

# Two Faces of Human Dignity: Mencius and Migrant Workers in East Asia

KIM Myeong-Seok

## Abstract

Daniel A. Bell and Nicola Piper have argued that the foreign domestic workers in Hong Kong and Singapore had better not be given equal rights or full citizenship, partly based on the claim that the affective ties analogous to familial love and caring are a more important value than mutual respect between the employer and the employee in the Confucian culture of East Asia. I dispute this claim by providing Confucian arguments emphasizing the importance of respecting other people's dignity in the context of non-familial relationships, while at the same time pointing out the limitations of the Confucian discourse on this matter by discussing the other, less bright dimensions of the Mencian conception of human dignity and respect that could actually be used to support the unequal treatment of migrant workers in East Asia.

**Keywords:** Mencius, Confucianism, migrant workers, human rights, human dignity, respect

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\* KIM Myeong-Seok: Assistant Professor, Philosophy Department, Yonsei University, Korea (dolbaegae@gmail.com)

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## 1. Introduction: Migrant Workers and Human Rights Issues in East Asia

Over the past few decades China has experienced large-scale internal movements of migrant workers, and during the same time East Asia has become a very popular destination for international movements of migrant workers from the other parts of Asia. According to Dorothy Solinger, China's economic liberalization starting in the 1980s led a large number of peasants (estimated to be around sixty million in the mid-1990s)<sup>1</sup> in the countryside to move into the towns and cities to work as drudges.<sup>2</sup> And, in Japan, during the late 1980s, there was a surge of influx of migrant workers from South, East, and Southeast Asia due to Japan's domestic labor shortages, which were caused by demographic changes not matching a sudden economic boom and a revaluation of the yen. This in turn increased the already considerable gap of income between Japan and other Asian countries.<sup>3</sup>

However, these migrant workers do not seem to have fared very well in these countries. In China, the "floating population"—the former peasants who had been confined to rural communities for more than two decades by the hereditary household registration system (*hukou* 戶口) and have since the 1980s moved to the cities looking for better jobs and higher earnings—suffered difficulties in getting approval for urban residence and restrictions on acquiring labor permits. Furthermore, those hired by government-owned factories or foreign-funded firms were not effectively protected by trade unions; on the one hand, the unions under the PRC regime were dominated by party officials who were not very keen on protecting the workers' rights, and on the other hand, the foreign companies often neglected the state regulations for the welfare of the laborers altogether. This frequently led to such abuses as sixteen-hour days, no toilet-breaks, kicking, beating, and lock-ins.<sup>4</sup>

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<sup>1</sup> According to a more recent study, the rural migrants in China are estimated to be between 120 million and 200 million as of 2008 (see Nielsen and Smyth, *Migration and Social Protection in China*, 3), and they may well be over 300 million now.

<sup>2</sup> Solinger, "Human Rights Issues in China's Internal Migration," 286 and 296.

<sup>3</sup> Solinger, "Human Rights Issues in China's Internal Migration," 293.

<sup>4</sup> For details, see Solinger, "Human Rights Issues in China's Internal Migration," 295-304. However, more recently there have been some important changes in government policies concerning the issue of social protection of migrant workers in China. For example, the State Council's Document No. 5 (issued in 2006) contains a number of measures for more strictly monitoring the implementation of the minimum wage laws, improving the housing and working conditions for migrants, and giving improved access to urban public services

In Japan, the official policy to outsiders is “to prohibit the entry of the unskilled, and to keep all immigration purely temporary.”<sup>5</sup> According to Solinger, the Immigration Control and Refugee Recognition Law (1990) is clearly aimed at limiting the inflow of unskilled and semi-skilled workers, there were a number of arrests and forced deportations of illegal residents, and a rotation system was used to reduce the number settling down. Moreover, most of the migrant workers in Japan are residing there illegally, and this makes them vulnerable to various kinds of unfair treatments and abuses from employers, labor brokers, immigration officers, and the police. The Japanese government guarantees all workers rights of social insurance and social security such as medical insurance and accident compensation, but most of the illegal workers do not apply for them fearing arrests and deportation. In addition, it is the general social consensus that the rights to voting, subsistence, education, and work only belong to the citizens.<sup>6</sup>

The situation of the migrant workers in Korea is quite similar to that of these two countries, especially to the case of Japan in many respects. After the 1988 Olympics Korea became one of the major labor-importing countries in Asia, but the Korean government left the issue of migrant labor mostly unattended until when it started the Industrial Trainee System in 1994.<sup>7</sup> The purpose of this system was mainly to meet the cost-saving needs of the small and medium-sized companies in Korea: foreign unskilled laborers were admitted and assigned to factories to work as “trainees” at low salaries due to their official status as trainees, they were not protected by the Labor

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and enlarged social security coverage to the migrants. In addition, in 2007, the National People’s Congress passed the Labor Contract and Employment Promotions Law, which requires that employers sign contracts with their workers (including migrants) and that migrant workers be given the same workplace rights as urban workers. See Nielsen and Smyth, *Migration and Social Protection in China*, 4-7. Despite these legal measures and government directives, though, there seems to be little progress on this matter, and discrimination against and exploitation of migrant workers in China still continue to prevail, partly because the central government’s policies for labor reforms are not favorably met by the officials and urbanites at local levels. For details, see Davies and Grant, “Righting Wrongs,” 31-48.

<sup>5</sup> Solinger, “Human Rights Issues in China’s Internal Migration,” 293.

<sup>6</sup> Solinger, “Human Rights Issues in China’s Internal Migration,” 293-295. For a more recent study of the structural factors that tend to encourage Vietnamese migrant workers in Japan to breach their contracts and go to the illegal sectors, see Bélanger, et al., “From Foreign Trainees to Unauthorized Workers.”

<sup>7</sup> A primitive version of this system, the “Trainee System for Overseas Investment Companies,” was started in 1991 following the Japanese footsteps. This system was to train the unskilled workers employed by Korean companies abroad and bring them to Korea for working in small and medium business sectors. See Moon, “Strangers in the Midst of Globalization,” 148-149, cited in Gray, “‘Gyegeup’-euroseo hanguk-ui iju nodongjadeul,” 102.

Standards Act, not allowed to enroll into the Four Major Insurances (medical insurance, employment insurance, accident compensation, the national pension system), and were denied basic labor rights (such as the rights to make organizations, bargain collectively, and strike). In short, this Industrial Trainee System was an effective means to exploit the migrant workers without acknowledging them to be laborers entitled to a set of rights and benefits.<sup>8</sup>

A great disadvantage to the migrant workers under this system was that they had no freedom to change their employers even when there were troubles or abuses, and this led to a large number of workers fleeing from their worksites and becoming illegal workers. In order to prevent them from fleeing, on the one hand, the employers often relied on such rights-violating means as forcing them to stay in the company dormitories (which was also for the purpose of forcing them to work for longer hours), confiscating passports, withholding salaries, and monitoring against any involvement in labor movement. For those who became illegal residents, on the other hand, the Labor Standards Act was now applicable to them and the pay was slightly better. But they seldom raised their voices in order to improve their working conditions or reported abuses to the government officials, fearing that once their presence was known, they could be arrested and expelled at any time. Ultimately, the Korean government proved their fears to be justified by implementing its three-year rotation system—meant to prevent the migrant workers from settling down permanently—so strictly.<sup>9</sup>

In 2004, the Industrial Trainee System was replaced by the Employment Permit System that included some improvements such as allowing registered workers to change their employers up to three times and enjoy some basic labor rights. However, the workers cannot claim their rights strongly because the employers will not agree to renew their contracts if they make too much trouble from the perspective of the employer. Also, many of these workers tend to overstay their employment permit and become illegal residents vulnerable to the unfair treatments described above. In short, there is still a long way to go before they acquire the full status of laborer and are treated as an integral part of Korean society.<sup>10</sup> The general situation of the migrant workers in East Asia can be summarized as follows: “To get their chance, migrants typically mortgage their human rights. . . . Many countries can’t

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<sup>8</sup> Gray, “‘Gyegeup iha-ui gyegeup’-euroseo hanguk-ui iju nodongjadeul,” 102.

<sup>9</sup> Gray, “‘Gyegeup iha-ui gyegeup’-euroseo hanguk-ui iju nodongjadeul,” 103-106.

<sup>10</sup> Gray, “‘Gyegeup iha-ui gyegeup’-euroseo hanguk-ui iju nodongjadeul,” 112-114.

live without foreign workers—but don't want to live with them. The message to unskilled migrants is almost always: get the job done and get lost; citizenship is out of the question.”<sup>11</sup>

To give a preview of the rest of the essay in advance, in Section 2 below I focus on the case of female migrant workers in Hong Kong and Singapore and critically examine Daniel A. Bell and Nicola Piper's claim that the migrant workers in these countries had better not be given equal rights or full citizenship.<sup>12</sup> They argue that the affective ties analogous to familial love and caring are considered as more important values than mutual respect between the employer and the employee in the Confucian culture of East Asia, and that claiming one's rights is not only unnecessary in these “Confucian” countries but also incompatible in general with the purpose of maintaining a good atmosphere among the members of a given society. However, I provide several counterarguments to these claims in order to show that respect for one's rights and maintaining a good atmosphere within society are actually not incompatible, and that the affective bonds among the members of society do not have to be understood, even in the Confucian culture of East Asia, as so important a value as to override the urgent needs of the weaker members of society such as the migrant workers discussed above.

This last point of the importance of the human rights issues in East Asia leads us to raise the question of whether the traditional Confucian culture is theoretically supportive of such concepts as *pingdeng* 平等 (equality), *zunyan* 尊嚴 (dignity) or *renquan* 人權 (human rights), which have apparently not been so much highlighted in the pre-modern Confucian literature. In Section 3, though, drawing on Irene Bloom's and Joseph Chan's insights I provide a number of arguments that traditional Confucianism is not incompatible with human rights thinking and actually has some important conceptual resources to support it. Specifically, I argue that Mencius' recommendation to the rulers of his time not to take an innocent life, even if doing so would enable them to govern the whole world, can be interpreted to acknowledge that every person possesses a kind of intrinsic worth or dignity as an innocent human being. Moreover, in Section 4, I also argue that a proper conception of human dignity provides an important conceptual basis for human rights, and elaborate Bloom's argument that Mencius'

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<sup>11</sup> Silverman, “Vital and Vulnerable,” 60-61, quoted in Solinger, “Human Rights Issues in China's Internal Migration,” 285.

<sup>12</sup> Bell and Piper, “Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore.”

concept of natural nobility (*tianjue* 天爵) can be considered as such a conception of human dignity.

However, it seems that there is another, less bright side to this Mencian concept of natural nobility, which is possible to be interpreted as well to support the unequal treatment of the migrant workers in East Asia. As will be discussed below, the concept of natural nobility is compatible with the existence of a hierarchical order of dignities, which correspond to the amount of merits accruing to oneself as a result of one's moral self-cultivation. Therefore, people of lesser merits may be thought to deserve to be treated less honorably than those with greater merits. Now, if the migrant workers had known about the conditions of their contract in advance but had still chosen to accept them in exchange for higher salaries in their host countries, such choices may be considered morally despicable and therefore partly justifying unequal or even abusive treatment of those workers. In the conclusion of this essay, however, I propose that there is an alternative way of interpreting the migrant workers' choices and behaviors that strongly encourages us to try our best to treat them humanely as our equals, despite the worrisome aspect of the Mencian concept of natural nobility.

## **2. Human Rights in East Asia?**

The "United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families" (1990) declares that all kinds of migrant workers, whether properly documented or non-documented, shall receive equal treatment to the nationals of the host country in such areas as labor, education, and social security, and that they may even enjoy some political rights if their host country decides to grant them such rights.<sup>13</sup> However, not only is the actual situation of the migrant workers in East Asia far from ideal, but there have been made some theoretical claims concerning the discourse on the human rights issues in East Asia that are susceptible to manipulation by those who might be interested in denying the migrants their human rights. For example, some scholars in Chinese philosophy argue that the concept of human rights is alien to the East Asian intellectual tradition which includes Confucianism

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<sup>13</sup> See especially Articles 25, 27, 28, 30, 42, 43, accessed April 20, 2010, <http://www.un.org/documents/ga/res/45/a45r158.htm>.

as an important component, and this argument sometimes takes the shape that the concept of human rights conflicts with the Confucian ideal of society as an extension of the harmonious and loving family.

Daniel A. Bell and Nicola Piper make a claim of the last kind in their valuable work on the foreign domestic workers (FDWs) in Hong Kong and Singapore. “FDWs” here refer to the migrant women mainly from Southeast Asian countries such as the Philippines, Indonesia, and Thailand who engage in housework and/or caring for needy family members of their employers, and Bell and Piper say that due to the nature of the interaction between these workers and their employers which is hidden in the privacy of the home, they often experience abuse and exploitation and may well be the most vulnerable of all migrant workers.<sup>14</sup> For example, they point out that there is no maximum number of work hours specified in the contracts between the FDWs and their employers, and sixteen-hour days are not uncommon for the FDWs in Hong Kong and Singapore. Astonishingly, an urban councilor in Hong Kong even told the press in 1998 that there are complaints from employers about their FDWs who work only from 8 a.m. to 9 p.m. and refuse to work any more, and proposed to change this situation by setting their work hours at what “seems reasonable” to her, namely sixteen hours per day!<sup>15</sup>

Interestingly, however, Bell and Piper argue that the practice of hiring FDWs fits well with the Confucian cultural heritage of East Asia, and that it is not always desirable to promote respect for the rights of FDWs because of the Confucian valuation of the affective ties that are supposed to be maintained at all costs in every relationship, including that between the FDWs and their employers. In other words, the very best employers—only a small minority and most of them being Chinese—treat their foreign domestic workers as if they were valued members of their family, and the feeling of being loved and trusted would outweigh any extra burdens (such as asking for work during public holidays) put on the shoulders of these workers.<sup>16</sup> Moreover, Bell and Piper point out that one’s rights tend to motivate one to see the rights of others more as limitations on one’s rights

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<sup>14</sup> Bell and Piper, “Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore,” 198.

<sup>15</sup> Williams, “Workers Starting at 8 am Are Stopping at 9 pm, Grumbles Councilor,” cited in Bell and Piper, “Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore,” 220.

<sup>16</sup> Bell and Piper, “Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore,” 216-217.

than as interests one wants to pursue, and in the family-like relationship between the FDW and her employer, claiming one's rights strongly may be inappropriate because it will undermine the affective bonds between the employer and the employee.

So, although having correctly observed the dire situation of the FDWs in terms of their work hours, Bell and Piper seem to make a strange suggestion that the FDWs' work hours had better not be specified and they should not always invoke their right to limited work hours:

From the perspective of the FDW, it might seem preferable to have the right to limited work hours, which can be invoked if need be. If the FDW wants to strengthen affective ties with her employer, then she can waive this right, and the employer would be grateful. In practice, unfortunately, this is not likely to happen. . . . Once the right is formalized, there is a strong tendency to invoke it, even against 'good' employers where it might not be necessary to do so. Moreover, the fact that this right is so difficult to enforce may lead to endless conflicts that could poison the atmosphere in the household.<sup>17</sup>

Bell and Piper accept that neither the duties of liberal justice nor Confucian familial ethics should always have the upper hand in every situation; as they see it, the actual decision in particular cases should be based on the examination of such factors as how severe the injustice is and how likely the curbing of rights will promote Confucian family values. However, they also hold that there are cases where agreement is hard to reach, and in such cases the Confucian preference is clearly toward promoting harmony and trust within the family-like society rather than protecting the individual's rights.<sup>18</sup>

However, Bell and Piper's presentation of the FDWs' attitudes toward the so-called Confucian values of harmony and love is doubtful, and their view of Confucianism on the relationship between individual rights and Confucian familial ethics is controversial. First of all, they assert that feeling loved and trusted would enable the FDWs to view their employers' excessive demands not as extra burdens but as duties to be voluntarily shared among the "family members," but it is not clear how many FDWs would feel loved and trusted when many of their employers expect them to be on duty sixteen

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<sup>17</sup> Bell and Piper, "Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore," 220-221.

<sup>18</sup> Bell and Piper, "Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore," 221.

hours per day, lock them up in apartments during the day and confiscate their passports (to prevent them from running away), and the governments do not allow them to bring in dependents or other members of their families (to prevent them from settling down).<sup>19</sup> Unless these practices are fundamentally changed, it would be very difficult for FDWs to feel themselves to be true members of their employers' families except for highly exceptional cases; and there is no doubt about Cheung Tak Sing and Mok Bong Ho's finding that the Filipina domestic workers in Hong Kong are generally more satisfied with their Western employers than Chinese ones, because the former are more likely to respect their employees' rights and treat them on equal terms.<sup>20</sup>

Second, I think that Bell and Piper are misguided to claim that respect for one's rights and maintaining a good atmosphere in a family-like relationship are incompatible. As I see it, if one party's familial care for another is genuine, worries about conflict over rights would not arise. That is, if one really cares about the welfare of another family member (or a maid one considers as invaluable as one's own daughter), then one would be inclined to show respect to all of her rights and do well to help her pursue her interests, and consequently she would feel no need to claim her rights.<sup>21</sup> On the other hand, if one feels a need to claim one's rights against other family members (or one's employer one lives with in the same house), it is probably because 1) they are getting out of a family relationship (e.g. a husband and a wife whose relationship is getting sour) or because 2) they are essentially not in a familial relationship in the first place (e.g. the FDW and her employer, who are in a market relationship in my view). In either case, then, the relationship between individual rights and affective family ties is not that of mutual incompatibility; it is simply that they can sometimes happily coexist, but on other occasions the decrease in the latter facilitates the increasing assertion of the former.

One might argue, though, that the excessive assertion of one's rights can stifle good atmosphere in the family, and it can be when the FDW claims her rights strongly against her employer that the good, family-like

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<sup>19</sup> Bell and Piper, "Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore," 199 and 200-201.

<sup>20</sup> Cheung and Mok, "How Filipina Maids Are Treated in Hong Kong," cited in Bell and Piper, "Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore," 216.

<sup>21</sup> Or one might think even more strongly, as an anonymous reviewer of this essay does, that one cannot love people without respecting them as full moral agents who have fundamental rights.

relationship between them is undermined. This should be avoided at all costs, the critique continues, because affective family ties are one of the most important values for Confucian-oriented East Asians.<sup>22</sup> This is a partly plausible scenario, I think, but it is not clear to me whether the Confucian tradition considers affective bonds among the members of any given group to be such an over-arching value that the crucial needs of the weaker members of the group, such as the FDWs' need for more humane and reasonable work hours, can be ignored in the name of the extended family. In other words, my view is that affective ties may be far less important than the FDWs' rights if the welfare of the FDWs is seriously in danger as it is now, and any social theory or interpretation of the Confucian culture that overlooks the fundamental importance of their basic rights is either highly confused or driven by an ulterior motive.<sup>23</sup> And it is needless to say that the same point is equally true for the case of similarly disadvantaged migrant workers in other countries of East Asia briefly described above.

### 3. Human Rights and Early Confucianism

Then, what are my theoretical grounds for emphasizing the importance of the issue of human rights in the context of the East Asian Confucian tradition? If it is not possible to find such words as *pingdeng* 平等, *zunyan* 尊嚴 or *renquan* 人權 in the classical Confucian texts, how could it be justified to talk about such notions as equality, dignity, and human rights in the Confucian tradition? There have been numerous scholars, though, who had the conviction that the concept of human rights can be found invested in diverse traditions taking different shapes but sharing some core vision in significant ways. For example, Irene Bloom says:

[T]here are many whose understanding of the Universal Declaration [of Human Rights], as of other human rights instruments and of human rights ideas more broadly, is informed and energized by religious and moral

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<sup>22</sup> Henry Rosemont, Jr. expresses a similar worry. According to him, the United States is a highly conflicted society, and its conflicts stem in important ways from the "rights talk" that permeates the moral and political discourse of the United States more thoroughly than in other countries. See Rosemont, Jr., "Human Rights," especially 56 and 60.

<sup>23</sup> A similar, brilliant, and more theoretically-oriented argument for the compatibility between the individual's rights and the Confucian ideal of society as the family writ large has been presented in Chan, "A Confucian Perspective on Human Rights for Contemporary China," 219-222. My arguments in this and the preceding paragraph are largely indebted to the general framework and insights Chan has provided in his essay.

attitudes much older, more complex, and more diverse. Rather than seeing cultural and religious diversity as, ipso facto, constituting an impediment to (or a counterargument against) the twentieth-century consensus represented by human rights, it seems more fruitful to acknowledge that this diversity may be potentially supportive of human rights thinking—not in every way, but often in very significant respects.<sup>24</sup>

In Bloom's view, Early Confucianism is one of such traditions: Confucius' saying, "By nature close together, through practice set apart," (*Lunyu* 論語 17.2)<sup>25</sup> was chosen by a group of international experts drafting a 1950 UNESCO statement on race as containing a fundamental belief in some significant similarity among human beings. And, in Mencius, human beings are considered to be *equally* endowed with compassion, shame, modesty, and the sense of right and wrong, and these "four sprouts" as a shared moral potential is the ground for a common humanity (*Mengzi* 孟子 2A.6).<sup>26</sup> Furthermore, this egalitarian view of human moral potential also provides a basis for the concept of human *dignity* in Mencius, because his notion of natural nobility (*tianjue*) is what every individual has within their mind in the form of moral possibilities, and the realization of one's moral potential creates "good honor" (*lianggui* 良貴) that no one can take away (*Mengzi* 6A.16-17). It can be in order to keep this natural dignity, and by extension to exercise the corresponding *right* not to be maltreated, that Mencius says even a wayfarer or a beggar in a dire situation does not sometimes accept a meal provided in a contemptuous manner (*Mengzi* 6A.10).<sup>27</sup>

Of course, there have been raised significant worries and strong challenges to this kind of interpretation of Confucianism. According to Joseph Chan's classification, a group of scholars in Chinese philosophy hold that the concept of human rights presupposes that human beings are basically asocial beings or free, autonomous individuals who have a set of entitlements that is independent of and prior to society, and this view of humanity is incompatible with the Confucian view of human beings as contextual beings whose duties and rights, and even self-identities, are determined solely in terms of the web of social relationships.<sup>28</sup> In addition, based on the Confucian ideal of society

<sup>24</sup> Bloom, "Fundamental Intuitions and Consensus Statements," 97.

<sup>25</sup> The book and chapter numbers of the *Lunyu* in this essay are according to Yang, *Lunyu yizhu*.

<sup>26</sup> Bloom, "Fundamental Intuitions and Consensus Statements," 96-104. The numbering of the chapters in the *Mengzi* throughout this essay is according to Yang, *Mengzi yizhu*.

<sup>27</sup> Bloom, "Fundamental Intuitions and Consensus Statements," 104-108. The complex relationship between dignity in Mencius and human rights will be analyzed and discussed in more detail in the next section.

<sup>28</sup> Chan, "A Confucian Perspective on Human Rights for Contemporary China," 216-217.

as modeled on the harmonious and loving family, some scholars also hold that asserting one's rights is not only unnecessary in virtuous relationships but also detrimental to promoting such relationships.<sup>29</sup> And finally, it has been sometimes claimed that the hierarchical or paternalistic relationships Confucianism advocates and the Confucian ideal of non-litigious society tend to suppress active assertion of one's rights.<sup>30</sup>

However, as Chan has effectively argued, the conception of human rights as entitlements that one has in virtue of one's being human and irrespective of such characteristics as gender, race, culture, religion, or nationality does not necessarily presuppose that human beings are asocial beings or free autonomous individuals making choices outside any cultural contexts. Rather, the concept of human rights should be interpreted as asserting a normative claim that one should not be denied a set of basic human rights because of one's gender, race, culture, and so forth. Furthermore, such rights as freedom of expression and freedom of religion endorsed by many international charters of human rights clearly acknowledge that human beings are social and cultural animals that want to communicate with others in a public space and join religious communities to pursue their cultural interests broadly conceived.<sup>31</sup>

However, critics would further ask whether such a concept of human rights is possible in the first place in Confucianism, because human beings are supposed in the Confucian tradition to exist in the web of social relationships such as father-son, husband-wife, ruler-ruled, elder-younger, friend-friend relationships and consequently cannot be considered to assume duties or rights just for the reason that they are humans. In response to this, though, Chan points out that the sites for the realization of the Confucian ethical ideal of humaneness (*ren* 仁) are not confined to these five concrete human relationships. According to him, the *Lunyu* and the *Mengzi* contain passages recommending benevolent treatment of others in general (e.g. *Lunyu* 1.6 and 12.22; *Mengzi* 4B.28 and 7A.46)<sup>32</sup> or giving help to those

<sup>29</sup> Chan, "A Confucian Perspective on Human Rights for Contemporary China," 219-220.

<sup>30</sup> Chan, "A Confucian Perspective on Human Rights for Contemporary China," 222 and 226.

<sup>31</sup> Chan, "A Confucian Perspective on Human Rights for Contemporary China," 216-217.

<sup>32</sup> Chan follows James Legge in interpreting *Lunyu* 12.22 to imply a kind of egalitarianism, but this reading of the passage is based on a problematic view of the character "*ren*" 人 in the *Lunyu*. For besides meaning human beings, "*ren*" in the *Lunyu* often designates persons of the upper social strata who belong to the ruling class in general, and "*ai ren*" 愛人 in the original text of the passage in question, which Legge translates as "to love all men," actually had a more particular sociopolitical sense of taking special care for one's fellow men belonging to the nobility in such a way that qualified ones among them could

in difficulty who are not in a particular relationship with oneself (*Mengzi* 2A.6), and these examples illustrate the way in which Confucianism could be modified so as to accommodate the idea of universal human rights.<sup>33</sup>

In my view, Early Confucianism—especially that of Mencius—seems to have richer intellectual resources favorable to the idea of human rights than what Chan provides. For Mencius often recommends the rulers of his time not to take innocent people's lives even if doing so would benefit them greatly. For example, Mencius states that what the ancient sages Bo Yi 伯夷 and Yi Yin 伊尹 shared with Confucius in character was that although they were equally capable of taking possession of the entire world if they had governed only a territory of a hundred Chinese square miles (*li* 里), they would have refused to gain the world if doing so had required them to do a single wrong act or kill one innocent life (*Mengzi* 2A.2). In addition, after commenting on a king's lack of royal dignity Mencius reports that he told the king that the world could be unified by the ruler who does not like killing people (*Mengzi* 1A.6), and Mencius also recommends Prince Dian 墊 of Qi 齊 to follow humaneness (*ren*) and righteousness (*yi* 義), which he codifies respectively as not killing an innocent person and not taking what is not one's own (*Mengzi* 7A.33).<sup>34</sup>

Mencius' classification of not taking an innocent life to the realm of *ren* 仁 (mainly benevolence or caring in this context) reveals his thinking that the ruler's refraining from taking his people's lives is to be based on his benevolence for his people, and this benevolence could be seen as mono-directional in the sense that whether to treat people benevolently or not is up to the ruler, and that the people have no demand on it. However, this is actually a wrong view, because what is important in Mencius' advice is people's innocence. That is, Mencius' thought underlying his recommendation not to take innocent lives seems to be that the ruler should view people's innocence as a factor making them at least *worthy* of not being killed for no fault, and that the ancient sages' refusal to accept the entire world at the expense of one innocent life shows that these sages considered this factor of people's innocence as imposing some restrictions on their treatment of their people. Now, this protection of people

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serve in the government of the country. For a detailed argument for this point, see Kim, "The Meaning of 'Love' (*Ai*) in the *Analects*," 262-265. However, I agree that the other passages Chan cites well support his view that Confucianism is not incompatible with the idea of human rights.

<sup>33</sup> Chan, "A Confucian Perspective on Human Rights for Contemporary China," 217-219.

<sup>34</sup> This paragraph and the next are largely based on materials in Kim, "Respect in *Mengzi* as a Concern-Based Construal."

from being killed for no fault of their own is clearly not owing to the duties they perform as the subjects of their rulers. Rather, it should be considered as what they are *entitled* to due to their being innocent human beings, and in my view this comes very close to the conception of human rights as what people are entitled to by virtue of being human.

Now I turn to the next argument summarized above, namely that the Confucian ideal of society is the family writ large based on harmonious and loving relationships, and that asserting one's rights is not only unnecessary but actually detrimental to promoting such an ideal. I have already argued in the last section that the FDWs and their employers are best considered to be in a market relationship rather than a familial one, and that even if the East Asian culture would encourage the members of a given society to maintain affective, family-like relationships, this consideration cannot be so crucial a concern as to override the pressing needs of the weaker members of the society such as the FDWs. Moreover, according to Chan, although rights would not necessarily constitute virtues or contribute to maintaining virtuous relationships based on mutual love and caring, human rights can play an important role of fallback apparatus for the vulnerable to rely on when people's relationships are no longer based on mutual caring, and Confucianism has no reason to object to accepting rights so conceived.<sup>35</sup>

As for the argument that the hierarchical or paternalistic characteristics of the Confucian tradition hinders Confucianism from being open to the idea and practice of human rights, I concur with Chan that many of the teachings demanding absolute obedience and submission from the younger or weaker sides of the personal relationships—such as *san'gang* 三綱—are ideologies developed during or after Han dynasty China and may not reflect the Confucian spirit correctly. To cite just one example to illustrate this point, Confucius sometimes explains his highest virtue of humaneness (*ren*) in terms of the reciprocity principle (*shu* 恕) that one should not do to others what one would not wish to be done to oneself (e.g. *Lunyu* 12.2 and 15.24), and the author of the *Daxue* 大學 (Great Learning) presents this principle by saying that “Do not treat your inferiors with what you dislike in your superiors, and do not serve your superiors with what you dislike in your inferiors.”<sup>36</sup> This implies that the virtuous father or husband would not impose on his son or wife what he would not desire if he were in his son's

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<sup>35</sup> Chan, “A Confucian Perspective on Human Rights for Contemporary China,” 220-222.

<sup>36</sup> Legge, *The Chinese Classics*, 373. Translation modified from Legge's.

or wife's position, and he would also refuse to follow authorities blindly if he finds it conflicting with more important ethical principles.<sup>37</sup>

Now, finally concerning the argument that claiming one's rights is not a suitable practice in a Confucian society because Confucianism emphasizes concession and compromise rather than competition and self-assertion, Chan correctly points out that although Confucius preferred more peaceful means than litigation in court, he never said that litigation is to be avoided at all costs (cf. *Lunyu* 12.13). Rather, he could be interpreted to be willing to endorse legal means as a last resort people may turn to when they can no longer expect others to treat them with justice and caring, and in such a situation human rights could be considered a useful means to protect one's legitimate interests. Moreover, Confucius recommends that kindness should be returned with kindness and injury with justice (*Lunyu* 14.34), and Chan seems to me to interpret this passage correctly by saying that Confucius would find it appropriate to respond with justice or fairness when one is wronged or unjustly harmed by others.<sup>38</sup>

#### 4. The Concepts of Dignity and Human Rights in Mencius

Yet another way to defend the compatibility between Confucianism and human rights, in addition to those presented above, is to consider the concept of human rights to be based on or intertwined with the concept of human dignity and try to argue one's way from the latter toward the former, partly based on the grounds that some notion of human dignity can more easily be found in traditional Chinese texts than that of human rights. The idea that human dignity provides conceptual grounds for human rights is reflected in such documents as the International Bill of Rights, which says that human rights arise from "the inherent dignity of the human person."<sup>39</sup> And Joel Feinberg, who holds that having rights to certain things is to have the legal power to make claims to those things,<sup>40</sup> takes human dignity to be equivalent to a recognizable capacity to assert claims. In other words, he thinks that to respect a person, or "to think of him as possessed of human dignity, simply *is* to think of him as a potential maker of claims."<sup>41</sup>

<sup>37</sup> A more detailed discussion of these points can be found in Chan, "A Confucian Perspective on Human Rights for Contemporary China," 222-224.

<sup>38</sup> Chan, "A Confucian Perspective on Human Rights for Contemporary China," 226-227.

<sup>39</sup> Quoted in Svensson, *Debating Human Rights in China*, 33.

<sup>40</sup> Feinberg, *Rights, Justice, and the Bounds of Liberty*, 150.

According to Marina Svensson, though, this approach is misguided because it confuses such ideas as dignity or justice with the idea of human rights. That is, she concurs with Jack Donnelly in thinking that while all societies possess the former concepts, the latter only came into being with the development of the modern nation-state.<sup>42</sup> In Donnelly's terms, certain acts that we would consider to involve violations of human rights may have been also deemed impermissible for one reason or another in traditional societies, but this does not necessarily mean that people in those societies also thought themselves to have human rights. They might have condemned certain acts for being, say, unjust, humiliating, or impious, but it is unlikely for them to have also deemed those acts to be violating human rights, because they probably did not have a concept of human rights.<sup>43</sup>

Moreover, Svensson proposes that we have to distinguish between intrinsic dignity and extrinsic dignity, which refer respectively to the kind of dignity that every human being has qua human regardless of one's origin or status, and to the kind that is contingent upon one's behavior or status in society and can therefore be considered as a hindrance to conceiving and/or practicing human rights. In Svensson's view, dignity can be guaranteed and promoted by many things other than rights, e.g. religious beliefs about the nature of human beings or ideas about how one should treat others based on their hierarchical status. According to her, it is indeed possible to imagine a society where dignity of the extrinsic kind is respected without its giving rise to a concept of human rights; traditional China, whose ethic is purportedly constituted by the rites (*li* 禮) that define people's different statuses and proper treatment of each other in accordance with them, is one such society.<sup>44</sup>

However, although it might be historically true that the concept of human rights developed in response to the industrialization and the formation of the nation-state in the modern West, this does not necessarily preclude the possibility that people from different intellectual traditions also have indigenous resources that could foster and support human rights thinking. Furthermore, it is not an implausible idea at all to think that a proper conception of human dignity could provide a sufficient theoretical ground for the concept of human rights,<sup>45</sup> and Irene Bloom, despite Svensson's

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<sup>41</sup> Feinberg, *Rights, Justice, and the Bounds of Liberty*, 151. Italic is original.

<sup>42</sup> Svensson, *Debating Human Rights in China*, 34.

<sup>43</sup> Donnelly, *Universal Human Rights*, 81.

<sup>44</sup> Svensson, *Debating Human Rights in China*, 34.

<sup>45</sup> This point is actually ceded by Svensson herself in her following remarks: "It would thus

underrepresentation of her work,<sup>46</sup> has already shown how this could be so in the context of the *Mengzi*.<sup>47</sup> In this section I will emphasize this point by discussing the Mencian conception of natural nobility (*tianjue*) closely, but I also intend to take one step further and raise the theoretical possibility that this notion of natural nobility, which is considered to be possessed by everyone and thus provides grounds for the equal treatment of every individual, can also have an embarrassing aspect which tends to promote the unequal treatment of a certain group of people in society.

Now, let me start by quoting two *Mengzi* passages important for illustrating the concept of natural nobility:

There is the nobility of Heaven [or, natural nobility, *tianjue*] and the nobility of man (*renjue*). Humaneness, rightness, loyalty, and truthfulness—and taking pleasure in doing good, without ever wearying of it—this is the nobility of Heaven. The ranks of duke, minister, or high official—this is the nobility of man. Men of antiquity cultivated the nobility of Heaven, and the nobility of man followed after it. Men of the present day cultivate the nobility of Heaven out of a desire for the nobility of man, and once having obtained the nobility of man, they cast away the nobility of Heaven. Their delusion is extreme, and, in the end, they must lose everything.<sup>48</sup>

In their desire to be honored all human beings are of like mind. And all human beings have within themselves what is honorable. It is only that they do not think about it, that is all. The honor that derives from men is not the good honor. Whom Chief Zhao honors, Chief Zhao can also debase. The *Classic of Odes* says: “We have been plied with wine, and satisfied with virtue.” To “satisfy with virtue” means that one is satisfied with humaneness and rightness, and therefore does not crave the flavors of the meat and grain served by men, and when a good reputation and widespread esteem accrue to one’s person, one does not crave the elegant embroidered garments worn by men.<sup>49</sup>

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be useful to distinguish between intrinsic dignity, which pertains to every human being qua human being regardless of his or her behavior and status and is the dignity human rights advocates have in mind, and extrinsic dignity, which is the antithesis of human rights because it is not a general attitude but contingent upon one’s behavior or status in society.” See Svensson, *Debating Human Rights in China*, 34.

<sup>46</sup> Svensson, *Debating Human Rights in China*, 34.

<sup>47</sup> Bloom, “Fundamental Intuitions and Consensus Statements.”

<sup>48</sup> *Mengzi* 6A.16. Translation is Bloom’s, including the words in the brackets. See Bloom, “Fundamental Intuitions and Consensus Statements,” 106.

<sup>49</sup> *Mengzi* 6A.17. Translation is Bloom’s, with the Romanization of Chinese characters omitted. See Bloom, “Fundamental Intuitions and Consensus Statements,” 107.

In this passage, we see a marked distinction between what Mencius calls the nobility of Heaven and the nobility of man. The nobility of Heaven (*tianjue* 天爵, literally “office given by Heaven”), or the nobility that everyone is born with by nature, refers to moral virtues or their beginnings growing in one’s mind. This type of nobility is sharply contrasted with the positions of high officials (and above) and accompanying accolades, and a crucial difference between them is that whereas the latter can be taken away at any time by the authority who has conferred them, the former type of nobility is invariably within oneself as one’s nature. The relationship between these two is such that in the process of cultivating one’s moral character, the sources of external nobility also usually come to oneself, but those who are genuinely satisfied with the nobleness of morality do not need them.

According to Bloom, Mencius’ view of these two types of nobility can be understood in terms of the distinction between human dignity and aristocratic dignity. What Bloom means by “human dignity” is the minimum dignity that human beings are supposed to have by virtue of their humanity, and one of its crucial characteristics is that it allows no degrees. In contrast, aristocratic dignity is basically what “rulers and elites claim based on their roles in the political and social order,” and it entails the existence of a hierarchical order of dignities corresponding to the different levels of status and amounts of achievements.<sup>50</sup> Now, there seems to be no difficulty in regarding aristocratic dignity to be basically equivalent to Mencius’ “nobility of man.” And it also seems quite reasonable to think that human dignity nicely matches Mencius’ “natural nobility” or “the nobility of Heaven,” because what makes everyone naturally noble in Mencius is their moral potential, which Heaven has given to every human being to more or less the same degree. Bloom argues that, for Mencius, this minimum dignity is what enables one to protest against unfair or humiliating treatment by claiming the same degree of moral agency as the abuser,<sup>51</sup> and this point can be illustrated in relation to respect as follows:

Just as human moral potential is understood by Mencius to dispose human beings to interact harmoniously with one another, so the Mencian notion of dignity, allied to this understanding, seems to involve a self-consciousness

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<sup>50</sup> Bloom, “Fundamental Intuitions and Consensus Statements,” 105-110. By now it must be clear that Bloom’s distinction between human dignity and aristocratic dignity is basically the same thing as Svensson’s aforementioned distinction between intrinsic dignity and extrinsic dignity.

<sup>51</sup> Bloom, “Fundamental Intuitions and Consensus Statements,” 107.

on the part of human beings that they are both capable and worthy of respect. I would suggest that human dignity in this context involves an appreciation on the part of individuals of their own moral potential, a claim for respect from others, and a corresponding duty and disposition to show respect for others—all in light of the awareness of a common humanity. The degree of respect that is to be shown may vary in accordance with the specific relationships between individuals—depending on kinship ties, gender, age, and social position—and the particular behaviors required vary as well. But always there is a basic respect required from each human being toward every other human being as a condition of their common humanity.<sup>52</sup>

Against Svensson's and Donnelly's claims, this interpretation of the Mencian notion of natural nobility clearly shows how this idea could support the egalitarian view that migrant workers in East Asia are human beings so much as we are and have a rightful claim to equal treatment, or at the very least have a right to resist abuses. However, while accepting that the Mencian notion of natural nobility can be interpreted this way, I think that the analogy between this concept and that of human dignity is not fully sustainable. In my view, there seem to be two crucial differences between Mencius' natural nobility and human dignity, and the first one is that whereas the latter does not admit of any difference in moral worth among people, the former can admit the possibility of such differences based on how much one realizes one's moral potential. In other words, if human dignity refers to "the minimum dignity which belongs to every human being qua human" and in that sense it "implies the very denial of an aristocratic order of dignities,"<sup>53</sup> human moral potential that makes every human being worthy of basic respect in Mencius opens up a new possibility of differing degrees of respect that correspond to the level of one's moral achievement. For example, Mencius tells us the following episode:

Someone asked Zeng Xi, "Between you and Zilu, who is more worthy?" Zeng Xi said uneasily, "[Even my late father] was afraid of him." "Then, who is more worthy between you and Guan Zhong?" Zeng Xi, expressing displeasure [this time], said, "How can you ever compare me to Guan Zhong? Guan Zhong enjoyed his ruler's confidence so exclusively and governed the country for so long, but his achievements are so insignificant. How dare you compare me to this man?"<sup>54</sup>

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<sup>52</sup> Bloom, "Fundamental Intuitions and Consensus Statements," 109.

<sup>53</sup> Spiegelberg, "Human Dignity," 56, quoted in Bloom, "Fundamental Intuitions and Consensus Statements," 114.

Zeng Xi 曾西 is the son of Zeng Shen 曾參, a worthy disciple of Confucius' who is even sometimes addressed as "Master Zeng" 曾子 in the *Lunyu*. Zilu 子路, another advanced disciple of Confucius', was much senior to Zeng Shen,<sup>55</sup> and according to his son (i.e. Zeng Xi), Zeng Shen had great reverence for Zilu, presumably not just for his seniority but, more importantly, for his great moral character. Now, Zeng Xi's uneasiness at the thought of comparing himself to Zilu, whom even his worthy father showed great respect, reveals that he feels greater respect for Zilu than he does for his father. Accordingly, one can imagine how much respect Zeng Xi would feel for Confucius, the great teacher of both Zilu and his father. On the other hand, Zeng Xi's displeasure at the question of who is more worthy, he or Guan Zhong, the famous seventh century minister of the Qi 齊 dukedom, shows his deep-seated disrespect for Guan Zhong. In short, this passage shows that one can feel different degrees of respect (and disrespect) towards different people's corresponding merits, and I think this is one of the things that distinguish Mencius' notion of natural nobility from the modern conception of human dignity.<sup>56</sup>

The second feature that makes natural nobility in Mencius different is that although everyone is endowed with this kind of nobility and it is called "good honor" or "innate honor" (*lianggui* 良貴) because it cannot be taken away by others, Mencius also thinks that one can dishonor oneself by neglecting one's innate nobility and consequently make oneself contemptible. So Mencius says the following:

Among the parts of a person, some are noble or more valuable and some are base or less valuable. Never harm the more valuable for the sake of the less valuable, or the noble for the sake of the base. [For] those who nurture the less valuable become petty men, and those who nurture the more valuable become great men. . . . Suppose there is a gardener, who cares only about [useless] jujube trees or thornbushes, while neglecting [highly valuable] paulownia trees; he would be considered a contemptible (*jian* 賤) gardener. . . . [Likewise,] one who cares only about food and drink is despised by others, and it is because he nurtures the less important while neglecting the more important.<sup>57</sup>

<sup>54</sup> *Mengzi* 2A.1. Translation is mine.

<sup>55</sup> According to Qian Mu's 錢穆 calculations, Zilu (542-480 BCE) was thirty seven years older than Zeng Shen (505-436 BCE). See Qian, *Xianqin zhuzi xinian*, 2:615-616.

<sup>56</sup> Most of this paragraph has once appeared in Kim, "Respect in *Mengzi* as a Concern-Based Construal."

<sup>57</sup> *Mengzi* 6A.14. Translation is mine.

That is, although everyone has within their mind a kind of natural nobility that enables them to stand up against each other and request basic respect, one deserves only contempt and disapproval from others if one is lured away by one's petty desires and fails to keep one's dignity. Good examples of this in the *Mengzi* are those who would accept ten thousand bushels of grain without considering its appropriateness (*Mengzi* 6A.10), and the husband who fulfills his desire for food and wine by begging for them at other people's funerals but pretends to have dined with noble acquaintances to his family members (*Mengzi* 4B.33).

As I see it, these characteristics of the Mencian view of human nobility could be interpreted to support the unequal treatment of the migrant workers in East Asia. For one thing, the Mencian conception of natural nobility is compatible with the existence of a hierarchical order of dignities corresponding to the amount of one's moral merits accruing to oneself through the cultivation of one's moral potential, and this seems to allow some theoretical room for treating those considered to have lesser merits differently from the other members of society. Moreover, if the migrant workers had known about the conditions of their contract in advance but still have chosen to accept them in exchange for the relatively high salaries they would get in their host countries, one might think that they have voluntarily chosen to expose themselves to unequal or even abusive treatment. Additionally, one might add along the Mencian line that these migrant workers are analogous to those in *Mengzi* 6A.10 who would not accept even a meal offered in a humiliating way in their original frame of mind but often forget about their original mind (*benxin* 本心) and follow their desires, and that they are in that sense both morally despicable.

## 5. Concluding Remarks

Then, how could a modern interpreter of Mencius, who is concerned about the human rights issues involving migrant workers in East Asia, deal with this charge? One thing worth pointing out is that many of the migrant workers are gladly taking all the humiliations and abuses only to support their family at home. For this reason, they should be considered not to have abandoned their basic human dignity for material gains, but rather to have made a virtuous decision to sacrifice it if necessary for the welfare of their family. But then, what about the others whose main goals were material

gains from the beginning? Shall we consider their too much understandable, but (from a certain perspective) not lofty enough decision to justify what they often get in our territories? For such a case, one could say that even they do not deserve to be treated badly despite their choice to expose themselves to abuses for higher salaries, because their basic human dignity, though neglected by themselves, still resides in their hearts in the form of moral potential that requires all the same degree of respect from us. In addition, for such a case Mencius would have cited Confucius (*Lunyu* 19.19) and said that it is pathetic for them to have failed to keep their natural nobility, but what is more to blame is the global political economy, which leaves them with no other real option but to make such a drastic choice (*Mengzi* 1A.7 and 6A.7). Furthermore, he would have also advised us to feel sympathetic to their situations and try our best to treat them as our equals, thus helping them keep their human dignity.

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## 尊嚴的兩面 ——孟子與東亞外勞

金明錫

### 中文摘要

對今日東亞外勞面臨的人權問題，儒學傳統——特別是孔子和孟子——有何提示？人權觀念能否適用於東亞儒家文化仍是學界爭議不休的課題。不過，我認同一些儒家自由主義者的說法，認為各類傳統的人權觀雖有不同形式，卻有一個共同的核心觀點：對人性尊嚴的尊重。本文主張，《孟子》一書中的“良貴”觀包含應分(desert)的觀念，並深入探討這觀念如何深化當今人權問題的儒家論述。Daniel Bell 和 Nicola Piper 教授不久前辯稱，香港和新加坡最好不讓外勞獲得公民的權益或身份。然而，這主張似乎假設一個未經證實的論點：在東亞儒家文化裡，家庭關係的愛與關懷之情比雇主與員工之間的彼此尊重更為重要。我不認同這一點，強調在家庭關係以外仍需尊重人性尊嚴，並指出孟子在這方面的論述有所缺限。我將探討孟子尊嚴觀的另一層面相。這一層面相可以支持對東亞外勞的不平等待遇。

**關鍵詞：**孟子，儒學，外勞，人權，尊嚴