FORUM

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On the universality of “rights”: Absence and presence of “rights” in the Chinese language

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Abstract: This paper wishes to challenge the proposition that the word “rights” is a universal and innate concept in human societies. It provides an analysis of the absence and presence of the word “rights” in the Chinese language and culture in traditional and contemporary China. It presents a linguistic and cultural explanation for the fact that classical Chinese language and culture did not have an equivalent word or concept for the English word “rights.” After the word and concept of “rights” were introduced to China from the West in the second half of the nineteenth century, the new word *quanli* (rights) has since taken on Chinese shades of meaning, not entirely the same as its English counterpart. The paper proposes that the claim of the universal and innate nature of the word “rights” is not tenable.

Keywords: rights, Chinese rights, *quanli*, Chinese legal language, legal concepts

1 Introduction

This essay was prompted, belated as it may be, by a proposition advanced *inter alia* in the journal *Intercultural Pragmatics*. Specifically, the proposition is explained this way:

As I (try to) make clear early in the exposition of Jackendoff [1999], the sense of rights I am concerned with in fact does not entirely mirror the English word. In particular I set aside things that are now called ‘human rights’, which are the main focus of in the political theory of rights. My analysis concerns rather more mundane sorts of rights such as those involved in possession (one has the right to use this object as one wishes, within parameters, and the right to give it away), agreements and contracts (one has the right to demand that the other person fulfill his/her side of the deal), authority (one has the right to impose demands on others), and marriage

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(one has the right to engage in sexual relations with this person). My own reading of the anthropological literature ... suggests that these issues occur in every society.

Culture differs in how these issues are realized, what the exact rights are, and how they are enforced. ... But the basic concept seems to be present universally, whether or not a particular language has a word for it (Jackendoff 2007b: 413).

The basic claim by Jackendoff is that “rights” is a universal concept whether any particular language does or does not have a word for it and that “rights” as a concept is largely innate to all humans (Jackendoff 2007a: 355). This essay wishes to provide a counterpoint with the Chinese language and culture as an example to illustrate that, first, classical Chinese language did not have an equivalent word for the English word “rights”¹; second, classical Chinese culture did not have an equivalent concept of “rights”; and third, after the word and concept of “rights” were introduced into Chinese from the West in the second half of the nineteenth century, the new word *quanli* (rights) has since taken on Chinese shades of meaning, not the same as its English counterpart retaining much of its old meaning unrelated to rights. The essay proposes that the claim of the universal and innate nature of the word “rights” is not tenable, or it would have to exclude traditional Chinese culture and classical Chinese language, one of the largest speech communities in the world and one of the longest continuous human civilizations.

2 “Rights” in Chinese

2.1 Linguistic absence of rights in classical Chinese and its creation

First, in English, “right” means a lawful and just entitlement. As Oxford English Dictionary defines it, a right means a moral or legal entitlement to have or do something. Another definition is that rights are entitlements (not) to perform certain actions, or (not) to be in certain states; or entitlements that others (not) perform certain actions or (not) be in certain states (<http://plato.stanford.edu/entries/rights/>). There are moral rights as well as legal rights. The notion of legal rights of a person was first found in the ancient Roman law (although the word used was *jus*, not exactly the same as “rights”). In more recent history, the idea of moral rights was traceable to John Locke and his theory of natural rights and other early European thinkers. And of course, there is also the famous description of

¹ The Chinese language consists of characters, not words. Despite the difference, for convenience, this article uses ‘word’ to describe the Chinese language.

natural rights by English legal philosopher Jeremy Bentham (1789/1996) as “natural and imperceptible rights,” “rhetorical nonsense, nonsense on stilts.” These and what follows regarding Chinese are different from the modern notion of human rights, not the subject of this essay.

In the case of China, China has had plenty of stilts as part of traditional folk culture, but there was an absence of a linguistic sign for ‘rights’ in classical Chinese for either legal rights or moral rights, i.e., no word or equivalent concept existed in classical Chinese close to the Western idea of ‘rights’. There were no equivalent intellectual discussions and debates about natural rights in early Chinese history. The idea of “rights” was imported to China from the West around the mid-nineteenth century with the introduction and translation of Western social and political science. Rights, together with other ideas such as democracy, freedom and constitution, were brought to China from the West at a time of great social, political, and cultural turmoil and transformation in China. New words were coined for all of these concepts and some via Japanese that had earlier borrowed from Europe (see Cao 2004). W.A.P. Martin (1817–1916) was credited with creating the word *quanli* for “rights.”² Martin first used *quanli* in 1864 in *Wanguo gongfa*, his Chinese translation of Wheaton’s *Elements of International Law* (Wheaton 1836/1878. For discussions of Martin’s translation of rights, see Angle 2002; Liu 1999; Wang 1991; and Svarverud 2001). Martin translated “independent sovereignty” as *zizhu zili zhi quan* (self-autonomous and self-determinative right) and “rights” as *quanli*.

Quanli, prior to Martin’s usage, had been used since ancient times in China, but it meant something totally different. *Quan* and *li* were mostly used separately, with *quan* meaning “power” and *li* meaning “profit,” “interest” or “benefit.” *Quan* and *li* were occasionally used together in philosophical texts to mean “power” and “interest or benefit” (see Cao 2004).

When *quanli* was first used in the new Western sense of rights, Martin described it this way:

[International] law is a separate field of study and thus a specific vocabulary should be devised for this purpose. Therefore, when there are occasional passages in the original text that are difficult to render comprehensively in Chinese, then the translation may sometimes seem strained. Take for instance the character *quan*. In this book it carries not only the meaning of someone being in power but also the meaning of the share ordinary people ought to obtain

2 William Alexander Parsons Martin, of Livonia, Indiana, USA, graduated from Indiana State University in 1846, and received his LL.D from the University of the City of New York in 1870. He once acted as an interpreter for William B. Reed, a US government minister in negotiating the treaty of 1858 with China. In 1857, he was made Professor of International Law in Tongwenguan (Imperial College) in Beijing, and was its President from 1869 to 1895. He acted as an adviser for the imperial Chinese government on questions of international law for disputes with European countries.

(rights). Sometimes a character *li* is added to this meaning, such as in the passage ‘the rights enjoyed by the common people’ etc. Passages and terms like this may seem awkward at first but when one has encountered them several times one comes to realize that there is no other way than to use such an expression (Martin et al. 1878).³

Various historical studies in recent years of Martin’s works did not document or identify the sources or inspirations for his choice of *quanli* for “rights”. At the time, a few other Chinese phrases were used for the translation of “rights” by various translators (see Yu 2001; Wang 2005). Martin’s *quanli* prevailed and it has been used as a semantic equivalent to “rights” in Chinese since.

2.2 Meaning and usage of *Quanli* in modern Chinese

As we know, seemingly identical words in different languages are not always the same, often carrying meanings or connotations indigenous to the language and culture of a particular society. As there was no linguistic equivalent for the word “rights” in classical Chinese, the word we have now in modern Chinese for “rights” was introduced. However, this new word uses the old Chinese characters, thus its new meaning of rights naturally and inevitably is mixed with and influenced by the old meaning unrelated to rights. *Quanli*, despite its Western origin, now a common Chinese word, has had a complicated history of usage and meaning and user acquisition in China since its inception. Not only *quanli* seemed awkward linguistically as Martin indicated, it has since been awkwardly ambiguous in Chinese culture, due to linguistic, cultural, political and other reasons.

First of all, the basic meaning of *quanli* (rights) arises from the meaning of *quan*. In classical Chinese, *quan* refers to a type of weight measuring instrument, for instance, the phrase *quanheng* meaning “to weigh,” “to deliberate” and “to balance” in a political context. But the more common and the dominant meaning of *quan* is “power,” “authority,” and “privilege,” most often “political power”.

Secondly, *quanli* (权利) has a homophone *quanli* (权力), but the latter means “power” or “authority.” They are indistinguishable in speech in modern Chinese,⁴ except by context. In writing, they are distinguishable by the second character *li*. The two *li* are written differently and carry different meanings. *Li* 力 in *quanli* (权力 power) means ‘strength’ and ‘power’, while *li* 利 in *quanli* (权利 rights) means ‘benefits’, ‘interests’ and ‘wealth’. In the actual use of the two

³ The English translation is taken from Svarverud (2001: 134).

⁴ According to Pulleyblank (1991: 188–189), the two characters for *li* were distinguishable in ancient Chinese pronunciation. They are pronounced exactly the same in modern Chinese.

words, even today, many Chinese use them incorrectly including well educated Chinese. When they mean *quanli* (权利 rights), they would write *quanli* (权力 power) by mistake, and vice versa. *Quanli* for individual rights virtually disappeared from the Chinese vocabulary in Mao’s China before its revival in recent times, while *quanli* (power) has always dominated in Chinese political discourse. The unfamiliarity with *quanli* (rights) among Chinese language users is the result of lack of practice, linguistic and mental, not helped by the linguistic ambiguity.

Thirdly, *quan* with the basic and essential meaning of “power” is a short form for both *quanli* (权力 power) and *quanli* (权利 rights). This linguistic ambiguity, as noted, may indicate a perspective ambivalence in the Chinese thinking as the two terms may not be conceptually very different to the Chinese, and not as mutually incompatible as they are generally understood in Western languages (Svarverud 2001: 126). A usage of *quan* is *you quan* (有权), “to have the right or power to do something.” It is ambiguous, distinguishable only by context.

Historically, the essential meaning of “power” in *quan* was retained in *quanli* (rights) since it was first used by Martin, and this meaning remains dominant until this day as *quan* has mostly meant “power” in Chinese. This can be illustrated by the way of the Chinese absorption and internalization of the Western rights idea against the historical and cultural background and by the linguistic usage. Following Martin’s use of *quanli* for rights, along with the introduction and translation of other Western works in political science, the notion of *quanli* (rights) was fiercely debated among leading intellectuals in China towards the end of the nineteenth century. *Quanli* then came into common usage. Among the intelligentsia then, there was a growing consciousness of the Western idea of rights. However, such an understanding was gained from within the Chinese meaning (Wang 1991: 167). One such pre-existing Chinese meaning was power and authority: the total dependence on power for anyone to have rights at all (Wang 1991: 178). In imperial China, *quan*, that is, political power and authority, belonged exclusively to the ruler, the most important power of the four dominant powers in Chinese society. The four powers were *junquan* (the power of the emperor), *zuquan* (the power of the family clan), *shenquan* (divine power), and *fuquan* (power of the husband) that Chinese women were subject to (rights for a wife in a marriage would be an alien concept in traditional China. For further discussions of the powers of the husband in traditional China, see Chü (1965, 1998)). Power and authority in pre-modern China was pervasive in all spheres of life and often absolute. It is noted that power and authority are different notions from that of rights as we understand the words in Western jurisprudence, law and political discourse and in Chinese culture as well.

Against such background, in introducing and translating the rights notion from the West, particularly from the ideas of Western liberal philosophers such as Kant and Locke, the Chinese rejected the traditional Kantian belief that rights were of intrinsic value to the individual. They instead opted for the more instrumentalist view of rights as a means to the nation-building goals of the Chinese state (Weatherley 1999). Similarly, the Chinese came to see rights as a way of augmenting power, enhancing the omnipotence of the state in its quest to unite and strengthen the Chinese nation, rather than a necessary restraint on state power as Locke envisaged (Weatherley 1999: 150). Such Chinese conceptualization was reinforced by the fact that *quanli* (rights) was first translated into Chinese in the context of sovereign or state rights in international law as described earlier. Thus, as observed, the blurred distinction of *quan* as “rights” and as “power” may not be very apparent to the Chinese intellectuals in the late 1800s because *quan* retained its early meaning of “power” while gaining the new meaning of “rights” (Svarverud 2001: 134).

In its modern usage, the association and meaning of power and authority in *quan* remains. *Quan* in modern Chinese means first and foremost power and authority. Apart from *quanli* (power), other phrasal combinations with *quan* include *quanwei* (authority, authoritative), *quanshu* (power games), *dangquan* or *zhangquan* (in power), *shouquan* (to authorize), *baquan* (hegemony), and *quanyu* (lust for power), *zhengquan* (political power), *tequan* (special power and privilege), *jiquan* (absolute power, dictatorial or totalitarian rule), and *zhuquan* (sovereignty or sovereign power). All these phrases are in common use in modern Chinese political discourse, with *quan* a high-frequency word, widely used with strong connotations associated with political power and authority. All the phrases in Chinese beginning with *quan* carry the meaning of “power”, with the only exception of *quanli* (rights).⁵

In short, *quanli* (rights) is not indigenous to Chinese language and culture, and its evolution has been fraught with complications since its introduction into Chinese. Its linguistic ambiguity and multiplicity may reveal the ambivalence towards the notion and practice of rights in modern Chinese society, and one thing for certain is that it is not identical to the original English word “rights” from which it came .

⁵ *Quanli* does not refer to the modern concept of human rights which is *renquan* (human rights), not the focus of this essay. In contemporary China, although *renquan* was first used in the late 1800s and the early 1900s in China, from 1950s to 1980s, *renquan* was a taboo in China. It has become more visible in the past ten years or so in Chinese media and political discourse.

3 Conceptual absence of rights in classical Chinese

As discussed above, the Chinese language in its classical form does not have a semantic equivalent to the word “rights.” The significance of the linguistic absence in the long history of Chinese culture was not lost in many of the discussions concerning rights in China. It signifies more than just a semantic absence. There was a conceptual absence of rights in classical Chinese as well. As there was no such word for rights or equivalent, we will have to look at other possibly related concepts and ideas as well as the intellectual environment to make visible the conceptual absence. It is also significant to note the duration of this absence. It was over two thousand years for most of the imperial China, which is a long time by any measure in the evolution of human civilization.

To begin with, ancient Chinese laws did not have provisions concerning various rights of individuals. Furthermore, there were no intellectual discussions and debates about natural rights in imperial China, unlike those during the Renaissance and Enlightenment periods in Europe. As pointed out, the American Declaration of Independence declares, “We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights”, but within the Chinese cultural and philosophical milieu, it is far from self-evident that everyone is endowed with rights that even the good of society as a whole cannot override (Peerenboom 1993: 37). Instead, what traditional China had in terms of philosophical debates were predominantly moral teachings from Confucius among others. Rights and individual liberty were not mentioned in Confucius, not part of the Confucian thoughts and principles. The most important Confucian moral teachings included rites instead of rights (see Ames 1988), and duties, collectivism, and the so-called eight virtues of Confucius - benevolence, righteousness, courtesy, wisdom, fidelity, loyalty, filial piety, and service to elders. In the more recent history, in the late nineteenth century, the Chinese were keen to embrace Western ideas in their desperate attempt to save China. However, the response to the West took place within a framework of concepts and categories furnished by the Chinese intellectual tradition (Schwartz 1964: 5–6). Many of the new introduced ideas had been built on Confucianism and other Chinese indigenous ideas because Chinese traditional values, in particular, Confucianism, were the spiritual and intellectual world within which these literati lived and breathed within the Chinese world (Schwartz 1964: 5–6). Due to the limited space, only a summary of the main ideas is presented here (For further discussions, see Cao 2004; 2017).

Directly related to our discussion of rights is the idea of collectivism, especially from classical Confucianism. In terms of collectivism and individuals, in traditional China, there were not discussions or mention of individuals being entitled to naturally endowed rights. One must earn privileges, interests and benefits by achieving some minimal level of humanity with required demonstration of credentials as a participating member of society (Peerenboom 1993: 40–41). Instead of positing some intrinsically residing features that qualify all human beings as members of a natural humankind, in the Chinese mind, people were to be understood by exploring relevant associations that constitute their specific patterns of meaningful relations (Peerenboom 1993). Persons were not perceived as superordinated individuals, not as agents who stood independent of their actions, rather they were ongoing events defined functionally by constitutive roles and relations within the context of their specific families and communities, that is, through the observance of rites or ritual propriety (*li*) (Ames and Rosemont 1998: 29). Due to the social nature of humans, a human becoming a human was a function of socialization (Peerenboom 1993: 41). As social animals, people had social roles and obligations. One consequence of this thinking was that people could acquire different social, economic and political standing in the process of becoming a human and a gentleman. People were differentiated and regarded as unequal. Traditional Chinese law was known for legalizing inequality and unequal treatment of different classes of people (see Cao 2004).

In addition, although Confucianism recognized the existence of private interests in society, they were viewed as belonging not to the individual but to the group – a family, lineage, or community (Nathan 1986: 138). In such a view, people were born into society and could not prosper alone; the individual depended on the harmony and strength of the group (Nathan 1986: 138). The individual must cultivate oneself, not for oneself but to contribute to the welfare of family and community. As pointed out, the basic unit of traditional Chinese society was not the individual but the collectivity: family, clan, village, gentry (Lubman 1999: 17). While there is evidence to suggest that the role of the individual was once highly prized and later suppressed as a result of the political and ideological imperatives of the Chinese state, the collective tradition has remained a dominant feature of Chinese culture (Potter 2001: 61).⁶ The Confucian understanding of the empirical and ethical relationships between

⁶ De Bary (1998: 23–29) calls Confucian individualism ‘personalism’, distinguished from Western individualism since Confucian personalism shares some common ground with forms of personalism in Western tradition, distinct from modern liberalist individualism. According to de Bary, Confucian personalism expresses the worth and dignity of the person not as a raw, ‘rugged’ individuals, but as a self shaped and formed in the context of a given cultural tradition, its own

the individual and society continues to inform Chinese political thought in modern China (Nathan 1986: 138; Munro, 1969, 1977; Nathan 1986). At the turn of the twentieth century, interestingly, reformers such as Liang Qichao and Sun Yat-sen influenced by Confucianism believed that the Chinese traditionally were too individualistic, too centered on oneself and one’s family, and that the Chinese people lacked the sense of group loyalty and group participation necessary for asserting one’s rights and fulfilling one’s duties as citizens (De Bary 1998: 116). Thus, Sun Yat-sen came to advocate the idea of the need of the Chinese not so much for freedom of the individual as for the freedom of the nation (De Bary 1998: 116. See also Zarrow 1998).

Another related idea is that of duty. When *quanli* (rights) was introduced to China, another strong competing notion within China was the indigenous notion and practice of duty or obligation. In fact, the emphasis on duty may very well be responsible to the absence of the notion of rights in Chinese culture. It may have overwhelmed, suppressed and killed any development of the conception of individual rights. Kang Youwei, one of the leading reformers in the late nineteenth century, believed that the failure of the Chinese people to conceive of their individual rights could be traced directly to the Confucian obsession with the performance of familial duties in the single-minded effort to maintain harmony of the Chinese social order (Weatherley 1999: 81). People were understood in terms of the duties they owed to others. In Confucianism, the obligations between people were differentiated, but they were mutual and shared, involving reciprocity (De Bary 1998: 18). Thus, in the late 1800s, the Confucian notion of duties was assumed or assimilated into the new notion of rights. *Yiwu* (obligation or duty) was also a new word created in the late 1800s. In traditional China and classical Chinese, there were many specific words for specific duties, but not a general or generic term for duties or obligations as in English.⁷ It is also worth noting that the binary thinking of rights and obligations as correlatives is Western, assuming their inherent co-existence and reciprocity. It is a modern and imported way of thinking in Chinese culture too to regard rights and obligations as linked.

To sum up, *quanli* for rights and the introduced idea of rights met with the Chinese cultural tradition and thinking. In the process, *quanli* as a notion for

social community, and its natural environment to reach full personhood. In de Bary’s view, the Confucian ideal was a balance of public and private, not an assertion of one over the other.

⁷ It is noted that when we use the word ‘duty’ in the Chinese context, its meaning is not identical to the English word. According to Wierzbicka (2014a: 145), the rise of duty as a keyword in seventeenth-century English has its roots in the Puritan tradition, and the word was historically related to the concepts of conscience and of right and wrong.

rights has acquired Chinese contents. Although one can never be absolutely sure that there was a complete absence of an idea similar to or resembling rights in traditional China (see more later), so far evidence suggests that until mid-1800s, there was no such concept as rights in China, certainly not a correlative of rights and obligations, linguistically, conceptually and pragmatically. Chinese sociologists and legal scholars have long warned against interpreting traditional Chinese society in terms of the Western and modern concept of rights or interpreting Chinese traditional laws in terms of rights (see Liang 1989).⁸

4 How universal are “rights” and other linguistic signs?

In view of the brief account of the linguistic and conceptual absence of rights in classical Chinese and the linguistic innovation relating to *quanli* (rights) in Chinese, a number of implications can be drawn.

First, as stated in the beginning of the paper, Jackendoff suggested the cultural universality of the concepts of rights and obligations. He further proposed that they are “largely if not entirely innate, a specialized way of thinking wired into the brain by the human genome,” and “they would form preestablished species-wide skeleton of social understanding over which each particular culture builds its own flesh” (Jackendoff 2007a: 355. See also Jackendoff 2002, 2006). This was also explained as a principle: If person X has a right to do action Y, that person Z prevents X from doing Y, then X acquires a right to impose sanctions on Z (Jackendoff 2007a: 414). The foregoing discussions show that the concept of “rights” may not be as universal or innate to all humans and all human societies as has been claimed. Otherwise, it would have to exclude a very large speech community of the human race and one of the longest continuous human civilizations and cultures that is Chinese. Relevantly, as has been long pointed out, in Western rights discussions, the idea that human beings have rights by virtue of being human is often said to be self-evident, but the non-obviousness of the idea may also be illustrated by the fact that there is no expression in any ancient or medieval language correctly translated by the word “a right” until near the close of the middle ages: the concept lacked the means of expression in Hebrew, Greek, Latin, Arabic, classical or medieval, before 1400, also in Old English and Japanese until mid-1800s (MacIntyre 1981). In direct

⁸ For a different view, see Xia (2011) who interprets *minben* (people-as-root) in terms of rights in traditional Chinese society.

response to Jackendoff's claim in 2007 cited in the beginning of the essay, Wierzbicka argued that rights and obligations are English words without exact semantic equivalents in most other languages, and such English words contain a wealth of history, not a universal history but one that is specific to English culture (Wierzbicka 2007a: 402, 406. See also; 2006, 2014b).

Secondly, the history of *quanli* (rights) in Chinese illustrates that the idea of rights is not indigenous to Chinese, but this does not mean that the idea is incompatible with Chinese culture after its introduction. Rights, like other terms and institutional practices such as democracy, rule of law, constitutional government, human rights, are all decidedly Western concepts and inventions. Indeed, the centrality of rights in our time is a product of Western liberalism, tracing back to Locke and other Western thinkers (Raz 1989). This Western birth origin does not and has not prevented the ideas and practices from being exported, transplanted, and successfully applied in other lands and other minds (in China's case, it is yet to flourish). Instead of seeing rights as a universal innate concept, I regard “rights” as cultural objects or units, cultural traits, or memes in Dawkins' (1989) language, that can be culturally transmitted from person to person and culture to culture. In China's case, the introduction and acceptance of the idea of rights in Chinese culture is a long and difficult process of cultural evolution that is still ongoing. As discussed earlier, the word *quanli* for rights and the idea of rights represents an innovation. It is a mutation that involves the change of the meaning of old classical words and adding a new meaning. The story of *quanli* (rights) also tells us that a seemingly simple word can tell a great deal about a culture and society. Just as the Chinese language and many Chinese words such as *quanli* have complicated history and stories, English and many of its words such as rights also have certain cultural assumptions and values embedded in them (Wierzbicka 2010: 5). Neither is totally neutral free from the baggage of its history and tradition. Every language carries with it a specific interpretation of the world and such interpretations are not the same.

Thirdly, there is a need to distinguish universality and innateness of words and concepts.⁹ Part of Jackendoff's proposition may be true in the sense of universal applicability of ideas such as rights if we consider rights in our time. Words such as rights are time-restricted. For instance, as has shown in this essay, the Chinese language and culture now have an equivalent to “rights”, as do most if not all other languages now in contemporary societies, although not identical to English, and complete identity is not necessary. Thus, such words

⁹ See Mooney (2014: 170) who argues against the claim of the innate nature of primitive words including the primes in Natural Semantic Metalanguage.

and concepts can be considered universally applicable referring to the present time, but not retrospectively. As for innateness, “innate” means as defined by Merriam-Webster dictionary (www.merriam-webster.com/dictionary/innate): 1. existing in, belonging to, or determined by factors present in an individual from birth: native, inborn; 2. belonging to the essential nature of something: inherent; and 3. Originating in or derived from the mind or the constitution of the intellect rather than from experience. Common sense and empirical studies tell us that “rights” cannot be described as possessing any of such meanings. It certainly cannot be described as being innate for the Chinese speech community, either in the past or present.

Fourthly, of course, when dealing with language and culture, one can never be absolutely definitive that a language or culture does not have fragments or traces of thoughts with some resemblance to an idea. One could even argue that there were some of the conditions and environment for the notion of rights to emerge in the early human societies. Nevertheless, the linguistic evidence so far is that no Chinese word or cluster words or cluster concepts resembling “rights” existed until the introduction of the Western notion of rights in the 1800s. It is not a question either of the rights idea and word appearing in ancient China before it was suppressed and killed off. It did not emerge indigenously in the first place. Despite this, one could still contemplate that there may be some ideas in ancient China that could be interpreted as being associated with “rights”. As Feinberg notes, the conceptual linkage between personal rights and claiming has long been noticed by legal writers and is reflected in the standard usage of claim-rights in English as distinguished from the liberties, immunities and powers that are sometimes also called rights (1980: 148). As we have seen, although no word for “rights” and no developed notion or law prescribing rights existed in traditional China, the Chinese people had the sense of what was due between one another, and they did make claims against each other (Cao 2004). Nevertheless, as pointed out (Lubman 1999: 21), the claims in pre-modern China might be considered claims that were grounded in relationships, familial, communal, or commercial. Such claims were not defined in objective rules promulgated by the state despite the existence of the fragmentary legislation, and they were not ordinarily vindicated by agencies of the state. In traditional China, the notion and activity of making claims never developed into a mainstream cultural trait or a concept of rights. Thus, I believe that the idea and practice of claim was present in traditional China, but not importantly present or contributing significantly to the shaping of the Chinese cultural milieu to indigenously generate the concept of “rights” (Cao 2004). Similarly, and alternatively, if we define rights as protected interests, the word “interests” certainly figured prominently in Chinese culture. There were interest holders in

traditional China, but with their interests deriving from social status and position, not rights. A related issue here is that the presence of related ideas, concepts or practices does not mean or lead to the conclusion for the presence of the idea or concept under discussion. The presence of the concepts and practices of duties, interests and claims in traditional China as discussed earlier does not lead to the conclusion for the presence of the concept of rights as the empirical evidence shows us.

A question was put to me that my argument may be like proposing that the Chinese language does not have nouns as Chinese does not employ case ending. First, this is not quite the right analogy, but if I have to explain it using this analogy of nouns and case ending, then there was no noun and no case ending, so to speak, for the situation regarding rights in classical China. It is not a case of one or the other scenario. Let us suppose nouns represents the general or generic concept of rights, and case ending represents a type of specific state or activity associated with rights, say the right to education. In imperial China's case, there was no general and overarching concept of rights and there was no specific species or type of right to education or to anything else. So far, there is no empirical evidence to the contrary. However, the nouns and case ending may be used to illustrate the concept of “duty” as mentioned earlier. In traditional China, there were many different specific duties, for instance, filial piety. However, there was no general or generic word for duty or obligation as in English. So a new word *yiwu* for duty was coined in the late 1800s. In this case, one cannot say that as classical Chinese lacked the general term for duty, therefore Chinese did not have the concept of duty, which would be factually wrong. This is very different from the situation of rights. Until its introduction in the late 1800s from the West, the Chinese language did not a word for rights, the Chinese culture did not have a concept for rights, and China did not have an intellectual idea or theory of rights and Chinese society did not have any practice associated with the notion of rights.

Fifthly, a relevant issue is the claims about the existence of universal words and concepts. There is a need for empirical studies for proposing any such words and concepts, and importantly, empirical studies of different languages and cultures in addition to English (see Wierzbicka's (2007a; 2007b) direct response to Jackendoff regarding empirical studies). In this regard, it seems that basic or culture-neutral words instead of value loaded words are better candidates for plausible universals, for instance, the theory and practice of Natural Semantic Metalanguage (NSM) as proposed and researched by Anna Wierzbicka and colleagues. Briefly, these researchers have conducted, for many years, extensive cross-linguistic investigations, across many different languages (in Europe, Asia, Africa, North America and Oceania), and on the basis of these

investigations have identified (or so they believe) a set of 65 universal semantic primes (see Goddard 2010, 2011; Wierzbicka 1996; Goddard and Wierzbicka 2014). This set includes elements such as I, you, someone, something, this, happen, move, know, think, want, say, where, when not, maybe, like, the so-called semantic primes, grounded in ordinary linguistic experience, not cultural specific words. They also proposed that in addition to the universal semantic primes, there are some universal semantic molecules – fairly complex meanings that can be defined in terms of primes but that function as integrated units and thus facilitate a kind of conceptual chunking in the building of more complex concepts, for instance, men, women, children, to be born and to kill (see Goddard 2010; Wierzbicka 1996; Goddard and Wierzbicka 2014).

Lastly, it is noted that given the divergent paths taken by Chinese and Western thought in their development, the problematics of the Anglo-European culture and that of China are quite distinct (Hall and Ames 1995: 253). Therefore, the language used in the two traditions is distinct despite the fact that words when translated into the same language may sometimes sound similar. In particular, culturally loaded words such as law, justice, interests, duties and rights do not carry the same meanings in the two philosophical or semantic traditions. To put it another way, “[a]part from mathematics, knowledge (including moral knowledge) is normally formulated in the words of a particular language, and the assumptions embedded in that language are likely to color all knowledge formulated in it” (Wierzbicka 2014a: 162–163). This is true for the Chinese as well.

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References

- Ames, Roger T. 1988. Rites as rights: The confucian alternative. In Leroy S. Rouner (ed.), *Human rights and the world's religions*, 199–217. Notre Dame: University of Notre Dame Press.
- Ames, Roger T. & Henry Rosemont Jr. 1998. *The analects of confucius: A philosophical translation*. New York: Ballantine Books.
- Angle, Stephen. 2002. *Human rights and Chinese thought: A cross-cultural inquiry*. Oxford: Oxford University Press.
- Bentham, Jeremy. 1789/1996. In B.J.H. Burns & H.L.A. Hart (eds.), *An introduction to the principles of morals of legislation*. Oxford: Clarendon Press.
- Cao, Deborah. 2004. *Chinese law: A language perspective*. Aldershot: Ashgate.
- Cao, Deborah. 2017 forthcoming. *Code red: Chinese language in law*. Lanham: Lexington Book.
- Ch'ü, T'ung-tsu. 1965. *Law and society in traditional China*. Paris: Mouton & Co.

- Ch'ü, T'ung-tsu (Qu Tongzu). 1998. *Qu Tongzu faxue lunzhu ji* (Qu Tongzu's Works on Law). Beijing: Zhongguo zhengfa daxue chubanshe.
- Dawkins, Richard. 1989. *The selfish gene*, 2nd ed. Oxford: Oxford University Press.
- De Bary, Wm. Theodore. 1998. *Asian values and human rights: A confucian communitarian perspective*. Cambridge: Harvard University Press.
- Feinberg, Joel. 1980. The nature and value of rights. In Joel Feinberg (ed.), *Rights, justice, and the bounds of liberty: Essays in social philosophy*, 143–155. Princeton: Princeton University Press.
- Goddard, Cliff. 2010. The natural semantic metalanguage approach. In Bernd Heine & Heiko Narrog (eds.), *The Oxford handbook of linguistic analysis*, 459–484. Oxford: Oxford University Press.
- Goddard, Cliff & Anna Wierzbicka. 2014. *Words and meanings: Lexical semantics across domains, languages and cultures*. Oxford: Oxford University Press.
- Hall, David L. & Roger T. Ames. 1995. *Anticipating China: Thinking through the narratives of Chinese and western culture*. Albany: State University of New York Press.
- Jackendoff, Ray. 2002. The natural logic of rights and obligations. In Ray Jackendoff, Paul Bloom & Karen Wynn (eds.), *Language, logic and concepts: Essays in memory of John Macnamara*, 67–95. Cambridge: MIT Press.
- Jackendoff, Ray. 2006. On conceptual semantics. *Intercultural Pragmatics* 3(3). 353–358.
- Jackendoff, Ray. 2007a. *Language, consciousness, culture: Essays on mental structure*. Cambridge: MIT Press.
- Jackendoff, Ray. 2007b. Conceptual semantics and natural semantic metalanguage theory have different goals. *Intercultural Pragmatics* 4(3). 411–418.
- Liang, Zhiping, 1989. 'Explicating "Law": A Comparative Perspective of Chinese and Western Legal Culture'. *Journal of Chinese Law* 3(1). 55–92.
- Liu, Lydia H. (ed.). 1999. *Tokens of exchange: The problem of translation in global circulations*. Durham and London: Duke University Press.
- Lubman, Stanley B. 1999. *Bird in a cage: Legal reform in China after Mao* Stanford: Stanford University Press.
- MacIntyre, Alasdair. 1981. *After virtue*. Notre Dame: University of Notre Dame Press.
- Martin, W.A.P. et al., 1878. *Gongfa bianlan (A practical introduction to international law)*, trans. Beijing.
- Mooney, Annabel. 2014. *Human rights and the body*. Aldershot: Ashgate.
- Munro, Donald J. 1969. *The concept of man in early China*. Stanford: Stanford University Press.
- Munro, Donald J. 1977. *The concept of man in contemporary China*. Ann Arbor: The University of Michigan Press.
- Nathan, Andrew J. 1986. Sources of Chinese rights thinking. In R. Randle Edwards, Louis Henkin & Andrew Nathan (eds.), *Human rights in contemporary China*, 125–164. New York: Columbia University Press.
- Peerenboom, Randall P. 1993. What's wrong with Chinese rights?: Toward a theory of rights with Chinese characteristics. *Harvard Human Rights Journal* 6. 29–57.
- Potter, Pitman B. 2001. *The Chinese legal system: Globalization and local legal culture*. London: Routledge.
- Pulleyblank, Edwin G. 1991. *Lexicon of reconstructed pronunciation in early middle Chinese, late middle Chinese, and early Mandarin*. Vancouver: University of British Columbia Press.
- Raz, Joseph. 1989. Liberating duties. *Law and Philosophy* 8(3). 3–21.

- Schwartz, Benjamin I. 1964. *In search of wealth and power: Yen Fu and the west*. Cambridge, MA: Harvard University Press.
- Svarverud, Rune. 2001. The nations of 'power' and 'rights' in Chinese political discourse. In Michael Lackner, Iwo Amelung & Joachim Kurtz (eds.), *New terms for new ideas: Western knowledge and lexical change in late imperial China*, 125–146. Leiden: Brill.
- Wang, Gungwu. 1991. Power, rights, and duties in Chinese history. In Wang Gungwu (ed.), *The Chineseness of China. Selected Essays*, 165–186. Hong Kong: Oxford University Press.
- Wang, Lijun. 2005. *Quanli yu quanli de xibian*. Beijing: Zhongguo fazhi chubanshe.
- Weatherley, Robert. 1999. *The discourse of human rights in China: Historical and ideological perspectives*. London: Macmillan Press.
- Wheaton, Henry. 1836/1878. *Elements of international law*. Edited by A.C. Boyd. London: Stevens and Sons.
- Wierzbicka, Anna. 1996. *Semantics: Primes and universals*. Oxford: Oxford University Press.
- Wierzbicka, Anna. 2006. *English: Meaning and Culture*. Oxford: Oxford University Press.
- Wierzbicka, Anna. 2007a. Theory and empirical findings: A response to Jackendoff. *Intercultural Pragmatics* 4(3). 399–409.
- Wierzbicka, Anna. 2007b. NSM semantics versus conceptual semantics: Goals and standards (A Response to Jackendoff). *Intercultural Pragmatics* 4(4). 521–529.
- Wierzbicka, Anna. 2010. *Experience, Evidence, and Sense: Hidden Cultural Legacy of English*, Oxford: Oxford University Press.
- Wierzbicka, Anna. 2014a. Can there be common knowledge without a common language? German Pflicht versus English duty. *Common Knowledge* 21(1). 141–171.
- Wierzbicka, Anna. 2014b. *Imprisoned in English*. Oxford: Oxford University Press.
- Xia, Yong. 2011. *The philosophy of civil rights in the context of China* (translated from Chinese). Leiden: Martinus Nijhoff Publishers.
- Yu, Jiang. 2001. Jindai zhongguo faxue yuci de xingcheng yu fazhan. *Zhongxi falv chuantong (Journal of Chinese and Western Legal Traditions)* 1. 24–66.
- Zarrow, Peter. 1998. Citizenship and human rights in early twentieth-century Chinese thought: Liu Shipei and Liang Qichao. In Wm. Theodore De Bary & Tu Weiming eds. *Confucianism and human rights* 209–233. New York: Columbia University Press.

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