

A step towards human rights in Confucianism:

A Confucian interest-based moral position to claim

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My focus in this paper is about Confucianism and human rights. Here I shall argue that in Confucian ethics there is a moral claim to one's life, which is a vital human interest. This is a crucial move, as without which no moral human right can be justified, not to mention being enshrined in Confucian ethics.

The essence of a moral right is no doubt the moral position on the part of the right-holder to make a claim. The importance of this moral position can be best illustrated by the example of a drowning person: What moral recourse does a person have to protect her life when no bystander on the river bank recognizes a moral duty to offer help? The answer would appear to be that the sufferer is in a moral position to make a claim on the bystanders for the protection of her life. Only this moral position to claim can best protect the right-holder's interests regardless of the willingness of the duty-bearers. This is an interest-based moral position to claim, since such position is based upon the interests of the right-holder, and this kind of moral position seems absent from Confucianism.

To say that others believe Confucian ethics lacks an interest-based moral position to claim does not mean that it does have no moral position to claim. For example, Seung-kwan Lee (1992: 241–261) has suggested a moral ground in Confucian ethics where people can have a moral position to make a claim. Lee found that in making promises, moral duties go hand in hand with

moral rights, and this grounding of moral duties and rights is just what most literature on moral rights suggests. Lee suggested that the following two quotes from *Mencius* imply a right-duty relationship.

“Supposing a man were entrusted with the care of cattle and sheep. Surely he ought to seek pasturage and fodder for the animals. If he found that this could not be done, should he return his charge to the owner or should he stand by and watch the animals die?” (2B:4)

“Suppose a subject of Your Majesty’s, having entrusted his wife and children to the care of a friend, were to go on a trip to Ch’u, only to find, upon his return, that his friend had allowed his wife and children to suffer cold and hunger, then what should he do about it?”

“Break with his friend.” (1B:6)

In both cases, Lee notes that while the person being entrusted has an obligation to do what is promised, the person to whom the promise was made possesses a position to claim over the one who made the promise. This position to claim derives not from the duty on the part of person entrusted but from the promise itself. By making a promise, the entrusted has assured that he will do or not to do certain things, and the beneficiary has been assured that certain things will be done or not be done. If the entrusted has not fulfilled the obligation, this means that he has broken the promise. On the beneficiary’s side, there should be a moral power to have the assured things—the content of the promise—done; hence there should be a position to claim over the entrusted.

Such ground of moral position to claim is crucial to the grounding of moral claim-rights, since being able to make claims to something is the essence of a right (Feinberg, 1980: 151; Martin, 1993: 53–58). Despite the plausibility for grounding certain moral rights in the Confucian context, however, this ground of moral position to claim does not fit perfectly with a moral claim to the

avoidance of and protection from suffering. The example of the drowning person can easily illustrate the problem: no one has promised to take care of the life of the sufferer; and life is not a kind of property. If there should be a moral claim-right to one's life in Confucianism, so that one could be free from suffering as other people would owe a moral duty to protect that life, then there must be, at least, a moral position to claim one's life in the Confucian context.

While it is rare in the text of *The Analects* and *Mencius* to have a quote clearly illustrating the existence of a moral position to claim one's interests, in *Mencius* there is one instance that implicitly suggests that sufferers could have a claim to their lives against the one who harms them.

King Hsuan of Ch'i asked, "Is it true that T'ang banished Chieh and King Wu marched against Tchou?"

"It is so recorded," answered Mencius.

"Is regicide permissible?"

"He who mutilates benevolence is a mutilator; he who cripples rightness is a crippler; and a man who is both mutilator and a crippler is an 'outcast'. I have indeed heard of the punishment of the 'outcast Tchou', but I have not heard of any regicide." (*Mencius* 1B:8)

Both Chieh and Tchou were notable despots in Chinese history. They killed innocents and confiscated the properties of common people. In the quote there is no question that the people revolted against two despotic emperors; what is in question is how to interpret these revolts. The quote shows that while King Hsuan deemed the actions to be regicide, Mencius disagrees. For Mencius, regicide means that subordinates take action against the emperor and replacing him; by doing so the subordinates act solely for their own selfish interests, which actions are, in the eyes of Mencius, illegitimate. But clearly the revolts against Chieh and Tchou occurred not because of their subordinates selfishly and illegitimately tried to replace them, but because these

despots had caused their people so much suffering.

But to say that the revolt occurred because the despots caused their people suffering is only half of the story of why the people revolted. The other half occurs within the subordinates and the people. While the revolts may seem to be revenge due to the suffering, a more plausible understanding would be that the common people, who have suffered, had a moral position to a claim their lives and properties against the one who had harmed them.

Mencius said, "Only now do I realize how serious it is to kill a member of the family of another man. If you killed his father, he would kill your father; if you killed his elder brother, he would kill your elder brother. This being the case, though you may not have killed your father and brother with your own hands, it is but one step removed." (*Mencius* 7B:7)

From this quote it is clear that Mencius does not encourage vengeance. 'An eye for an eye' is just immoral for Mencius. Taking this thought into consideration, it seems plausible that the punishment of the Outcasts is not simply revenge against them. Another equally plausible explanation is that even if punishing them means taking revenge, it is actually the people's moral position to have a claim to their lives. The strongest and most justified reason the people had when they acted against their emperors was that their lives and properties had been severely encroached upon. In order to prevent their interests from being further impaired, they **took initiatives** by revolting against the Outcasts. From this point of view, the revolts could be regarded as exemplifications of what Feinberg terms "the activity of claiming" (Feinberg, 1980: 148; italics in original). He says when one makes a claim to something there can be two meanings:

One sort of thing we may be doing when we claim is to make claim to something. This is "to petition or seek by virtue of supposed right; to

demand as due.” Sometimes this is done by an acknowledged right-holder when he serves notice that he now wants turned over to him that which has already been acknowledged to be his, something borrowed, say, or improperly taken from him. This is often done by turning a chit, a receipt, an I.O.U., a check, an insurance policy, or a deed, that is, a title to something currently in the possession of someone else. On other occasions, making claims is making application for titles or rights themselves, when a mining prospector stakes a claim to mineral rights, or a householder to a tract of land in the public domain, or an inventor to his patent rights. (Feinberg, 1980: 149–150; italics in original)

While revolting against the Outcasts may not exemplify that common people have rights to their lives and properties, doing so seems to satisfy the second meaning of making claim to something, which is to “apply for the title itself, by showing that one has satisfied the conditions specified by a rule for the ownership of the title and therefore that one can demand it as one’s due” (Feinberg, 1980: 150). Having lived under the inhumane regimes, the people took action to protect themselves, and hence prevent further suffering. This seems to qualify their title of a claim to their lives and properties.

Furthermore, in another dialogue with King Hsuan, Mencius reveals how he understood the mind of the people during the revolt against Chieh,

...and when he marched on the east, the western barbarians complained, and when he marched on the south, the northern barbarians complained. They all said, ‘Why does he not come to us first?’ (*Mencius* 1B: 11)

Here Mencius conceives the people as individuals rather than a state as a whole. The outcry from the sufferers carries an important message. The message is that when people are said to have a claim to their interests, they see themselves *individually* rather than the whole state or country, just as victims in a fire would naturally cry, ‘Help me!’ This is what Mencius conceives.

To conclude, I have argued, by means of textual analysis on *The Analects* and *Mencius*, that in

Confucian ethics there is really an interest-based moral position to claim for one's life. This is very crucial, since the absence of which cannot justify any moral rights. Attempts to ascertain other elements that constitute a moral right, namely a claim-against and a moral duty are required in order to substantiate a discourse of moral human rights in Confucian ethics.

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