

THE UNIVERSALITY, INDIVISIBILITY AND INTERDEPENDENCE OF HUMAN RIGHTS: THE CASE OF CHINA

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INTRODUCTION

All social life is an expression of its unmistakable protagonist: the human person. The foundation of a just society is the principle that affirms the inviolable dignity of the human person. Sadly however, respect for human dignity is not a dominant social practice everywhere. The principle of just society is often challenged either by the Machiavellian dictum of *Realpolitik* or the economic maxim of utility maximization. Though these challenges come predominantly from within, they are not confined to, national boundaries. Violations of human dignity by governments are often defended in the name of state sovereignty and national development, while human degradations by multinational corporations are justified in terms of share-holders' interest and global competition in production costs. The development of international human rights law and human rights regime have made some inroads in qualifying the principle of state sovereignty, whereas the organization of the world into sovereign nation-states still allows a rights claim by the state to withstand intervention in its domestic affairs by external agents. The conflict between a universal understanding of human rights and a state's preoccupation with national particularities is a serious matter that this chapter purports to analyze, with reference to changing practices in mainland China.

To fully understand human rights practices in China, we need to take a developmental perspective – development of human rights is path-dependent. Cultural legacies are deep-seated forces that may be activated selectively to form preferences, thereby affecting strategic actions of agents. Political ideologies such as Marxism and nationalism can also have an important influence at different times depending on the domestic and international circum-

stances. Human rights development in China has been embedded in the state's nation-building project and its quest for modernity. Path adaptation and breaking points are affected by the trajectory of sociopolitical changes at both the domestic and international levels. It is altogether a matter of political learning, a protracted process where the role of government is crucial. The reason is twofold. In a general sense, protection of human rights everywhere ultimately hinges on the exercise of public authority and at the same time the restraint of this very authority. In the Chinese case, civil society had been weakened or even destroyed by the state after the communist seizure of power. The path of political learning does not end with a positive change to the general policy line, as institutional guarantees are yet to be secured and new practices need to be habituated. A developmental perspective has also to address the issue how members in the resurrected civil society think and behave. Such a perspective will lead to a conclusion with a guarded optimism.

CULTURAL LEGACIES

It is sometimes held that traditional Chinese culture is detrimental to the development of human rights. It is however a gross mistake to compare Chinese culture and the Western idea of human rights, since the concept and discourse of human rights is a unique phenomenon of modernity, only to appear first in the West during the 17th and 18th centuries and was practically unknown in ancient China. There are indeed cultural elements in traditional China that are incompatible with the modern concept of human rights, such as hierarchical social structure with rather fixed positions of authority and subordination, despotic power¹ of the emperor as a Son of Heaven, the priority of communal interests over individual ones, and an ethos for social order and political unity at the expense of diversities and dissents. But similar elements can also be found in feudal Europe. It is true that the modern concept of human rights in China is an imported good. It is equally unnecessary or even futile to prove the existence of such a modern concept in old China with reference to phrases in the Confucian or Taoist texts. For instance, it is one thing to discover in the former the mention of human worth and the possibility for the human person to become a sage through the exercise

¹ In the sense of Michael Mann, 'The Autonomous Power of the State: Its Origins, Mechanisms and Results', *European Journal of Sociology*, Vol. 25 (1985), pp. 185-213.

of *ren* (literally two-man-mindedness, as a moral exhortation to treat others as oneself).² But it is a different thing to consider whether these precepts amount to an affirmation of human dignity *as a matter of rights*.³ In the same vein, the saying of the Taoist master Laozi that the human person partakes in the Nature, and that the Nature's Way is the human Way, has nothing to do with 'natural law' as understood in the West. Confucianism is by no means rights-oriented. It is an ethical doctrine that emphasizes obligations and self-nurture in virtues. Obligations are not constructed on a legalistic principle of equality but in a moral register concerned with designated roles in social relationships. The closest thing to the Western concept of rights is *fen*. It is generally translated as roles or functions performed, but a better translation of *fen* should be 'shares', that is, a particular kind of role morally grounded in mutual respect and reciprocity. The closest equivalent to the Western idea of natural law is *tianming* (Heaven's imperative). Yet, 'Heaven' is not nature and 'imperative' is no law. In Confucianism, *tianming* is ultimately based on human moral sentiments. In short, the crux of the classics is not about equality of rights and duties, but an equality of human worth and common morality (rites) that calls for mutual respect and reciprocal conduct in *ren*. Scholars argue that these ideas of human worth, morality of a common humanity, *ren*, *tianming* and many others provide an important link between Chinese traditional philosophy and contemporary human rights documents.⁴ But in this author's view, the two discourses represent quite different approaches to the worth of the human person.⁵

² Mou Zhongsan, a great neo-Confucian scholar, for example, described China's challenge and the challenge for contemporary Confucians as 'the opening up of a new mode of outward kingliness', which he identified as the way of democracy and human rights. Like a number of twentieth century Confucian thinkers, Mou believed that the seeds for democracy and human rights lie within the Chinese cultural tradition itself. See Albert Chen, 'Chinese Cultural Tradition and Human Rights', *China Perspectives*, Vol. 1 No. 5 at http://www.oicyf.org/perspectives/5_043000/contents.htm. 'Outward kingliness' is one of the dual virtue of the dictum for the best life as 'inner sagehood and outward kingliness'.

³ The concept of rights did not exist in traditional China. See Lee Seung-kwan, 'Was there a Concept of Rights in Confucian Virtue-Based Morality?', *Journal of Chinese Philosophy*, Vol. 19 (1992), p. 241.

⁴ See Wm. Theodore de Bary and Tu Weiming, eds., *Confucianism and Human Rights*, N.Y.: Columbia University Press, 1998, in particular the chapter 5, 'Fundamental Intuitions and Consensus Statements: Mencian Confucianism and Human Rights', pp. 95-116.

⁵ It is important to note the coming back of Confucianism in post-Mao China, see John Makeham, *Lost Soul: Confucianism in Contemporary Chinese Academic Discourse*, Cambridge: Harvard University Press, 2008.

FLAT DENIAL OF UNIVERSALITY OF HUMAN RIGHTS IN THE ERA OF MAO ZEDONG (1949-76)

China under Mao was a place where the universal idea of human rights was unequivocally refused.⁶ Traditional cultural legacies have nothing to do with it. When the modern idea of inalienable human rights was introduced to China in the early 20th century, it was well received by the intelligentsia. In his book *Datong pian* (On the Great Harmony), Kang Youwei (1902) hailed human rights as a foundation for social-political reform. In 1930, the nationalist government promulgated the first ever law of the kind: *renquan baohu ling* (edict on protection of human rights), only to be breached in practice later on. Nationalist China is a founding member of the United Nations. Its representative P.C. Chang (Zhang Pengjun) was one of the two vice-chairpersons of the Human Rights Commission set up in 1946 to draft the Universal Declaration on Human Rights. At its meeting, Mr. Chang proposed, in vain, to add to article 1 of the UDHR the Confucian concept of *ren* (two-man mindedness) to complement the reference to reason. Citing traditional Chinese philosophy, he stressed that man should act in consideration of his fellow human beings.⁷ Mr. Chang's initiative serves to demonstrate the compatibility between Confucian ethics and human rights. It is even more interesting to note that among P.C. Chang's contemporaries were founding leaders of the communist movement, for instance Chen Duxiu and Li Dachao, who had once embraced the idea of universal human rights.⁸ It was not until the Chinese Communist Party was established that they changed their stand. Communism prevailed over Confucianism and won the hearts of many young intellectuals who were dissatisfied with the political situation of the day. During the Sino-Japanese war and the civil war, authorities in Communist-controlled parts of China occasionally employed the term 'human rights' in their criticisms of the nationalist government. With a view to winning over public support for the revolutionary cause, those communist authorities even enacted regulations to protect 'human

⁶ This entails that the issues of indivisibility and interdependence were irrelevant too.

⁷ Comments by Mr. Chang were reproduced in Stephen C. Angle & Marina Svensson, eds., *The Chinese Human Rights Reader: Documents and Commentary 1900-2000*, N.Y.: M.E. Sharpe, 2001, pp. 206-213.

⁸ Translations of their rights-related writings are provided in Angle & Svensson, *ibid.*, pp. 62-80.

rights' in their areas. Nevertheless, it is important to note that 'human rights' in their pronouncements and regulations was still based on class analysis and political-situational morality with protection of specific rights available only to people of recognized classes at specific times, e.g. those who were qualified to be co-opted into the United Front for the anti-Japanese war. Mao was no believer in innate human rights, but in his essay 'On Policy' written in December 1940, was willing to concede that 'all landlords and capitalists not opposed to the War of Resistance shall enjoy the same human rights, property rights, and right to vote, and the same freedoms of speech, assembly, association, thought, and belief, as the workers and peasants'.⁹ Despite this tactical concession, communist ideology and political objectives as a rule remained the prime factors contributing to the denial of universal human rights for the first 30 years after the founding of the People's Republic.

It is in order to dwell a little bit on the political objectives after 1949. Conservation of power and socialist construction were the key objectives of the political leadership. The fate of human rights was thus closely knitted with the trajectory of power struggle and fights on policy line, which swung between the extreme left and the extreme right. But the dynamics of power struggle at home had an external background. For the first thirty years, this background includes the leaders' memory of China's sufferings from imperialism and semi-colonialism, hostile vicissitudes of the cold war, isolation and self-isolation of China, Cross-Taiwan-Straits conflicts and strains in the Sino-Soviet relations. Against this hostile background, designated groups of persons were sometimes treated as accomplices of foreign powers and with harsh policies and measures that resulted in human rights violations.

In the first few years, the policy imperative perceived by the Party-government was to consolidate political power against the enemies of the new regime. The construction of socialism required the elimination of undesirable old elements and the winning of the broadest support of all others. The Common Programme of the People's Political Consultative Conference passed on 29 September 1949 – which is regarded as the first, albeit provisional constitution of China – adopted a conciliatory policy on the issue of rights. There was neither explicit mention of human rights nor rights of cit-

⁹ See for example, Mao Zedong (1940), 'On Policy', reproduced in Angle & Svensson, *ibid.*, pp. 187-191.

izenship. The language was 'people' instead.¹⁰ One may therefore argue that to the authorities, the individual human person *per se* is not the subject of rights.¹¹ Furthermore, putting all rights-related provisions into a holistic context, one can find that rights are not universal, but class-based. The rights generally available to the 'people' are denied to certain classes of people.¹² For instance, the right to private property was differentially distributed. It was granted to workers, peasants, petty bourgeoisie and national bourgeoisie, but not to bureaucratic capitalists whose assets were to be confiscated. The Common Programme further established an undefined offence of counter-revolutionary activities as a target for resolute suppression. Those classes of people found to have committed such an offence, i.e. 'Kuomintang war criminals' and 'other un-repentant, major counter-revolutionaries', would be severely punished without regard to rights. For those who were classified as common reactionaries, feudal landlords and bureaucratic capitalists, their political rights would be deprived but their survival permitted, subject to a penalty of re-education through forced labour. Such a scheme of class struggle against treason and counter-revolution provided a sweeping excuse for widespread violations of human rights during many suppressive campaigns in the following decades. In such a light, the Common Programme can better be regarded as a policy agenda of socialist revolution rather than a normative document.

An ordinary constitution was enacted in 1954, against the background of a more relaxed environment after successful consolidation of political

¹⁰ 'People' and 'nations' are two terms used in the Common Programme. The differences between them were explained by Zhou Enlai in his report to the People's Political Consultative Conference in September 1949 as follows. Nationals were those bureaucratic capitalist class and landlords who were subjected to repression of their reactionary activities and re-education through labour. Unlike the 'people', they had no rights but duties. The distinction between 'people' and 'national' were eliminated in the 1982 constitution where the concept of 'citizen' was for the first time adopted.

¹¹ Mo Jihon, 'The Significance of the Conception of Human Rights in the Constitution of China', in C Raj Kumar and D K Srivastava eds., *Human Rights and Development: Law, Policy and Governance*, Hong Kong, Singapore: LexisNexis, 2006, pp. 119-135, here p. 120.

¹² While Mao Zedong in his earlier writings was willing to grant the people a full range of freedom rights after the Communist revolution, he did not mean by 'the people' that all Chinese citizens are political equals. The meaning of the people was laid bare in his article about the 'People's Democratic Dictatorship' that combines democracy for the people and dictatorship against the reactionaries. It implies that there are no universal rights. See 'On Coalition Government' and 'On Peoples' Democratic Dictatorship' in *Mao Zedong xuanji* (Works of Mao Zedong), Vol. 3 and 4 respectively.

power, initial achievements in collectivization in the countryside¹³ and the end of the Korea War in 1953. The constitution of 1954 is important for its introduction of the concept of citizenship and citizen rights. It offered a comprehensive catalogue of civil, socio-economic and political rights for Chinese citizens. These provisions of citizen rights allow some Chinese scholars to later claim that legal protection of human rights had already been enshrined in 1954. It is sometimes argued further that citizen rights are a better form of rights than human rights because the former are more concrete and enforceable. It is clear that the concept of sovereignty lies behind such a discourse. It is a matter of the sovereign's will to give concrete effect to the general requirements of human rights, rather than the state's responsibility to respect and safeguard human rights. It would be, however, a mistake to equate human rights with citizen rights as stipulated in the 1954 constitution. Not only were these rights not conferred to all persons *qua* their human hood¹⁴ but as citizen rights they could be withdrawn by the Party-state. In fact, Article 7 of the Common Programme was retained with slight modification in Article 19 of the 1954 Constitution. There were still different categories of people with different entitlements to rights or without any entitlement at all. In other words, a residual of class analysis coexisted with the modern concept of citizenship in the same document. Such a citizenship with rights is still a far cry from the acceptance of the universality of human rights grounded on the dignified human person.

An acid test of the limit of these citizen rights came a few years after the promulgation of the 1954 constitution. From the end of 1956 through June 1957, a hundred flowers campaign¹⁵ was launched on the occasion of a rec-

¹³ By the end of 1952, a total of 8.3 million mutual cooperation teams were formed covering about 40% of the total rural households. Experiments with deeper agricultural cooperation in the form of agricultural production cooperative society (basic society) were launched in several places.

¹⁴ While the universal idea of human rights had not obtained a hold at home, Zhou Enlai spoke, in his report to the 1955 Bandung Conference, of basic human rights to be enjoyed by different people around the world without any discrimination in terms of ethnicity or skin colour. This resonates with the pre-1949 communist strategy of differentiation whereby universality of human rights were denied at home but recognized and encouraged in specific international contexts.

¹⁵ The term 'Hundred flowers' refers to an old policy line on literature and arts: 'let hundred flowers bloom and hundred schools of thought contend'.

tification campaign within the Party.¹⁶ Even non-Party intellectuals and members of the democratic parties were invited to speak out against bureaucratism, subjectivism, and sectarianism within the Chinese Communist Party. The invitees' response was lukewarm in the beginning, but they eventually became active participants in the campaign after the publication of Mao Zedong's 'On the correct handling of the contradictions among the people' and the Party Central's 'Guidelines on the Rectification Campaign'. The former suggested a relaxation of the class struggle and the latter promised no post-facto penalty against criticism. It is in the ensuing criticisms we can see for the first time since 1949 the language and issues of human rights were evoked against the Party and the government. Violation of human rights was said to be widespread during the previous political campaigns. Young university students¹⁷ openly disagreed with the Party's position on human rights as a bourgeois idea. They vowed to strive for equality of human rights in the law and even demanded the National People's Congress to pass a bill of human rights. This demonstrates therefore that the idea of universality of human rights was already acceptable to young Chinese in the 1950s.

The political thaw did not last long before the regime decided to take revenge from June to August 1957. During the strike-back, people who had been critical of the Party were labeled as rightists or extreme rightists and subjected to six different types of punishments, with the most severe being re-education by (forced) labour. Re-education by (forced) labour is an institution that has contributed to a large number of human rights violations in the history of the People's Republic. Among the 550,000 rightists persecuted, only about one fifth survived to experience their rehabilitation twenty years later. Establishment scholars made comments on the rightists' use of human rights as a tool in their critique of the regime. In these comments, major tenets of the official line on the subject in those days are revealed as follows.

The first is a flat denial of the universality of human rights. As the analysis goes, human dignity is unequal in a class society. It is denied to the exploited class but enjoyed by the exploiting class. Human rights serve as an

¹⁶ It is unclear whether this campaign had to do with events in the Soviet bloc. In 25 February 1956, Khrushchev delivered a secret speech against Stalin for his cult of personality and brutal violence. A revolution in Hungary against the Stalinist government broke out and lasted from 23 October to 10 November.

¹⁷ See the three translated statements from students in Angle & Svensson, *ibid.*, pp. 217-222.

imperialist instrument of the capitalist class in the West to suppress the peoples in the third world. Secondly, the Peoples' Republic of China is a democracy led by the working class in alliance with the peasants. They have rights and dignity. In contrast, there is rightly a minority group of persons without rights and dignity, such as the imperialists, landlords, bourgeois bureaucrats, and counterrevolutionaries. They are the objects of the revolution and of the dictatorship. Thirdly, violations of human rights were committed by the above-mentioned elements in pre-1949 China and the greatest violation pertains to that of the human rights of the Chinese people as a whole. They once had neither human dignity nor a rightful place in the world. The collective right of the Chinese people to development is therefore more important than those individualist rights advocated by the rightists. Fourthly, the government justified its various campaigns against the categories of bad people as legitimate activities of a class struggle in the interests of the socialist project, i.e. consolidation of the party leadership, establishment of the state-owned economy, reform of the feudal, imperialist, capitalist thinking of the counterrevolutionary intellectuals, and development of a strong, prosperous and independent state. Violations of individual rights are necessary to defend the state's right to collective development. Fifthly, errors and mistakes in those campaigns despite conscious efforts to avoid them are understandable because of the scale and difficulty of the tasks. It is more important that the Communist Party and the government are quick to discover their mistakes and correct them correspondingly.

A different twist was added to the above policy line after the suppression of an uprising in Tibet in 1959. Tibet had been related to the Qing dynasty (1644-1912) variously as ally, opponent, tributary state or region under Chinese control. In 1724, the Tibetan regions of Amdo and Kham were incorporated into China's western provinces. In 1951, the new China decided to liberate the Tibet proper from the Dalai Lama's reign. A 17-point agreement was reached with the Lhasa government according to which socialist land reform would be executed in Amdo and Kham but postponed in Tibet. In June 1956, Tibetans in Amdo and Kham revolted and were met with Chinese army reprisals. In 1958, the Dalai Lama's efforts to end the escalating fighting through negotiation failed and his delegation returned to Lhasa as supporters of Amdo and Kham's cause. On 10 March 1959, some 300,000 Tibetans staged a protest in Lhasa. The Dalai Lama went into exile on the 15th before the major fighting began in the capital of Tibet on the 19th. The People's Liberation Army put the uprising down in two days. Studies report that the suppression involved brutal violation of human

rights, resulting in the death of about 87,000 Tibetans. There are also reports that the U.S. funded the training and arms of Tibetan guerillas before and several years after the uprising.

It is apparent that the government of the day did not recognize the issue of Tibet as one that concerns human rights. Rather, the uprising was interpreted as a desperate resistance of feudal Tibetan landlords against a socialist land reform that was designed to benefit the peasants. It was also charged as a plot of foreign forces to promote Tibet's independence. It was hence a matter of state sovereignty and territorial integrity for China and the suppression was justified. From that point on, the insistence on the principle of state sovereignty constituted a cornerstone in China's rhetoric on human rights. In later statements on the subject, the government even argues that China was a defender of human rights in Tibet for having liberated Tibetans from the feudal serf system.¹⁸

We cannot leave the 1950s without treating the Great Famine (1959-1961). I submit that it is another major issue of human rights, i.e. the right to subsistence for Chinese peasants. The Great Famine is one of the worst in modern history of the world, with an official estimate of around 15 millions of 'unnatural death'. A reputed scholar put the figure at about 36 millions.¹⁹ The government initially attributed the famine solely to the spell of nature by using the term 'three year natural disaster'. As more information and figures were discovered, it became prepared to admit other causes with a new characterization of a 'three year difficult period'. Decades later when scholars managed to gain access to more information for independent research, they were able to confirm that policies and institutions at the time were responsible for the fatal casualties. The major causes were thus found to be the Great Leap Forward campaign whereby agriculture was blindly exploited for the sake of crude industrialization, the People's Commune system that robbed the peasants' freedom to manage their production and social life, the self-interested bureaucrats who submitted false production

¹⁸ This year, to commemorate the 50th anniversary of 'the liberation of Tibet', the People's Congress of the Autonomous Region of Tibet resolved to institute 28 March as an annual holiday to celebrate the liberation of Tibet's feudal slaves.

¹⁹ The most thorough study of the famine is by Yang Jisheng, *Mubei – zhongguo liushi niandai da jihuanguang jishi* (Tombstone – The Great Famine in the 1960s), 2 volumes, Hong Kong: Cosmo Books, 2008; For an account in English, consult Basil Ashton *et.al.*, 'Famine in China: 1958-1961', *Population and Development*, Vol. 10, No. 4 (December 1984), pp. 613-645.

information to the top leadership for policy-making, and the reckless increase in forced requisition by purchasing at government fixed prices in midst of dropping yield. When millions of peasants died of hunger, is it not an issue of the right to subsistence? Certainly, the right of subsistence was then an unknown concept in China.²⁰

LIBERALIZATION AND HUMAN RIGHTS IN THE 1980S

The Cultural Revolution (1966-76) was a mass movement initiated by Mao Zedong to fight those elements within the government and the Party who were critical of radical policies in general and his role in the Great Leap Forward in particular. Young rebels known as red guards were agitated to do whatever they wanted to do. A kind of mob rule had followed, which had incapacitated political institutions including the Party itself. It brought widespread social chaos and disrupted economic production. The army had to be engaged to restore order but mass campaigns still protracted for a few more years until Mao's death put an end to the Revolution.

The Cultural Revolution had ample implications for human rights. It reminds us of the way in which communist leaders had deployed the discourse of rights in the struggle against class enemies according to a situational morality. As a result, the Revolution means countless violations of human rights of those 'enemies'. During the Revolution, the so-called four big freedoms and big democracy²¹ were granted to the rebellious students without any legal restraints while their victims were deprived of the most basic human rights of personal integrity. Nearly three million party members identified as spies, revisionists or counter-revolutionaries were subjected to abuse, torture, imprisonment, forced displacement and execution. Countless ordinary citizens were wrongfully purged one way or another. A

²⁰ It took more than three decades before the government took up the language. In its human rights dialogue with the outside world, the government gave the right to subsistence the top priority over all others. See Section V on particularity below.

²¹ They were free 'to speak out, to air one's views freely, to write big-character posters and to hold great debates'. The second one is sometimes replaced by 'to network freely' meaning to cut class and travel free of charge to meet other activists in other places. These Freedoms were enshrined in the 1973 constitution but were removed when a new constitution was enacted in 1982.

large number of young people from the cities were forcibly moved to the countryside to receive re-education by the poor peasants.²²

There are two less obvious implications of the Cultural Revolution for subsequent development of human rights in China. First, the excesses during the revolution and extreme sufferings had stimulated people to critically reflect on many things, including Marxist ideology, the rule of the Party, and the predicament of China. It led to a subsequent erosion of communist ideology, a thirsty search for alternative ideas and a revival of humanism.²³ Secondly, among the victims of the Revolution were high-ranking cadres of the government and the Party, including senior leaders like Liu Shaoqi and Deng Xiaoping (with his son, Deng Pufang, who was victimized and rendered paralegic). What impact did their personal sufferings have on their attitudes towards human rights for the following decade has never been systematically studied. Two competing hypotheses are plausible though. First, the post-Cultural-Revolution leadership had acquired a strong ethos for stability. As a consequence, the Cultural Revolution was evaluated only as serious, individual mistakes committed on the part of Mao in general and the Gang of Four in particular, rather than as something wrong with the Party-state system. The lesson to be learned was to avoid the kind of anarchy that prevailed during the Revolution. Since the anarchy was produced by too much participation by uncontrollable mobs under the influence of the cult of personality, it was necessary to restore the legal system, strengthen the Party's capacity for social control, while stressing its collective leadership. In conclusion, personal experiences of victimization and of rights violation had no positive impact on the subsequent development of human rights in China. Rather, the ethos 'stability above all' and the insistence on the absolute 'leadership of the Party' would jointly serve as a brake on future advance towards human rights. The other hypothesis sees the personal experiences of those leader-victims as consequential in an awakening to

²² Harry Harding, *China's Second Revolution: Reform after Mao*, Washington, D.C.: Brookings Institution Press, 1987.

²³ For example, the novel *Man, Oh Man!* by Dai Houying published in 1987, represents forceful yearning for humanism, set against the agonizing background of the Cultural Revolution. In the prologue, the author speaks of her two recent publications dealing with the theme of the human person. In both, she writes 'I loudly cry for the return of the Soul and happily record the resuscitation of the human nature'. The novel is available at <http://www.mwjx.com/other/book/story/top100/076.rar/index.html>

human rights,²⁴ or at least for a strengthening of socialist 'legality' as a kind of desirable normative structure beyond a purely instrumental tool of social control. The early, vague idea of legality became a precursor for later ideas of *yifa zhiguo* (rule by law) and *fazhi* (rule of law).

At any rate, a completely different era developed as the leaders were determined to first restore law and order and then try a new path of development. The surviving rightists were rehabilitated and a new constitution was promulgated. The practical end to class struggle as proclaimed in the Resolution of the third Plenum of the 11th Central Committee in 1978, and as reiterated in the new constitution promulgated in December of the same year, unexpectedly removed a major barrier to future development of human rights.²⁵ For the first time in Chinese history, the preface of this current constitution requires all political parties, thus including the Chinese Communist Party, to abide by constitutional norms in their activities. In reflection of the bitter lessons learned from the Cultural Revolution, the first Criminal Code was promulgated in 1979, and article #38 introduced in the 1982 constitution prescribes that 'the human dignity of citizens is inviolable and any humiliation, libel, false accusation or frame-up is prohibited'.²⁶ Finally, the Party-government adopted a new policy paradigm of reform and opening that would ultimately facilitate an empirical and pragmatic mode of policy-making, end China's self-isolation from the world and call for new ways to deal with Western countries. The resumption of diplo-

²⁴ Deng Pufang was a driving force behind the formation of the China Disabled Person's Federation. It aims among others to promote the 'legitimate rights' of the handicapped. The Federation does not use the words 'human rights' in its work and Deng Pufang preferred to call himself a humanitarian. In this case, it is the deeds that matter, not the words. He was awarded in 2003 the United Nations Human Rights Prize for his contribution to the human rights of the handicapped. On the occasion, he said in his speech the following: 'Human rights represent a holy and lofty pursuit. As I used to be subjected to the misery of being deprived of dignity and freedom, I deeply appreciate the true value of human dignity and freedom. I must also thank the arrangement of fate, which has enabled me to experience personally the challenges facing persons with disabilities and given me the opportunity to work unremittingly for the protection of their rights and the improvement of their status'. See <http://www.cdpc.org.cn/old/english/top-3.htm>.

²⁵ Ideology-based class struggle and power-based policy line struggle can be regarded as the two major barriers in the Chinese context.

²⁶ This innovative and extremely important provision is the result of bitter lessons learned from the Cultural Revolution when human dignity was blatantly violated. The 1982 constitution has a regrettable defect though, i.e. the removal of some important rights from previous constitutions, i.e. right to strike, right to move and right to residence.

matic relations between the U.S. and China on 1 January 1979 and the visit of Deng Xiaoping to the US ushered a new era in China's diplomacy, including human rights diplomacy.

All in all, on the eve of the 1980s, a relaxed environment was in place for an ideological and intellectual spring. A democracy movement surfaced in November 1978 and human rights became one of the popular ideas in big character posters and other writings in magazines. On 1 January 1979, China Human Rights League was established in Beijing and published a Chinese Declaration of Human Rights.²⁷ It contains no theoretical discussion about human rights but presents nineteen concrete demands or appeals. A more theoretical contribution is made by a radical human rights advocate in this period, Wei Jingsheng, who saw human rights as 'innate' and 'universal'. He argued that 'the moment one is born, one has the right to live and the right to fight for a better life' and asked 'on what basis can they (the socialist countries) say that the people are their own masters if universal equal human rights are absent?'²⁸ Such a view is significant in and of itself, but it is more significant that it comes from a self-learned worker. Advocates of human rights in the hundred flowers campaign were university students and intellectuals, the appearance of Wei in the 1980s suggests the spread of the human rights idea to a broader spectrum of Chinese society.

After the crackdown of the 1978 democracy movement, top leaders actually became open-minded to the issues of human rights. A landmark change was visible when on 6 June 1985, Deng Xiaoping said 'China ought to talk about human rights'. Deng's remark set the line for other leaders to take in the following years, such as praising the international human rights regime²⁹ or arguing that human rights are not a monopoly of capitalist countries.³⁰ Then in 1988, the Universal Declaration of Human Rights was signed to signal China's formal acceptance of the universality of human rights. China also became in the same year a party to the UN Convention

²⁷ English translation of the Declaration can be found in Angle & Svensson, *ibid.*, 262-266.

²⁸ 'Human Rights, Equality, and Democracy', English translation available in Angle & Svensson, *ibid.*, pp 253-261. See also James D. Seymour, ed., *The Fifth Modernization: China's Human Rights Movement, 1978-1979* Stanfordsville, N.Y.: Human Rights Publishing Group, 1980, pp. 141-46.

²⁹ See for example the speech by the Chinese Foreign Minister during the general debate at the 41st session of the United Nations General Assembly held in 1986.

³⁰ For instance, this was maintained by Premier Li Peng in his conversation with Soviet Union's General Secretary, Gorbachev on 16 May 1989.

against Torture, albeit with reservations with respect to Article 1 and Article 30, Section 1.

The positive new trend was disrupted in spring 1989. Hu Yaobang, former general secretary of the Party, died on 15 April. Spontaneous mourning activities by students on campuses in Beijing soon developed into escalating protests against bureaucrats' racketeering and corruption to be followed by demands for press freedom and democratic election of some leaders. In view of the rapid spread of the movement to other cities, moderate elements within the Party led by General Secretary Zhao Ziyang tried in vain to stabilize the increasing precarious situation through dialogues with students. The People's Daily published a verdict made by the conservatives within the leadership was published on 26 April as its editorial declared that the protests and demands amounted to an anti-revolutionary rebellion. This further agitated the students, leading to a hunger strike starting on 13 May and drawing widespread sympathy from all walks of life. As the movement turned more radical, the hardliners in the ruling camp become more resolute to resort to force. Zhao Ziyang had to step down on 17/18 May and the movement was suppressed by the army on 4 June. It is beyond doubt that there were violations of human rights during the violent suppression.

PARTICULARITY AND PRIORITIZATION OF HUMAN RIGHTS: THE 1990s

What happened on 4 June in Tiananmen, Beijing is indeed very sad. Apart from inexcusable violations of human rights, it shattered the leadership's confidence in carrying out political reforms without risking instability. The more liberal and balanced reform measures undertaken in the late 1980s gave way to the one-dimensional, economic reform only strategy. The breakdown of communism in Eastern Europe and the Soviet Union on the other hand further reinforced the Chinese leaders' acute sense of insecurity. While the policy paradigm of reform and opening was there to stay, the dual emphasis was on stability and economic development, as suggested by the slogans 'stability above all' and 'development is the sure way'. In this context, human rights paradoxically played a useful role in China's diplomacy vis-à-vis the West. To better equip itself for the task, the government actually encouraged scholars, through commissioned projects, to conduct more and better research on human rights. In addition, incremental reform of the legal system to match the goal of socialist legality – first set forth after the Cultural Revolution – continued

without disruption. Both trends had positive spillover effects on China's positions towards human rights in the years to come.

Official policy on human rights in the 1990s was marked by the publications of a series of nineteen white papers. They made clear that the Chinese government now appraised the Universal Declaration of Human Rights, recognized their implementation as the sublime goal of all peoples and nations, but argued for flexibility in the light of *guoqing*, i.e. particularities and prioritization. The latter involves an attitude against the integral promotion of every category of human rights. The question of indivisibility of rights and duties received only scant attention.

The first White Paper 'Human Rights in China' of 1 November 1991³¹ set out the basic views of the government for the more specialized white papers in the coming years. The position was basically defensive, arguing that socialist China had achieved significant progress in many fields of human rights, with occasional attacks on inhuman practices of imperialist countries in China and on the Nationalist government of the Republican era. It was acknowledged that China had suffered from setbacks and there is still much room for improvement, due to China's status still as a developing country. The defense of being a developing country led to the advocacy of particularity and priority of human rights. On particularity it was argued that the evolution of the situation in regard to human rights everywhere is circumscribed by the historical, social, economic and cultural conditions of various nations. Since the issue of human rights falls by and large within the sovereignty of each country, a country's human rights situation should not be judged in total disregard of its history and national conditions, nor can it be evaluated according to a preconceived model or the conditions of another country or region. On priorities among human rights, the Chinese government held it as a simple truth that, for any country, the right to subsistence is the most important of all human rights, without which the other rights are out of the question. The right to subsistence entails, as a precondition, a right to development,³² 'since without national independence, there would be no guarantee for the people's

³¹ An English translation is available at http://news.xinhuanet.com/ziliao/2003-01/20/content_697545.htm. An English excerpt is available in Angle & Svensson, *ibid.*, 355-36.

³² The right to development has both individual and collective dimensions. It was argued that this is provided for in the Universal Declaration of Human Rights. The 1991 White Paper says that the Chinese government 'pays due attention to the protection and realization of the rights of the country, the various nationalities and private citizens to economic, cultural, social and political development'.

lives'. What does this right to development mean? Given the official argument that China already had gained independence in 1949 and by 1991 secured for the people basic conditions to eat their fill and dress warmly, the right to development could only mean something beyond the subsistence level, i.e. towards a *xiaokang*, i.e. well-off society and national strength. Otherwise, the already secured people's right to subsistence could still be threatened, it was argued. Thus, the utmost priority of all government work is to develop the national economy and only under this umbrella the right to subsistence enjoys the highest priority before all other human rights.

Such a basic position goes a long way to explain why the government did not take its 'responsibility to protect' seriously when it comes to civil and political rights. It becomes also understandable why it could accede to the International Convention on Social, Economic and Culture Rights, signed in 1997³³ but fail to ratify the International Convention on the International Convention on Civil and Political Rights, signed in 1998.³⁴ The plain reason is that the latter Convention can pose a threat to the Party's monopoly to rule and partially also the government's capability to steer economic development without checks and balances against misuse of power. In its efforts to promote legislation to back up its pledge on human rights, the government also privileged economic legislation over all others. The 1990s thus witnessed a bifurcated development whereby economic rights protection gradually converged with international standards while civil and political ones generally lagged far behind if not retrogressed from time to time.

One cannot help wonder whether the official pronouncement on respect for human rights amounts to no more than just a kind of human rights diplomacy in the service of the 'opening to the world' policy of economic development. It is partly true that the official positioning on the issues of human rights in the 1990s was grounded in an attempt to deal with critique from the West. One should however not miss another at least equally significant trend that ultimately contributed to progress in the protection of human rights. This is the construction of the legal system, especially in terms of legislation, which brought about improvements of statutory conditions for the protection of human rights. These conditions

³³ It was ratified in March 2001 with reservations on some rights, e.g. freedom of assembly and freedom to form (independent) trade unions.

³⁴ On occasion of the Olympic Games in Beijing in 2008, a public petition to urge the ratification of the Convention passed unheeded by the National People's Congress.

offered members of the public a persuasive tool to fight for their rights in later years. The trend had already started in 1979 and now gained momentum in the 1990s, especially in terms of securing the right to private property and other economic rights. This specific progress in the economic field was achieved through amendments made in 1988, 1993 and 1999 to the 1982 constitution and subsidiary legislations. In addition, the protection of civil and social rights benefited from four major legislations: state compensation law, criminal procedure law, administrative penalty law and criminal law. Rights recognized in constitutions and statutory laws are useless if a victim of rights violation has no access to judicial remedies including compensation. The first three laws provide such remedies. The State Compensation Law is most specific and direct among all three laws. It was promulgated in 1994 after five years of drafting and came into effect from 1 January 1995. It covers rights to personal integrity and freedom as well as property rights and compensation claims arising of their infringement by administrative units and their staff. The Criminal Procedure Law experienced important revisions in 1996 by strengthening the right to defense and introduced a new provision of 'no offence shall be established except by a verdict made by the court in accordance to the law'.³⁵ The Law Governing Administrative Penalty was promulgated in 1996 with a view to reigning in the arbitrary edicts produced by administrative organs that had often resulted in violations of rights. Article 9 clearly specifies that any coercive (administrative) measures that restrict personal freedoms may be enacted only by law. Besides, Articles 10 and 11 also stipulates that both national and local administrative regulations may determine penalties *except* those that restrict personal freedom. Important amendments were also made in 1997 to the 1979 Criminal Code. The overall objective is to align Chinese law with international standards. For instance, the principles of 'a legally prescribed punishment for each specified crime', 'suitable punishment for each crime' and 'criminal law equally applicable to everyone, public trials and statutory procedures' were adopted. The offence of counter-revolutionary activities was revised as that of 'threat to national security', with a reduction in its political elements. Other rights related to personal integrity were better specified.

These legislative advances are definitely not without defects. Moreover,

³⁵ However, Article 48 of the said law prescribes that 'anyone who are informed about the case is obliged to testify'. This provision violates the right to silence as specified in the Convention on Civil and Political Rights.

their implementation depends on the administrative authorities, who did not necessarily take human rights as an important consideration in their work. The judiciary which could serve as an independent guardian of access to human rights remedies was not yet up to its task. The 1990s continued to witness widespread violations of civil and political rights. The most alarming phenomenon of the decade was a dramatic increase in the use of death penalty, partly due to anti-crime campaigns. In its 1995 China Human Rights Fact Sheet, the Robert F. Kennedy Memorial Center for Human Rights reported that in 1993, 77% of all executions worldwide were carried out in China (1419 out of 2564 people sentenced). On a single day, 9 January 1993, 356 death sentences were handed down by Chinese courts; 62 executions took place that day.³⁶ All in all, it is fair to say that the human rights situation in the 1990s did experience steady progress in attitudinal, ideological, and legislative terms. The progress was crowned by adoption of the phrase 'respect for human rights' in the Party's report to the 15th Congress on 12 September 1997,³⁷ to be followed by a corresponding amendment to the Party Charter³⁸ passed at the 17th Congress on 25 October 2007. The latter is apparently not a step required by human rights diplomacy but took a decade after the 15th Congress to realize.

THE ERA OF RIGHTS IN 2000S

The new millennium offers new hope for the advancement of human rights. It may become a period of real rights. The broader context was much more favourable than that in previous periods. Two decades of economic reforms had brought about remarkable material progress to the extent that people began to speak of 'peaceful rising up (of China)' and 'responsibility of a big state' in the world. As a result of the entry into the World Trade Organization on 10 December 2001, the government had to step up its legislative work to annul, revive or otherwise enact new economic laws and regulations in pertinent areas. This contributed to ongo-

³⁶ The full text of the Fact Sheet can be downloaded at http://www.christusrex.org/www1/sdc/hr_facts.html. In 2006; in 2006, the Supreme Court resumed power to review all death penalty verdicts and number of death executions has since declined.

³⁷ Full text available at <http://rwxy.shfu.edu.cn/dangjianketi/shiwudabaogao/>.

³⁸ Full text available at http://news.xinhuanet.com/newscenter/2007-10/25/content_6944081.htm.

ing convergence between Chinese and world legal standards, which in turn entailed further adaptation and restructuring of governmental functions vis-à-vis the Chinese economy and society. The whole context of economic liberalization lent support to the domestic pressure for developing constitutionalism whereby the government should first of all be held accountable to what it has already promised in the current constitution and laws. As a corollary, the government was urged to make further revisions to realize constitutionalism by removing factors that inhibit the enjoyment of citizen rights. The pressure for constitutionalism was helped by a growing maturity of legal studies and their authors during the previous decade, in terms of independence, critical capability, specialization and methodological sophistication and influence on government. Apart from this legal community, various human rights networks also gradually evolved in a society with a growing number of citizens becoming more rights conscious³⁹ and inclined to support collective actions to defend rights. One may even submit that since government had given up its totalitarian character, thereby opening up space for the civil society to grow, the development of human rights became a different game. Since the mid-2000s, the rights movement took off with promising results. Asking for reform towards constitutionalism constitutes a new strategy for the human rights activists. They now have endogenous tools to do their job while their predecessors had to rely on external resources.

The establishment of the Shanghai Cooperation Organization (SCO) in 2001 is a major event in China's proactive diplomacy to gain a say in world

³⁹ It is not easy to document the first emergence of rights consciousness among the general public. Rights consciousness can be detected from writings of the victimized rights in late 1950s and political dissidents in the late 1970s and late 1980s. The same may be inferred from collective actions taken by workers and peasants in the early to mid-1990s. The language used was not rights as such in the beginning, but a sense of fairness, as depicted in *Qiu Ju Goes to Court*, a realist movie produced by Zhang Yimou in 1992. It is about a true story with some shots secretly filmed on the spot. It tells of a peasant woman persevering in securing a 'shuofa' (an explanation) from a local cadre for hurting her husband. In academic jargon, it means a demand for political answerability. Findings from a not-yet-published survey conducted in 2007 in four counties of China's countryside demonstrated a very high level of rights consciousness among present-day peasants. On the statement of 'human rights are inborn', 16% answered 'very much agreed' and 64% 'agreed', as compared with 19% who disagreed or very much disagreed. [The rest are missing value. Sample size=1600.] On another question about the ground for inborn rights 'Without human rights, peasants have no human dignity', the corresponding figures are 3%, 14%, 68%, 15%, respectively [without missing value due to round-up].

affairs. On 7 June the following year, a declaration of the heads of its member states had the following to tell the world:

The Shanghai Cooperation Organization member states, undertaking to act in accordance with the principles of the United Nations Charter, reaffirm the universality, indivisibility, interdependence and interrelationship of all human rights, as well as their obligations to observe human rights and basic freedoms, regard peace and development as the main guarantee of the promotion and defense of human rights and come out against the use of 'double standards' in questions of human rights and interference in the internal affairs of other states under the pretext of defending them.⁴⁰

This is the first time when China unambiguously affirmed in an official document the indivisibility and interdependence of all human rights and the state's responsibility to protect human rights. However, such an affirmation was meant for an overseas audience only, because in the official Chinese translation, the whole paragraph was deleted.⁴¹ To say the least, the Chinese government still maintained an ambivalent attitude towards the principles of indivisibility and interdependence.

Another probably more practical development towards constitutionalism happened in March 2004 when an amendment bill to add 'the state respects and safeguards human rights' to the 1982 constitution was adopted by the National People's Congress. The state's responsibility to protect human rights was thus elevated from a political concept to be a constitutional principle for the first time in Chinese history. Should this be charged as purely symbolic or human rights diplomacy again, the government was quick to add on 16 March 2006, for the first time in the Republic's history, into its 11th Five-Year Outline Plan on National Economy and Social Development⁴² the item 'Respect and safeguard human rights and to promote the comprehensive development in the work of human rights' under Chapter 43, Section 1. In the same vein, it was declared that human development (*yiren weiben*) is the basic objective of

⁴⁰ An official translation from Russian at http://www.shaps.hawaii.edu/fp/russia/sco_20020610_4.html.

⁴¹ See http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/world/2003-05/30/content_893213.htm.

⁴² Full Chinese text downloadable at http://news.xinhuanet.com/misc/2006-03/16/content_4309517.htm.

economic development.⁴³ It turned out that among the 22 planning targets, those concerning economic growth and structure amounted to 2 and 4 respectively, while the rest went to cultural, social and environmental issues.

Surely, just a human rights agenda item does not mean much in reality. In April, 2009 the government published a two-year National Human Rights Action Plan of China.⁴⁴ In terms of basic principles, the action plan vows 'to improve laws and regulations for the protection of human rights and to promote *balanced* [italics mine] development of economic, social and cultural rights as well as civil and political rights, in adherence to the principles of interdependency and indivisibility of human rights'. The vow echoed China's commitment expressed by its signature to the Moscow Declaration of SCO Heads in 2001 and together meant a significant break from the previous decade when universality of human rights is acknowledged but not interdependency. Yet, this apparent breakthrough turns out to be a lip service because the third principle of the Action Plan emphasizes a kind of *xianshi* ('realism' as an approximate translation) – or sensitivity to basic realities – according to which human rights development must be based, thus harking back to the old theme of particularity of human rights. Besides, the Introduction to the Plan repeats the old theme of rights priorities that 'as a developing country with a population of 1.3 billion, China must give priority to the protection of the people's rights to subsistence and development'. The theme was reiterated by Mr. Wang Chen, Director of Government Information Office of the State Council in the press conference on the Action Plan. These contradictory statements in a single official document, which may reflect the lack of consensus on the human rights issues among the authorities, are most regrettable. They serve to neutralize those positive points in the Action Plan such as benchmarks with deadlines for specific rights and concrete measures to discourage torture during

⁴³ More than two years before the submission of the Outline Plan, government-sponsored development research projects had already begun to employ the United Nations Human Development Index as a reference for planning activities instead of just gross national product and its growth rate.

⁴⁴ English text available at http://news.xinhuanet.com/english/2009-04/13/content_11177126.htm. The United Nation had in fact repeatedly urged the Chinese government to work out an action plan on human rights. Preparation was started in 2008 and the forthcoming Action Plan was announced in November. Some commentators took issue of the timing as to meet the challenges of the periodic review of human rights by the UN Council on Human Rights scheduled for Spring 2009 when China's record would be examined. Others also suspected that the 20th anniversary of the June 4 incident might also play a role.

interrogation. The contradictions also alert readers to significant omissions in the plan like the fate of the notorious system of administrative detention without trial, including 're-education through labour'.⁴⁵

The changing political and legal environment was accompanied by a further growth of the civil society and of rights consciousness among the public. A prominent case of what is called the *weiquan* (rights protection) movement happened in 2003 when Sun Zhigang, a university graduate and fashion designer who went to Guangzhou to seek work, was detained and beaten to death while in custody. He was a fatal victim of the 'custody and repatriation' regulation under the *hukou* (household registration and residency or temporary residency permit) system originally designed to control rural migration into urban areas. Such a system amounts to an enforced apartheid structure that together with differential social and other policies had rendered the peasants – the majority of the Chinese population – second class citizens. Migrants without a temporary residency permit are liable to detention and repatriation. Sun had not applied for one and forgot to bring his national personal identity card. His death drew a public outcry in the mass media against police brutality. An upsurge of emails and SMS calls for the government to remedy the wrong quickly developed across the country. Legal scholars wrote to the National People's Congress questioning the constitutionality of the regulation concerned. The administrative punishment of custody and repatriation obviously violates Article 10 and 11 of the Law Governing Administrative Penalty. A few months later, the government announced the replacement of the said regulation with 'Measures for Assisting Vagrants and Beggars with No Means of Support in Cities' that came into effect on 1 August 2003. Sun's father received from the government a cash settlement and local government officials involved either directly or as accessories in Sun's 'murder' were sentenced. The Sun Zhigang case is extremely significant in terms of bringing the efficacy of a civil society to light, especially, the roles of critical press, the courageous network of legal scholars and workers, and last but not least interested and energetic netizens.

There was another prominent case in the same year but of a different nature. About a thousand small private oil field enterprises with over sixty

⁴⁵ In 2005, the government was planning legislation on criminal rehabilitation in replacement of the re-education through labour system. The initiative was allegedly resisted by the security authorities. It is unknown whether the same subject had been discussed during the drafting of the 2009 Action Plan.

thousand investors in Northern Shanxi, which had been established in response to earlier official calls for oil field development, were nationalized with zero to inadequate compensation. The case was widely reported in the mass media and attracted support from legal scholars and 'rights protection' lawyers. Unlike the Sun's case where torture was committed by a local authority, higher level authorities had been implicated in the case at various stages. A protracted struggle between the government and the affected investors ensued. The latter's application to sue for damage was rejected twice by the high court of the province concerned. The leader and other organizers of the protest actions were later charged and sentenced to two to three years of imprisonment for an offence of mobilizing masses to disrupt social order.

Incessant collective actions of workers and peasants since the early 1990s have presented the regime much greater pressures for change than the above two isolated cases. Apart from a rapid growth in number,⁴⁶ these actions have matured in strategy and organization. In the new millennium, *yifa weiquan* ('rights protection through the law') has become the mainstream of collective actions of grassroots people, especially the peasants in China.⁴⁷ It has become a citizen rights movement. The new political leadership has so far shown respect for the peasants' rights movement by introducing in recent years new policies to improve the peasants' odds in the countryside and alleviate the plight of migrant workers in the cities. These include a promise in the afore-mentioned Action Plan to extend to the countryside policies that so far have mainly benefited cities. Policies aimed at reforming the apartheid-like *hukou* (registration and residence) system have yet to be institutionalized, reforms that would protect peasants' right to move, to reside and work wherever they want.⁴⁸ Without reforming the *hukou* system, peasants will remain second-class citizens at best.

⁴⁶ It is estimated that in 1993 the number of cases is about 8709. It is increased by three folds to 32,000 in 1999 and to over 40,000 per year since 2002.

⁴⁷ Earlier phases were characterized by peaceful petition and lawful resistance respectively.

⁴⁸ Two new laws coming into effect from 1 January 2008, if faithfully implemented, were designed to considerably alleviate the plight of all workers in general and rural migrant workers and other vulnerable groups in particular. The Labour Contract Law enshrines the principle of fairness for contract and the Law on Employment Promotion stipulates the principle of non-discrimination and specifically prescribes equal employment opportunity and fair employment terms for all.

CONCLUSION

This year is the 60th anniversary of the People's Republic of China. Its record of human rights registers a remarkable change from a flat rejection of human rights in both words and deeds in the first thirty years to an evolving acceptance in theory and underperformance in practice since 1978. The rejection was grounded on a Marxist theory of class struggle, anti-imperialist and nationalist ideologies, as well as the perceived need to consolidate political power and construct a socialist utopia. It took thirty years for leaders committed to the 'general policy line of reform and opening' to first entertain the idea and language of human rights, before embracing human rights in the name of diplomacy and governance, and then finally, to accepting universality of human rights with more and less qualifications. Ever since 1991, acceptance has become firmer with respect to the ideas of universality and indivisibility, although in the latter case, the language is often times of 'unity between rights and duties'. When it comes to interdependence of human rights, the official acceptance is still a bit ambiguous, since recent policy documents contain a formal acknowledgement of interdependence, while highlighting the priority of some rights over others. Of course, what matters ultimately is not just ambiguous word, but practice, in which interdependence has not been honoured. The development of civil and political rights has lagged far behind that of social and economic rights.

The trajectory of changes in the human rights situation is embedded in China's political development. To begin with, flat denial of human rights was offered by a totalitarian regime poised to subjugate any person who disagreed with its goal of socialist construction or its means of ruthless mobilization. Today's China is an authoritarian regime with a human face. The ideology of class struggle has given way to a language of *hexie shehui* (harmonious society) and *kexue fazhan guan* (theory of scientific development). After all, how can Chinese people still be differentiated in terms of Marxist class analysis after the successful completion of the Communist revolution and elimination of classes? With the end of class politics and the erosion of ideology, an era of citizenship politics based on the principle of equality has dawned.

To the extent that agency matters more than structure, leadership change should play an important role in the development of human rights in China. There are marked differences between the pre-1978 leaders and the new generation of today. In the first thirty years, the Republic was ruled by fervent revolutionaries with ideologically motivated policies. Their place

is now taken over by pragmatic technocrats who follow an empirical approach to policy-making. There is no hard evidence on the difference between these two groups of leaders with regard to human dignity. With a risk of exaggeration, we can observe a huge contrast between the supreme leader Mao Zedong who boosted, in the 1950s, of China's affordability to lose human lives in a nuclear war given its huge population and Premier Wen Jiabao who instructed, on 14 May 2008, the Sichuan earthquake rescue team in Beichuan that 'the highest priority was to save lives and any trapped victim with a dim of hope must be rescued with hundredfold efforts'. Or, just compare the two following scenes to get the huge sea change. In the 1950s' propaganda materials, human lives belonged to the nation and can be sacrificed for the sake of great projects such as the Great Leap Forward campaign. On 30th May last year, an earthquake fundraising soiree was organized by the Sichuan Television in Chengdu with singers from all parts of Greater China. The banner for the event exhibited the theme 'In the name of life' and the group song was 'Prayer'.⁴⁹

In the old days when almost all livelihood resources were centralized in the Party-state and human life from the cradle to the grave was subjected to arbitrary intervention by the all-powerful government, domestic opposition to rights violations was fatally hazardous. Courageous dissident intellectuals in the 1950s paid with their lives for speaking the truth. State-society relations started to change after the strategic policy of reform and opening in 1978. The results are on-going processes of redefinition of the role of the state, cautious restoration of the market and spectacular growth in the economy and concomitantly in individual wealth, thereby enhancing the citizens' capability to political participation. Society is growing stronger while the state is losing its traditional power of control. More importantly, the people are rapidly awakening to their rights entitlement and are increasingly less tolerable of rights violations. They are readier to respond by pressuring the government through various kinds of private or collective actions. In this context, workers and peasants are becoming a driving force for better protection of citizen or human rights.⁵⁰ In both ideological and

⁴⁹ See http://blog.sina.com.cn/s/blog_4e8bca310100accr.html.

⁵⁰ It is not meant here to belittle the valuable efforts of the intelligentsia and political dissidents who have played and will continue to play an important role in the promotion of human rights. For instance, the *lingba xianzhang* (Charter 08) campaign towards the end of 2008 on occasion of the 60th anniversary of the Universal Declaration of Human

practical terms, the state has to adapt with bold reforms in human rights to survive and prosper further.

All in all, the domestic landscape has become much more favourable for the development of human rights. The same may be true too for the external environment of China. The phase of flat denial of human rights fell in the context of the Cold War when China's memory of humiliations by the West still remained fresh and leaders were suspicious of human rights as a self-serving tool of imperialist countries. Chinese leaders' sense of insecurity was constantly renewed by the Korean War in early 1950s, the Taiwan Straits crisis in late 1950s, Sino-Soviet split in early 1960s and the collapse of the Soviet bloc in late 1980s. In contrast, the post-cold war world is welcoming China's integration into the global economic system and increasingly expecting China to play a greater role in many global issues. Since 1996, Western powers have been able to supplement condemnation of rights violations with dialogue and partnership programmes, thereby enabling closer engagement and practical cooperation projects on human rights. This changing context carries intriguing implications for the prospect for human rights development. The baseline is however that China's own desire to integrate and interact with the West has so far remained one driving force for human rights-focused reform. With growing self-confidence in rising to greater power status, China may learn to become a responsible member by making contributions to the global normative framework. After all, there is also mounting social pressure at home, especially from workers and peasants, on the state to take seriously its responsibility to protect the human person.

To wrap up the Chinese government's record of human rights, we note good progress at the conceptual and epistemological levels but sluggish improvement in deeds.⁵¹ Reformist practice is most noticeable in terms of social and economic rights but remains very poor in the area of civil and political rights. On the other hand, it is gratifying to learn that civil society is playing an increasingly more active role in promoting and safeguarding human rights. The prospect is therefore still optimistic.

Rights and the 10th anniversary of China's signature has attracted widespread support from the said groups of persons. See text at <http://www.chinainperspective.net/ArtShow.aspx?AID=92>.

⁵¹ One can argue that the decreasing scale of rights violations is significant. The large scale of violations during the various political campaigns in the 1950s and 1960s and the Cultural Revolution no longer repeats itself.

Poverty reduction – or, in the eyes of the rulers, the right to subsistence, is an area where China has done best. According to the World Bank, China is responsible for 75% of poverty reduction in the developing world from early 1980s to early 2000s, having lifted more than 400 million people above US\$1 a day poverty levels in that time.⁵² On the other hand, much more remains to be done with respect to old and new problems, for example, rising inequalities across regions and social strata as well as to the lack of social security for the disadvantaged.

Government authorities should apply the same vigor in social-economic rights protection to the civil and political areas. Outstanding measures abound in the fields of legislation, institution-building and policy development. It is imperative to accelerate the legislative work of improving criminal justice by adopting presumption of innocence, offering right to silence, and establishing inadmissibility of evidence extracted by forced confession, and by securing for defense lawyers a role equal to the prosecutors in the litigation process. In terms of institution building, nothing is more important than the development of an independent and impartial court system. With regard to policy development, the National Human Rights Action Plan is a good start but too timid. With regard to practice, there is still a long way to go, as attested to by a recent event. On 23 June this year, a Tiananmen veteran and leading dissident writer, Liu Xiaobo⁵³ was formally charged for subversion of the state regime. Liu was previously detained, a few hours before the release on 8 December 2008 of the ‘Charter 08’, of which he was a key drafter and organizer. It was intended for online co-signature to mark the 60th anniversary of the Universal Declaration of Human Rights. The Charter, originally signed by 303 persons – including academics, intellectuals and ordinary people from other walks of life – proposed 19 measures to improve human rights in China, including freedom of speech and association, an independent legal system and free elections. While the name Charter 08 and the call for an end to party-rule might have agitated the top leadership,⁵⁴ Liu’s arrest without a decent warrant and the formal charge with-

⁵² See http://www.finfacts.com/irelandbusinessnews/publish/article_10003611.shtml and the updated research report by World Bank downloadable at http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2008/08/26/000158349_20080826113239/Rendered/INDEX/WPS4703.txt.

⁵³ For a brief introduction of Mr. Liu, please consult http://en.wikipedia.org/wiki/Liu_Xiaobo.

⁵⁴ It may be conjectured that the name ‘Charter 08’ models after the ‘Charter 77’ circulated in Czechoslovakia in January 1977. It is later regarded as the first of similar move-

out prima facie evidence suffice to make the government's Action Plan a mockery. While it is sad that the government has not taken rights seriously, the signatories⁵⁵ of the Charter are brave citizens who, in defense of a good cause for humanity, risk a lot like career and personal freedom.

Where there is a will, there is hope. With more citizens now having the will to defend human rights, China is more hopeful.

ments that contributed to the breakdown of the authoritarian regimes in Eastern Europe and the Balkan. Such political transitions are called colour revolutions of which the key characteristic is non-violence. The Communist regime has been apprehensive of the risk of a colour revolution in China for years. Back in 2005, General Secretary Hu Jintao made an important political report to the Politburo of the Party in which he urged for persistent vigilance against such a revolution.

⁵⁵ Up to April 2009, the number of signatories to the Charter 08 has increased to over 8,000, as reported by Mr. Tian Ye of Voice of America. The report is available at <http://www.voanews.com/Chinese/archive/> Click the calendar for first quarter of April 2009, move to 3 April and open the file 'lingba xianzhang qianshuzhe zao daya dan bu fangqi (Charter 08 signatories are suppressed but won't give up)'.