their own status and privileges. There were indeed men who deplored the arbitrariness that had crept into the system and wrote critically about what had to be done. I shall give only two examples of political innovation here. The first, in the eleventh century, occurred when the reformer Wang Anshi (Wang An-shih) brought acrimonious debate on policies and issues into the court. Instead of leading to the emergence of something like a government with a loyal opposition, the debate led to a general condemnation of the evils of factionalism. Factions fought for the emperor's ear and, when the emperors were changed, the defeated factions were thoroughly purged. Factions could not become legitimate parties, and no rights were gained in the ensuing decision to condemn as factionalism any kind of sharing and grouping of political views. The other example comes from imperial policy about religious heterodoxy. After the taming of the Buddhists during the Tang dynasty, especially after the persecutions of the ninth century, the imperial government no longer tolerated any effort to organize dissent against the doctrines and policies of the empire. The Confucian literati had a hand in this because they saw themselves as the protectors of the state orthodoxy and they condoned the harsh punishments drawn up against any group that organized itself in ways that were not approved. Eventually, they themselves became the victims, especially during the Ming dynasty, when the court fell into the hands of eunuchs and court favourites. For when at the beginning of the seventeenth century, the literati tried to check the abuses of power, they found that they had no right to organize themselves to do so. Their feeble efforts were declared to have been examples of factionalism and nothing came of them. This failure, and the fall of the dynasty soon after, did lead to some re-thinking about the dangers of absolutist power. The new ideas were futile, too feeble and too late.[33] Also, ironically, the Manchu conquest of China was brutal but successful. It brought more than a century of unity, stability and relative peace and was probably the most glorious period of absolutism in Chinese history.

Why traditional China became increasingly despotic is a major historical question which will engage us for generations to come, and my outline here of the growing stress on duties, and the total dependence on power of any rights, is not an attempt to deal with that larger issue. What it does help us understand is why the Chinese defenders of the tradition in the twentieth century who turned to the remote past to find ways to save China failed and why those who openly rejected the tradition came eventually to succeed. I shall use the time remaining to me to consider how this development affected the subject of rights and duties. I need hardly say that I have to do this with a very broad and sweeping brush.

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First let me remind you of the point I made earlier about the use of the word *quan* to translate rights, especially its connotation of power that had to be seized and which was far from the idea of "natural rights". At the end of the nineteenth century, there were two major strands of thought about rights. There were those like Kang Youwei and Liang Qichao among the reformers in 1898 and Sun Yat-sen and Zhang Binglin (Chang Ping-lin) among the revolutionaries before 1911 who were primarily concerned with China's power to recover its sovereign rights. Many conservative mandarins of the Qing court shared that concern in their own way.[34] Others, more philosophically inclined, like Yan Fu and Tan Sitong, understood something about the importance of individual rights but saw them ultimately in terms of their contribution towards strengthening China. Yan Fu, in particular, understood it well and admired the energy that individualism could generate and wanted to see it harnessed towards collective ends.[35] In other words, for both groups, rights represented the kind of power and energy China needed. Because of this, it was easy to see such rights not as universal principles, but as instruments, as means to a higher end, this end being the revival of China.

For both these groups, it was easy to translate imperial or monarchical rights into modern terms: there were British and German examples to compare with and even better, the Japanese model. But the idea of democratic rights as represented by the republics of France and the United States was more difficult; there the key words were freedom and equality. It is doubtful if any Chinese leader at the time understood the deep roots these words had in the legal and political institutions of the West. This is understandable, not only because the words had different meanings and connotations for the Chinese, but also because they did rather confusingly mean different things at different times in the different countries of the West itself. I need only mention a few examples of how some Chinese understood individual freedom. I have already referred to Yan Fu's idea that this freedom released new energy for the greater wealth and strength of the nation. Liang Qichao, on the other hand, started with enthusiasm for rights and liberties for the Chinese people, but the more he learnt about their implications for the group, for the collective idea of *qun*, the more uneasy he became about the dangers they would bring to China.[36]

As for Sun Yat-sen, who had a far more authoritarian personality than either Yan Fu or Liang Qichao, he was quite blunt in claiming that the Chinese people already had liberty, so much liberty that they did not need a word for it. Here I must pause to comment on how confusing this claim sounds. It may be compared with that commonly made observation about how individualistic the Chinese people appear to be. Obviously we need to know the context of such statements. Sun Yat-sen was talking about people's rights (*minquan*) and not about personal or civil liberties. His

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reference to liberty described the numerous rival families and local organizations that would never unite and, when not firmly controlled, tended towards anarchy. Similarly, Chinese are individualistic in action and behaviour with the confidence that they are fully supported by their families, but that would have nothing to do with individual rights. Thus, Sun Yat-sen went on to say, China was like a tray of loose sand and what was desperately needed was the cement that would bring it unity and national liberation.[37] It is significant how this vivid image of a tray of loose sand came quickly to dominate most Chinese thinking during the first half of this century.

All these men, and there were hundreds of others of this first generation, spoke of rights and liberties very much in terms of what would best serve collective goals. Collective rights were obviously quite different from individual rights, but they were not merely those of the state but would include those of the scholar literati and other social groups as well as those of merchant guilds, local organizations and extended families. The stress on the collective meant that the rights of the individual were never autonomous but always subordinated to the rights of the group he belonged to. On the other hand, the individual had the right to exercise the rights of his group. In the use of *quan* in *minquan* (people's rights), this generation of writers gave emphasis to the political power due to the people, their share in determining the destiny of China, their role, in fact, in saving China. Thus, although they used *minquan* to translate democracy, there was little hint of civil liberties in the word, that would link people's rights with the idea of natural or legal rights so prominent in Western usage.[38]

What of the second generation? This year being the sixtieth anniversary of the widely remembered May Fourth Movement I mentioned earlier in the lecture, it is appropriate to call it the May Fourth generation, whether it remained in China or ended in Taiwan, Hong Kong or North America. The generation includes, among others, those who played a role in launching the Movement and those who became part of it and were greatly influenced by it. Of the former, Chen Duxiu (Ch'en Tu-hsiu), Li Dazhao (Li Ta-chao), Hu Shi (Hu Shih), and Lu Xun (Lu Hsun) are the best-known. Of the latter, there were writers, scholars, politicians and journalists of every colour, and most of them left a mark in the history of the three decades before the establishment of the People's Republic in 1949. Men like Mao Zedong (Mao Tse-tung), Zhou Enlai (Chou En-lai) and Guo Moruo (Kuo Mo-jo), perhaps the most powerful and influential of them, stayed long on the stage and only recently died. The generation was a very varied one and represented several different political and intellectual strands. Some of them also had starkly different fates: the most striking being those of Hu Shi, the liberal follower of the American philosopher, John Dewey, and Lu Xun, the fierce critic of

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tradition and every kind of humbug. The first is reviled and the second is worshipped in China today.[39] But most of them started with one basic cause in common: they were prepared to contemplate the rejection of the ancient Confucian tradition. The difficulty, however, was that they could not agree what to replace it with.

Where rights and duties were concerned, there were many voices raised on behalf of individual rights, women's rights, political rights, legal rights, even something akin to what we would call today basic human rights. But what became clear was that voices however loud, proclamations however bold and goodwill however widespread were not enough. What was needed was the power to clean away the corruption and anarchy and bring China back to unity and stability. It had been clearly recognized that, without that unity and order, all else would come to nought. With the militarists ruling over different parts of China, it became widely agreed that power had to come from military victory. Indeed, the unity of China had always come from superior armed force and no Chinese leader could avoid that heritage. Finer issues of rights and duties would simply have to wait.

When the militarists were overthrown in 1927 and the Guomindang established its one-party government in Nanjing, the waiting for rights was couched in terms of political tutelage, not people's rights but party cadres teaching the people to know their rights. The new government asked for six years to do this in. During these years, a fierce debate went on about the relative merits of democracy and dictatorship. This is not the place to enter into that debate. It is enough to say that it brought out grave doubts about liberal democracy. Some called for a return to the familiar traditional duties: the self-improving discipline that would make one truly filial and therefore ready to give absolute loyalty to the ruler and the state. Others simply admitted their admiration for Mussolini, Hitler and Stalin and several organizations were founded to give support to Chiang Kai-shek as the Supreme Leader. Western-educated intellectuals, too, had begun to admire dictators, and the following was a commonly expressed view in the 1930s: "China's current situation absolutely does not allow us time for old-fashioned Western thought. We should immediately abandon superstitions about democracy . . . We need a government with centralized powers that can produce the best talent that is efficient and competent".[40] Little progress was made in the realm of political rights but there was progress with legal rights in the new courts and the small legal profession. Equal rights for women, particularly with regard to inheritance, was a notable step forward. All the same, the progress has to be placed in the context of a philosophy that rejected any legal system which stressed individual freedom in favour of one whose basic units were the extended family (*jiazu*) and the social organization (*tuanti*). Hu Hanmin went even

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further to say that the laws erected upon (Sun Yat-sen's) *Three Principles of the People* were quite different from the legal systems of Europe and America because they recognized that, during a national revolution, the basic unit must be the society as an organic whole.[41] The *quan* or rights of the state, therefore, came before the *quan* of its component parts.

This was also the context in which the Chinese Communist Party was founded. The CPC leaders saw the force of this *quan* of the state that was so pervasive in China. What they had to do was to transform the *quan* from that of the state to that of the class, "the class of the labouring masses". For an intermediate period, the United Front strategy permitted the inclusion of some friendly members of the bourgeois and rich peasant classes. But the hostile ruling elites were identified with foreign imperialists as "enemies of the people".[42] Therefore, the people's duty was clear: destroy the elites who betrayed the people. In order to do this, the party would seize power in the name of the rights of the working classes.

The CPC was led by those of the May Fourth generation who had turned to Marxism-Leninism for the best solution to China's problems. They wanted to replace their heritage with the best available from the West and they saw Marxism-Leninism as the most advanced and scientific body of ideas around. Their model, therefore, was the Soviet Union, including its legal and political organizations, and most notably the Stalinist party organization which was being moulded into shape in the 1930s.

It is probably no coincidence that, on the surface, both the ideology and the model fitted in well with the Chinese predilection for collective concerns which I have argued above. For although the May Fourth generation rejected the traditional system and wished to remove the kind of traditional power that favoured duties over rights, it is interesting that they did not reject the traditional idea of reciprocity, nor did they reject the stress on centralized power. For example, when the CPC came to power in 1949, the idea of duties from above being reciprocated by duties from below seems to have taken the form of party cadres adopting the slogan of "Serve the People"[43] while the masses in turn performed their duties on behalf of their socialist state. The crux of the problem was whether the cadres were above (acting like traditional bureaucrats or officials), and the masses were below (comparable to the traditional peasants). Similarly, centralized power was not supposed to be held by bureaucrats but to be in the hands of the all-powerful party as the vanguard of the proletariat. Such a party exercised that power through networks of rights and duties, one of the most notable of which was expressed through the Mass Line which is summed up in the phrase "from the people, to the people".[44] The strict ideological position was that there was no above and no below and that the duties were not simply duties but were reciprocal duties accompanied and balanced by reciprocal rights. As for the power, it was not to be the old kind of power

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monopolized by selfish interests and an elite class, but a new kind of people's power which, where rights and duties were concerned, might be used to keep the reciprocal rights and duties in balance. And there was a constitution and various judicial and supervisory organs to keep everything under tight control. Where the new dispensation gave equal weight to rights and to duties, this was clearly a conscious effort to improve on the traditional neglect of rights. But what is clear is that these are class rights, or group rights that may generally be described as collective rights, and not individual rights.[45]

China in the 1950s no longer wanted to imitate the West of Western Europe and North America; its model was the Soviet Union. But all was not well with that model and, by the end of the decade, Mao Zedong was looking for what he thought would be a more genuinely Marxist-Leninist way for China. Since the West was still taboo and China's own traditions were outmoded, it was far from clear how Mao Zedong was going to make his leap into the revolutionary unknown. What seems clear is that he was genuinely afraid that his own generation of cadres was about to lose its revolutionary ideals and act like bureaucrats from above when dealing with the masses below.[46] This he thought would have been a step backwards, especially if power thereafter resided in a new ruling class similar to a Soviet-type technocracy. On this subject, he was opposed by most of his senior party colleagues who did not share his zeal for revolutionary purity at the cost of unity and stability.

I do not know how Mao Zedong worked this out in his own mind. What was astonishing is how he was able to act above and outside his party and the law. He seems to have gone beyond the settled triangle of power, rights and duties to exert his personal authority on behalf of some new and undefined rights, the rights of the young, of the third generation, the uncorrupted children of the People's Republic. Indeed, the way he launched the Great Proletarian Cultural Revolution in 1966 was a remarkable innovation.[47] He seems to have wanted the young to revive the revolution and keep his vision alive and, if possible, to define their right to check the power of their elders. But his plan was probably an impossible one. His colleagues in the armed forces were divided and the majority was unmoved. The party was wounded but the senior leaders managed to hold firm. The government and the country as a whole staggered on the brink of an anarchy which was unacceptable even to Mao Zedong himself. The young generation knew not what they were supposed to do and became victims of the power struggle at the top that ensued. Thus, in the end, not only were no new rights defined, but even the sacred collective rights of the working classes guaranteed by law were severely undermined. Ironically, Mao Zedong's discovery of his absolute authority and his willingness to use it and allow it to be used and abused created a situation where he was

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himself to become the sole object of both loyalty and filial piety in a very traditional sort of way.[48] The net result was that, for some ten years from 1966 to 1976, everyone had duties but few had rights and all power, absolute power, was lodged in one man.

The attempt to define new rights for the young to check the power of their elders has failed and Mao Zedong's senior surviving colleagues are determined never to allow it to be tried again, at least not in the same way. The present policy seems to be to return to the pre-Cultural Revolution ways (in some cases, back another decade to the mid-1950s). Where rights and duties are concerned, this may be described as restoring the balance between rights and duties by paying more attention to legal rights and re-examining the issues of political rights. But there is no noticeable change of policy towards the idea of individual rights, which is still seen as being based on "bourgeois and capitalist" values. The most recent statements on this subject quote Marx's comments in *Das Kapital* on the innate rights of man being best exemplified in the sale and purchase of labour-power where he explained, echoing Jeremy Bentham, how freedom, equality and property "all work together to their mutual advantage, for the common weal and in the common interest". But after the transaction, he adds, the money-owner now smirks self-importantly as the capitalist while the man who brought his own hide to market can now only expect a tanning.[49] Therefore, the recent articles quote with approval Marx's famous definition in his essay "On the Jewish Question", "that the so-called rights of man are quite simply the rights of the member of the civil society, that is, of egoistic man, of man separated from other men and from the community".[50] What Marx believed in was the citizen, the moral person, whose rights would harmonize with those of the community. In this spirit, the rights that have been restored in China since 1977 are understandably defined in terms of collective and therefore moral interests.

But the circumstances have changed. As with all others in history, restorations never restore fully. The question is whether the restoration may now take two steps forward or whether China may go the Stalinist way again and become more like the Soviet Union. I would suggest that there are at least three developments which may be described as post-Cultural Revolution and which promise interesting changes to the question of rights. The first concerns the activists of the third generation, the children of the People's Republic. Although Mao Zedong failed to give them power and responsibility, he succeeded in raising their political awareness and in involving some of them for a while in practical politics at different levels. They are a sadder generation now but they have seen what can go wrong with a system that could not guarantee legal protection against abuses of authority. They are among the ones who are writing about legal and political rights today and they will never be content to become the inert masses

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again. The second concerns the release of energies which seem to be encouraged by the present Vice-Premier Deng Xiaoping (Teng Hsiao-p'ing), something observers have compared to "the spontaneous urge to capitalism" of the Chinese people everywhere. There is much new initiative and enterprise now. It may not be long before China acknowledges Yan Fu's perceptive comment on individualism at the turn of the century: if individualism were encouraged and individual rights protected, great energies would be released to serve collective ends.

The third development follows from the first and the second. Collective ends and interests take many forms and all Chinese who had been through the Cultural Revolution, the present leaders as well as the young activist generation, would have learnt that China needs strong legal protection for all sizes of collectives. The absolute power of Mao Zedong as the Great Leader and the ultimate collective, the State, were terrifying without adequate checks. The checks were supposed to lie in the wide range of collectives spread around the country. But every Chinese experienced the power of the State and its leader when they interfered in the rights of all these collectives, so much so that none of the larger collectives were able to protect the smaller ones within them, and the small collectives, of course, lost their right to protect their own individual members. Thus the present policy of restoring rights to collective units does not refer only to the larger ones of class, party, army, government and commune, but also to the smallest institutions, factories, production teams, even families. The question is, after the traumatic experience of 1966-1976, will the new rights be qualitatively different? Will there be stronger safeguards? If indeed full rights are restored and guaranteed, there may be no need to labour the point about individual rights. A hierarchy of collective rights which protects the rights of each of its smallest units may not be as dramatic or as challenging as the ideal of the legal right of the individual versus the State that some cultures prize. But it does seem to be something in harmony with a society such as China that is deeply committed to the moral and social value of reciprocal rights and duties.

Logically speaking, the ideal position may be one in which individual and collective rights and duties are so balanced that they are self-regulatory. But then history is not logical. At any point of history, each society has a specific pattern of rights and duties and faces decisions about the next step it should take: it can give more weight to rights or more to duties or stay as it is. What makes it possible for the society to take the next step is what I would call power.[51] In Chinese history, this power had been exercised over some twenty centuries against rights of all kinds in favour of duties. For the past sixty years, modern Chinese have tried to use new power to guarantee a balance of duties and rights. They have not yet succeeded but they may now know the way.

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Notes

[1] As examples, the most notable are the following:
- (a) From China, *Lishi yanjiu*, 4 and 5, 1979; *Zhexue yanjiu*, 2, 4, 5 and 6, 1979; *Hongqi*, 5, 1979.
- (b) From Taiwan, *Zhuanji wenxue*, 204 (XXXIV:5); also in 1978, *Zhonghua zazhi,* 7, 8 and 10, 1978 and *Zhonghua wenhua fuxing yuekan*, 6, 1978.
- (c) From Hong Kong, *Ming bao monthly*, 161 (XIV:5); *Qishi niandai*, 5, 1979 (112).

[2] Lo Hui-min (ed.) *The Correspondence of G.E. Morrison, II, 1912-1920*, Cambridge, 1978, 728-755.

[3] W.A.P. Martin (Ding Weiliang, trans.) *Wan'guo gongfa*; extracts in *Huangchao xuji wenbian* (1902), Taibei reprint, 1965, II, 1175-1211; 1241-1252. For early Meiji usage, a recent study defines terms like democracy, liberty, equality as they were used at the time; Matsuo Chōichi, *Jiyu minken shisō no kenkyu*, Tokyo, 1975, ch. 1. On the influence of Martin's translation on Mitsukuri Rinshō in the use of *ken* and *kenri* in 1869, 34; Martin's contribution was omitted in D.F. Henderson, "Japanese influences on legal language", in Jerome A. Cohen (ed.) *Contemporary Chinese Law*, Cambridge, Mass., 1970, 175-176.

[4] *Shangjun shu*, Zhuzi jicheng edition, Beijing, 1954, V, 14; see translation by J.J.L. Duyvendak, *The Book of Lord Shang*, London 1928, 216-217; also Xun Zi jijie, Zhuzi jicheng edition, Beijing, 1954, II, "*Quan xue*", 11; B. Watson, *Basic Writings*, New York, 1963, 23.

[5] The best example is in the famous memorial by Yan An of the Han dynasty during the latter part of the second century BC, *Shi Ji*, Beijing, 1959, ch. 112, 2958; see B. Watson, *Records of the Grand Historian of China*, II, N.Y., 1961, 232. Another notable example is in the Debate on Salt and Iron: Huan Kuan, *Yen-t'ieh Lun*, Zhuzi jicheng edition, 1954, VII, "Za lun", 62.

[6] Both words were used by Confucius in the sense of doing what was righteous (duty); *Lun yu*, "Yong ye" (in *Shisan jing zhushu,*, Taibei reprint, 1955, XIII), 54; James Legge, *Confucian Analects*, Hong Kong edition, 1960, I, 191.

[7] Liang Qichao, *Xin min shuo* in *Yinbingshi wenji*, Hong Kong, 1949: "Lun gongde", 10-14; "Lun quanli sixiang", 28-36.

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[8] The writings against loyalty to the ruler died down for a while after 1911 and were revived only against the abortive "restorations" of 1915 and 1917. They were not, however, as striking as those against the abuses and social evils of the family system which led to the fierce anti-Confucianism of the May Fourth Movement; compare the specific attacks by Tan Sitong in 1896-98 in his *Ren xue* (*Tan Sitong quanji*, Beijing, 1954), 65-66, to the extreme stance taken by Wu Yu some twenty years later in *Xin qingnian*, II:6; III:3 and 4, 1917, VI:6, 1919. Probably the most general attacks on Confucianism were found in the early issues of *Xin qingnian*, notably that by Chen Duxiu in reply to Kang Youwei, "Bo Kang Youwei zhi zongtong zongli shu", 1 October 1916.

[9] The defenders of the Confucian tradition of the 1920s and 1930s have not had as much attention as the attackers during the past three decades, but there has been a revival of interest in the West, notably three recent books, Charlotte Furth (ed.) *The Limits of Change: Essays on Conservative Alternatives in Republican China*, Cambridge, Mass., 1976; Thomas A. Metzger, *Escape from Predicament: Neo-Confucianism and China's Evolving Political Culture*, New York, 1977; and Guy S. Alitto, *The Last Confucian: Liang Shu-ming and the Chinese Dilemma of Modernity*, Berkeley, 1979.

[10] The elaborate relationships of ten grades were enunciated most clearly in *Zuo zhuan*, Zhao Gong 7 (in *Shisan jing zhushu*, Taibei reprint, 1955, X), 759; another kind of status elaboration expressed in terms of length and quality of jade and other lesser objects was spelt out in *Zhou li*, ch. 18 (Taibei reprint, 1955, V) 280-281.

[11] There was no word in pre-Buddhist Chinese for equality, but the idea of all men being born good or born evil implies a natural equality in a person's moral potential at birth (as in the debate between Mencius' followers and Xun Zi). An excellent discussion of this question may be found in Donald J. Munro, *The Concept of Man in Early China*, Stanford, 1969, vii-x; 1-18; 58-65.

[12] *Lun yu*, "Yan Yuan" (Taibei reprint) 108; cf. James Legge, I, 256.

[13] *Lun yu*, "Ba yi" (Taibei reprint) 30; cf. Legge, I, 161.

[14] *Lun yu*, "Wei zheng" (Taibei reprint) 18; cf. Legge, I, 152. Here I follow Arthur Waley, *The Analects of Confucius*, London, 1938, 92.

[15] *Zuo zhuan*, Wen Gong 18 (IX) 354.

[16] *Meng Zi*, "Teng wen gong", (in *Shisan jing zhushu*, Taibei reprint, 1955, XIV) 98; cf. D.C. Lau, *Mencius*, Harmondsworth, 1970, 102.

[17] *Xun Zi jijie*, "Li lun", 231, note different translations in H.H. Dubs, *The Works of Hsüntzu*, London, 1928, 213 and B. Watson, *Hsün Tzu*, 89.

[18] *Xun Zi jijie*, "Fu guo", 113-114. I follow Hsiao Kung-sh'üan's interpretation in *Zhongguo Zhengzhi sixiang shi*. F.W. Mote translates the key sentence, "The only means of solving these difficulties is to devise *li*, which make clear the social distinctions, so that everyone's rights and duties are both definite and universally known"; *A History of Chinese Political Thought*, I, Princeton, 1979, 185 and note 90.

[19] The best concise account of this next step as represented by the Legalists (or Realists) is still Arthur Waley's *Three Ways of Thought in Ancient China*, London, 1939, esp. 199-200, 209-215, 232-239. An excellent recent study of this development is Xu Fuguan, *Zhou Qin Han Zhengzhi sheshui jiegou zhi yanjiu*, Hong Kong, 1972, esp. 128-154.

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[20] *Meng Zi*, "Li lou", I, 126-128, 132 (Lau, 119-122) have the clearest statement on this subject without explicitly speaking of *tian ming* (mandate of heaven).

[21] *Lao Zi jiao gu* (Ma Xulun text) Beijing, 1974, 3 vols, I, 212-214, argues for *zhen* (upright) instead of *zhong* (loyalty). I accept D.C. Lau, *Tao Te Ching*, Harmondsworth, 1963, 74.

[22] Burton Watson goes so far as to say that "the central theme of the *Chuang Tzu* may be summed up in a single word: freedom"; *The Complete Works of Chuang Tzu*, New York, 1968, 3-7; but freedom in the sense of not being bound, of letting go, of letting slide; Etienne Balazs, *Chinese Civilization and Bureaucracy*, New Haven, 1964, 247.

[23] Kenneth K.S. Ch'en, *The Chinese Transformation of Buddhism*, Princeton, 1973, ch. III "Political Life", 100-124.

[24] Mo Zi discussed the idea of *li*, benefit or profit, extensively. The link between this *li* and universal love (*jian'ai*) is specially illuminating; see the three essays on universal love, *Mo Zi xian'gu*, Zhuzi jicheng edition, Beijing, 1954, IV, 62-80. Feng Youlan gives particular stress to this under the heading of "utilitarianism", see D. Bodde's translation, *A History of Chinese Philosophy*, Peiping, 1937, 84-91.

[25] *Shang jun shu*, "Xiuchuan", 24; I follow Duyvendak's translation, 260.

[26] The phrase did not originate with Han Feizi, but no one can mistake the meaning of his essay "Zhu dao"; *Han Feizi jishi*, Beijing, 1958, I, 67-69. See B. Watson's translation, *Han Fei Tzu: Basic Writings*, New York, 1964, 16-20.

[27] *Shang jun shu*, 24; Duyvendak, 260. For the full range of meanings of the word, see *Shuowen jiezi gulin*, Taibei reprint, 1959, V, 2427a-2428a, and Morohashi Tetsuji, *Dai Kanwa jiten*, VI, 6317-6322.

[28] Thus it has been argued that the Chinese emperor has never had absolute powers; see the fine statement of this position in John C.H. Wu, "Chinese legal and political philosophy", in Charles A. Moore (ed.), *The Chinese Mind*, Honolulu, 1967, 219-226.

[29] *Lun yu*, "Xue er", 5; cf. Legge, 138.

[30] Xiao Jing, "Wu xing" (in *Shisan jing zhushu*, Taibei reprint, 1955, XIII, 42-43); for a broader interpretation of what was not filial, see Liu Xuan, *Xiao Jing shu yi*, ms. version in Hayashi Hideichi, *Kōkyō jutsugi fukugen ni kansuru kenkyu*, Tokyo, 1953, 151-152.

[31] Niida Noboru, *Shina mibunho shi*, Tokyo, 1942, 814, 820 ff.

[32] Words attributed to the Han scholar, Kong Anguo, in the preface he was supposed to have written for *Xiao Jing*, in Yan Kejun, *Quan shanggu Sandai Qin-Han San'guo liuchao wen*, Beijing, 1958 reprint, 196-197. The controversy as to whether this was forged by Wang Su (third century AD) or Liu Xuan (seventh century) or by some unknown Song scholar whose work was brought to Japan in the thirteenth century is too complex to go into here. The view was an extreme one which honest Confucians could not have accepted, but it certainly revealed the real situation by the Song dynasty as may also be seen in the forging of the *Classic of Loyalty*; Zhang Xincheng, *Weishu tongkao*, Shanghai, 1954 reprint, I, 418-435; II, 640-641.

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[33] The most famous example of this rethinking is Huang Zongzi, *Mingyi daifang lu* (Sibu beiyao edition, la-2a), essays on "Yuan jun" and "Yuan cheng"; see W.T. de Bary, "Chinese Despotism and the Confucian Ideal" in J.K. Fairbank (ed.) *Chinese Thought and Institutions*, Chicago, 1957, 165-176. For the ideas of the Donglin "Party", the most thorough study in English is Heinrich Busch, "The Tung-lin (Donglin) shu-yuan and its political and philosophical significance", *Monumenta Serica*, XIV (1955), 1-163.

[34] The best example is Zhang Zhidong who favoured the spirited defence of sovereign rights but totally rejected the idea of democratic rights; *Quanxue pian* "Zhengchuan", *Zhang Wenxiang gong quanji*, Taibei, 1963, 3715-3716; see also He Qi's reply, *Quanxue pian shulou* in *Huangchao xuai wenbian*, VII, esp. 713-744.

[35] See Benjamin Schwartz, *In Search of Wealth and Power: Yen Fu and the West*, Cambridge, Mass., 1964, 54 ff.

[36] Liang Qichao, *Xin min shuo* in *Yinbingshi wenji*, "Lun Ziyou", I, 37-46; and his essay, "Guojia sixiang bianqian yitong lun", in III, 46-55. Liang Qichao was greatly influenced by Katō Hiroyuki, the Meiji scholar who debated the problem of natural rights (*tempu jinken*) with the Japanese liberals of his day. His two influential works *Jinken shinsetsu* (1882) and *Kyōsha no kenri no kyoso* (1893) reflected the influence of the theories of evolution and Social Darwinism which were inimical to the idea of natural rights; Yoshida Koji, *Katō Hiroyuki no Kenkyu*, Tokyo, 1976, 71-197. On Katō's influence on Liang, see Philip C. Huang, *Liang Ch'i-ch'ao and Modern Chinese Liberalism*, Seattle, 1972, 56-61.

[37] Sun Yat-sen, *Sanmin zhuyi*, in *Guofu quanshu*, Taibei, 1960, 224-225.

[38] There were striking exceptions. Shen Jiaben was a convert to modern Western law, if only to help restore China's sovereign rights, but he did recommend between 1902 and 1912 reforms that would have introduced civil liberties in China. The opposition to his reforms, however, was too strong; Yang Honglie, *Zhongguo falu sixiang shi*, Shanghai, 1936, 305-335.

[39] For Hu Shi's liberal ideas on "human rights", see his first essay in *Renquan lunji*, Shanghai, 1930, 1-12. Mao Zedong was only partly responsible for the sharp difference in response towards the two men since 1949; see his praise for Lu Xun in "Xin minzhu zhuyi lun" (1940) in *Mao Zedong Xuanji* (one-volume edition), Beijing, 1964, 691. Hu Shi was attacked in the 1950s as the symbol of bourgeois liberalism and is still so attacked even after Mao Zedong's death; see the recent essay by Geng Yunzhi, "Hu Shi yu wusi shiqi de xin wenhua yundong", in *Lishi yanjiu*, 5, 1979, 59-79.

[40] Quoted in Lloyd Eastman, *The Abortive Revolution: China under Nationalist Rule, 1927-1937*, Cambridge, Mass., 1974, 148. The writer of these words was Chen Zhimai, but he was fairly representative of the number of leading Western-trained intellectuals at the time. Cf. the calmer voice of Wu Jingxiong (John C.H. Wu), one of the most enlightened jurists of the time, who said, "Westerners, in struggling for freedom, started from the individual. Now we, in struggling for freedom, start from the group . . . We wish to save the nation and the race, and so we cannot but demand that each individual sacrifice his own freedom in order to preserve the freedom of the group" (q. Eastman, 150).

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[41] Hu Hanmin, quoted in Yang Honglie, 347-350.

[42] See examples of statutes concerning counter-revolutionaries, traitors, war criminals and also human and property rights in Patricia E. Griffin, *The Chinese Communist Treatment of Counterrevolutionaries 1924-1949*, Princeton, 1976, Appendices.

[43] Mao Zedong, "Serve the People", *Selected Works*, London, 1956, IV, 219-220.

[44] Mao Zedong, "On Methods of Leadership", *Selected Works*, IV, 111-117.

[45] All Chinese constitutions since the 1920s guarantee a wide range of civil liberties; cf. the formally promulgated constitutions of 1923, 1946, 1954, 1975 and 1978: 1923 and 1946 constitutions in Ch'ien Tuan-sheng, *The Government and Politics of China*, Cambridge, Mass., 1950, Appendix C & D; 1954 constitution, Beijing, 1954; *Peking Review* 24 January 1975 and 17 March 1978. Only the 1923 constitution, however, gives a slight emphasis to the individual citizen. The important change from Art.26 in 1975 to Art.56 in 1978 has been widely commented on; in 1975, "The fundamental rights and duties of citizens are to support the leadership of the Communist Party of China" is the first of four articles, while in 1978, it became simply "Citizens must support . . . ", the thirteenth of sixteen articles.

[46] Mao Zedong "Chairman Mao discusses twenty manifestations of bureaucracy", quoted in D. Milton, N. Milton and F. Schurmann (eds.), *People's China*, Harmondsworth, 1977, 246-250. The more modern and technocratic the bureaucracy, of course, the harder it is to check its abuses.

[47] Of the many documents relevant to this, none suggests this point more succinctly than his "Bombard the Headquarters" (5 August, 1966), *Peking Review*, 33, 1967 (11 August).

[48] There is now a vast literature on this, but the point was well summed up at Tianan men on 5 April, 1976, thus, "China is no longer the China of yore, and the people are no longer wrapped up in sheer ignorance; gone for good is Qin Shihuang's feudal society", quoted in *Peking Review*, 15 (9 April 1976).

[49] Karl Marx, *Capital*, I, Harmondsworth, 1976, 280. This has been quoted, for example in Xiao Weiyun, *et al.* "Makesi Zhuyi zenyang kan 'renquan' wenti" in *Hongqi*, 5, 1979, 45.

[50] Karl Marx, "On the Jewish Question", *Early Writings*, Harmondsworth, 1975, 229, 234.

[51] Power is double-edged. Compare Hitler's "There are no rights without protection by power" (quoted in *Encounter*, May, 1979, 97, inscribed in his hand on the 1927 first edition of volume II of *Mein Kampf*) with the fine traditional Chinese analogy of people's power with water power: "Water can float a ship; it can also sink it", originally quoted in Xun Zi, "Wang Zhi"; see Watson, 37.

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