

## The Three Aspects of “Human Existence” from the Human Rights Perspective

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**Abstract:** *At present, the West overrides the East in international human rights discourse. In order to break through the shackles, it is imperative to provide legal support for China’s human rights discourse. Taking the concept of “human existence” as the fulcrum and comparing it with nature, otherness, and community as the reference, the human being showcases triple facets: “individual person”, “person in relations”, and “person with rights”, which correspond to the three personal perspectives and progressively deduce the subjectivity of human beings, the world history of human rights, and the comprehensive and free development of human rights discourse. The concept of “individual person” is the starting point of human rights, and the harmonious, moral concept of subjectivity provides an orderly basis for the importance of the “right to subsistence and right to development”. “Person in relations” represents the externality of human rights, and the world-historical view of time and space has laid the value foundation for the unity of “universality and particularity of human rights”. “Person with rights” is the goal of human rights, and the concept of cooperation for the well-rounded and free development of human rights paves the conceptual way for the realization of people’s well-being.*

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In Foucault’s analyses of power, discourse patterns are not so much the product of assumptions and observations or autonomous processes of communication between theory and practice, as the basis for determining which theories and practices prevail over a given period of time.<sup>1</sup> The same is true of the human rights discourse. The West has leveraged its advantage as the initiator of the human rights discourse and its political system legacy to occupy a dominant position in international human rights institutions through hegemony, creating an international human rights discourse

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1. John Sturrock, *Structuralism and Since: From Lévi-Strauss to Derrida*, translated by Qu Dong, Li Kang and Li Meng (Shenyang: Liaoning Education Press, 1998), 83-128.

system with a strong Western bias. Admittedly, it has promoted the progress of human rights, but its entanglement with politics has turned the discourse on human rights into a tool of its hegemony. The West’s human rights discourse ignores the particularities of the nations and history, imposing Western values as universal. Western countries even interfere in the internal affairs of other countries under the pretext of human rights, and wantonly slandered them in international public opinion. China stands firm in the world with its profound historical legacy and moral culture. Although its influence has considerably declined due to various historical events, its rapid and stable development in recent years has once again proved the tenacious vitality of Chinese culture. It no longer chooses to turn a blind eye to its denigration in the international human rights discourse, but instead has adopted a more active stance, speaking out for China’s human rights undertaking and providing Chinese experience for human rights governance on the public opinion stage of international human rights.

As far as the human rights discourse is concerned, the academic community has already responded to this change. In terms of epistemology and methodology, some scholars have proposed that we should be wary of Western universal human rights standards, and that we should realize the dual transcendence of “Western-centrism” and “self-orientalism”, and use China’s experience as a method and position for exploration.<sup>2</sup> Some scholars have started from the perspective of semiotics and pragmatics to clarify the relationship between human rights concepts and the human rights discourse in a historical and systematic way, and have repeatedly explored the content of China’s human rights discourse.<sup>3</sup> Other scholars have used data combing and historical comparison for data analysis, analyzing the changes in China’s human rights discourse over certain periods of time, and proposed helpful suggestions.<sup>4</sup> Many scholars have also explored the in-depth content of China’s human rights discourse from such angles as the background of the epidemic, value orientation, Marxist philosophical theory, and the core essence.<sup>5</sup> However, treatises that begin with the philosophy of law

2. Wang Liwan, “China as Method in the Construction of Human Rights Discourse System,” *Chinese Journal of Human Rights* 1 (2021): 52-61.
3. Liu Zhiqiang, “On the Interrelation between the Concept of Human Rights and the Discourse of Human Rights,” *Tribune of Political Science and Law* 6 (2020): 82-91; Liu Zhiqiang and Lin Dong, “The Development of the Research Paradigm of China’s Human Rights Discourse System,” *China Social Science Review* 2 (2020): 53-68; Liu Zhiqiang, “On the Construction Logic of China’s Human Rights Discourse System in the New Era,” *Modern Law Science* 3 (2019): 23-34.
4. Kang Huaru, “China’s International Human Rights Discourse in 1979-1991 — An Analysis of the Speeches and Position Papers of China at the UN Commission on Human Rights,” *Chinese Journal of Human Rights* 2 (2021): 65-85; Han Dayuan, “The Human Rights Discourse and its Changes during the Early Establishment of the Communist Party of China: From 1921 to 1927,” *Human Rights* 2 (2021): 59-72; Mao Junxiang and Wang Xinyi, “The Changes of the CPC’s Human Rights Discourse since the Founding of the People’s Republic of China,” *Human Rights* 1 (2020): 1-18.
5. Yin Haozhe, “The Function of Human Rights Discourse in a Country With a Major Outbreak of Disease,” *Journal of Human Rights (Series)* 1 (2020): 60-64; Lu Guangjin, “The Construction Dimension and Value Orientation for Contemporary Chinese Discourse on Human Rights,” *Human Rights* 4 (2020): 1-14; Li Chaoqun, “Karl Marx’s ‘Human Image’ Theory and Its Inspiration to the Construction of China’s Human Rights Discourse System,” *Human Rights* 1 (2020): 19-42; Li Chaoqun, “Transcending the Enlightenment Human Rights Discourse with the Spirit of Prometheus: The Paradigm and Logic of Marx’s Human Rights Thought,” *Journal of Southwest University of Political Science and Law* 1 (2019); Zhang Xiaoling, “On the Core Essentials of the Discourse System of Socialist Human Rights with Chinese Characteristics,” *Human Rights* 1 (2019): 19-28.

are few and sparse. Contemporary Chinese jurisprudence discourse is transforming, and its way of argumentation is gradually shifting from the limited Western transplantation model to a practical independent innovation model.<sup>6</sup> With the historical changes in the “new era,” it is urgent for the existing achievements, theories, and experience in human rights governance to provide strong, scientific, and vigorous legal support for new breakthroughs, new developments, and new leaps in China’s human rights discourse at the theoretical level, so as to respond to the development of China’s human rights cause. At the 37<sup>th</sup> group study session of the Political Bureau of the Communist Party of China (CPC) Central Committee, Xi Jinping, General Secretary of the CPC Central Committee stressed the need to rely on the vivid practice of China’s human rights cause to derive original concepts, and develop the discipline system, academic system, and discourse system for China’s human rights.<sup>7</sup> However, China’s human rights discourse has always faced the problems of insufficient explanatory power, credibility, and charisma, and it can hardly contribute due knowledge convergence to the “three systems.” In short, discourse propositions speak vividly of the human rights cause in China, but the original concepts fail to provide relatively stable interpretive thinking and an expressive method, leading to a mismatch between discourse and theory, demonstrating remarkable timeliness.

Therefore, it is the general essence of this article to distill the legal principles for China’s human rights discourse and to elucidate its legal and philosophical basis. Therefore, the first and foremost issue of tracing back to the philosophical foundation of law from the human rights discourse is to refine the concept of “human existence” as the fulcrum of argument. What is “human existence”? In short, the answer is how human beings count as human beings. Positioning the “existence of human beings” shows the different aspects of the human rights concept, and constitutes the basis for the philosophical interpretation of human rights discourse. Generally speaking, it is difficult to find a direct answer to the problem, while approaching it from its opposite for reverse understanding is advisable. Therefore, this paper intends to begin with the interpretation of the proposition of “human existence,” to explore the triple human rights aspects of “individual person,” “person in relations,” and “person with rights” against the three reference systems of nature, otherness and community, respectively, clarify the philosophical understanding and evolution path of “human existence” in different contexts, and interpret the legal basis of China’s human rights discourse proposition. The logical progression of the arguments is as follows: the three reference criteria corresponding to the three personal perspectives for observing “human existence” are adopted to refine a system structure. Firstly, the “individual person” is the starting point of the awakening of human subjectivity, and the division of basic human rights in different contexts represents the cognitive focus of the subjective view from the perspective of philosophy. Second, “person in relations” is the world-historical ex-

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6. Guo Zhong, “Production Mechanism of Jurisprudential Discourse in Contemporary China,” *Journal of Wuhan University of Science and Technology (Social Science Edition)* 3 (2021): 315-323.

7. Xi Jinping, “Xi Jinping Stresses Steadfastly Following the Chinese Path to Promote Further Progress in Human Rights at the 37<sup>th</sup> Group Study Session of the Political Bureau of the CPC Central Committee,” *People’s Daily*, February 27, 2022.

ternalization of human rights, and we should adhere to the human rights construction based on the temporal and spatial view combining principle and practice. Third, the “person with rights” is the destination of the comprehensive and free development of human rights discourse, and the happy life for the association of free people provides practical support for the concept of cooperation in human rights discourse.

## **I. “Individual Person”: Human Subjectivity**

It is a human instinct to obey the rules and pursue order. The former prompts human beings to peek into the secrets of nature with curiosity, and the latter prompts them to constantly think about how to build a complete community. Understanding the former frees human beings from the constraints of nature, while deepening the latter frees human beings from chaos and disorder. The high similarity between the two inevitably leads human beings to project their self-understanding gaze onto the pre-existing order of nature. The “human existence” under the mirror of nature can be regarded as an “individual person”, which concentrates on the subjective characteristics of man compared to nature. In the Western context, subjectivity is established on the difference between all things and conformity with rational regulations, while in the Chinese context, subjectivity is shaped by harmonious coexistence and belief in moral growth. Human subjectivity means an autonomous grasp of destiny, and provides the basis for human existence independent of external things. The awakening of subjectivity opens up the path for people to understand themselves independently, serves as the root of people’s rights as human beings, and lays a theoretical foundation for the hierarchy of basic human rights.

### **A. A review of the intellectual history of human subjectivity**

Human subjectivity sprouted from the emancipation from traditional church control. After the Reformation, people no longer had access to God through their conscience alone, and their belief in God no longer depended on the Church as a medium. Consequently, there appeared a duality between faith and secular life. “Render therefore to Caesar the things that are Caesar’s, and to God the things that are God’s.” Martin Luther’s doctrine of “justification by faith” put an end to the supremacy of the Holy See, and the dichotomy of the soul and body separated the world from faith. As a result, Christians were freed from external control and freedom by faith alone, affirming the rights, wealth, and status of the individual, and creating the conditions for the awakening of the subjectivity of modern people. But the freedom to which Luther appealed was not freedom in the true sense of the word, just as Marx put it: “He broke the faith in authority, but restored the authority of faith. He turned the priests into laity, but the laity into priests. He liberated man from external religion, but turned religion into the inner world of man. He freed the body from chains, but he also put chains on the human heart.”<sup>8</sup> The Reformation only had a tremendous impact on the traditional church and the structure of the faith, but it did not bring about a substantial change in the present world. The people were routinely subordinated to the inner God and the

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8. Central Compilation and Translation Bureau, *The Complete Works of Marx and Engels*, vol. 1 (Beijing: People’s Publishing House, 1956), 461.

outer authority.

Human subjectivity awakens to a general suspicion of the world. When Descartes uttered the famous philosophical proposition “I think, therefore I am” (*cogito ergo sum*), personality generally replaced the deities as the master of knowledge on earth. Starting from the deception of the senses, and the indistinguishability of dreams and reality, he imagined that a powerful demon had created lies in the world, and consequently everything that expresses thought can be doubted, but the mind itself is beyond doubt. Descartes’ contemplation makes the world of experience a world of doubt, thus highlighting the contemplative “person” as an exception to the object of universal doubt. Furthermore, what “I think” gives is not a simple objective image of “I am,” but a confirmation of the rationality of “I think.” Hegel said, “From Descartes onwards we have stepped into an independent philosophy that understands that it comes independently from reason, and that self-consciousness is the primary link of truth.”<sup>9</sup> Although Descartes himself was a faithful believer in God, he enlightened philosophical reflection on human beings and drew open the curtain on modern philosophy.

Human subjectivity matures in rational criticism and system construction. In the era of the philosophy of subjectivity, the focus of human subjectivity was on the acquisition of freedom, which was seen as the basis of the human being as a subject. Immanuel Kant, on the other hand, broke through the previous philosophical contemplation, and turned inward to seek freedom under self-discipline in the process of criticism and construction. “Person” is defined by Kant as a being who, firstly, is “manifested as a personality independent of the prescribing of physics,” i.e., as an ontological person (*homo noumenon*), and secondly, “as a human being subject to the prescribing of physics,” i.e., as a human of phenomenon (*homo phaenomenon*).<sup>10</sup> Based on this duality of human beings, the law will necessarily exist to regulate desires beyond reason. From this point of view, the law is both the product of the self-legislating of freedom and a means of restricting freedom so that the order of freedom can be universally organized.<sup>11</sup> Hence Kant’s famous formula of human nature: “Humanity as an end and not only a means.”<sup>12</sup> Freedom gives humanity dignity, frees him from ignorance to make him human, and gives him inalienable rights as a human being. In Kant’s writing, the reconciliation between freedom and man was completed, and man became the subject of normative sources beyond empirical limitations. From then on, the subjectivity of humanity was highlighted above everything else in the world, ushering in the “Copernican revolution” in the field of practical philosophy.<sup>13</sup>

9. Hegel, *Lectures on the History of Philosophy*, vol. 4, translated by He Lin and Wang Taiqing (Beijing: Commercial Press, 1978), 63.

10. Li Qiuling, *The Complete Works of Kant*, vol. 6 (Beijing: China Renmin University Press, 2013), 249-250.

11. Wu Yan, *Law, Freedom and Coercion: An Introduction to Kant’s Philosophy of Law* (Beijing: The Commercial Press, 2016), 159.

12. Immanuel Kant, *Critique of Practical Reason*, translated by Han Shuifa (Beijing: The Commercial Press, 2009), 95.

13. Immanuel Kant, *The Collection of Kant’s Three Critiques (I)*, translated by Deng Xiaomang, reviewed by Yang Zutao (Beijing: People’s Publishing House, 2017), 12-13.

Human subjectivity has developed from the political concept of fairness and justice. The reality is that people are able to participate in and play a role in social life, to perform and comply with various rights and obligations, and thus to engage in mutually beneficial social cooperation throughout their lives. This means that human subjectivity is designed according to the social structure, and thus is normative and political, not metaphysical or psychological. Such a “free and equal person” is considered by Rawls to have “two kinds of moral faculties” — one is the ability to have a sense of justice, and the other is the ability to have a conception of good.<sup>14</sup> When we construct human subjectivity in such a way that the faculties of reason, reasoning, etc. are added to the description of human characteristics, it is determined by moral and political thought and their practice. In Rawls’s conception, the curtain of ignorance in the primordial state obscures the label of man, and separates the concept of citizens from the human being. However, the subjectivity of human beings requires the “basic good” as a means or condition for the smooth development and full use of the two moral faculties, which are closely related to political norms. Therefore, how to construct a just system for the distribution of basic rights has become an explicit expression of human subjectivity, the abstract personal assumption of depersonalization has occupied the mainstream discourse.

## **B. Critical understanding of the concept of human subjectivity**

There is no doubt that the exploration of human subjectivity is crucial for human beings to think about the proposition of “human existence” and is the starting point for the interpretation of human rights. Looking back at the above-mentioned history of Western philosophical thought, it is not difficult to find that conceptual understandings of “human existence” form the perspective of Western human rights discourse, and the use of terms such as freedom, universality, and rationality also shows the underpinning of the philosophical contemplation underlying the discourse. However, it is debatable whether such an interpretation of “human existence” actually explains the nature of human subjectivity, and the separation of human rights discourse between China and the West reflects a difference in understanding of “individual man.” This prompts us to further criticize and understand the interpretation of human subjectivity by philosophers in the past, and interpret “human existence” in different cultural contexts.

### **1. “Form” and “matter”**

Hylomorphism, stemming from Aristotle and representative of his metaphysical thought, has covered almost the basic understanding of the “individual person” in Western philosophy today. According to Aristotle, matter is what an entity comes from, and form is the principle and logic by which an entity is generated, and the perceptible entities are produced by form.<sup>15</sup> In this sense, form and matter are not constitutive elements but generative elements of perceptible entities, and any sensible entity is a special form contained in a special matter. Kant continued to use the terms

14. John Rawls, *Justice as Fairness: Justice as Fairness: A Restatement*, translated by Yao Dazhi (Shanghai: Shanghai Joint Publishing Co., Ltd., 2002), 31.

15. Cao Qingyun, “On Aristotle’s ‘Hylomorphism’,” *Philosophical Trend* 10 (2016): 69.

“form” and “matter,” but changed the way in using them, regarding them as essential elements of human experiential activity. Of the two, form is considered some of the constitutive principles that preceded human beings, and matter is seen as a chaotic heterogeneity to be organized with human consciousness. However, in any case, it is indisputable that in using the term “form and matter” the dichotomy between form and matter should be recognized, and that form takes precedence over matter. In the understanding of “human existence,” this understanding is embodied as “mind-body dualism.” Like Descartes who held the view that human mental attributes belong to the soul and physical attributes belong to the body, Kant divided norms into the interior realm of freedom and the exterior realm of nature to correspond to the constraints of ethics and legal power.

This phenomenon is universal, i.e., philosophers are always consciously or unconsciously looking inward to examine “human existence” in relation to nature. From the perspective of biological existence, human knowledge often initially concerns only the natural environment on which it depends, and it is impossible for human beings to survive without adapting to the environment. However, in the development of human civilization, an introspective self-observation has always been accompanied by and supplemented by an outward-looking natural observation, and this introspection has become increasingly more obvious with the development of civilization. The sages seemed to be exploring the origin of nature, but they were all insightful about “human existence.” On the one hand, nature has become the source of human methodology for understanding himself, and on the other hand, it has become a reference coordinate for distinguishing itself from man. In nature, the form is constant, while the matter is chaotic. As for “human existence,” the body (matter) is subject to nature, but the soul (form) is unfettered and absolutely free. In this philosophical context, “human existence” refers to the conceptual person, that is, the person is placed in a world of absolute conceptual stillness rather than a world of absolute change of reality. We do not see entities and change as different realms of existence, but as different categories — as combinations of different presuppositions and conditions under our knowledge.<sup>16</sup> Based on this context, the combination of the existential unit of “individual” and the ethical value of “individual rights” completes the Western structure of modernity based on human subjectivity, while the individual is elevated to an absolute value despite being alone. That is precisely the necessary assumption and fundamental meaning of human rights in the West.<sup>17</sup>

However, the epistemology of “human existence” in such a tone is obviously out of place in the Chinese context. The individual seems to be regulated by the natural order of physical existence, but it creates the illusion of absolute and unconditional rights in the soul. In fact, the individual will be manipulated by greed, arrogance, and fear to unilaterally take and give, thus even antagonizing the relationship between humanity and nature. In the dual identity as an individual and a citizen, in the self-in-

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16. Ernst Cassirer, *An Essay on Man*, translated by Gan Yang (Shanghai: Shanghai Translation Publishing House, 2013), 295.

17. Zhao Tingyang, *On Possible Lives* (Beijing: China Renmin University Press, 2010), 323.

terested and closed life of the citizen, the overly ostentatious and isolated individual will lose his essential power and become a servant of the power of the other.<sup>18</sup> In the context of Chinese culture, the unification of nature and man is the supreme pursuit of “human existence,” and the “rationality” contained in nature needs to be understood and mastered by people through the method of “learning from things.” That is to say, human beings should seek harmony with nature, both materially and consciously, and understand the existence of practical reason in experiential life. In other words, human beings are a practical existence, and live in a world of absolute change. They must understand the natural order, including their own existence, through the experience of material causes. Therefore, in China, the relationship between the “individual person” and nature is more of integration and harmony, and the boundary between the body and the soul is never clear, while the “individual” is seen as an intermittent existence. Thus, the meaning of existence is often greater than the dispute over rights. In short, the Western understanding of human subjectivity focuses on the emphasis on “humanity” as different from non-human things, while the Chinese interpretation of human subjectivity tends to emphasize the independent “existence” of human beings.

## 2. On “Reason” and “Morality”

Another factor in the understanding of “human existence” is the different standards of subjectivity. Article 1 of the *Universal Declaration of Human Rights* declares: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience...”<sup>19</sup> It can be seen that the drafters of the document integrated the theoretical foundations of human rights from the East and the West in its content, and sought and extended the common divisor of values in the international concept of human rights to the greatest extent.<sup>20</sup> At the same time, the differentiation between “reason” and “conscience” reflects the different understandings and standards of the human rights foundation in the value systems of the East and the West. What is more dramatic is that in the Western context, human rights, as a product of resistance to theocracy, have always been apparently severed but actually connected with religion. As a result, Western human rights theories always have a place for religious faith. The most representative of all is the discourse on human nature, that is, the culture of original sin in the teachings of Christianity. The theory of original sin has led philosophers to presuppose that human beings are inherently evil and we should always be on guard against the omnipresent evil in everything. For example, in Kant’s anthropological presuppositions, the fragility of man to be considered so fundamentally bad that he cannot incorporate the moral law into his own norms, is the impurity of the human mind that is not motivated by pure obligation but also needs to be supplemented by other motives in order to be good, and the reversal of the human heart

18. Han Zhenwen, “A Reformulation of the Legal Principles Behind Human Rights Theory with Chinese Characteristics: From Natural Rights Theory to Marxist Theory of Species-Being’s Essential Rights,” *Law and Modernization* 1 (2021): 113.

19. United Nations, *Universal Declaration of Human Rights*, accessed October 20, 2023, <https://www.un.org/zh/about-us/universal-declaration-of-human-rights>.

20. Hua Guoyu, “Do Human Rights Need a Unified Foundation? — Religious and Philosophical Controversy during the Drafting of the Universal Declaration of Human Rights,” *Tribune of Political Science and Law* 5 (2020): 11.



that places moral motives behind other motives.<sup>21</sup> In response to this distrust of human nature, philosophers have had to turn their attention to objective reason. Be it natural reason, instrumental reason, or pure reason, Western scholars are always searching for or presupposing the only “rightness.” The rationalist view of human rights holds that starting from rationalism, the knowledge of rational deduction is essential, universal, and inevitable, and therefore, as long as the premise is true, all knowledge questions, including the metaphysics of human rights, can be answered via reasoning.<sup>22</sup> In contrast, China’s human rights theories are based on the idea of “conscience,” or “ren,”<sup>23</sup> which imposes more solemn ethical and moral obligations on humanity than on other beings on earth. In Chinese philosophical discourse, ethics and morality derived from blood are the distinguishing features of “human existence.” “Ren” is not the inner moral court of the liberal individual born of the state of nature, but the moral principle of getting along with others in the context of living in concrete social relations. It originates from the compassion that is born as “good” and is further sublimated and concretized in social cooperation and coexistence.<sup>24</sup> Under the concept of benevolence, human nature is presupposed to be kind, and “self-denial,” “self-restraint” and “from the self to others” are always upheld, so as to achieve moral transcendence of sanctification. In this context, human rights are not a static ultimate goal, but a dynamic process that develops with the growth of human morality. Thus human beings move away from abstraction and into society. In other words, the difference between Chinese and Western presuppositions on human nature has led to the divergence in the theoretical basis of human rights, and “rationality” and “morality” have created different subjective standards for “human existence” in the East and the West respectively.

In short, although the awakening of modern human subjectivity originated from the West, there are still divergences in understanding the “human existence” between China and the West due to different philosophical contexts. From the perspective of “individual person” with reference to nature, Western philosophical concepts have made great efforts to highlight the particularity of human beings and conceived of human beings as completely rational abstract individual values, while Eastern philosophical concepts tend to emphasize the harmony and unification of human beings and nature, and have embodied human ethics and morality in practice, identity, and society. From a historical point of view, the “human existence” in the West has been obscured in the shadow of God for a long time, and in the case of overcorrection, the understanding of human subjectivity tends to be the demand for individual rights, and the discourse on human rights tend to become more aggressive when the wall of

21. Li Qiuling, *The Complete Works of Kant*, vol. 6 (Beijing: China Renmin University Press, 2013), 28-29.

22. Zhou Xiaoliang, “A Theoretical Outline of the Western Modern Epistemology: Rationalism and Empiricism,” *Philosophical Research* 10 (2003): 49.

23. In the process of drafting the *Universal Declaration of Human Rights*, Zhang Pengchun’s suggestion expressed and emphasized the Confucian view of “ren,” which was literally translated as “two-man-mindedness.” However, it was inappropriate to write this new word directly into the *Declaration*, and difficult to find a corresponding expression in English. In the final text, it was translated as “conscience.” Hua Guoyu, “From the Perspective of the Article 1 in the Universal Declaration of Human Rights,” *Journal of Southwest University of Political Science and Law* 2 (2019): 55-56.

24. Hua Guoyu, “From the Perspective of the Article 1 in the Universal Declaration of Human Rights,” *Journal of Southwest University of Political Science and Law* 2 (2019): 56.

rights is erected for one’s own existence. In China, whose natural conditions feature a vast land and abundant resources, the “human existence” under the small-scale peasant economy is mostly discussed in an ethical and moral sense; individuals have been aware of the gap between themselves and saints from the beginning, so the elaboration of human subjectivity focuses on moral self-restraint, and the discourse on human rights also tends to be defensive.

### C. The subjective argument of “primary human rights”

If an “individual person” wants existence in the form of a subject independent from natural objects, he must have his rights recognized. The primary human right, in other words, is the right to be prioritized in the human rights sequence. “The right to subsistence and the right to development are the primary basic human rights” is a representative human rights proposition in China’s human rights discourse. It vividly reflects the understanding of subjectivity in oriental philosophies under the face of the “individual person.” The weighting sequence of basic rights bespeaks the importance of subjectivity in different contexts, either respecting the supremacy of freedom and reason, or emphasizing the priority of survival and development. In addition, the word “primary” can be interpreted in roughly two dimensions — one is the “basic” content, and the other is its “purposeful” content. Survival and development is China’s understanding of the “individual person,” and it expresses in a concentrated manner the subjective thinking contrary to the Western human rights sequence.

The right to life, as indicated by the name, is the right to preserve life. It is the most primitive, instinctive, and intense consciousness of human nature. Hobbes said that “The right of nature, which writers commonly call ‘jus naturale’, is the liberty each man hath to use his own power as he will himself for the preservation of his own nature; that is to say, of his own life.”<sup>25</sup> In contrast, Zhuangzi said, “The two arms are more important than the world, while the body is more important than the two arms,” emphasizing the importance of individual survival.<sup>26</sup> The ancient Chinese philosopher Mozi believed that the problems faced by the people are nothing more than three kinds, that is, “the people have three troubles: no food for the hungry, no clothing for those in cold weather, and no breaks for the laborers.”<sup>27</sup> It can be seen that, in all philosophical frameworks, respect for life has always fallen within the scope of human rights. However, based on the different emphasis for “individual person,” the defensive subjective view attaches greater importance to the preservation of life. So it is understandable that the right to life is placed in the first place in China’s human rights theory. It can be said that the seven decades since the founding of People’s Republic of China have been a history of maintaining the basic right to existence. In 1991, China issued the white paper *Human Rights in China*, which pointed out for the first time that “the right to life has been the primary human right pursued by the Chinese

25. Thomas Hobbes, *Leviathan*, translated by Li Sifu and Li Tingbi (Beijing: The Commercial Press, 1985), 97.

26. An Jimin and Gao Xiuchang, *Annotates, Zhuangzi* (Zhongzhou: Zhongzhou Ancient Books Press, 2006), 393.

27. Li Yushu, *Annotates, Contemporary Annotation and Interpretation of Mozi* (Tianjin: Tianjin Ancient Books Publishing House, 1988), 243.

people.”<sup>28</sup> In 2020, when COVID-19 broke out, protecting everyone’s life and health became the first goal. On February 25, 2021, General Secretary Xi Jinping solemnly announced at the Great Hall of the People that “China has won a comprehensive victory in the uphill battle against poverty.” Thus China realized comprehensive poverty alleviation.<sup>29</sup> In July 2021, General Secretary Xi Jinping said at the meeting celebrating the 100<sup>th</sup> anniversary of the founding of the CPC, “We have achieved the first centenary goal and have built a moderately prosperous society in all respects on the land of China.”<sup>30</sup> Compared with the Western subjectivity view prioritizing the right to freedom, China’s protection of the right to life as the primary human right is in line with not only the understanding of “individual personal” in traditional Eastern philosophy, but also the historical considerations of China’s actual national conditions. In addition, the right to subsistence is the natural existence of humanity in reality, which is the material premise of “human subjectivity” and therefore the basis of all basic human rights. However, “human existence” lies not only in its natural attributes, but also in its social attributes, which are the essential attributes of human beings. Therefore, in this sense, the right to life is only a “basic” primary human right, but by no means a “purposeful” primary human right.<sup>31</sup>

The right to development, as the primary human right, is intended to emphasize its “purposeful” approach choice of approach. It takes development both as a means and as a human right. In the understanding of the “individual person,” ethics and morality continue to evolve along with the path to sanctification; the maintenance of life is the basis of introspection, and loyalty and self-denial are the momentum driving the development of human rights. Understood from the level of social structure, human rights as a superstructure have always been based on the economic foundation of society. Therefore, we should pay attention to the significance of human rights to development, and refrain from using low-level development as a pretext for negating human rights. Only with economic, social, and cultural development can we lay a solid foundation for human rights.<sup>32</sup> China is fully aware of moral growth in traditional philosophy and the spirit of contemporary times. It has upheld the principle that development is of paramount importance, and has strived to enhance the people’s well-being and realize their right to development through development, and to achieve a higher level of development by guaranteeing the people’s right to development. The report to the 19<sup>th</sup> CPC National Congress pointed out that after years of unremitting efforts, China has stood at the forefront of the world in economic strength, scientific and technological strength, national defense strength, and comprehensive national strength, and the Chinese nation, which has endured hardships for a long time, has ushered in a great

28. The State Council Information Office of the People’s Republic of China, “White Paper on Human Rights in China,” *Gazette of the State Council of the People’s Republic of China* 39 (1991): 1348-1392.

29. Xi Jinping, “Speech at the National Poverty Alleviation Summary and Commendation Conference,” *People’s Daily*, February 26, 2021, page 2.

30. Xi Jinping, “Speech at the ceremony marking the centenary of the Founding of the Communist Party of China,” *Qiushi* 14 (2021): 1.

31. Yang Xin, “The Basic Connotations of the Right to Life and Its Status in the Human Rights System,” *Journal of Wuhan University of Science and Technology (Social Science Edition)* 2 (2014): 170.

32. Wang Xigen, “The Human Rights Value in Xi Jinping Thought on Rule of Law,” *Oriental Law* 1 (2021): 42.

leap from standing up and growing prosperous to becoming strong. It added that we must unswervingly implement the concept of innovative, coordinated, green, open, and shared development, and successively put forward the “two centenary” goals.<sup>33</sup> Human development is a process in which human potential is constantly transformed into reality, and it is also a process in which “individual persons” continue to grow. Taking the right to development as the primary “purposeful” human right can be said to be an affirmation of people’s ability to grow. It has also proved from the opposite side that “human existence” is realistic rather than abstract, and practical rather than conceptual and that it is an inevitable choice of human rights theory in the context of China’s legal philosophy. Moreover, this kind of development-based human rights perspective is different from the Western human rights discourse, which is limited by the perceived gain or loss of rights. Instead, it always holds an open attitude to add elements of the development of the times for human rights. The right to development forms an interrelated system with the five major development concepts, the main contradictions in society, and socialist theories, emphasizing the interactive value between social mechanisms and “human existence,” overcoming the “barrenness” of previous theories of human rights jurisprudence, and “enhancing its scientific, people-oriented, contemporary, and international nature, and gradually constructing a human rights discourse system with Chinese characteristics.”<sup>34</sup>

## II. “Person in Relations”: The World Historicity of Human Rights

To put it simply, the human self contains two cognitive perspectives, namely “I” and “me,” and human rights are the mutual recognition between the subject and the object from the observer’s perspective, that is, the agreement between right demand of the subject and the recognition of the universal object in society.<sup>35</sup> At this point, “human existence” can be understood as “person in relations,” and the self is a relative existence with reference to the existence of the object-self, and vice versa. From the perspective of time and space, the universality of humanity reflects the extension of human rights in the spatial dimension, while the historicity of humanity reflects their compression in the spatial dimension.<sup>36</sup> Therefore, understanding human rights in the perspective of time and space necessitates considerations for not only the universal standard of human rights brought about by the value of subjectivity, but also the special differences between people in inter-subjectivity.

### A. World historicity under the temporal and spatial construction

The world historicity of humanity emphasizes the spatio-temporal positioning of

33. Xi Jinping, “Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era,” *People’s Daily*, October 28, 2017, page 1.

34. Zhang Wenxian, “Promoting the Construction of a Legal System with Chinese Characteristics at a New Historical Starting Point,” *Social Sciences in China* 10 (2019): 39-42.

35. Jürgen Habermas, *The Philosophical Discourse of Modernity*, translated by Cao Weidong (Nanjing: Yilin Publishing House, 2011), 348.

36. Liu Zhiqiang, “On Scope of Two Pairs of Human Rights under Construction of Time and Space,” *Law Review* 1 (2017): 46.

human beings as a set of social relations, and thus advocates the process of constructing from theory to reality, from abstraction to concreteness, and from a region to the world. The world historicity of humanity is scattered throughout Marx's works, and is one of the core propositions of Marx's philosophical theory. It comprehensively expounds on the issue of "person in relations." The following is a discussion of the world-historical understanding of human beings from three aspects.

First of all, in Marx's dialectical understanding, "man's world-historical existence" is actually "man's 'non' world-historical existence" under the constraints of multiple "frames," such as "civil society" and "private ownership."<sup>37</sup> In this sense, under the premise of civil society, the existing things in reality become alien to human beings when affected by privatization, so it is in line with the objective law of history to return to the concern of "human existence" itself. In Marx's view, all social mechanisms (i.e., the structures of rights) are the product of reconciling the contradictions between public and private interests, the highly inflated productive forces will inevitably compress the space for public interests, and "person in relations" is regarded as a subject of rights and should have the ability to internalize the external life. Therefore, any social mechanism that excludes the individual is a denial of the world-historical nature of human beings, as well as a denial of human rights, while the life of human beings in this "non-world-historical" environment is a denial of human dignity.

Second, the world historicity of human beings is based on "human beings engaged in practical life," not "some purely abstract action metaphysical grotesque in nature, but a purely material, empirically demonstrable action that every individual who needs to feed and clothe himself in living a practical life can attest."<sup>38</sup> Formal studies in the transcendental sense tend to ignore the historical agency of human beings in the temporal dimension, and regard social mechanisms as repeated stacks of atomic individuals, interspersed with rationality as the immutable truth. From Marx's point of view, "human existence" has a dual role in the long course of history, firstly as a participant in history, and secondary as the main writer of history. As a result, when we understand the historical nature of the human world, we can only treat it as implicit in our will and action, i.e., believing that we can rush with history as a universal person, and also act on our own as a special person. In the modern era of great industry, everyone is involved in the needs of the world, and private property as the alien existence of man has become the force dominating "human existence" through the most universal form. This force has made the individual increasingly more meaningful in world history, and at the same time increasingly further detached from the value of subjectivity. Therefore, understanding the world historicity of humanity inevitably requires us to advocate a shift from the abstract to the concrete, and an exploration of the active characteristics of humanity as the subject of "world history."

Finally, the opposite of human world historicity is narrow regionality, while the

37. Dong Jinqian, "The Content of the Practical Dialectic of 'Man's World Historical Existence' and the Dimension of Human Emancipation: A Discussion with Mr. Gu Zhiming," *Social Science Journal* 4 (2010): 33.

38. Central Compilation and Translation Bureau, *Selected Works of Marx and Engels*, vol. 1 (Beijing: People's Publishing House, 1972), 51.

existence of the nation-state in the real scenario is indeed relatively reasonable. However, the law of history tells us that the boundaries of the community will no longer be subject to regions or nations, and human beings will form a world-wide community because of the connection of universal destiny. The world historicity of humanity is a tremendous breakthrough in Marx’s profound thinking based on historical materialism, which strives to reveal the law of development of human society vertically and the transformation of the national history of a narrow region into a connected and unified world history horizontally.<sup>39</sup> Similarly, Kant pointed out “the fact that human beings live on the finite surface of the earth” dictates the necessity of breaking away from narrow territoriality. In order to pursue a state of permanent peace, each individual is intrinsically existing as a “citizen of the world.” It can be seen that blindly confining ourselves to a narrow national perception to interpret “human existence” would be inadvisable and the only way out is to seek the universality of human rights content in inter-subjectivity from the perspective of world history.

### **B. The externalization of human rights: universality and specificity**

The world historicity of human beings is a legal philosophical viewpoint of the inter-subjective “human being.” It responds to the one-sidedness of the understanding of human rights in the state of “individual person,” and provides basic theoretical support for the different characteristics of human rights externalization. In a nutshell, the externalization of human rights is based on the cognition of “human existence” and is manifested in the human rights concept, human rights system, and human rights norms in specific human rights protection. This externalized behavior is the embodiment of the core understanding of the cognition of “human existence” in a country or a certain region. In other words, the process of externalizing human rights is the transition of human rights from the supposed level to the actual level. Although human rights have reached a certain value consensus and common standards in the world, it does not preclude countries from exploring desirable paths and methods in the existing human rights norms in light of their own special circumstances, and this has also produced different aspects of the externalization of human rights, the most intuitive embodiment of which is the independent signing of the two conventions A and B in the international human rights system.<sup>40</sup> If divided, the world historicity of humanity can be simply regarded as the characteristic expression of “human existence” in the relationship in two dimensions, that is, the expression of human worldliness in the horizontal spatial dimension and the historicity of human beings in the vertical temporal dimension.

From the perspective of the universal dimension of human beings, human rights are an extension of the spatial dimension, that is, universal rights. Universality has been embedded in the concept of human rights since its inception. In the text of the *Declaration of Human Rights*, the *Declaration of Independence*, and the *Universal*

39. Gu Zhiming, “‘Man’s World-Historical Existence’ and His Practical Consciousness of Man,” *Social Sciences in China* 2 (2009): 40.

40. The *International Covenant on Civil and Political Rights* (Covenant A) and the *International Covenant on Economic, Social and Cultural Rights* (Covenant B) were adopted by the United Nations General Assembly on December 16, 1966, and together with the *Universal Declaration of Human Rights* they form the framework of the international charter system of human rights.

*Declaration of Human Rights*, the expression “all” is intended to construct a universal right. The principle of the universality of human rights was reaffirmed in the 1993 *Vienna Declaration and Programme of Action*: “The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfill their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with... The universal nature of these rights and freedoms is beyond question.”<sup>41</sup> The root of the universality of human rights is manifested in universal recognition of the value of human rights, which is rooted in the expression of human nature and is the basic principle required for people to live a dignified life.<sup>42</sup> The innumerable trials and hardships and the scourge of war have made human beings deeply aware of the preciousness of their own existence. This emotion has stemmed from the individual’s empathy with others with similar experiences, and has evolved into the recognition that no one should be deprived of basic rights because of factors such as region, identity, ethnicity, etc. Each person, as a member of the world, should consciously respect the existence of others and abide by the most basic boundaries of rights. In other words, the universality of human rights does not lie in the universal applicability of human rights, but in the universal dimension of the image portrayed by “human existence” in inter-subjectivity. One misconception that needs to be clarified is that universal human rights are not the same as equal human rights. Utilitarian politicians are keen to whitewash human rights and set higher “absolutely correct” requirements and standards for other countries’ human rights policies, touting “universality.” In fact, universality means that people enjoy these rights just by virtue of being human beings. It equalizes the “I” and “me” in the spatial dimension, but the actual enjoyment of these rights is still subject to objective conditions. Historically, the “universal human rights” vigorously advocated by the West are only the rights of rich, white males. Even in modern times, women, people of color and poor people have not been able to fully enjoy the nominal protection of human rights.

From the perspective of the historical dimension of humanity, human rights are a kind of compression in the temporal dimension, and they are special rights. The particularity of human rights is generally understood to mean that due to differences in historical traditions, religious culture, values, and other factors in different countries and regions, the specific means, methods, and modes of operation in pursuing their full realization can be diverse. As long as they do not violate the basic principles of protecting human rights, there is no need to force consistency.<sup>43</sup> Human rights are a product of history, and their realization is closely related to the social development of specific historical periods. The “human historicity” germinates “human existence,” which is always on the way to realizing “world historicity.” In reality, the “non’

41. China Society for Human Rights Studies, *The Universal Declaration of Human Rights and China’s Human Rights* (Chengdu: Sichuan People’s Publishing House, 1998), 226.

42. Zhang Liwei, “On the Universality and Particularity of the Human Rights,” *Western Law Review* 3 (2008): 124.

43. Xu Xianming, “An Analysis of the Universality of Human Rights and Human Rights Culture,” *Law Review* 6 (1999): 18.

world historicity” factors present different characteristics due to the historical, cultural, and geographical features. That is precisely the reality of the world historicity of human beings. The understanding of the specificity of human rights is also evident in the *Bangkok Declaration*: “Considering that, despite their universality, human rights should be viewed in the light of a process of constant reformulation of international norms, bearing in mind the peculiarities of countries and regions, as well as their different historical, cultural and religious backgrounds.”<sup>44</sup> Further, perhaps it is precisely the particularity that has given human rights endless vitality, enabled people to constantly deduce new human rights in the midst of dissatisfaction and resistance to their reality, and awarded openness to the content of human rights. In the contemporary world, all ethnic groups that can stand on the world stage have their own rationality for existence; it is precisely because of the specificity of human rights that “human existence” can enjoy fuller protection. Just imagine that if the discourse is monopolized by “civil and political rights,” “economic, social, and cultural rights” will become the best tool for capital to systematically persecute human rights, and the protection of human dignity will be reduced to a dead letter. Therefore, the particularity is manifested in the highly condensed understanding of “human existence” in the temporal dimension. There is no particularity that is superior or inferior, and we should persist in independently constructing human rights protection based on the actual situation, and maintain an open mindset and refrain from blindly following or believing in “universal” standards.

The world historicity of human beings is the basic feature of human rights. It reflects the legal philosophical contemplation of the “person in relations” between “I” and “me” from the perspective of time and space, and it is also the theoretical support for the diversity in contemporary human rights discourse. In order to explain more clearly the externalization of human rights, we must clarify the relationship between the universality and particularity of human rights. In this regard, the relationship between the two may be understood in two ways. First, the relationship between universality and particularity is one between essence and content. The externalization of human rights is the transition of human rights from “de jure” to “de facto”, and it is not difficult to conclude that the universality of human rights represents the “de jure” level, and the particularity of human rights represents the “de facto” level. The support for the universality of human rights lies in the universal recognition of the value of human rights, and seen from another point of view, this value is the “de jure” state pursued by human rights. In contrast, the particularity of human rights is a pluralistic form derived from the historical nature of human beings, and it is a human right in an “unfinished” state formed on the basis of the universal value of human rights and the actual situation. Compared with the “de jure” human rights at the level of values, the particularity of human rights contains the “de facto” state of human rights. Second, universality and particularity are not mutually exclusive but are in a relationship of co-prosperity and symbiosis. They seem to be opposite to each other, but in fact do not function at the same level. Universality means the universality of values, and particu-

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44. The China Foundation for Human Rights Development, *Human Rights and Sovereignty* (Beijing: New World Press, 2002), 227.



larity means the particularity of content and form, and both are indispensable for the construction of human rights. Particularity represents the self-perception of the subject-self, while universality represents the consensus cognition of the object-self, and the externalization of human rights is the mutual recognition between the subject-self and the object-self, that is, the symbiosis of universality and particularity. In short, the parallel of the prevailing international human rights standards and the diverse human rights discourses in the world is the inevitable path for the externalization of human rights, and also the rational existence of the understanding of “person in relations” from the perspective of time and space.

### C. The argument of “combining principle and practice” in time and space

Human rights in the perspective of time and space features world historicity, so that the “person in relations” views the development of human rights from a dialectical perspective as both the subject and the object. “Upholding the integration of the universality of human rights with China’s reality” is the basic stand of China’s human rights discourse. It highlights the world-historical nature of human rights and is the foothold and target for developing China’s human rights theory and practice. On the whole, the extension of human rights in the spatial dimension and the compression of human rights in the temporal dimension are actually two dynamic aspects in the spatial-temporal construction, which also predestines the possibility of coexistence between the two and maintenance of unity and moderate tension.<sup>45</sup> Thus, the rationality of the possibility can be broadly stated with two points.

First of all, “upholding the integration of the universality of human rights with China’s reality” is based on an accurate grasp of the spatio-temporal dimension of “human existence,” and it makes up for the disconnect between theory and practice in the Western view of human rights. The essence of this proposition lies in reconciling the contradiction between universality (space) and particularity (time). Universality is seen as a principle-like hidden existence, or as a minimum criterion, while particularity is the effect of human rights protection in practice. They correspond to the “de jure” and “de facto”, as well as the theory and practice of human rights, respectively. However, there is a clear disconnect in the Western discourse, and the universality of human rights not only covers theory but also involves practice, thus confusing the existence of “individual person” and “person in relations.” In other words, the two are never purposefully distinguished in the Western discourse system. The highly abstract “human existence” of the “individual person” is rigidly applied to the practical human rights protection for the “person in relations,” ignoring the world historicity of human beings, and thus failing to realize that human rights are not only universal but also particular from the perspective of time and space. It is precisely because of this perception of the “individual person” that has confined “human existence” in the Western context to the political realm. This perception is, of course, highly idealized and romantic, depicting an untouchable utopia for “human existence,” but it is also doomed to be nothing more than a castle in the air, denying the “person in relations” the

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45. Liu Zhiqiang, “On Scope of Two Pairs of Human Rights under Construction of Time and Space,” *Law Review* 1 (2017): 50.

nourishment of human rights as it has done in the past. Some Western countries are also aware of the differences between people in reality, and have introduced relevant welfare policies to redistribute social wealth and maintain basic human rights, leading to mismatches between reality and theory. In contrast, the human rights proposition in the Chinese context has chosen to not only highlight the subjectivity of “human existence” from the perspective of the “individual person,” but also understand its world historicity from the perspective of the “person in relations.” However, China’s concept of human rights does not take a negative attitude towards human rights in the political field. Instead, it attaches greater importance to the equality of participation (or “justice of opportunity”) so that “social people” can enjoy equality of opportunity more than the “political people.” Obviously, this is a two-level pursuit, and the basic equality of participation has not yet been guaranteed, and the equality of opportunity is merely rhetoric.

Second, “upholding the integration of the universality of human rights with China’s reality” is in line with the understanding of subjectivity in traditional Chinese philosophy, and has continuously promoted the development of human rights with the help of the mirror mechanism in the “person in relations.” In the thinking of traditional Chinese philosophy, the “individual person” reflects on his own existence by understanding the natural order of things, so as to reach the realm of a saint, and further deduces it to the social level in the understanding of the “person in relations,” never boasting perfection, but always upholding a development view to understand human rights. However, the emphasis on particularity is not a denial of universality, but is reflected in the relationship of co-prosperity and symbiosis between the two. Particularity is the understanding of human rights of “I,” and needs to be adjusted from the perspective of the universal “me.” Likewise, universality also requires the recognition of particularity to improve the principle of universality. The two reflect and learn from each other. From this point of view, it is obvious that those who use their own human rights standards as universal human rights rules to criticize others are falling into the trap of subjectivism. In practice, China has been upholding the principle of the universality of human rights, and has proposed the initiative of a community with a shared future for mankind across the spatial dimension, emphasizing the particularity of human rights, and encouraging developing countries to consolidate the economic foundation for development in the time dimension. Those measures are based on a full understanding of the world-historicity feature of the “person in relations” and are intended to interpret the development of human rights from the perspective of time and space.

### **III. “Person with Rights”: The Full and Free Development of Human Rights Discourse**

Human rights discourse is a way in which the value of human dignity is integrated through the concept of human rights and expressed through language, symbols, and interpretations. In other words, the expression of discourse has become highly abstract in the understanding of human rights, with a great focus on the elaboration of the relationship between people and the community (the aggregate of people). Within the community, the recognition of human dignity is encapsulated in the form of rights; so

human beings can be interpreted as the “person with rights.” Each person is not only the bearer of human rights, but also the (co-) maker of her or his rights.<sup>46</sup> The adversarial discourse model of the West has carved out “an inviolable territory” for individual rights, but it has subconsciously instrumentalized the existence of “community” and has imprisoned the “person with rights.” China has been upholding the cooperative discourse model, and taken the full and free development of human beings as the core of the discourse. Thus the community realizes the transformation from a realistic state to a rational state, and the association of free people is regarded as the ultimate destination of human rights.

### A. From “community alienation” to “community as concept”

The absolute reverence for individual rights in the community will inevitably lead to the “alienation of the community.” Early Western political thought was dominated by Aristotle’s notion that “man is naturally an animal inclined to the life of the city-state.”<sup>47</sup> It was believed that the city-state is a “product of nature” and that the individual and the city-state grow naturally to achieve the highest good. In modern history, Hobbes explicitly challenged Aristotle’s ideal model for the first time and proposed a community concept of social contract theory established based on the transfer of individual natural right. The community is known as the “Leviathan”. The advent of the Leviathan severed the connection between the individual and the community, and created a political logic featuring a binary separation of civil society and the political state. It’s like God ruthlessly abandoning man in this terrified earthly world, while giving him the supreme right to defend himself. So human rights exist as if in a play. Locke constructed the state of nature on an opposing level, and proposed the priority of the individual over the community. His theory later became the mainstream political concept in the West. In this concept, the state is seen as the product of rational consultation and creation by individuals in accordance with their will and desires in order to satisfy their own interests and needs and fully realize their rights.<sup>48</sup> In this context, the community is only a tool to ensure security and satisfy interests, and loses the “vitality” of maintaining the good in classical politics. It is true that the recognition of individual rights is a great step forward in modern political ideas, as Hegel once said: “If the autonomous realm of subjectivity and human rights is not recognized, then the ethical entity and the most solid community of citizens are doomed.”<sup>49</sup> However, without some “divinity” to regulate and balance the special interests and recognition relations of the free individual, the absolute admiration of individual rights will lead to the “objectification” of the community itself, and the community would inevitably fall into the “paradox of alienation.”

Returning to the community in the sense of the concept, a harmonious relation-

46. Georg Roman, *On Human Rights*, translated by Li Hongyun and Zhou Aimin (Shanghai: Shanghai People’s Publishing House, 2018), 66-67.

47. Aristotle, *Politics*, translated by Wu Shoupeng (Beijing: The Commercial Press, 1965), 7.

48. Huang Tao, *Freedom, Rights and Community: The Legal Deductive Theory of German Conceptual Theory* (Beijing: The Commercial Press, 2020), 305.

49. Losurdo, *Hegel and the Freedom of Moderns*, translated by Ding Sandong et al. (Changchun: Jilin Publishing Group Co., Ltd., 2008), 225.

ship was re-established between the individual and the community. The “paradox of alienation” of the community forced philosophers to reflect on the relationship between the individual and the community, to treat not only individuals but also the community as the end, and to make rights a positive rather than a negative element in the development of the community, and the community a positive rather than a negative element in the realization of rights.<sup>50</sup> German conceptual jurists chose to transform the theory of the social contract into a concept, thus returning the community to Aristotle’s political tradition. The concept here elucidated not only the freedom of the individual, but the freedom of all people, or “a constitution that has the greatest human liberty according to the law for enabling the freedom of each individual to co-exist with the freedom of others.”<sup>51</sup> Here “man as an animal of the city-state” was no longer a natural attribute in the original sense, but a natural attribute in the conceptual sense, and the community also returned to the construction of power relations with the help of the existence of the conceptual sense. After deduction, an identity was found between rights and political logic. Rights were not only based on the rationality of the individual, but also on the rationality of the community, that is, on the mutual recognition between individuals and the recognition of the conceptual community. The main issue of human rights is to resolve the tension between the rights of the individual and the power of the State, and to achieve harmony between the community and the individual in the conceptual sense. The unilateral silence of the community does not promote but instead hinders the openness for human rights to confront the rich realities of the world. All in all, the re-understanding of the community overcomes the inflated nature of individual rights and the near-silent attitude toward responsibilities in the traditional human rights view, and provides a basic platform for communication in a cooperative discourse mode.

In addition, the community as a concept reflects to the greatest extent the “common values,” i.e., the basis of the consensus between individuals and the community. The human rights discourse concerns not only the interests of isolated subjects, nor is it hampered by relational and inter-subjective suspicions. Instead, it pursues rights and overall happiness. As a due right, the right to cooperate is a core right jointly protected by citizens and the state on the basis of human rights obligations; as a legal right, it is a provision of constitutional norms and exists as a legal right through a consensus between the state and citizens; as an actual right, it is an actual right of exchange and compromise on human rights between citizens and the state.<sup>52</sup> Compared with the “alienation of the community,” the atmosphere of cooperative relations that returns to the paradigm of common values, especially with the participation of multiple actors, allows the coexistence of differences and divergent worldviews or values, and even accommodates voices of doubt and opposition, thus making possible better expression

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50. Huang Tao, *Freedom, Rights and Community: The Legal Deductive Theory of German Conceptual Theory* (Beijing: The Commercial Press, 2020), 313.

51. Kant, *Critique of Pure Reason (Annotated Edition)*, translated by Li Qiuling (Beijing: China Renmin University Press, 2011), 256.

52. Liu Zhiqiang, “On Common Value as the Argumentation Paradigm of Human Rights Foundation,” *Academic Forum* 4 (2022): 11.

of the rich connotations of modern human rights discourse.

### **B. The destination of human rights: association of free individuals**

In the *Communist Manifesto*, Marx declared that the ultimate goal for the development of human society is to build an “association of free individuals” — the old bourgeois society featuring classes and class antagonism is replaced by such an association, where the free development of each individual is the condition for the free development of all people.<sup>53</sup> Implicit in this observation there is such a logic: the self-improvement and development of the individual does not only stay at freedom of individual needs and their satisfaction from infringement or obstruction by others or government powers. Only within the “association of free individuals” can the freedom of the individual be highly unified with the freedom of society, and can the individual’s personality, creativity, independence, and other qualities achieve the highest and ultimate development. Such an association recognizes a high degree of openness of individual freedom, without getting in the way of normal social order. It should be pointed out that the “association of free individuals” is not a “community” born under contracts, but a real community in which the individual and the community are unified. In order to address the sharp contradiction between the individual and the community, under the face of the “person with rights,” most Western philosophers have chosen to make a strict distinction between the public and private spheres in the form of a primitive contract, depicting the modern political prototype of “limited government.” However, in the Western context, the “individual person” is abstract, absolute, and prone to evil. As the selfish and profit-seeking individual turns the community into a platform for the exchange of interests through contracts, the community becomes an obstacle to the full and free development of people. Marx rejected the solution of priority for the individual and critically proposed that “the free development of each individual is the condition for the free development of all people;”<sup>54</sup> thus dissolving the fixed perception of the natural opposition between the two. The false community is a political form of capitalist society. In order to alleviate the increasingly fierce conflict between individual interests and general interests, the state is adopted in such a form that separates itself from the actual interests of individuals and the interests of the whole. It represents only the common interests of the ruling class rather than the general public interest of “human existence.”<sup>55</sup> The basis of the association of free individuals lies in the reality of each “individual person”; in it, the individual renounces “forced labor” and acts freely according to his own will, and unifies the general interests of the community with the special interests of the “person with rights,” individual rights and collective rights, thus forming a real community.

In the “association of free individuals,” the full and free development of human beings means, to a certain extent, the free development of individual capacities. In

53. Marx and Engels, *Communist Manifesto* (Beijing: People’s Publishing House, 2017), 51.

54. Central Compilation and Translation Bureau, *Collected Works of Marx and Engels*, vol. 2 (Beijing: People’s Publishing House, 2009), 53.

55. Xie Lixia and Liang Shuguang, “Class Liberation, the Subject of Labor, and Communism: An Interpretation of Political Philosophy on The Communist Manifesto,” *Philosophical Research* 8 (2020): 33.

other words, the associated social relations are not only relations of the self, but also relations subordinate to the self. The full development of individual capacities depends on the protection of rights. Therefore, in the “association of free individuals,” the rights of individuals are regarded as the inherent qualifications and abilities of individuals for self-improvement and development, and the state should strive to create possibilities for the right to the full and free human development on the basis of the existing productive forces. First, “human existence” has never been able to exist in isolation from the community, and human rights theories that separate individuals from the community just ignore the ultimate goal of human rights. In the human rights discourse of full and free development, “human existence” is respected to the greatest extent, and human beings return to human subjectivity since they are not enslaved by any existence. The realization of the full and free development of human beings is defined by the ultimate significance and value orientation of the development of human society. Thus the construction of this discourse is necessary for the current stage of universal alienation by things. Second, the association of free individuals emphasizes that the full and free development of individuals is promoted by their practical social activities, and that the history of human development is the history of social development. Therefore, the state of human development is an important symbol of social development, while the realization of the free and full development of human rights discourse in accordance with the objective laws of history is an inevitable requirement of social development, and the fundamental value pursuit of Marxism for “human existence.”<sup>56</sup> In short, the ultimate goal of human rights consists in the construction of an “association of free individuals” and in the realization of the full and free development of human beings.

### C. Demonstration of the cooperative concept of “a happy life for the people”

A happy life symbolizes humanity’s vision for the future, and is expressed in the expectation of the “person with rights” for the full and free development of all in the association of free individuals. On December 10, 2018, General Secretary Xi Jinping first proposed “living a happy life is the primary human right”, the latest achievement of China’s human rights discourse, pointing out that “in a nutshell, China’s development achievements consists in constantly improved lives of hundreds of millions of Chinese people.”<sup>57</sup> Upon close scrutiny, the proposition is found to contain the viewpoint statements of the people’s subject status, the right to a happy life and the broadest coverage, which give expression to the cooperative discourse under the concept of the “person with rights,” and reflect the pursuit for full and free development from the subject discourse, content discourse and system discourse.

First of all, the subject discourse upheld by “living a happy life is the primary hu-

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56. Zhu Rongying, “The Logic Direction and Its Study Interest of Marx’s Human’s Full-Scale Development Theory: In View of the Fact that People’s All-round Development is the Highest Proposition of Socialism with Chinese Characteristics,” *Journal of Henan University (Social Sciences)* 2 (2018): 13.

57. Xi Jinping, “Xi Jinping Sent a Congratulatory Letter to a Symposium Marking the 70<sup>th</sup> Anniversary of ‘The Universal Declaration of Human Rights’, and Pledged to Uphold the Path of Human Rights Development that Fits the Chinese Context and to Promote Comprehensive Human Development,” *People’s Daily*, December 11, 2018, page 1.

man right” constitutes “humanistic democratic theory.” The characteristics of the people as a class of beings fit the “person with rights.” In other words, the person exists in the community not only as an individual, but also as a member of the community. In the “community as an idea,” the “person with rights” and the community are re-reconciled. Specifically, the defensive mechanism of human rights is weakened; the “human existence” is regarded as part of the community in development, and the weight of cooperation gradually exceeds that of confrontation. Further, attacks on China’s human rights in the Western context for annihilating individuals with collectives is actually a narrow interpretation of “human existence.” In the cooperation mechanism with the community, the individual person is constrained by particularities, and becomes a tool for the ruling class to usurp interests since they often cannot fully stand for the comprehensive demands of the “person with rights.” Therefore, it is difficult for them to maintain the balance of power in cooperation with the community and pursue full and free development. The “people” are able to integrate the common aspirations of the individuals, and the power of the group is able to cooperate with the community to the greatest extent by striking a balance of power. Under historical materialism, the people are the creators of history and represent the direction of historical development, so the discourse with the people as the subject is in line with the objective historical order. General Secretary Xi Jinping has said: “It is the essential requirement of socialism and an important embodiment of the Party’s adherence to the fundamental purpose of serving the people wholeheartedly, for the broad masses of the people to share the fruits of reform and development. The development we pursue is the development that benefits the people, and the prosperity we pursue is the common prosperity of all the people.”<sup>58</sup> Therefore, the full and free development of the people represents the liberation of all people, the historical development path for everyone to become a “free individual,” and the inevitable choice of human rights discourse under the socialist path.

Second, the content discourse upheld by “a happy life as the primary human right” constitutes “the right to a happy life,” which is a combination of existing rights and expectation rights, political rights and economic rights, and legal rights and moral rights.<sup>59</sup> In other words, the right is a comprehensive and open right. However, in the Western discourse, the community still maintains a realistic perception, artificially severing the relationship between the community and the individual, and regarding human rights as trophies or gifts. In other words, rights derived from human dignity should not simply be summarized by positive enumeration, which tends to solidify the scope of human rights and restrict the space for their interpretation. In contrast, instead of enumerating what can constitute a right, it is better to say what should be a right, to maintain the openness of human rights and expand the scope of their interpretation. The right to a happy life also represents a harmonious atmosphere between the individual and the community in purpose, and the community is unified with the demands

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58. “The CPC Central Committee Convenes a Symposium of Non-Party Personalities to Solicit Opinions on Formulating Suggestions for the Formulation of the 13<sup>th</sup> Five-Year Plan,” Xinhuanet, accessed August 8, 2022, [http://www.xinhuanet.com/politics/2015-10/30/c\\_1116995911.htm](http://www.xinhuanet.com/politics/2015-10/30/c_1116995911.htm).

59. Liu Zhiqiang and Yan Naixin, “On the Right to a Happy Life as a Human Right,” *Human Rights* 6 (2020): 123.

of human rights as a concept. Such a harmonious atmosphere is built on the mutual trust and cooperation between the two, and is the basis for the full and free development of the “person with rights” towards the association of free individuals. On the other hand, the West has not only trampled on basic human rights in the fight against the COVID-19 epidemic and disregarded the loss of life, but also sold the country to capital, reducing it to a means of systematic exploitation of human rights. It can be seen that only in close and mutually-reinforcing cooperation with the community can “human existence” realize the association of free individuals and achieve full and unrestricted autonomous activities.

Third, the systematic discourse upheld by “living a happy life is the primary human right” has “maximal coverage.” What is the “primary human right”? In the traditional Western human rights context, human rights are different in demands and content, but there is no distinction in their importance. Similarly, the “maximal” here does not concern the division of human rights, but only their “inclusiveness.” It is mainly reflected in three aspects, namely, the breadth of the subjects, the richness of the content, and the comprehensiveness of the system. First, the subjects of the right to a happy life are the people, and specifically all workers in the Chinese context. Marx once said, “The emancipation of the producer class is the emancipation of all mankind without distinction of sex or race.”<sup>60</sup> In other words, the scope of people can even be expanded to all those aspiring to full and free development, and the “person with rights” coexists with the community as natural political creatures, with association of free individuals as the ultimate destination. In this sense, the broad subjectivity of the people is closer to the essence of human rights than the human rights holders of any previous era. Second, the content of the right to a happy life entails not just a simple addition of rights, but rather a concentrated expression of rights, so that the subject of rights can “enjoy access to childcare, education, employment, medical services, elderly care, housing, and social assistance.”<sup>61</sup> Therefore, the right to a happy life is not only an independent human rights concept, but also a set of rights under the existing human rights system. Its content is richer than any previous human rights protection. Third, seen from the interpretation of “human existence,” those whose right to a happy life is pinned on the “person with rights” is the end of the human rights construction under the layer-by-layer cognition of the “individual person” and “person in relations.” As for the pursuit of values, the pursuit of a happy life is the full and free development of human beings, corresponding to the realization of common prosperity in China, while the specific human rights imply the establishment of a well-off society in an all-round way (the right to be free from poverty) or the achievement of sufficient food and clothing (the right to subsistence). In terms of the discourse mode, a happy life represents a cooperative discourse, and a transcendence and upgrade of the traditional adversarial discourse, highlighting the core of full and free development.

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60. Central Compilation and Translation Bureau, *Collected Works of Marx and Engels*, vol. 3 (Beijing: People's Publishing House, 2009), 568.

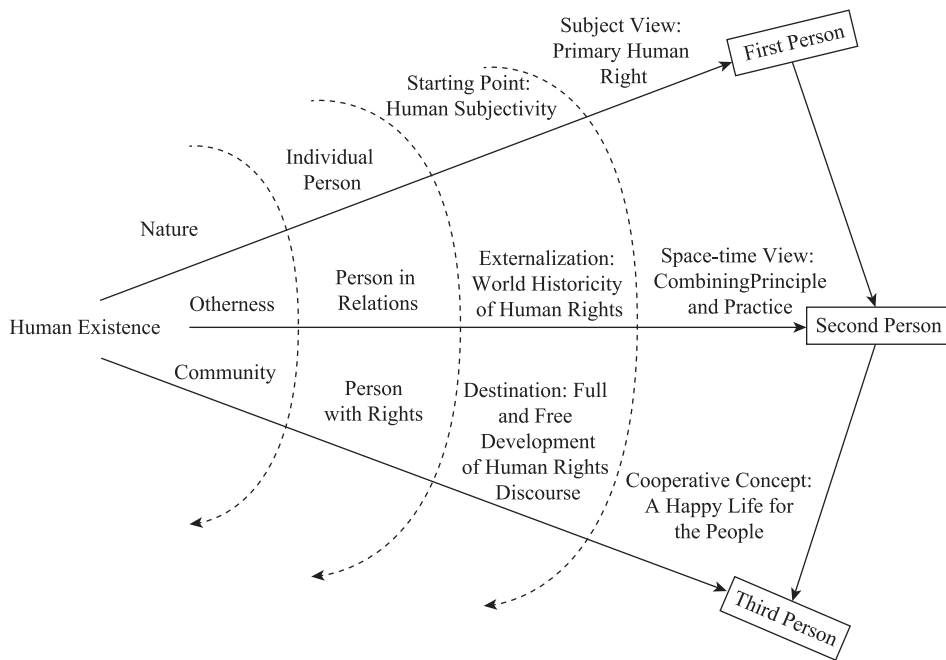
61. Xi Jinping, “Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era,” *People's Daily*, October 28, 2017, page 1.



In short, the biggest human rights are shown in terms of broadest coverage, while the right to a happy life explains the understanding of the “person with rights” in the context of Eastern philosophy with its unique value, and encapsulates the wisdom in human rights governance in China.

**IV. Conclusion: The Structure of the “Human Beings — Human Rights — Human Rights Discourse” System and Their Relationship**

To sum up, we can extract a “human existence” system structure from the above arguments, to interpret the vivid practice of China’s human rights cause and provide legal support for it. This system is shown in the figure below:



That is to say, the concept of “human existence” is taken as the fulcrum of the concept and the origin of the system, and nature, otherness, and community are taken as the reference system, to depict human rights from the first, second, and third person perspectives via extension respectively. Horizontally, the depiction can be extended to four levels: the first level compares the different perspectives of the three reference frames via the people-centered discussion to clarify the direction of the system development. The second level discusses the three platform cognitive images incubated and generated by human existence, which are characterized by individual, relations and rights. The third level brings this understanding into the human rights system, to highlight the three aspects of human beings, human rights, and human rights discourse. The fourth level further explores the value foundation and discourse representation at a deeper level, and interprets the three human rights propositions with Chinese characteristics progressively from the subject to time and space, and to cooperation. Ver-

tically, from top to bottom, human rights can be understood at three levels. The first level entails the gradual expansion and objectification of the cognitive horizon of “human existence” due to changing perspectives, the second level lies in the progressive relationship, and often the upper layer is the premise and support of the lower layer, as manifested in the different stages of human rights (starting point, externalization, and destination); the third level means the inheritance and development of concepts, from the requirement for protection of “survival and development” to the “de jure” to “de facto” transformation and then to the pursuit of “a happy life,” reflecting effective thinking on the development of human rights under different paths.

In essence, the concept of “human existence” has leveraged reference to nature, the otherness, and the community to progressively deduce the subjectivity of human beings, the world historicity of human rights, and the full and free development of human rights discourse. The progressive deduction from the “individual person,” to “person in relations,” and to “person with rights” represents the evolutionary path of human beings — human rights — human rights discourse. It also looks at the understanding of human rights discourse from different personal perspectives: “individual person” highlights subjectivity in reference to nature, and serves as the starting point of the concept of human rights from the first-person perspective, while the subjective discourse expresses the weight sequence of human rights. The “person in relations” is the person who reflects the world historicity as the second person in comparison with the other, and the one that unifies the externalization of human rights, while the spatio-temporal discourse clarifies the development model of human rights; the “person with rights” is the person who emphasizes the full and free development with reference to the community, and as the third person perspective is the destination of the human rights discourse, while the discourse of the cooperative concept states the basis for the construction of human rights. The three types of “human existence” provide jurisprudential support for the propositions of human rights discourse in China. “The right to subsistence and the right to development are the primary basic human rights” expresses the judgment of the rights hierarchy of “individual person” in Eastern philosophy; “upholding the integration of the universality of human rights with China’s reality” explains why the externalized human rights assumes a pluralistic picture; and “the people’s happy life is the primary human right” depicts how the “person with rights” can achieve a happy life in the association of free individuals.

(Translated by *QIAN Chuijun*)