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Confucianism and Human Rights*

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The relationship between Confucianism and human rights has been explored by many authors from various perspectives. Some have attempted a liberal interpretation of Confucianism to argue for the compatibility between Confucian thoughts and certain aspects of civil and political rights as enunciated by the Universal Declaration of Human Rights.¹ Others have paid attention to the question of how Confucian traditions could be more fruitfully utilized to support economic and social rights, such as the right to subsistence, rather than the individual entitlement of liberal rights.² Still others have attempted to show the precise conceptual relationships—similarities and differences—between the Confucian ideas of rites, norms, virtues, harmony, and so on, and human rights as a modern achievement.³ Taking one step further, we can also find Chinese scholars digging deeply to lay a new basis for a universal framework of human rights, which is neither a copy of western hegemonic individualism nor a parochial confrontation with it.⁴

In this paper I wish to explore the idea of a people-centered, participatory, communitarian human rights based on certain Confucian traditions and examine the Kwangju democratic self-rule of 1980 from that standpoint. I am referring to the historical event initiated on May 18, 1980, when citizens of Kwangju in South Korea rose up in protest against the country's military dictatorship and took control of their city. To be sure, my argument is selective and normative. In other words, the paper is concerned more with communitarian than liberal approaches to human rights, but with a specific focus and orientation.⁵ The term “communitarian” in this paper differs from all other conventional usages of this term that justify authoritarian power structures in one way or another. In contrast, my use of the term advocates a participatory and discursive approach to consensus formation as the basis of the common good or collective interests. I argue that the Confucian heritage of *minben* 民本 philosophy—which loosely means “the people are the root of the country”—can be normatively reconstructed so as to yield such a participatory communitarian concept of human rights.⁶ As such,

it neither excludes, nor is identical with, individual (subjective) liberal rights, but includes these in its own way.

To be more precise, this paper attempts to reinterpret the experience of the Kwangju democratic self-rule of 1980 from the perspective of people-centered participatory communitarian human rights.⁷ As we will see, the Kwangju popular uprising in May 1980 was unique in its rich, practical consequences. The citizens, when threatened by extraordinarily repressive military forces dispatched by the central authoritarian government, not only protested against it vigorously but also shared a collective experience of peaceful self-rule from May 22 to 26 after the collapse of the local state apparatus and with the military forces pushed back to the outskirts of Kwangju city. I would like, therefore, to examine to what extent, if any, this experience of self-rule can be considered as a realization of a people-centered participatory communitarian human rights, however imperfect and short-lived it might have been.

THREE PUZZLES OF THE KWANGJU UPRISING AND THE STRUGGLE FOR RECOGNITION

There are three puzzles we encounter when we try to understand the significance of the Kwangju popular uprising in May 1980. First, why was a specially trained army unit, paratroopers, dispatched to the city of Kwangju despite there being no particular unrest, crisis, or urgent situation up to May 18, when the students and citizens had a peaceful night street march with torches? This puzzle or anomaly arises because it deviates from the conventional assumption that paratroopers are professionally trained to be sent to enemy territory on special missions.

Second, given the extremely savage attacks and suppression by paratroopers, how was it possible for the citizens of Kwangju to engage the army and push them back to the outskirts of the city so that the citizens became liberated, so to speak? This puzzle arises because according to the conventional assumptions of social science, in a setting of confrontation, protesters tend to lose vigor and energy when faced with far more aggressive forces than foreseen. They are shocked and scattered and remain silent with fear. Contrary to this, however, the citizens of Kwangju rose, armed themselves, and made successful offensive attacks.

Lastly, according to the conventional assumptions of social science, society will come close to anarchy, full of violent crimes such as murder, arson, and looting, if law enforcement breaks down. Yet the experience in Kwangju was exactly the opposite. Despite a state of “anarchy” as officially defined by the military regime—that is, in a situation where law enforcement agencies were absent—the citizens of Kwangju shared genuine cooperation and solidarity. Care ethics as well as comradeship spread among the citizens to overcome fear and anxiety in the midst of an intense crisis. The Kwangju uprising demonstrated that the absence of law enforcement agencies does not necessarily bring chaos and social threats. On the contrary, communal solidarity blossomed, re-

placing the egocentric pursuit of interests and hostility. So, the third puzzle arises.

Of fundamental significance for our discussion of a people-centered participatory communitarian approach to human rights is the Kwangju citizens' unique experience of self-rule touched upon by the third puzzle. But let me mention some salient issues related to each of these three puzzles.

The first puzzle has been a source of various conspiracy theories. According to the statement issued by the United States State Department, the paratroopers dispatched to Kwangju were under the jurisdiction of the Korean Army. For this reason, it was said that neither prior approval of, nor subsequent consultation with, the US Army in Korea was made when this unit was dispatched. Thus it might be the case that the then military regime dispatched this special unit with the expectation that they would immediately crack down on the protest movements and maintain order. In fact, this is exactly what they did when dispatched to the areas of Pusan and Masan some months earlier. However, the resistance was unexpectedly intense in the case of Kwangju, since the army's cruelty invited the extreme moral outrage of the citizens. When the crisis consequently emerged, however, this was, in turn, used as a pretext for establishing another military regime in Korea as we can confirm from what followed thereafter.

As for the second puzzle, the Kwangju citizens' experience of inhuman treatment by the paratroopers seemed to create unbearable pain and anger, to the effect that they became firmly united in the struggle for human dignity. One may say that the gap between the experienced world of brutality and human dignity as a norm became dangerously widened as a consequence of the paratroopers' "barbaric and atrocious treatment of the Kwangju citizens."⁸ Indeed, the citizens were shocked when they saw the troops "shoot and kill unarmed students and put their corpses on trucks to throw them away."⁹ It was beyond their imagination that soldiers who were paid by their taxes could assail innocent citizens in such a cruel way. Thus they painfully questioned how these soldiers were "any different from communists." This means that core values in the moral community were severely violated. The question of human dignity became a burning issue "when they saw the paratroopers kick their fellow citizens 'like dogs' and [they] found themselves agonizing over the fact that they were not risking their lives in the struggle to put a stop to the violence."¹⁰

In addition, the denouncement by the military regime of the Kwangju citizens' democratic protest as a "violent mob" or "unlawful rioting led by communists" created anger. Against these sorts of misrecognitions, biases, and distortions, the citizens desperately fought to reconstitute their own identity as defenders of democracy and human rights. The following two statements demonstrate how important the struggle for recognition was for the citizens of Kwangju, and how deeply they felt humiliated:

From now on, we cannot walk on two feet. We are animals and should crawl like animals on four limbs because we were treated like animals. They dragged us into corners, shot us as if we were animals being hunted down. How was this

possible and who will be responsible for this atrocity? Furthermore, we are degraded as ‘mob’ and we will continue to be categorized as such in years to come. Everyone from our province, our sons and daughters in the future, will be called ‘mobs.’¹¹

The Kwangju incident was not a communist riot but a righteous movement against the oppression of democracy and freedom. Thus, the main force behind this noble movement was neither mobs nor communists. It was we, the democracy-loving Chonnam people, who rose to protect our rights in the name of democracy.¹²

So, the key to the second puzzle can be found in the concept of struggle for recognition. It can be said that the citizens of Kwangju, as individuals, made their decision to risk their lives and join the popular uprising in order to recover their dignity as humans. It is very likely that this decision was tightly interwoven with moral and emotional concerns. Yet it is clear that individual self-determination by the citizens of Kwangju gave rise to the “absolute community” that Jungwoon Choi describes, and this made it possible for them to liberate the city from the army.¹³

The recovery of human dignity sought by the citizens was realized not only through the self-affirmation resulting from the brave struggle of the individual, but also by means of the recognition one received from one’s fellow citizens, from the newly-formed absolute community. At the heart of the absolute community was love—the human response to an existence more elevated than one’s own. Following the emergence of the absolute community, those citizens who had hesitated to join the struggle flocked to it to receive its blessing and were liberated from their fear. It was as if they were “reborn” in the absolute community, and from that moment forward, participating in the movement became a joyous self-affirmation.¹⁴

COMMUNITARIAN SELF-RULE AS HUMAN RIGHTS

As for the third puzzle, it should be noted that something like consensual will or ethos was operating in the minds of the Kwangju citizens, such that strong cohesion and unity emerged. It not only regulated but also constituted social intercourse in the direction of mutual care and cooperation. Why did cooperation and solidarity blossom instead of chaos and unrest despite the breakdown of legal order? What does this experience of self-rule mean for human rights? Here we need to pay attention to the communitarian aspect of human rights as exercised by the citizens of Kwangju though without a clear recognition of it. The citizens went beyond individual concerns in order to reconstitute the wellbeing, dignity, and respect of the community. In a desperate crisis, they voluntarily cooperated and sustained a respectable community as a condition of their own individual dignity. This is what I mean by the communitarian aspect of human rights. In other words, we, as members of a community, are entitled to seek a good community as a condition of our wellbeing. Being preoccupied with egocentric in-

terests and having little consideration for collective wellbeing was not the case in Kwangju. On the contrary, the individual struggle for recognition was in harmony with the realization of collective wellbeing and dignity. As such, one may argue that one of the essential characteristics of the absolute community lies in a symbiotic relationship between the human dignity of individuals and the wellbeing of the community.

Citizens risked their lives in the struggle in order to confer human dignity upon themselves. Human dignity, of course, is less important to the individual than life itself. One could, however, obtain human dignity only by risking one's life in the struggle. The essence of human dignity, then, is not to be found in the pursuit of personal rewards or social standing, but in the acknowledgement of an entity more valuable than one's own life and in the act of risking one's life for the sake of this entity. For many, this entity can be the nation or God. In the case of Kwangju's citizens, it was community, the life of one's fellow citizens, their dignity.¹⁵

Needless to say, the experience of self-rule in Kwangju was not only short but also highly unstable. The absolute community was a kind of utopia, "a place to which one could never return."¹⁶ Despite these intrinsic shortcomings, however, we need to pay careful attention to this experience to explore its significance for human rights today. For instance, as a kind of collective self-determination, the Kwangju experience of self-rule differs significantly from an institutionalized form of self-determination such as representative democracy. Choi correctly points out that "The human dignity sought by the citizens of Kwangju during the uprising differed from the legal concept of human rights found in the modern Western nation-state."¹⁷

For the citizens of Kwangju, the absolute community contained implicitly the ideals of human rights, freedom, equality, democracy, the state. We encounter difficulties, however, when we attempt to understand the uprising by separating, one by one, these terms from each other, treating them, as is done in western thought, as concepts that represent discrete phenomena. The moment we engage in such an analysis, we find that these concepts betray the spirit of the uprising, particularly the spirit of the absolute community. In the absolute community, all of these ideals were intertwined as a unity, existing as an unnamed feeling.¹⁸

We see here a primordial capacity that arises when ordinary people, not through such institutions as election, directly participate in and lead the dynamic process of collective decision-making. I am interested in pursuing this possibility from the vantage point of the Confucian *minben* philosophy.¹⁹ Before I do so, however, I would like to sketch how I want to resolve the relationship between the Kwangju uprising in 1980 and human rights.

Insofar as we agree that the Kwangju citizens struggled for human dignity, it seems obvious that human rights were built into the Kwangju uprising. The moral outrage was constitutive of a struggle for recognition.²⁰ As the main energizing force, it helped the citizens to join the popular uprising. Thanks to its temporary success, the uprising produced a peculiar community in which com-

munitarian solidarity, fraternity, and cooperation were created and maintained over egocentric interests. This was socially constructed neither by any decision of an authoritarian government nor by a revolutionary organization, but through the processes of negotiation and cooperation in which the citizens took part in public assemblies, volunteer services, and many other activities. This experience is provocative and challenging in that it reveals how popular sovereignty might take place before, or even without, the representative institutions of democracy. This is why we need to pay careful attention to this experience despite its short-lived and unstable status.

THE HUMAN RIGHTS DEBATE AND CONFUCIANISM

The above discussion is intended to bring to the fore a concrete historical reference to which I would like the following discussion on Confucianism and human rights to address itself. The self-rule in Kwangju in May 1980, as a rare example of primordial popular sovereignty, was realized through neither state apparatuses nor representative institutions but instead by way of public assemblies and discussions as well as armed struggles by citizens. It is from this experience that we ask about the possibility of people-centered participatory communitarian human rights. With this objective in mind, let me first briefly reiterate the debate between liberalism and communitarianism over human rights.

For the sake of convenience, we can deal with human rights in both its subjective and public dimensions. The first refers to individual sovereignty. We are all equally entitled to pursue our interests freely unless our expressions or actions harm others. The public dimension of human rights, in contrast, is meant to be about collective self-determination. There may arise problems if one sticks strictly only to one of these dimensions without proper consideration of the other. The liberalists who are preoccupied with individual choices are likely to object or at least raise doubts when they hear somebody *claiming* the right to define collective interests. Liberalists fear that collective claims are likely to lead to an authoritarian leadership that prioritizes order and stability.²¹ In contrast, those who are more concerned with the wellbeing of a community tend to argue that the liberal version of human rights, when pursued one-sidedly, destroys community insofar as it fosters the egocentric pursuit of individual interests. Each side has its own point, of course. The question is how to reconcile these two dimensions of human rights in a balanced way.

The liberalist position is all too well known. It insists that “each is equal as a moral being and should enjoy substantial personal independence immune from coercion by the will of others.”²² As far as the concept of sovereignty is concerned, the same logic is applied to the state and individuals: “Just as a sovereign state rules over its territory, onto which no other state can trespass, a sovereign individual rules his or her own life and action so long as the actions do not harm others.”²³ Individual sovereignty is as effective as state sovereignty in that “one is entitled to absolute control of whatever is within one’s domain however

trivial it may be.”²⁴ Thus, individuals are entitled to enjoy pornography, for example. No state power can be legitimately used to control this individual freedom.

Communitarians would find it difficult to accept this sort of liberal idea of individual sovereignty, since they are deeply concerned about the moral fabric of a community and the social consequences of individual-centered human rights. They do not deny human rights as such but argue that it is necessary to keep under control those excessive views and lifestyles, including pornography, which “are considered morally corrupt or debased, even if they do not harm others.”²⁵ They justify this in the name of the wellbeing of the community. More precisely, they welcome and encourage human rights insofar as these rights are instrumental for promoting a moral and ethical life, but would become doubtful if these are used to promote the bad instead of the good. Simply put, “Individuals do not have the moral right to moral wrongdoing.”²⁶

This argument may sound compelling in non-western countries where the liberal tradition is lacking and some kinds of communitarian traditions remain strong. Excessive individualism may be viewed as a cause of moral decay in the community, along with the materialist values associated with the “cronyism” of capitalistic development. In this view, human rights, particularly liberal rights, are seen not only as too western but as being likely to destroy the community. Westernization, for some, becomes “a convenient label for all the evils that eroded the foundation of a sound, non-corrupt Asian society.”²⁷

One may argue, as Lee Kwan Yew does, that the American failure to deal with the problems of drugs and guns effectively has something to do with the western tradition of individual-centered human rights. Certainly, it would make no sense to reject individual sovereignty as such. Nevertheless, there do arise problems when individuals remain overwhelmingly preoccupied with their private affairs in the name of human rights and have little consideration for the possible negative consequences of their actions on the community. Communitarians may respond that to prevent this kind of moral decay we must nurture a good community as the condition for individual development.

However, we should ask if it is sufficient for communitarians simply to voice such complaints. We must raise serious the question of how we can best conceptualize communitarian concerns within the language of human rights. In other words, we must address the charge that the communitarian critique of individual rights tends to support authoritarian power structures, one way or another.

It is against this backdrop that prominent scholars of Confucianism such as Theodore de Bary have launched an impressive project investigating the liberal aspects of the Confucian heritage. It is no less wrong, they argue, to deny Confucianism in the name of human rights than to deny human rights in the name of a conservative interpretation of Confucianism.

It is obvious enough that Confucianism itself did not generate human rights concepts and practices equivalent to those now embodied in the Universal Declaration; it is not obvious that Confucianism was headed in an altogether differ-

ent authoritarian or ‘communitarian’ direction, incompatible with the rights affirmed in the Declaration. Thus our aim is not to find twentieth century human rights in Confucianism, but to recognize therein certain central human values—historically embedded in, but at the same time at odds with, repressive institutions in China—that in the emerging modern world could be supportive of those rights.²⁸

Confucian scholars of human rights generally do not accept the rigid western dichotomy between individual and community and, hence, between liberal and communitarian traditions. They argue it is a fundamental *shortcoming* to assume “the radical autonomy of persons abstracted from communal bonds, social roles and historical and cultural traditions,” as the starting point of human rights discourses.²⁹ Such a liberal understanding of human rights is “implicitly imperialistic,” since it imposes once and for all the “truncated conceptions of persons and communities,” such as “isolated individual monads and market societies of unrelated strangers,” upon all cultures and societies in the globe.³⁰ Consider that, in a liberal discourse, the primary function of rights is to protect individuals against the community. Community is here presupposed to be antithetical to individual liberties. The question of how to nurture a good community is rarely seen as relevant to advancing the quality of individual rights. This has given rise to a dubious presupposition widely held in western societies that genuine human rights are exclusively civil-political liberties. Against these approaches, dichotomies, and presuppositions, Confucian scholars argue that “Rigid dichotomies as well as static understanding of the historical sources of human rights may be quite misleading with regard to the conceptual flexibility and development of international human rights.”³¹

In badly characterizing civil-political human rights as the “negative liberties” advanced by liberal individualism (that is, “freedom from” oppressive political authority), one risks deflecting attention away from the fact that these liberties are also means of “enablement” or “empowerment” for persons to function as flourishing members of a polity or community—where they may indeed debate with others about the best way to live together in their society. That is to say, civil-political liberties are not simply the negative “freedoms from” associated with a caricatured liberal individualism concerned with protecting the privacy of radically autonomous, isolated, self-interested, ahistorical and acultural selves, but rather they positively empower a person’s involvement in a flourishing community and are thus compatible with, for example, communitarian traditions of moral and political thought.³²

A fruitful way of understanding the reciprocity referred to above is to bring to light individuality and sociality as two indispensable and equally fundamental conditions of human existence.³³ A person exists as an individual, but leads his or her life as a member of a group and a society. Individuals become members of a society through the process of socialization. Correspondingly, there may be two different modes of raising the claim to rights, that is, individual and communitarian.³⁴ In the former, I am thinking, speaking, and acting in my capacity as an independent person, and I pursue what I consider to be worthy and impor-

tant for realizing the dignity of my own individuality. In the latter, however, I am acting in my capacity as a member of the community where I belong, and I pursue what I take to be worthy and important for realizing the common good of the community or public interests. What is at stake here is not only my own individuality, but also the question of how to keep the community healthy and flourishing, since my individual life is sustainable only when grounded on a flourishing community.

Rigorously speaking, the correct conceptualization of human rights can be neither need-based nor supplier-based, but should be rights-based. In this sense, it is considerably ambiguous whether Confucian traditions can provide a clear-cut conception of human rights. However, as Confucian scholars like de Bary insist, the simple dichotomy of individual versus communitarian rights is misleading. To learn from the experience of Confucianism “need not mean surrendering any individual rights to the community or state, but only gaining a deeper awareness of human independence and social sensibility.”³⁵ The ideas put forward by neo-Confucian thinkers—such as anti-torture laws and penal reforms, the idea of individual perfectibility, the inherent worth of the individual, the autonomy of the moral mind and individual conscience, the reformed conception of law as a check on political abuse, and the role of public education in enhancing people’s participation—are significant enough to make it plausible to argue for a compatibility between Confucianism and civil-political liberties.³⁶

Simultaneously, the affinity between Confucianism and economic and social rights, particularly the right to subsistence, calls for careful attention.³⁷ The Confucian tradition is well known for stressing benevolent government, fairness in taxation, and charitable granaries, with particular emphasis on “the responsibility of the rulers to ensure the subsistence, livelihood, and education of the people as a qualification of political legitimacy.”³⁸ Given this tradition, it may be easier to see the positive relationship between Confucianism and human rights. According to an old saying, in the world there is nothing more important than the right to subsistence; it is so fundamental that, without it, it is impossible to enjoy civil-political rights in practice even if one is entitled in principle. The right to subsistence entails an appeal to humaneness: it is not merely about existing or being alive. “It is about living in a fuller sense having food, shelter, clothing, access to healthcare, and even, in some formulations, some considerable political and cultural opportunities.”³⁹ This humane concern over people’s subsistence long predates the emergence of an explicit concept of the right to subsistence in nineteenth-century China, when, for example, Gao Yihan (1884–1968) coined the phrase *shengcumquan* 生存權 or “the right to subsistence.”

For Gao, the abstract ideas of freedom are meaningless if not well supported by concrete institutions and social arrangements. He ridiculed how absurd it was to ask the poor “who cannot even find work pulling rickshaws to choose freely an occupation. Before they can begin to put self-sovereignty into practice, they need a modicum of material well-being on the basis of which they can seek training or other forms of education.”⁴⁰ Because of the “rich and strong connec-

tion” between the right to subsistence and Confucianism and Marxist traditions, as well, this idea has enjoyed wide support and sympathy in China.⁴¹

De Bary’s liberal approach to neo-Confucianism is sensible, but I would say not strong, in that he tacitly presupposes global standards of human rights and seeks the availability of Confucian equivalents in support of these. Not only the western tradition of individualism but the Chinese tradition also can provide those human values that could be supportive of human rights. One may even say that, by taking up a liberal approach, he seeks the Confucian conditions for the universality of human rights as established by the United Nations. What is missing is a rigorous reconstruction of a communitarian approach to human rights.

Although the Confucian communitarian tradition has been overshadowed by state power and bureaucratism, it did continue to propose, albeit in adverse circumstances, consensual alternatives for promoting a more balanced relationship among the individual, the community, and the state. It is to such Confucian advocates, and not spokesmen for state power, that one should look for a genuine Chinese communitarianism as the basis for the advancement of human rights.⁴²

The communitarianism de Bary defends differs from any traditional collectivism that would tend to favor collective interests over those of individuals. But he does not go further to reconstruct a needed communitarian approach in its own right. Thus, it still remains ambiguous how the common good of the community is to be defined, who is in the position to define it, and why we should understand these questions in terms of human rights.

COMMUNITARIAN APPROACHES WITH AUTHORITARIAN CONSEQUENCES

We have started from the premise that as human beings we are entitled to both individual and collective self-determination. The latter is no less important than the former since individual sovereignty can be best sustained in a flourishing community. The relationships between individual and communitarian human rights are complex.⁴³ However, I shall focus here only on the dimension of collective decision-making. As regards to individual self-determination, there seems to be no ambiguity involved since it is clear that individuals can make their decisions through their own choices, wills, and preferences. They have a full control over their thoughts, beliefs, tastes, and so on. No one can arbitrarily intervene in their sovereignty, so to speak. However, there seems to be left a number of ambiguities with respect to collective self-determination. Who is in the position to define collective interests? What are the rights-based procedures for arriving at the common good of a community? How can we exercise these allegedly communitarian rights?

After all, communitarian traditions are supposed to offer a better answer to these questions than liberalism, according to which the sum of individuals’ choices constitutes collectivity. More often than not, however, the claim to the

wellbeing of the community has been raised by authoritarian figures. Thus, we must ask whether there can be an alternative approach within communitarian traditions that overcomes the shortcomings of the state-centered approach to collective interests.

With this in mind, I would like to differentiate two approaches within Confucianism. One is oriented toward legitimizing the state as the source of public authority. In this approach the government has the right to define collective interests *de jure* as well as *de facto*. This mainstream solution, however, leans unavoidably towards authoritarianism. Contrasted to this is the approach that focuses more on the consensual processes of communication and consultation. Community compacts formulated and implemented in sixteenth-century Korea may serve as a case in point.⁴⁴ Of course, in reality, this model was far from being perfect. However, if we want to extrapolate an idealized communitarian model from this, it would certainly not be the state but the discursive formation of public opinion that defines the common good of a community.⁴⁵

We can then conceive of two different modes of the communitarian approach. One is an institutional solution in which the role of the state or political leadership is decisive in defining collective interests. Beng-Huat Chua's point is penetrating in this respect:

Central to communitarianism is the idea that collective interests are placed above individual ones. Logically, what constitute the collective interests should be based on 'consensus.' However, as suggested earlier, the technical difficulties of soliciting opinions from every interested and affected party tends to be resolved, in practice, by a conflation of state/society, in which the elected political leadership assumes the position of defining both the consensus and the national interests by fiat.⁴⁶

To be sure, a communitarian approach presupposes a consensual culture. In practice, however, it tends to endorse authoritarianism and paternalism of various kinds by enabling "the rationalization and preservation of an entrenched centralized power."⁴⁷ Ultimately, the state is supposed to define community needs in an efficient and authoritative manner.

Probably, the best case in point can be found in Singapore where the influence of Confucianism is still pervasive. In his keynote address at the Create 21 Asahi Forum on November 20, 1992, for instance, Lee Kwan Yew pointed out three pathologies of American society which include: 1) law and order out of control, with riots, drugs, guns, muggings, rape and other crimes; 2) poverty in the midst of great wealth; and 3) excessive rights of the individual at the expense of the community as a whole.⁴⁸ Explaining why the US has been unable to deal effectively with a particularly sensitive problem, namely drugs, he proudly declared that Singapore had been able to contain its drug problems owing much to "Asian values." "To protect the community," said Lee, "we have passed laws which entitle police, drug enforcement, or immigration officers to have the urine of any person who behaves in a suspicious way tested for drugs. If the result is positive, treatment is compulsory."⁴⁹ He continued:

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Such a law will be unconstitutional [in the United States], because it will be an invasion of privacy of the individual. Any urine test would lead to a suit for damage for battery and assault and invasion of privacy. . . . So in the US the community's interests have been sacrificed because of the human rights of drug traffickers and drug consumers. Drug-related crimes flourish. Schools are infected. There is high delinquency and violence amongst students, a high dropout rate, poor discipline and teaching, producing students who make poor workers. So a vicious cycle has set in.⁵⁰

Indeed, Singapore is an interesting example of Confucian communitarian ideology and practice. Certain Confucian ethics have been selectively used to establish a corruption-free, clean government as well as a clean society that protects the interests of the community.⁵¹ Beginning with the premise that what people want is good government, Lee argues that good government depends on the values of a people, which means that Asian values are different from American or western values. Lee's identity is well expressed when he states: "As an Asian of Chinese cultural background, my values are for a government which is honest, effective, and efficient in protecting its people, and allowing opportunities for all to advance themselves in a stable and orderly society where they can live a good life and raise their children to do better than themselves."⁵² He then listed seven requirements for good government as follows: 1) the people are well cared for regarding their food, housing, employment, and health; 2) there is order and justice under the rule of law, and not the capricious arbitrariness of individual rulers; 3) there is as much personal freedom as possible without infringing on the freedom of others; 4) there is growth in the economy and progress in society; 5) education is good and ever-improving; 6) the rulers and the people both have high moral standards; and 7) there is good physical infrastructure supporting facilities for recreation, music, culture, and arts, as well as spiritual and religious freedoms, and a full intellectual life.

Here we find a Confucian path of development towards the expanded role of the state. Benevolent leadership is called for to protect and nurture the collective interests of the community. Human rights are not flatly rejected. Rather, a step-by-step incremental approach is recommended, with heavy emphasis on community and state interests. In addition, there is consultation among diverse interest groups to secure and preserve social consensus. Nonetheless, it remains the case that this path of communitarian development is more likely to lead to paternalistic authoritarianism than to democracy.⁵³

NORMATIVE RECONSTRUCTION OF A PEOPLE-CENTERED PARTICIPATORY APPROACH

Another mode of communitarian approach is more participatory. It is here that we should try to make clear what has remained only implicit in the liberal interpretation of Confucian traditions represented by de Bary and his followers. We search for a model of consensual determination of the common good of a com-

munity based on participation. What is central is the capacity of the people—not the state or political leaders—to be the ultimate source of popular sovereignty. We are here concerned with the question of how to preserve and maintain the common good of a society within the framework of the right to collective self-determination. The Confucian teachings of Zhu Xi, Cheng Yi, and Wang Yangming, among others, deserve our attention for their emphasis on the essential voluntarism of the political and social order of a self-governing community.

The methodological problem of a normative reconstruction is a delicate issue, however. To begin with, much in a given tradition is open to interpretation. In this respect, I am interested in an approach aimed at deconstructing mainstream Confucianism associated with the status quo, while reconstructing “those traces within Confucianism which, though marginal to the mainstream, are still valid and allow the exploration of the possibility of a more humane society based on these.”⁵⁴ We may then move “from deconstruction to reconstruction via the reshaping of the foci of tradition.”⁵⁵ This might break down the dominant tendency in Confucianism to legitimize the relationship of power, while releasing its hidden but normatively valid “earlier meanings lodged within the same tradition.”⁵⁶

In a nutshell, then, our normative reconstruction depends on what we take to be the relevant meaning of the tradition in question. Though expressed only in an implicit, often hidden, and marginal form, this meaning may still have strong normative force. Reconstruction aims at making explicit this implicit meaning while breaking down the hegemonic uses of Confucianism.

Perhaps, the potentially universal significance of Confucianism lies in its emphasis on the profound role of language and consensual communication rather than in any of its relatively fixed hierarchical relationships, such as that between father and son, husband and wife, ruler and ruled, and so on.⁵⁷ A conception of language as the performative practice by which reality is created and shaped is implicit in the Confucian worldview.⁵⁸ As Chad Hansen puts it:

Language is a social practice. Its basic function is guiding action. The smallest units of guiding discourse are *ming* (names). We string *ming* together in progressively larger units. The salient compositional structure is a *dao* [guiding discourse]. . . . In learning a conventional name, you learn the socially shared way of making discriminations in guiding your action according to *dao*.⁵⁹

A pragmatic, non-metaphysical view of language and communication seems to be deeply built into Confucianism.⁶⁰ The discursive nature of learning and knowledge formation is assumed in Confucian traditions, and its political significance becomes discernable in the *Zhongyong*, one of the four Confucian classics.⁶¹ “The process of decision-making is depicted here as the process of deliberative communication: it is open to include ‘two extremes,’ nothing should be arbitrarily excluded, while, at the same time, it must be deliberative enough so that the best choices can be made and applied to the people.”⁶²

The normative orientation underlying the liberal interpretation of Confucianism can be made explicit by highlighting Confucianism’s emphasis on the

discursive nature of human interaction and knowledge formation. This normative layer of Confucianism can be reconstructed as the basis of a communitarian approach to human rights, which may differ significantly from the authoritarian tracks mentioned above. In this way, I believe that we can conserve the essential aspects of Confucianism while methodologically keeping our distance from its conventional preoccupation with hierarchical relationships. At the same time, we will make the Confucian traditions more relevant to contemporary issues.

We take up this perspective when we deal with the Confucian question of rites. Confucians advocate learning by education, not by punishment. "Lead them with edicts, keep them in line with punishment, and the common people will stay out of trouble, but have no sense of shame. Lead them by virtue, keep them in line with the rites, and they will not only have a sense of shame but order themselves."⁶³ Confucianism is emphatically communicative. Human subjectivity as well as social relationships are understood as shaped through discourse and communication. The observance of rites is nothing but the discursive process of learning to emulate moral exemplars. Comparative evaluations, persuasion, and consensual agreement are pursued and take place. No direct coercion, no violence, no economic incentives are presupposed for this learning.

In reality, however, the Confucian rites were hierarchical. They followed hierarchically differentiated social relationships, albeit with no violence. "Rites support a hierarchy in which moral elites determine what is right and people defer to the judgment of the elites."⁶⁴ One may complain that there are no significant differences between the Confucian emphasis on the rites, the paternalistic attempts to provide moral education, and the socialist propaganda campaigns aimed at developing socialist ethics in today's China, since these all serve the interests of the elite and those in power.⁶⁵

I have no dispute over the claim that the paradigm of rights differs from that of rites. Yet I would consider it not only possible but desirable to view Confucian rites as discursively oriented instead of hierarchically prescribed. What is important in the rites are the discursive procedures open to all, not any moral substance privileged by Confucian traditions. In other words, whether the validity of Confucian moral relationships can be accepted today cannot be determined by any privileged authority but must be decided by discursive processes through which individuals and groups put the validity of such relations to the test. This is possible because Confucianism is capable of providing such a framework of discursive learning, as an open-ended process whereby individuals jointly pursue the common good of a community.

In a similar way we can re-examine the conception of *minben* as a normative layer in Confucianism. A typical expression of *minben* thought in ancient Confucianism says that the people are the only basis of the world, and the world enjoys wellbeing only when the basis is solid (*minweibangben*, *bengubangning* 民惟邦本, 本固邦寧). This raises a new set of questions significant for a normative reconstruction of Confucianism. For instance, when we see the people as the basis, what do we mean by the basis? Who are the people? How do they act as the basis of the world, as the root (*genji* 根基), as the origin or the internal

essence (*neihe* 內核) of the order, as the subject (*zhu ti* 主體) of action? Certainly, the ruler can be neither the subject of *minben* nor the basis of the people. *Minweibangben* is radically opposed to *junweibangben* 君惟邦本 in which the ruler is treated as the basis of the world. In Confucian political philosophy, the people are assumed to be, collectively, an independent agent, the subject of politics, capable of even communicating with, and representing, the authority of the heaven (*tianming* 天命).

Ancient Confucianism is well known for its remarkable upgrading of the status of the people by advocating a symbiotic relationship between the people and heaven (*tianminguanxilun* 天民關係論). There is the semantic homology among such concepts as *tianfa* 天法 (heaven's model), *tianxia* 天下 (the world under the heavens), *tianmin* 天民 (heaven's people), and *tiande* 天德 (heaven's excellence). It is through the authority of heaven that the people become the collective owners of the world, exercising their inborn natural rights.

Care must be taken, however, not to confuse the normative question with the institutional one. Insofar as normative orientation is concerned, as Xia Yong demonstrates, ancient Confucianism offers profound imaginings and sensibilities. It regarded the people as the ultimate origin of the legitimacy of power and saw the interests of the people (like welfare) as the supreme value to pursue. Xia Yong refers to "the law of value" and "the law of right rule."⁶⁶ The former means the primacy of the people as the basis of the world, and the latter comes close to meaning popular sovereignty, in that the people's consent is the criteria of political legitimacy. According to him, however, because the political reality was despotism, all these normative orientations associated with *minben* thought could be expressed only implicitly via the symbolic metaphors of heaven's order (*tianming*).

In reality, consequently, the normative idea of *minben* politics has been largely appropriated by the ruling elites in an instrumental way—as a governing technology. The people are regarded as an important resource of political leadership. This is quite evident in such an expression that "one gains the world with the people, but loses the world without them." This is also why Liang Qichao concluded, in his comparison between Mencius's idea of *minben* and the modern concept of democracy, that the former expresses "of people" and "for people," but not "by people." We may say that Confucianism could have embraced a normative idea of popular sovereignty but fell short of the institutional procedures by which this idea could be implemented.

Despite this shortcoming, however, it is an open question as to how to reconstruct the normative potential of *minben* thought as the basis of a participatory communitarian approach to human rights. Such a concept as *yiminweibenti* 以民為本體, or "making the people fundamental," is an explicit negation of despotic politics, but the extent to which the people can empower themselves remains to be seen. The concept of *minben* supports the notion of righteous rebellion by the people, as Mencius explicitly discusses. The people are morally entitled to repel those rulers who treat them inhumanly and fail to serve their

fundamental interests. We can easily imagine *minben* philosophy, combined with western liberal ideas, naturally embracing ideas such as *minquan* 民權 (people's rights) and *minzu* 民主 (democracy). Yet of course, the ideas of *minquan* and *minzu* could have been realized within the constitutional framework of representative democracy.

The question of whether people can empower themselves as the subject of a direct democracy in modern society is an interesting question and hard to answer convincingly. Of course, people can make initiatives as can be easily seen in many citizens' movements today. But no agreement is available concerning the extent to which we can trust popular empowerment, that is, the capability of the people to generate and sustain the common good of a community on the basis of voluntary participation. It is not clear whether we can assume that ordinary people have the ability to create collective order through joint efforts. Yet the Confucian *minben* traditions recognize this possibility. As the basis of the world, as the root and origin of order, and as the subject of politics, the people are assumed to be capable not only of constructing consensual order but also of performing actions in terms of virtues. As inborn moral assets, virtues are said to be evenly distributed to all human beings regardless of wealth, power, and status. Mencius thus referred to virtues as *tianjue* 天爵, or predispositions bestowed by heaven.

There are, at least, two aspects under which a people-centered participatory communitarian approach to human rights, as derived from the Confucian tradition of *minben* thought, can be applied to the Kwangu citizens' experience of self-rule in May 1980. First, seen from the normative idea of the *minben* tradition, the maltreatment by the military of innocent citizens was beyond imagination and unbearable, giving rise to a righteous rebellion by the people. The paratroopers dangerously violated the most primordial Confucian norm of regarding the people as the basis of the world and, consequently, the citizens of Kwangju as a whole were united in their struggle for human dignity. They wanted to be treated as human beings, not as animals. They were against the misrecognitions, systematic biases, and prejudices greatly reinforced by the military regime and the mass media subjugated to it. The struggle for recognition bears rich implications for human rights since the pursuit of human dignity was the major motivating factor of the Kwangju Uprising.⁶⁷

Second, of more significance for human rights is the fact the citizens not only made a righteous rebellion against a nakedly savage military dictatorship but were also capable of cooperating with each other to create and sustain peaceful order on the basis of voluntary participation. Here we see a rare example of collective self-determination outside the institutionalized framework of representative democracy. Peace and order was managed by such means as public assemblies, discussions, mutual care, voluntary services, and so on. In this way the collective will of the citizens was formed spontaneously, capable of regulating affairs in a surprisingly peaceful and orderly way. This experience is highly

suggestive in that it points to the possibility of autonomous self-rule independent of top-down regulation by the state.

CONDITIONS FOR FEASIBILITY

In the foregoing discussion I have attempted to examine salient aspects in the relationship between Confucianism and human rights. Within Confucian traditions, I can say that there are two mutually interrelated modes of approaching human rights. Simply put, I am entitled to my subjective sovereignty as much as I am to a good, flourishing community. The Kwangju experience as I have discussed refers to an extreme case in which the dignity of a community was completely shaken and torn apart to the extent that the citizens rose up to protest against it and recover their communal dignity and wellbeing. I have paid attention to Confucianism in order to open up a new space of human rights, that is, a participatory and communitarian mode of self-determination. This mode differs significantly from the conventional authoritarian mode of collective decision-making as well as an institutional framework of indirect, representative democracy.

I argue that the normative potential of the Confucian *minben* traditions, when adapted to contemporary democratic environments, aspires to not only representative constitutional democracy but also direct, participatory democracy. The full implications of regarding the people as the basis of the world can be better explored in depth through participatory democracy. The claims that I have raised may be more feasible in South Korea than elsewhere. Therefore, I would like to close discussion by suggesting why I think so.

First, the historical conditions are unique. The way in which Korea received Confucianism from China was distinctive in that enormous emphasis was placed on the normative idea of *minben* politics and the role of the public sphere. From the beginning of the lengthy Chosŏn dynasty (1392–1910), this normative idea was used to legitimize a new kingdom. The Confucian idea of the public sphere was visible in the censor's role of public and critical debate within government as well as public discourse in the community. By and large, it was the Confucian literati that actually joined this discourse. However, owing much to this tradition, the normative expectations of an unbiased public sphere and the critical role of intellectual discourse remain higher in Korea than elsewhere in East Asia. This helps facilitate a pro-participatory revitalization of Confucianism.⁶⁸ The wellbeing of a community no longer has to be defined by the state, but needs to be worked out via the discursive formation of consensus and compromise, in which individuals and groups are entitled to join with no exception.

Second, we need to take into account sociological conditions, by which I mean the formation of a distinctive social force with people-centered orientation.⁶⁹ The best example is those groups who were born in the 1960's and attended the colleges during the 1980's, where they acquired a people-oriented

identity. Interestingly enough, many of them have kept this identity even after becoming members of a full-fledged middle class. They are not only critical of the authoritarian heritages in politics and society but are also more capable of understanding the situations of minorities. They are eager to foster participatory democracy, while strongly supporting the Confucian normative idea of *minben* development.⁷⁰

Third, a participatory communitarian development may be more feasible in a country where civil society functions well independently and autonomously. In this regard, there is no doubt that the civil society sector has gained a more prominent role in South Korea than in any other Confucian society. Politics is no longer a monopoly of parties and politicians but has become subject to the ever-increasing influence of civil society.

Last, but not least, communication technology is important. In order for the people to act as the ultimate origin of public order, it is necessary that they be able to express what they want, aggregate, articulate their demands, and pursue alliances with others with whom they share common interests. The more effectively the state controls the means of communication, the more difficult it is for people to communicate freely. However, recent revolutions in internet technology have made it increasingly difficult to keep the internet, and its format for public discourse, under control. Here again, we can see that an internet-based public sphere has been most intensively developed in South Korea today.

When we discuss the relationships between Confucianism and human rights with a forward-looking perspective, we see that it may be feasible to test the possibility of Confucian innovations against historical developments in South Korea.⁷¹ When speaking of China, we may easily fall into the trap of confusing the shortcomings of the Chinese authoritarian regime with those of Confucianism. This mistake can be avoided when we situate our discourse in South Korea where such factors as the steady advance of democratization, the increase of the middle class, the expanded role of civil society, and a vibrant online community, seem to support the possibility of a people-centered participatory communitarian approach to human rights. Revitalizing Confucian traditions will be greatly affected by these sociological changes.⁷²

SUGGESTIONS FOR FURTHER READING

Jeong Dojeon (1342–1398) was an early advocate of *minben* politics, arguing passionately that people are not a simply objects of rule but are indispensable subjects of politics together with the king and public servants. He helped to legitimize the overthrow of the Koryŏ dynasty, arguing that the rulers had given up their right to rule. See his work in the (1961), *Sambongjip* (Collective papers of *Sambong*), Seoul.

For a discussion of discursive politics in the Chosŏn dyansty, see Lee Sang-Hee (1993), *Chosenjo sahoe communication hyunsang yeongu* (A Study of Communication Phenomena in Chosŏn Society), Seoul: Nanam. The author de-

monstrates how important the idea of *eunro* 言路 or “discursive roads” was in shaping and justifying politics during the Chosŏn dynasty, and how the Confucian idea of *minben* led to the widely held belief that the health a nation depends upon the extent to which communicative channels remain open such that all citizens have access to public sphere. For an English-language discussion of *minben* politics during the Chosŏn dynasty from the perspective of *sonbi* culture, see Han Young-Woo (2008), “The Historical Development of Sonbi Culture and its Future,” *The Flow of Ideas and Institutions: Korea in the World and the World in Korea*, proceedings from Seoul National University.

For a history of *minben* politics in China, and its relations to human rights, see Xia Yong (2004), “*Minben yu minquan: zhongguoquanlitanlunde lishijichu*” (*Minben and People’s Rights: Historical Foundation of the Chinese Rights Discourses*,” *Zhongguoshehuikexue* (Chinese Social Science), Vol. 5. For an English-language overview of the history and relevance of Confucian *minben* thought, see Enbao Wang and Regini F. Titunik (2000), “Democracy in China: The Theory and Practice of *Minben*,” in *China and Democracy: Reconsidering the Prospects for a Democratic China*, edited by Suisheng Zhao.

NOTE

* “Confucianism and Human Rights” Wunsuk Chang & Leah Kalmanson (eds.), *Confucianism in Context: Classic Philosophy and Contemporary Issues: East Asia and Beyond*. State University of New York Press, 2010, 121-144.

1 De Bary (1983); (1998b).

2 Angle (2002).

3 Chang (1998); Cheng (1998); Peerenboom (1998).

4 Zhao (2005a); (2005b).

5 By “communitarian” here I mean more of a discursively formed voluntary consensus than an authoritarian definition of collective interests by the state; see Taylor (1992). I think it possible to work out this approach based on certain Confucian traditions strong in Korea; Han (1999c). It should be noted that this communitarian approach with discursive orientation is not identical with the brand of communitarianism advocated by authoritarian figures in East Asia; Han (1999b).

6 In the actual political histories of China and Korea, this idea has been examined and appropriated in many different ways depending on historical contexts. As intensively discussed in late Qing, for instance, the differences in conceptual implications among *minben*, *minquan* (human rights) and *minzu* (democracy) are undisputable; see Judge (1998).

7 Much research is needed to make clear the relationship between the experience of the Kwangju uprising in 1980 and human rights. This paper owes much to Korea Journal, volume 39:2, where we find papers drawing careful attention to the processes and consequences of how participants in the uprising came to understand the meaning of the event.

8 Han (1999a):191.

9 KHMC (1997):22.

10 Choi (1999):275.

11 IMKH (1990):106.

- 12 KHMC (1997):218.
 13 Choi (1999):273–74.
 14 Ibid.
 15 Ibid. 275.
 16 Ibid. 279.
 17 Ibid. 276.
 18 Ibid. 276–77.
 19 This requires the radicalization of the Confucian idea of people-centered development. Apart from this, such historical factors salient today as political democratization, the overall advancement of the level of education, the revolution of information technology, and internet communication not only foster a more active role of the citizens but also make participatory democracy more plausible than ever.
 20 Honneth (1995).
 21 Donnelly (1999).
 22 Nagel (1995):94.
 23 Chan (1998):231.
 24 Feinberg (1986):55.
 25 Chan (1998):230.
 26 Ibid. 232.
 27 Kuo (1996):297.
 28 De Bary and Tu Weiming (1998):5–6.
 29 Twiss (1998):44.
 30 Ibid. 29.
 31 Ibid. 34.
 32 Ibid. 33.
 33 Han (2007).
 34 The private and public domains can also be distinguished. The private autonomy of citizens has been legally institutionalized in the form of privacy and civil rights. At the collective level, human rights means that citizens, as members of a political community, are equally entitled to take part in the formation of legitimate government. This public autonomy of citizens has been institutionalized in the form of the right to political participation, national self-determination, territorial sovereignty, and so on.
 35 De Bary (1998b):156.
 36 Twiss (1998):40–42.
 37 Angle (2002).
 38 Twiss (1998):41.
 39 Angle (2002):244.
 40 Ibid. 190.
 41 Ibid. 244–245.
 42 De Bary (1998b):157.
 43 Han (2007).
 44 Lee (1996); de Bary (1998b).
 45 The idea of discursive formation is important to the work of Jürgen Habermas.
 See Habermas (1996).
 46 Chua (1995):191.
 47 Ibid.
 48 Kwang, Fernandez and Tan, eds. (1997):380.
 49 Ibid.
 50 Ibid. 381.
 51 Tu Weiming (1984); Kuo (1996).

52 In Kwang, Fernandez and Tan, eds. (1997):380.

53 Chua (1995).

54 Han (1999b):35.

55 Ibid.

56 Gross (1992):119.

57 The importance of language and communication for the Confucian way of life is evident. Good relationships depend on how one employs appropriate language. Scholarly dispute, for example, requires a commitment to mutual accommodation, not just contentiousness but an active cultivation of the art of accommodation. Normatively speaking, dispute is “a cooperative exercise among responsible participants that proceeds beyond obstinacy to search for an alternative on which all can agree”; see Ames (1994), Preface. This discursive paradigm is also present in ritual, and understood as a “scheme of mutual accommodation of differences in attitudes, beliefs, and values in social intercourse.”

58 Peerenboom (1998):246.

59 Hansen (1992):3–4.

60 Hall and Ames (1987):268.

61 Han (1999):38–39.

62 Ibid. 39.

63 Analects 2:3.

64 Peerenboom (1998):251.

65 Ibid. 246.

66 Xia Yong (2004).

67 Han (1999a); Choi (1999).

68 The participatory tradition can be seen in the channels of direct appeal available to ordinary people during the Chosŏn dynasty. Apart from the channels of participation for the Confucian literati, the bottom-up channels of direct communication began to significantly expand after the seventeenth century. Examples were *sangeon* 上言 and *kyŏkchaeng* 擊錚 as two ways of direct appeal by the ordinary people to the king. The total of these appeals during the reign of the King Cheongjo were as many as 4,427 cases; Sang-Kwon Han (1996). This participatory tradition was greatly reinforced in late nineteenth century when, as a popular response to the heightened perception of national crisis, a number of voluntary associations competed with each other to draw public attention and opened up a wide space for public discourse and mobilization; Lee (1996).

69 I have called these people *jungmin* 中民 or “the middling grassroots” as a distinctive segment of the middle class in Korea. As a combined fruit of the university-centered popular movements and industrial modernization, they were inspired by the *minjung* 民衆 culture spread all over the colleges and universities during the 1980’s. See see Han (1997b).

70 According to the analysis of a survey on this group in 2000, as many as 97.6% of the respondents considered the idea of *minben* to be most amenable to providing the means for the revival of Korea in the twenty-first century.

71 For this reason, I would like to advance a thesis that the Confucian future in Korea will differ significantly not only from the Chinese or Singaporean paths but also from Korea’s own past as well. In the future, more emphasis will be placed on humanity-enriching traditions within Confucianism that are, by nature, participatory and deliberative.

72 When I suggest this possibility, I do not intend to offer a clear-cut causal relationship between Confucian traditions and a particular pursuit of human rights (such as participation in the Kwangju uprising) in terms of either a cognitive belief system or membership in a Confucian community on the part of the participants. I only wish to

suggest that a participatory communitarian approach to human rights seems to be plausible in Korea today and in the future as well, and that this possibility can be better understood within the Confucian *minben* traditions, which this paper has attempted to reactivate and radicalize.