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## CONFUCIANISM VERSUS LIBERALISM OVER MINORITY RIGHTS: A CRITICAL RESPONSE TO WILL KYMLICKA<sup>1</sup>

Minority issues pose problems for all political rulers and major ideologies, including liberalism and Confucianism. Confucianism as a political philosophy had a rich experience in dealing with minority issues and accumulated substantial knowledge about them, for it had, particularly during the Yuan and Qing dynasties, confronted the invasion of minorities from the North and West, the question of controlling minority areas effectively, and the question of how to deal with the minority rule over China. Today, Beijing endorses minority rights and faces the question of how to honor its commitment to minority rights.

Ironically, contemporary Confucian scholars have said very little about the ethnic minority question and minority rights.<sup>2</sup> In contrast, liberalism, with its rich experience in confronting the minority question, has developed different systematic theories of minority rights. Will Kymlicka, for example, forcefully argues that democratic institutions should include minority rights, in particular, the right of national minorities not to be assimilated into a larger community. His theory justifies and defends the institutionalization of internal boundaries between communities within a nation-state, and fundamentally challenges the Confucian approach to the minority question. Moreover, Western liberal theories of minority rights have quickly penetrated into Asian studies,<sup>3</sup> and Kymlicka himself has raised the issue of whether his theory can be extended to handle ethnic problems in Africa and Asia.<sup>4</sup>

If Confucianism is to remain relevant to the world in which minority issues increasingly become a global agenda, and contribute to the contemporary global conversation of philosophy and to a global discourse and ethics on minority issues, it must take minority rights seriously. It must address the following questions: What are the features

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of a Confucian approach to minority questions? What are the Confucian legacies with regard to minority rights? Does Confucianism contain the resource to endorse and develop minority rights? How could Confucianism itself be transformed to support and defend minority rights? What has been transformed in ideological fields with regard to minority questions? What are the limits of Confucianism? In which way can Confucianism retain its Chinese cultural characteristics while endorsing minority rights?

This article attempts to fill the intellectual gap discussed above and to answer the above listed questions. It aims to articulate a Confucian approach toward minority rights and a Confucian response to Kymlicka's theory. It intends to engage in a badly needed cultural dialogue between liberalism and Confucianism. The strategy I adopt is to question the basic assumption of Kymlicka's liberal theory of minority rights from a Confucian perspective and to challenge the basic presupposition of Confucianism and some of the assumptions and practices of Confucian communitarianism from the viewpoint of Kymlicka's liberal theory of minority rights.<sup>5</sup> This kind of cross-cultural engagement is useful in producing some positive intellectual outcomes that will help bring into contact different political ideas in different geographic areas and clear away obstacles to thinking usefully about what can be done to settle the minority question.

This cultural dialogue immediately comes up against the complexity and subtlety of the subject. While the mutual critiques between liberalism and Confucianism enable us to open our minds, they may confuse those committed to one ideological position. Indeed, while it is desirable to work out Confucian sources to support minority rights, we must cautiously avoid the pitfall that a Confucian approach might lead to in the implementation of genuine minority rights and retain, if possible, some Confucian cultural characteristics. Moreover, both liberalism and Confucianism have different ways of responding to minority rights as well as different understandings and interpretations of these (see section on Critics of Kymlicka). Neither a simple rejection of Kymlicka's theory of minority rights nor a simple acceptance of it will do justice to the subject. We should exercise extreme caution against a simple ideological position that prevents us from engaging deeply with such a complex and subtle subject.

The paper begins by reviewing the main ideas of Kymlicka's theory and criticism of his theory by other liberal scholars as a basis for discussion. It then turns to the Confucian legacy to identify its advantages and disadvantages with regard to minority rights. It further investigates the transformation from the Confucian Yi-Xia doctrine to the modern minority rights discourse. The basic characteristics of

the Confucian approach to minority questions and minority rights are outlined and discussed.

#### KYMLICKA'S LIBERAL THEORY OF MINORITY RIGHTS AND HIS CRITICS

Kymlicka has developed his theory of minority rights against a Canadian background, where the Indian tribes and Quebecois do not normally share the values and aspirations of the larger society. Indian tribes have demanded their historical right of self-government, and the Quebecois, the right to secession. Moreover, classical liberalism and assimilation policies have failed in reality, creating the need reconsider liberal principles to address minority questions.

Historically, the Europeans occupied the land of native peoples and reached various historical agreements in granting them special status. Should liberal society continue to grant these peoples special status and to recognize their right not to be assimilated by the larger community? Two approaches within the liberal tradition<sup>6</sup> offer different answers to this question. A classical liberal approach to minority issues can be summarized as follows. First, it aims to indirectly protect cultural minorities by guaranteeing basic civil and political rights to all individuals, regardless of race, ethnicity, and group membership. A "color-blind" constitution will remove all legislation differentiating people in terms of their race or ethnicity. Second, it separates the state and ethnic identity, and the state plays a neutral role. Third, people are free to choose and express their ethnic identities in private life. Fourth, no minority rights need be attributed to members of specific ethnic minorities, because liberalism as a moral ontology recognizes each individual as having equal rights and entitlements and allows no room for the idea of collective rights. Lastly, classical liberalism is primarily concerned with the stability and unity of the nation-state. In short, classical liberalism and traditional human rights theory exclude minority rights.

This classical approach fails to recognize historically embedded communities and the rights of these communities not to be assimilated into the larger community. Dissatisfied with the inadequacy of classical liberal theory, Kymlicka offers a neo-liberal approach to minority issues. The neo-liberal approach can be summarized as Recognition, Rights, and Resources. The theory is primarily concerned with justice toward minorities and aims to supplement traditional human rights principles with a theory of minority rights. As Kymlicka argues, "A comprehensive theory of justice in a multicultural state will include both universal rights, assigned to individu-

als regardless of group membership, and certain group-differentiated rights or 'special status' for minority cultures."<sup>7</sup> The neo-liberal approach also attempts to explain how minority rights coexist with human rights and how minority rights should be restricted limited by principles of individual liberty, democracy, and social justice. There are two limits to minority rights—no internal violation of human rights and no external exploitation of other groups.

Kymlicka starts with a conceptual clarification of the forms of culturally plural societies. He makes a distinction between cultural and political communities.<sup>8</sup> The political community grants citizenship to individuals who exercise the rights and responsibilities entailed in the framework of liberal justice. The cultural community provides individuals with cultural membership; they share a culture, language, and history.<sup>9</sup> In the modern nation-state system, a single political community could include various co-existing cultural communities. This leads to a further distinction between "multinational" states (where cultural diversity arises from the incorporation of previously self-governing, territorially concentrated cultures into a large state) and "polyethnic" states (where cultural diversity arises from individual and familial immigration).<sup>10</sup>

Kymlicka also distinguishes between national minorities and ethnic groups. National minorities are those which were previously self-governing, territorially concentrated cultures; they now demand various forms of autonomy or self-government so as to maintain themselves as distinct societies alongside the majority culture. Ethnic groups are composed of individual or familial immigrants who wish to integrate into the larger society. While national minorities have the right of self-government and even the right to refuse to be assimilated, immigrant groups do not have the right of self-government and should be encouraged to assimilate.<sup>11</sup>

Kymlicka introduces a typology of minority rights or collective rights.<sup>12</sup> Self-government rights refer to the delegation of powers to national minorities. For example, under the federal division of powers in Canada, Quebec has extensive jurisdiction over issues that are crucial to the survival of the French culture, including control over education, language, culture, and immigration policies. Another example is the Indian reservation system inside the existing Canadian state, in which Indian tribes have been acquiring increased control over health, education, family law, policing, criminal justice, and resource development.<sup>13</sup>

Polyethnic rights include financial support (for example, state funding for ethnic associations, magazines, and festivals) and legal protection for certain practices associated with particular ethnic or religious groups. For example, in order to wear their turban, Sikh men

in Canada have sought exemption from motorcycle helmet laws and from the official dress-codes of police forces.<sup>14</sup>

Special representation rights guarantee seats for Indian natives or Quebecois, or other ethnic or national groups within the central institutions of the larger state. For example, a certain number of seats in the Canadian legislature are reserved for the guaranteed representation of women, ethnic minorities, official language minorities, and Aboriginals.<sup>15</sup>

Kymlicka puts forward three arguments for group-differentiated rights. The first centers on the value of cultural membership. He argues for the primary good of cultural membership, pointing out that “The individuals who are an unquestionable part of the liberal moral ontology are viewed as individual members of a particular cultural community, for whom cultural membership is an important good.”<sup>16</sup> The intrinsic value of cultural diversity lies in the context of choice that the cultural structure provides; individual choice is dependent on the presence of a societal culture, defined by language and history.<sup>17</sup>

The second argument concerns equality for minority cultures. It is unjust for a disadvantaged group to compete with the dominant group on unequal terms. Kymlicka claims that “the members of minority cultural communities may face particular kinds of disadvantages whose rectification requires and justifies the provision of minority rights.”<sup>18</sup> Kymlicka emphasizes the fairness for protecting the cultural life of minorities so as to reject the argument that the reservation system violates fundamental rights. He says:

It doesn't seem fair for the Indian and Inuit population to be deprived of their cultural community just because a few whites wish to exercise their mobility rights fully throughout the country. If aboriginal peoples can preserve their cultural life by extending residency requirements for non-aboriginal people, or restricting the alienability of the land-base, doesn't that seem a fair and reasonable request?<sup>19</sup>

Taking his argument about the compatibility of minority rights and liberalism further, Kymlicka claims that a liberal theory of minority rights is not only consistent with the principles of liberal equality but is required by them.<sup>20</sup> This is because individuals, as ontological agents, are members of cultural communities and because a just concern with disadvantaged communities requires and justifies the provision of minority rights.<sup>21</sup> Aboriginal groups are outbid for resources, and outvoted, for example, in the use of their own language. This inequality generates legitimate claims that can only be met through certain forms of minority rights, and cultural membership of these groups should therefore be protected.<sup>22</sup> For Kymlicka, the

American conception of an ethnicity-blind constitution cannot be applicable to other countries.

The third argument for minority rights is the history-based argument. In defense of group-differentiated rights for minorities, Kymlicka argues that these rights are the result of historical agreements, such as the treaty rights of indigenous peoples.<sup>23</sup> For example, Quebecois leaders agreed to join Canada on the condition that jurisdiction over language and education be guaranteed to the provinces, not the federal government. Honoring such agreements entails respecting the self-determination of the minorities involved, as well as ensuring that citizens have trust in the actions of government.<sup>24</sup>

In defense of minority rights, Kymlicka attempts a compromise between liberalism and communitarianism. On the one hand, he accepts some claims of the weak version of communitarianism. On the other hand, he rejects and criticizes three strong claims promulgated by communitarians.<sup>25</sup> The first is Walzer's idea of membership-defining communal value. Walzer sees cultural membership as the fundamental value because it defines the shared understanding of social groups in a given culture.<sup>26</sup> The problem with Walzer's argument, Kymlicka points out, is to regard the community as the bearer of cultural membership. Here Walzer faces a challenging boundary problem: how do two different historical communities in a country work out the shared meanings of all citizens? Walzer offers an answer—that politics establishes its own bonds of commonality. For Kymlicka, this is unsatisfactory because it is precisely on that basis that politics in Canada has been binding Indians in bonds of commonality with other citizens, for which the Indians have consistently resisted.<sup>27</sup>

The second communitarian argument holds that cultural community shapes the identity of individuals within it, providing their sense of self. Cultural community also assumes a common perspective and attitude, thereby establishing social norms and standards. These norms and standards will be internalized so that we can expect the same behavior from members of the community. Kymlicka rejects the above argument, for the reason that two persons in a cultural community are likely to have two different life plans. Here Kymlicka defends an individualist position and rejects the cultural determinist view.

Kymlicka dismisses the third communitarian argument, put forward by Charles Taylor, that special protection of historical communities is based on some independent claim by the community itself to equal treatment. Kymlicka relies on the fact that the value of community must be assessed by individual members. A community has no moral claim to well-being, independent of its members.<sup>28</sup>

As to the question relating to the relationship between minority rights and the stability of liberal democracy, there are two opposing arguments concerning the effects of minority rights on order and peace. Some nineteenth-century liberals felt that minority rights exacerbated the problem of developing a national political consensus, and protecting the minority culture would just prolong inevitable injustice by inhibiting the creation of a homogeneous national culture.<sup>29</sup> In contrast, many liberals before and after World War I, such as Lloyd George, believed that it was the refusal to meet the legitimate claims of minority cultures that created a danger to domestic and international peace.

### *Critics of Kymlicka*

A classic liberal would disagree with Kymlicka's theory and suggest that minority rights are incompatible with individual rights. For example, reservation systems restrict mobility, property, and voting rights. The classic liberal would argue further that the primary good of cultural membership undermines the principle of equal liberty, for minority rights make an exception to the liberal commitment to equality and universalism. There is inconsistency between a "color-blind" constitution and special arrangements for minorities.

Classic liberals may criticize Kymlicka for the view that minority rights institutionalize contingent factors and the privileged position of top groups in a cultural community. Human beings are "accidentally" born within a particular community. An institutionalized cultural community goes against the equality principle that aims to reduce the impact of "accidents" on individual life. In practice, Kymlicka's theory of minority rights has confronted the practical problems, such as the misuse of minority rights to maximize self-interests,<sup>30</sup> the institutionalization of separate community, and the violation of individual rights. A classic liberal would also argue that, much as Kymlicka intends to save liberalism, his attempt has failed since his theory undermines individualism, blurs the distinction between private and public lives, and undermines the effectiveness of a modern state.

Chandran Kukathas even questions the concept of cultural rights. He argues that "the divided nature of cultural communities strengthens the case for not thinking in terms of cultural rights." Take an example in Malaysia: the masses may be more interested in jobs and economic progress, whereas the elites, who already enjoy these material benefits, have a greater interest in symbolic traditions. Another example is some individual Aborigines who argue that the land as an economic asset should be bought and sold. From a liberal point of view, cultural groups' wish to live according to the practices of their

own cultural communities, as Kukathas asserts, “has to be respected not because a culture has the right to be preserved but because individuals should be free to associate: to form communities and to live by the terms of those associations. A corollary of this is that the individual should be free to disassociate from such communities.”<sup>31</sup>

Unlike Kukathas, Brian Barry does not reject cultural rights but endorses Daniel Weinstock’s distinction between a liberal theory of minority rights and a liberal theory of rights for liberal minorities, and outlines an egalitarian liberal theory of group rights.<sup>32</sup> He questions the assumption of equal value for cultures by pointing out sharply the incompatibility between the incommensurability of cultures and the equality of cultures. He also calls for a subtle understanding of what is involved in equal treatment by distinguishing positive and negative public policies. The former refers to these policies that provide resources and subsidies to minority groups, while the latter grants minority groups exemption from certain requirements

Brian Barry offers an incisive critique of Kymlicka’s view of non-assimilation. He believes that “it is an appropriate objective of public policy in a liberal democratic state to facilitate the achievement of a state of affairs in which all immigrants—or at least their descendants—become assimilated to the national identity of the country in which they have settled.”<sup>33</sup> He favors a sort of “assimilation that occurs in the absence of coercion within a context of just institutions.”<sup>34</sup> In short, he charges that Kymlicka’s theory substitutes confused assertion for systematic argument, fails to understand the workings of liberal democratic institutions, and multicultural policies do little to help (and sometimes do a lot to harm) members of their target groups.

Bhiku Praekh criticizes Kymlicka for his distinction between national minorities and immigrants, that is, while the former have the right to refuse to be assimilated, the latter should be encouraged to assimilate and be educated to fluency in the mainstream language and accept the liberal principle of their host country. Praekh claims that Kymlicka’s position is inconsistent, since Kymlicka has argued that culture is primary good. Therefore, it could not be right for a country accepting immigrants to demand that they should abandon such a good.<sup>35</sup> In practice, second and third generation immigrants, such as Turks in Germany, have demanded education in their original native language and even demonstrated extreme nationalism of their origin country.

J. Waldron criticizes and refines Kymlicka’s argument that individual choice is dependent on the presence of a societal culture defined by language and history by pointing out that “from the fact that each genuine option must have a cultural meaning, it does not follow that

there must be one cultural framework in which each available option is assigned a meaning.”<sup>36</sup> For Waldron, Kymlicka’s argument operates in the one-person-one-culture model, in which each individual identifies with only one culture. Waldron suggests an alternative model, namely the “one-person-many-fragments” model in which each individual constructs an identity in the wider society, a multiplicity of cultural fragments are available for the constitution of individual lives, and boundaries between cultures are permeable.

Like Kymlicka, James Tully criticizes modern constitutions for presupposing a uniformity of one culture. Unlike Kymlicka, however, Tully focuses on constitutional reform, intercultural dialogue, and negotiation. He sees cultures as essentially overlapping, interactive, and internally negotiated. A culture is a multi-faced, dynamic affair.

James Tully advocates a kind of situated, intercultural dialogue as the solution to social conflicts, and he proposes that seemingly intractable demands of diverse groups both can and should be handled through direct mediation and negotiations. “A contemporary constitution can recognize cultural diversity if it is reconceived as what might be called a ‘form of accommodation’ of cultural diversity. A constitution should be seen as a form of activity, an intercultural dialogue in which the culturally diverse sovereign citizens of contemporary societies negotiate agreements on their form of association over time in accordance with the three conventions of mutual recognition, consent, and cultural continuity.”<sup>37</sup>

As shown above, it is clear that liberal scholars differ in their views of minority rights and assimilation. These different views offer Confucian scholars an opportunity to make a contribution to the debate through a cultural dialogue and engagement. Now I will turn to examine the Confucian traditions and legacies with regard to minority autonomy, rights, and assimilation.

## THE CONFUCIAN LEGACIES

### *Ethnic Autonomy*

*Tusi* was the native official system of appointing national minority hereditary headmen in the Yuan, Ming, and Qing dynasties. In such a system, which was the result of imperial expansion, a headman was appointed by, or inherited through the confirmation of, central authority. Headmen enjoyed a number of autonomous powers, such as the right to tax and the right to have their culturally regulated laws.<sup>38</sup> “[This] hereditary elite was responsible for the taking of censuses, the collection of taxes, and the keeping of peace. The tendency

was to avoid interfering with local affairs unless developments directly threatened imperial control of the area.”<sup>39</sup> These customary practices for more than a few hundred years can be seen as customary rights. While customary rights are not absolute, they are important to safeguarding the right of minorities to defend their way of life.

Under Emperor Yongzheng’s rule, a debate took place over whether the *Tusi* system should be ended. Confucian scholars held the view that it should be continued while Yongzheng and his supporters initiated a reform of “*Guiliu*” to end the autonomy system and to establish a unitary political system. Confucian scholars also preferred a moral persuasion approach to military force and urged minorities themselves to demand the reform of the *Tusi* system. After a transformation from the *Tusi* system to the unitary system, Confucian schools were established and minorities, who had been banned from taking examinations by their headmen, were encouraged to take examinations for official office. Clearly, Confucianism played a significant role in the process of assimilation.

Yongzheng’s forced reform led to rebellion in Guizhou. As a result, when Qianlong became emperor, he granted the exemption of tax for the Guizhou area and the right of the decedents of the Miao minority to follow their traditional laws. It was no longer up to the central government to settle disputes taking place in the Miao community in accordance with central laws.<sup>40</sup>

### *Confucian Assimilation*

Many East Asian countries share the Confucian legacy that emphasizes the Great Way, the harmony of minorities and the majority, and the necessity of cultural assimilation. Confucianism stresses that diverse minorities should merge into a unified harmony and co-exist peacefully in mutual respect and interdependence. It assumes that in the end all peoples should be unified and live harmoniously under one “heaven” as a harmonious organism. The key notion is “*ronghe*,” the fusion or amalgamation of majority and minorities in a process of Confucian cultural diffusion. In an ideal Confucian world, to harmonize the relations between different ethnic and cultural groups and communities is a top priority. This harmonization approach recognizes differences while not imposing conformity and minimizes conflicts while not undermining autonomy. It stresses mutual respect and responsibility.<sup>41</sup>

Herber points out that “Confucianism, the ideology of the state throughout all Chinese dynasties, despised these so-called ‘barbarians,’ but called for a policy of non-violent assimilation through the imposition of Han-Chinese values rather than through a policy of

extermination . . . The court's policy was not to conquer and occupy them, but rather to have them administer themselves. . . ."<sup>42</sup> Confucian assimilation was no "melting pot," but a system where outsiders or minorities could partake in Han society by adopting, incorporating, learning, and understanding the majority's ways. This has been a two-way process where the Han population, despite its xenophobic inclination, was influenced culturally by foreign dynasties that came to rule China.

The best example was the intermingling between the Manchu and the Han. When the Manchu established its empire, both Manchu and Chinese were official languages. After more than three hundred years, both ethnic groups had integrated. The Manchu language had influenced Beijing's vocabulary and pronunciation, but today only about 2,000 people can speak this language. It should be pointed out that the key elements of this successful intermingling include the Manchu ruler adopting Confucianism as an official ideology, and the Han Chinese, albeit subject to "foreign" political rule, maintaining a cultural leadership role in sustaining and developing Confucianism.

Another example is the Yunnan Province, where many minorities live. Among them, the Yi ethnic group has lived there for around 1,000 years. Today's younger generations of the Yi nationality know nothing about one huge tomb where 10,000 Han Chinese were buried. They were killed by the Yi in a battle that took place during the Tang dynasty. Looking back, we can see that intermingling and cultural assimilation did occur.

Underlying Confucian assimilation is the Chinese Confucian concept of what constitutes a Chinese community. It is essentially a cultural one, that is, anyone can be a member of the Chinese community as long as he or she accepts the Chinese culture. This concept of cultural community plays down ethnic criterion and holds that a greater Confucian cultural community can embrace different political communities. Moreover, to harmonize the relationship between ethnic groups is another feature of the Confucian communitarian approach. Morality, in particular, family-based moral principles, should prevail in the community. The Confucian communitarian approach toward the minority question is thus an extension of the family principle to the larger cultural and ethnic community. Confucianism holds that the government should be impartial toward all nationalities and ethnic groups as parents are toward their children, that big ethnic groups should love and have a duty to look after smaller ones, as elder brothers do to their younger ones.

The above examples demonstrate that a process of assimilation—the essence of Chinese civilization—has made the Chinese diffusionist model highly successful. It is no exaggeration to say that without

assimilation, there would have been no such thing as a Chinese cultural community today.<sup>43</sup> From this point of view, Confucian cultural and societal diffusion has an historical depth and density that is grossly lacking in Kymlicka's theory. Part of the reason could be found in his idea of assimilation, which is built on the very limited case of the Indian tribes and Quebecois culture in Canada.

In the Confucian approach to assimilation, there are four basic elements that are not quite consonant to Kymlicka's approach. First, in the Confucian view, the self-governing right should not, as Kymlicka suggests, institutionalize and strengthen an internal boundary.

The Confucian approach accepts autonomous rights but these rights do not create an internal boundary. Second, in contrast to Kymlicka's idea of non-assimilation for national minorities, Confucianism celebrates the idea of intermingling: cultural exchange, economic integration, and political sharing between ethnic and cultural groups. It is the idea of intermingling that challenges the idea of the institutionalization of an internal boundary. For Confucianism, all parts (majority and minorities) should be united into one harmonious community. Third, it is this idea of one harmonious community that stipulates that all small cultural and ethnic communities should live harmoniously and intermingle with each other and with the majority community. It is this theoretical assumption that resists Kymlicka's idea of non-assimilation. Fourth, Confucianism advocates a paternalist approach to the minority question, of which Kymlicka is very skeptical. For Kymlicka, Confucian paternalism, even a slight hint of it, is unacceptable to liberals. Kymlicka also argues that Confucianism has double standards with regard to the boundary question. If Confucianism accepts the state boundary, why should it reject an internal boundary? For Kymlicka, an internal boundary meets ethnic demand, encourages cultural transactions on an equal basis, enriches the cultures of majority and minority, and does not necessarily contradict cultural intermingling. Internal boundary does not mean an obstacle to mobility; rather, it creates conditions under which one must respect and learn from others.<sup>44</sup>

#### CONFUCIAN ROADS TOWARD MINORITY RIGHTS: RESPONSES AND STRATEGIES

##### *From the Confucian Yi-Xia Doctrine to Minority Rights Discourse*

Even though the Confucian doctrine of five relations does not aim to deal with the relationship between majority and minorities, it is

useful in addressing the minority question. Within a Confucian culture, with its emphasis on family, minorities are seen as younger brothers, sometimes as occasionally disobedient ones. Confucian obedience involves minority groups conforming to Confucian norms, maintaining unity and correct relations.

The dominant framework in which Confucian scholars have dealt with the question of minority is the *Yi-Xia* doctrine. In the Confucian order, *Xia* (Han Chinese, or *Zhongyuan*) is the ruler while *Yi* (barbarians, outsiders, or minorities) is subject; *Xia* is center, while *Yi* is the peripheries; *Xia* consists of insiders and fellow countrymen, while *Yi* consists of outsiders and strangers; and *Xia* is superior, while *Yi* is subordinate. The idea of *Yi-Xia* presupposes the Middle Kingdom and the central power of China.

Confucius' approach to the minorities is premised on the moral principle of *Ren*, or the assumption that *Xia* embodied this moral principle; if the minorities conform to it, all under Heaven can coexist peacefully. He expected that *Yi* would not disrupt *Xia*.<sup>45</sup> Mencius held the view that *Xia* could cultivate *Yi*, but not the other way around. Writing after the fall of the Mongol Yuan dynasty, Fang Xiaoru (Fang Hsiao-ju), a great Confucian scholar, asserted that: "to elevate them [barbarians] to a position above the Chinese people would be to lead the world to animaldom. If a dog or a horse were to occupy a human's seat, even small boys would be angry . . . Why? Because the general order would be confused." Fang insisted on the importance of the distinction between Chinese and barbarians and that a barbarian should not hold the Chinese throne.<sup>46</sup>

We should pay attention to one hardly mentioned and long ignored position. Hao Jin, a Confucian scholar who lived in the Yuan dynasty, developed a new interpretation of the *Yi-Xia* doctrine. The essential argument of his interpretation is that *Yi* can rule China if it follows Confucianism. In this interpretation, Confucianism has gone beyond ethnicity, it does not necessarily belong to Han Chinese, and ethnic groups can also cherish and develop Confucianism. The rulers of China can be anyone committed to Confucianism regardless of their ethnic backgrounds. Through this interpretation, Han Jin recognized and legitimized the minority rule, the right of Mongol to rule China if Confucianism were followed.<sup>47</sup> It can be inferred that minority groups should also enjoy their autonomy of rule if they followed Confucianism. Indeed, Song-Ming Confucianism, the doctrine of Li, became the official doctrine in the Yuan dynasty. 1

In modern China, the Confucian *Yi-Xia* doctrine has been replaced by the idea of nation-state systems and the ideology of nationalism. The right discourse also came to China as a new political and moral principle to deal with the minority question. In 1924 Sun Yat-sen

addressed the nationality issue, writing in the manifesto of the 1st Chinese Nationalist Congress:

The Kuomintang solemnly declares that the right of self-determination is recognized for all the nationalities inhabiting China; following the victory of the revolution over the imperialists and militarists there will be established a free and united (formed on the basis of a voluntary union of all nationalities) Chinese republic.<sup>48</sup>

The Chinese Communist Party agreed and supported Sun Yat-sen's policy on the right of self-determination by national minorities, passed by the 1st Chinese Nationalist Congress.<sup>49</sup> Article 14 of the Constitution of the Chinese Soviet Republic declared in November 1931:

The Soviet government in China recognizes the right of self-determination of the national minorities in China, the Mongols, Moslems, Tibetans, Miao, Li, Koreans and others inhabiting the territory of China enjoy the complete right to self-determination, that is, they may either join, or secede from, the Federation of Chinese Soviets, or form their own state as they may prefer.<sup>50</sup>

Later this policy of self-determination was completely abandoned, both in theory and practice, by the Kuomintang and the CCP. Mao Zedong went through an ideological transformation from his early idea of federalism and self-determination to that of regional autonomy as a political principle to deal with minority issues. Mao initially supported the right of self-determination (in the 1920s and 30s) but quickly abandoned it on the following grounds: (1) Lenin's theory of self-determination was used by Japan to support the independence of Mongolia. (2) The right to self-determination should be denied except in the case of oppressed nations casting off the rule of imperialism and colonialism to fight for independence. (3) The right to self-determination is not feasible in China where different nationalities overlap and are interdependent.<sup>51</sup> (4) The self-determination of China's nationalities had been decided, once and for all, by their common revolutionary struggle and voluntary incorporation in the PRC.<sup>52</sup>

Mao also rejected the idea of federalism because China, as a unitary country, in which many nationalities have lived together for centuries, is different from Europe in general and Russia in particular, where federalism was adopted in the wake of communist revolution.<sup>53</sup> The rejection of Soviet-style federalism was on the grounds that it would enable various nationalities of China to form separate states and thus allow the national autonomous regions to secede.<sup>54</sup> Apparently, the Confucian idea of the great unity and harmony contributed to the rejection of federalism and the right to self-determination by minority nationalities. Also, Sun Yat-sen drew on the Confucian idea of harmony to stress coexistence, equality, and harmony among the five major nationalities in the wake of the end of Qing dynasty.<sup>55</sup>

In recent years, Chinese scholars like Yang Houdi, Wang Ping, and Sui Qing have developed a “Chinese-style” theory of minority rights shaped by the Chinese theory of collective rights. They argue that China has developed a model of protecting and guaranteeing minority rights, such as the rights to minority autonomy, to political consultation, to the use and development of minority languages, and to the preservation and development of minority cultures and customs.<sup>56</sup> In 2002, Ma Yang argues strongly that the foundation of the state unity and the harmony of all nationalities must be based on respect for human rights. The reunification is not the highest goal if it does not promote human rights.<sup>57</sup> It seems that the human right discourse sets up a new framework in which Confucian normative terms such as “brotherly love,” “the family-like state,” and paternalism have limited value and cannot even get on the table for public justification.<sup>58</sup> At the same time, one must note with interest that the Confucian discourse of family or brotherly love will continue to play out in the politics of minority issue. And the most significant challenge is that China lacks the negotiation mechanisms through which a consensus may be reached. Also lacking is democratic verification for minorities to be associated with the Chinese nation-state. While what Kymlicka advocates—polyethnic rights and special representation rights—have been written into the Constitution and have already been partially or completely implemented in China, the question of whether minority rights have been internalized as a part of Chinese culture and collective psychology remains to be seen.

#### *Duty, Affirmative Action, and Entitlement*

Confucianism is a duty-based theory that stresses love for others. From duty, one looks to others and to serving families and communities. According to Confucianism, a majority has the duty to look after minorities with brotherly love, the duty to protect younger minority “brothers.” Minority “brothers” are entitled to such a treatment, and they can be allowed to live separately with their own customary rights and cultural traditions. As Chung-Ying Cheng points out, “The Confucian social duty of mutual respect and mutual help between friends (one of the cardinal relationships regarded as horizontally equal) may be a native source for an ethics of equal human rights with Chinese characteristics.”<sup>59</sup>

The Confucian idea of compassion (or *ren*) implies a paternalistic government whose duty is to look after the weak and the poor. Confucianism does not have a system of individual rights, although some Confucian ideas can be seen as compatible with human rights. To win the hearts of minorities, emperors have offered benefits to minorities,

or adopted, in modern terminology, affirmative action.<sup>60</sup> These affirmative policies are customary and minority people have natural feelings to expect them so that they become entitlements enjoyed by minority groups. A minority group might see their rights as their entitlements to consideration by the ruler who has duties to look after all peoples, including disadvantaged minority groups. We could see that a just Confucian society has the duties of virtues for the benefits of minorities. In this sense, minorities expect such duties to be performed for them so that their duties could become recognized as minority rights. The only thing lacking would be an explicit assertion of these rights as a basis for their political recognition. In this regard, modern institutions, such as constitutional articles and the right to appeal, could address this problem.

Nevertheless, the Confucian understanding of minority rights is instrumental in the sense that minority rights should support the moral development of humans and the unity of society rather than being disruptive of society. Confucianism stresses the freedom to choose good, disapproves the idea of the right to do wrong, and requires that human rights must promote *ren* or humanity.<sup>61</sup>

It should be also noted that a different interpretation of affirmative policies holds that they should be interpreted as an act of paternalist goodness, not as one based on, or justified by, liberal right-based theories. The Confucian doctrine sees states' provisions for minorities as "sweets," while Kymlicka's liberalism sees them as rights. This theoretical distinction has considerable implications. Very few members of minorities in the West have a feeling of gratefulness toward the state for the provision of material benefits, because it is seen as a matter of entitlement within the liberal theoretical framework. By contrast, members of Chinese minorities are expected to be grateful to the state because the benefits they have are *given* by the state within the Confucian paternalist framework. With such different attitudes toward the state, Confucian paternalism tends to support political authority, while the liberal theory of minority rights is often very skeptical of political authority. Moreover, within the Confucian duty-based theory, it is expected that such paternalism (in the form of state benefits) be reciprocated with obligation and obedience from minorities.

### *Confucian Communitarianism*

Chinese understandings of minority rights are embedded in a communitarian tradition. Confucian communitarianism<sup>62</sup> stresses the importance of community in establishing and maintaining a political unit or power. It relies on the recognized values of relating, harmo-

nizing, and integrating. From a Confucian communitarian perspective, Kymlicka moves uneasily between individualism and communitarianism. The central problem Kymlicka faces—how to balance liberal and communitarian claims—is not the key issue in China. In fact, the dichotomy between liberalism and communitarianism is not central in Chinese thinking on the minorities issue. What is absent in the Chinese context is purely individualistic thinking; for example, no one will make a claim over Taiwan's independence purely on an individualist ground.

While the individualist doctrine may be used to criticize some forms of state affirmative action for minorities in the West, the legacies of Confucianism and socialism make it easier for the Chinese to accommodate Kymlicka's argument for state provision for minorities. Essentially, minority rights are collective rather than individual. The preoccupation of the unity of a community, the strong sense of communal harmony, and the idea of Confucian cultural community, are all rich sources to justify and promote collective rights rather than individual rights. On ideological grounds, it is much easier to accept and develop minority rights than individualist rights.

If, as Kymlicka suggests, communitarianism in the West weakens the argument for minority rights,<sup>63</sup> Confucian communitarianism<sup>64</sup> seems to lend strong support to state protection of minorities. It is often much easier to implement such provisions because Confucian communitarianism requires people to make some kind of sacrifice. For example, although some Han Chinese feel they are discriminated against by the state's minorities policies, their discontent is not easily translated into political action. This contrasts with the case of India, where the Hindu majority can develop into a political force against the state's affirmative action.

However, communitarianism plays dual roles: while it can support the state's provision for the protection of minorities, it can also be used to justify the suppression of minority rights, or to camouflage the exercise of majority power. Today's Chinese communitarianism equates the existing political community with the Chinese nation-state. Such a version of communitarianism emphasizes that the state has a duty to defend the political community and to maintain the unity of the nation. To do so, the state is required to protect disadvantaged groups or cultural communities in order to ensure harmony among different ethnic groups. The state is also required to look after minorities in a paternalistic way.

Here Kymlicka's criticism of communitarianism is useful in a critique of Confucian communitarianism. The first problem associated with Confucian communitarianism is its repressive nature; it is often used to deny and violate individual rights by giving high priority to

the value of community without providing a mechanism against the abuse of communal power. Its most serious problem is a blind trust in paternalist government. It fails to recognize that state and governments are sometimes part of the problem.

Second, while Confucian communitarianism rejects the right to secede, it supports the right of annexation and the enterprise of expanding Confucianism. This is a logically contradictory position that fails to recognize that it is often annexation that is the cause of ethnic conflict and the demand for the right to secede by certain national minorities.

Third, it fails to recognize equality between different cultural communities. There is no equal status between *Xia* and *Yi*, between majority and minorities. Chinese cultural nationalists do not respect Tibetan or Mongolian cultures and often see minority self-rule as returning to either a federal system or despotism. In a similar manner, when Japanese cultural nationalists defend their culture, they do not accord any respect to the minority culture of Koreans in Japan.

#### CONCLUSION

Confucian minority rights legacies are complex and diverse. Confucianism did recognize and promote the autonomy of minorities and their customary rights. Confucian scholar Han Jin's interpretation of Confucian *Yi-Xia* doctrine implicitly contained the idea of minority rule and minority right, and it transcended Confucianism beyond Han Chinese.<sup>65</sup> Minority rights of Confucian-style have such Chinese characteristics as customary rights of autonomy, duty-deriving minority rights, minorities' entitlement to certain benefits, paternalistic affirmative traditions, communitarian support for collective rights, and above all, instrumental minority rights for the purpose of great unity and harmony. All these constitute a basis for Confucianism to support and promote minority rights.

Confucianism prefers its own version of assimilation through cultural diffusion rather than military force. It emphasizes great unity and harmony and is hostile toward Kymlicka's argument for non-assimilation. Confucianism's central aim is to achieve assimilation and harmony between the majority and minorities, to prevent conflicts between the majority and minorities (or among minorities), to maintain stability and order in the context of a diversity of races and ethnicities, and to promote the co-existence of plural ethnic identities.

Nevertheless, Confucianism has its internal limits. Confucian customary rights, ethnic autonomy, paternalistic affirmative policies, and minorities' entitlements are often compromised in reality. Confucian

communitarianism fails to recognize equality between different cultural communities and cannot guarantee its full protection to minority rights. The Confucian *Yi-Xia* doctrine of Fang Xiaoru contains a very conservative and unequal approach toward minorities, which is still an obstacle to the implementation of genuine autonomy in China's minority areas.

#### ENDNOTES

1. The author would like to thank Will Kymlicka and Chung Y. Cheng for their suggestions and comments, Yingjie Guo and Eric Zhang for their help, and the anonymous reviewers for their valuable critical comments.
2. A library search for a combination of words "Confucianism" and "minority rights" finds little in several data sources. And no article is devoted to the topic of minority rights in Wm. Theodore de Bary and Tu Weiming (eds.), *Confucianism and Human Rights* (New York: Columbia University Press, 1998).
3. Thomas Heberer, for example, applies a liberal idea of minority rights and social justice in his study of the minority issue in China. He criticizes China's immigration policy and argues that "in the long run such a hard line and its effects may be the ultimate block to the unity of the country." See Thomas Heberer, *China and Its National Minorities: Autonomy and Assimilation* (Armonk, NY: M. E. Sharpe, 1989), p. 131. Also see Baogang He, "Can W. Kymlicka's Liberal Theory of Minority Rights Be Applied in East Asia?" in *New Developments in Asian Studies*, edited by Paul van der Velde and Alex McKay (London and New York: Kegan Paul International, 1998), pp. 20–44.
4. Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), pp. 194–195.
5. Surely, there are different versions of communitarianism. The Japanese version differs from the Chinese. And the Tibetan communitarian argument can support their demands for protection of their culture and even their demands for nationhood. Moreover, China is not purely a Confucian society. China's minority policies contain mixed elements of Confucianism, pragmatism, Marxism, and liberalism.
6. Liberal traditions have been divided on the minority issue. While Hobhouse has paid attention to minority rights, Rawls and Dworkin have entirely neglected it. See Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1989), pp. 3–5.
7. Kymlicka, *Multicultural Citizenship*, p. 6.
8. Kymlicka charges Rawls with a failure to discuss cultural rights and membership on the ground that Rawls assumes that a political community is culturally homogeneous. Kymlicka, *Liberalism, Community and Culture*, p. 166.
9. *Ibid.*, p. 135.
10. Kymlicka, *Multicultural Citizenship*, chapter 2.
11. *Ibid.*, p. 10.
12. Kymlicka distinguishes collective rights, where a community itself exercises certain powers, from minority rights that refer to "special status" and concern the content and grounding of people's claims about cultural membership in culturally plural countries. See Kymlicka, *Liberalism, Community and Culture*, p. 139.
13. Kymlicka, *Multicultural Citizenship*, pp. 27–30.
14. *Ibid.*, p. 31.
15. *Ibid.*, p. 32.
16. Kymlicka, *Liberalism, Community and Culture*, p. 162.
17. Kymlicka, *Multicultural Citizenship*, p. 8.
18. *Ibid.*, p. 162.
19. *Ibid.*, p. 151.

20. Ibid., p. 4.
21. Ibid., p. 162.
22. Ibid., p. 4 and p. 162. When cultural rights are really in tension with equal liberty, what is a lexical order? Kymlicka endorses Rawls's idea of the priority of rights over good. See Kymlicka, "Rawls on Teleology and Deontology," *Philosophy and Public Affairs*, 17, no. 3 (1988), 173–190.
23. Kymlicka, *Multicultural Citizenship*, p. 116.
24. Ibid., p. 119.
25. Kymlicka, *Liberalism, Community and Culture*, chapters 11–12.
26. Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (Oxford: Blackwell, 1983).
27. Kymlicka, *Liberalism, Community and Culture*, pp. 221–224.
28. Ibid., chapter 12.
29. Ibid., p. 212.
30. For example, some people in Australia apply for minority benefits through identifying themselves as aboriginal. As a result, the number of the aboriginal community has dramatically increased in recent years.
31. See Chandran Kukathas, "Are There Any Cultural Rights?" *Political Theory*, 20, no. 1 (1992), 105–139, 114, and 116.
32. Brian Barry, *Culture and Equality* (Cambridge, Massachusetts: Harvard University Press, 2001), p. 147.
33. Ibid., p. 72.
34. Ibid., p. 76.
35. Bhiku Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Basingstoke: Macmillan, 2000).
36. J. Waldron, "Minority Rights and the Cosmopolitan Alternative," in W. Kymlicka (ed.), *The Rights of Minority Cultures* (Oxford: Oxford University Press, 1995), p. 106.
37. James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995), p. 30.
38. Jiang Yinliang (ed.), *Zhongguominzushi (The History of Chinese Nationalities)* (Beijing: Nationality Publisher, 1990), pp. 138–145, on the Tusi system.
39. June Teufel Dreyer, *China's Forty Millions: Minority Nationalities and National Integration in the People's Republic of China* (Cambridge: Harvard University Press, 1976), p. 10.
40. See Feng Erkang, *The Biography of Yongzheng* (Taipei: Taiwan Shangwu yinshuguan, 1992), pp. 386–399.
41. Also see Derk Bodde, "Harmony and Conflict in Chinese Thought," in Arthur Wright (ed.), *Studies in Chinese Thought* (Chicago: the University of Chicago Press, 1967), pp. 46–47.
42. Herber, *China and Its National Minorities*, p. 18.
43. This is true of German, French, and English cultures, although the British colonial policies were much less assimilationist than French ones. China shares a lot in common with Germany, France, and England who insist on the necessity of assimilation.
44. His remark on my paper presented at Asian Minorities and Western Liberalism workshop, 14 January 2003, the National University of Singapore.
45. Liu Houqing, "Confucianism and Han Wu Emperor's Nationality Policy," *Qinghai Social Sciences*, no. 2 (1999), 98–102.
46. See John Fincher, "China as a Race, Culture, and Nation: Notes on Fang Hsiao-ju's Discussion of Dynastic Legitimacy," *Transition and Permanence: Chinese History and Culture*, edited by David C. Buxbaum and Frederick W. Mote, p. 59.
47. Liu Zehua (ed.), *The History of Chinese Political Thought: Sui, Tang, Song, Yuan, Ming, Qing* (Hangzhou: Zhejiang People's Press, 1996), pp. 457–473.
48. Sun Yat-sen, *Selected Works of Sun Yat-sen* (Beijing: People Press, 1981), p. 592; also cited in Victor Louis, *The Coming Decline of The Chinese Empire* (New York: Times Books, 1979), p. 114.
49. Mao Zedong, *Selected Works of Mao Zedong*, Vol. 3 (Beijing: People Press, 1966), p. 1033.

50. *Selected Documents of Central Committee of the CCP* (Vol. 7, 1931), reprinted by the Central Data Library (Beijing: the Central Party School Press, 1991), pp. 775–776. In Louis's translation, he stresses "their (national minorities) right to complete separation from China, and to the formation of an independent state for each national minority." See Louis, *The Coming Decline*, pp. 114–115.
51. Yang Jingchu and Wang Gelu, "Woguo de minzu quyü zizhi: Mao Zedong dui Marxism's minzu lilun de gongxian" ("National Regional Autonomy in China: Mao Zedong's Contribution to Marxist Theory of Nationality") *Minzu yanjiu* (*Nationality Study*), no. 1 (1994), 1–8.
52. See Chen Yanbin, Liu Jianzhong, and Qiao Li, "Mao Zedong sixiang minzu lilun yanjiu huigu" ("Review of the Studies on Mao Zedong Thought about Nationalities"), *Heilongjiang minzu congkan* (*Heilongjiang Nationality Series*) (Ha'erbin), no. 4 (1998), 33–38; W. Smith, "China's Tibetan Dilemma," *The Fletcher Forum of World Affairs*, 14, no. 1 (1990), 78.
53. Ma Xing and Zhong He, "Minzu quyü zizhi yanjiu huigu" ("Review of the Studies on National Regional Autonomy") *Heilongjiang minzu congkan* (*Heilongjiang Nationality Series*) (Ha'erbin), March 1998, pp. 29–38.
54. Louis, *The Coming Decline*, p. 116.
55. Sun Yat-sen, *Selected Works of Sun Yat-sen*, pp. 586, 588.
56. See Yang Houli, Wang Ping, and Sui Qing, *Equality, Autonomy and Development: the Chinese Model of Protecting Minority Rights* (Beijing: Xinhua chubanshe, 1998).
57. Ma Yang, "Reconsideration on the Discourse on National Blending," *Strategy and Management*, no. 5 (2002), 103–111.
58. For a discussion of Chinese theories of autonomy, see Baogang He, "Why Does Beijing Reject the Dalai Lama Autonomy Proposal?" *Review of Asian and Pacific Studies* (Seikei University, Japan), no. 22 (2001), 61–63; and for a discussion of Chinese views on human rights and democracy, see Baogang He, *The Democratisation of China* (London: Routledge, 1996), chapter 4.
59. Chung-Ying Cheng, "Transforming Confucian Virtues into Human Rights," in de Bary and Tu Weiming (eds.), *Confucianism and Human Rights*, p. 147.
60. See Barry Sautman, "Affirmative Action, Ethnic Minorities and China's Universities," Working Papers in the Social Sciences, no. 13, Hong Kong University of Science and Technology, 20 May 1997.
61. Joseph Chan, "A Confucian Perspective on Human Rights for Contemporary China," in Joanne R. Bauer and Daniel A. Bell (eds.), *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999), pp. 212–237, in particular, p. 228 and p. 233.
62. For a discussion of Confucian communitarianism, see Wm. Theodore de Bary, *Asian Values and Human Rights: A Confucian Communitarian Perspective* (Cambridge: Harvard University Press, 1998).
63. Kymlicka, *Liberalism, Community and Culture*, p. 22.
64. As for Confucian communitarianism, see Chua, *Communitarian Ideology*.
65. Also see contemporary attempt in the United States, see Robert Cummings Neville, *Boston Confucianism: Portable Tradition in the Late-Modern World* (Albany, N.Y.: State University of New York Press, 2000).

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