

## COMMON TRACK 5: ASIAN VALUES, CHINA AND HUMAN RIGHTS

### THE RISE OF ASIAN VALUES

In the first half of the 1990s, the relationship between human rights and what were described as Asian values came briefly to the fore as a topic of the first importance, one that for a time seemed to threaten the universality of human rights, forcing its ethical assumptions onto the defensive and (at its most extreme) suggesting that respect for human rights was little more than a provincial piece of Western thinking for which the rest of the world should have no sensible use.

Forged in the exciting crucible of a set of countries whose economic prosperity was such that their leaders had convinced themselves that they had found the capitalistic Midas touch, 'Asian values' were to decline just as the inexorability of these nations' prosperity ground to a halt: in retrospect we can see that it was an idea too closely linked to a passing sense of superiority of the leaders of a few small states, too reliant on economic (rather than intellectual) power.

The challenge it posed to human rights did however appear for a while to be a fundamental one, and the response developed to it has helped frame the subject's recent history.

The human rights idea has emerged stronger from its joust with 'Asian values', better able to stand up for itself, to frame the right responses to cultural critiques, and in the process has jettisoned baggage from the past that does not fit with what the idea of human rights entails today. Our subject owes a great deal to the 'Asian values' critique: it has made it a fitter and leaner intellectual, political and activist beast.

### VIENNA

The main stimulation for the emergence of the Asian values perspective was the World Conference on Human Rights, held in Vienna in 1993. This was a major event so far as women's human rights were concerned, the highpoint of a campaign which had been heavily critical of human rights discourse from a feminist perspective. The protagonists of

this discourse sought to develop a new way of looking at human rights, and in particular were keen to break down the idea that human rights was only about the public sphere (the state and the individual) and not the private realm as well.

The issue was important to feminists because of increased appreciation of the fact that there was great abuse of power (and therefore it was said breaches of human rights) within the realm of personal relations, and in particular within the husband/wife and family spaces. Thus on this account, violence within the home involved serious human rights violation that had hitherto been neglected.

This opening up of human rights to a discourse based on power may seem straightforward today but it was highly innovative at the time – and very challenging. Vienna was to be about women’s rights, but it was also – inevitably as a major human rights forum – to be about civil and political rights, including the usual civil liberties (expression, assembly, association and so on) which were a core part of the human rights story, entirely orthodox in comparison to women’s rights, but none the less difficult for national leaders whose sympathy with expressions of dissent was – to put it mildly – very limited.

*These two sets of agendas were disturbing to a number of leaders of Asian countries, including in particular the then senior minister of Singapore Lee Kuan Yew and Malaysia’s Prime Minister Dr Mahathir bin Mohamad. The Chinese leadership was also predictably uncertain about the human rights agenda.*

## THE BANGKOK DECLARATION<sup>1</sup>

In preparation for Vienna, the Asian States adopted a statement, the Bangkok Declaration, containing ‘the aspirations and commitments of the Asian region’ with regard to human rights. Its opening recitals made various non-controversial statements of loyalty to human rights, but there were a sufficient number of a different sort among them to suggest something other than mild obeisance before a universal force:

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<sup>1</sup> See generally M Jacobsen and O Brun (eds), *Human Rights and Asian Values. Contesting National Identities and Cultural Representations in Asia* (Curzon Press, Richmond, Surrey, 2000).

*Emphasizing* the significance of the World Conference on Human Rights, which provides an invaluable opportunity to review all aspects of human rights and ensure a just and balanced approach thereto,

*Recognizing* the contribution that can be made to the World Conference by Asian countries with their diverse and rich cultures and traditions,

*Noting* the progress made in the codification of human rights instruments, and in the establishment of international human rights mechanisms, while *expressing concern* that these mechanisms relate mainly to one category of rights,

*Stressing* the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization,

*Recognizing* that the promotion of human rights should be encouraged by cooperation and consensus, and not through confrontation and the imposition of incompatible values,

*Reiterating* the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the inherent interrelationship between development, democracy, universal enjoyment of all human rights, and social justice, which must be addressed in an integrated and balanced manner,

*Recalling* that the Declaration on the Right to Development has recognized the right to development as a universal and inalienable right and an integral part of fundamental human rights,

*Emphasizing* that endeavours to move towards the creation of uniform international human rights norms must go hand in hand with endeavours to work towards a just and fair world economic order,

*Convinced* that economic and social progress facilitates the growing trend towards democracy and the promotion and protection of human rights,

## EXPLAINING THE DECLARATION

There are three themes underlying these statements which set the Asian leadership that agreed them apart from the conventional human rights thinking of the day.

*First* there is the matter of fair application: the approach to human rights has to be 'balanced'; 'double standards in the implementation of human rights' are to be avoided; 'concern' is expressed about the priority accorded 'one category of rights'; 'economic, social, cultural, civil and political rights' are interdependent and indivisible and must therefore be 'addressed in an integrated and balance manner'. The barely disguised subtext here is that civil and political rights (with their assertions of democratic and protest rights) have been wrongly prioritised by the supporters of human rights in the Global North with the result that the subject of human rights often appears exhausted once the issue of democratic freedom has been fully ventilated. In fact from the Bangkok perspective, social and economic rights are of *at least* equal importance.

*Second* the declaration introduces the notion of regional values as potentially in opposition to human rights. The 'diverse and rich cultures and traditions ' of Asia need to be better recognised. '[C]onfrontation and the imposition of incompatible values' are to be avoided. Though ' universal in nature', human rights must, as the substance of the declaration went on to say, ' be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.'

*Third* there is the importance of the right to development, not only of particular countries but in relation as well to the development of ‘a just and fair world economic order’. The right is ‘an integral part of fundamental human rights, which must be realized through international cooperation, respect for fundamental human rights, the establishment of a monitoring mechanism and the creation of essential international conditions for the realization of such right’. It is economic and social progress (rather than one supposes this or that international oversight body) that ‘facilitates the growing trend towards democracy and the promotion and protection of human rights’. The forthcoming world conference should take a ‘just’ approach to human rights. So the Declaration itself goes on to ‘[d]iscourage any attempt to use human rights as a conditionality for extending development assistance’. It calls for the ‘non-use of human rights as an instrument of political pressure’ and reiterates ‘that all countries, large and small, have the right to determine their political systems, control and freely utilize their resources, and freely pursue their economic, social and cultural development.’

The Bangkok Declaration had an impact out of proportion to the relative restraint of the language that it used.

While the signatories were also careful to commit themselves to women’s and children’s human rights, albeit in rather formulaic terms,<sup>2</sup> the atmosphere generated by the meeting of the leaders and the publicity attending the launch were perceived by the NGO community as involving a high degree of underlying hostility to human rights.

## THE NGOS STRIKE BACK

Meeting at the same time, some 240 participants from 100 non-governmental organisations issued their own declaration, identifying the challenges facing contemporary human rights

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<sup>2</sup> ‘*Reaffirm* their strong commitment to the promotion and protection of the rights of women through the guarantee of equal participation in the political, social, economic and cultural concerns of society, and the eradication of all forms of discrimination and of gender-based violence against women’ (Para 22); ‘*Recognize* the rights of the child to enjoy special protection and to be afforded the opportunities and facilities to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity’ (Para 23).

to be those of universality, indivisibility, the recognition of women's rights, solidarity and sustainable development.<sup>3</sup>

- While universal human rights standards 'are rooted in many cultures' and there is a new understanding of the subject as 'encompassing the richness and wisdom of Asia and Pacific cultures', it was nevertheless the case that 'cultural practices which derogate from universally accepted human rights, including women's rights, must not be tolerated.'
- Nor should advocacy of human rights ever 'be considered to be an encroachment upon national sovereignty'. It was true that social and economic rights were of importance but that was not to say that it should not be recognised that '[v]iolations of civil, political and economic rights frequently result from the emphasis on economic development at the expense of human rights.'
- Moreover, '[v]iolations of social and cultural rights are often the result of political systems which treat human beings as being of secondary importance'.

The NGO declaration went on:

- Economic rights involve a fair distribution of resources and income, the right to freedom from hunger and poverty. These can only be protected when people are able to exercise their civil and political rights, for example, the right of workers to organise and form trade unions to protect their economic rights. Poverty arises from maldevelopment in the face of systematic denial of human rights.
- The issue of women's rights has not been sufficiently visible in the human rights discourse, in human rights institutions and practices. Patriarchy which operates through gender, class, caste and ethnicity is integral to the problems facing women. Patriarchy is a form of slavery and must be eradicated. Women's rights must be addressed in both the public and private spheres of society, in particular the family.

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<sup>3</sup> F de Varenes, *Asia-Pacific Human Rights Documents and Resources* (Martinus Nijhoff, The Hague, 1998), 147-149.

...In the Asia-Pacific region, women's rights are violated by increasingly militant assertions of religious and ethnic identity; the fact that these violations often take place through private actors is used by states as a pretext for failing to counter them as transgressions of human rights.

The energy of the NGO approach is captured in its call to arms under **the challenge of solidarity**, an idea which in its internationalism 'transcends the national order to refute claims of state sovereignty and non-interference in the internal affairs of a state.'

## THE VIENNA DECLARATION

The Vienna Declaration adopted by the world conference on human rights on 25 June 1993<sup>4</sup> had before it these very different perspectives on its remit. Despite what its language appeared to promise, there seemed to be no scholarly way out, no right answer that could be found by inviting philosophers, or religious leaders, or judges to have their say.

In the hands of *both* the Asian leaders *and* the NGO community, the language of human rights had been politicised, deployed not as a set of facts but as a persuasive tool through which to achieve particular goals, objectives that in each case were framed as either compatible with human rights (the leaders) or necessitated by a right reading of what human rights involved (the NGOs).

Resisting the normal drift to the middle-ground, the Vienna drafters did not shy away from restating some human rights absolutes:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic

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<sup>4</sup> The final declaration at Vienna is in M R Ishay, *The Human Rights Reader* (Routledge, London, 1997), pp 479-91.

and cultural systems, to promote and protect all human rights and fundamental freedoms.

Furthermore, while the right to development was 'a universal and inalienable right and an integral part of fundamental human rights' nevertheless 'the lack of development [could] not be invoked to justify the abridgement of internationally recognised rights' . Even more unequivocal was the restatement of the importance of women's rights, in language closer to that of the NGOs than the Asian leaders:

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.

## AFTER VIENNA

*The 1993 Conference witnessed the high-water mark of the Asian values controversy.*

Severe economic downturns in the late 1990s distracted the states from which the most biting critique of human rights had emerged.

- The 1995 Beijing Declaration at the fourth world conference on women confirmed that a strong commitment to women's rights was now an indelible part of the

human rights oeuvre; as paragraph 14 of the Declaration put it in terms that were all the stronger for being so economical 'Women's rights are human rights'.<sup>5</sup>

- Ratification of the international human rights conventions has continued across the Asia-Pacific region, not as quickly as human rights advocates might like certainly, but the graph of engagement has been pushing upwards rather than downwards.
- The strong leaders associated with the Bangkok Declaration have left office, being replaced in peaceful processes that have tended both to ignite and then to deepen calls for democratic renewal from within the countries concerned: such reforming energy from within civil society inevitably undercuts claims that human rights and democracy are alien forces to be resisted rather than embraced.
- The machinery of human rights monitoring, led by the UN and aided and abetted by the ever-vigilant NGO community, continues to track human rights abuses in the Asian-Pacific region without any undue embarrassment rooted in supposedly illegitimate interferences in culture or tradition.<sup>6</sup>

It would be tempting to conclude that the passing squall of 1993 can now be safely forgotten, a passing blip on the stately progress of universal human rights. But this would be to take exactly the wrong approach: the critique offered in 1993 is of the first importance to our subject, and the answers developed by way of response have shaped the form that contemporary human rights have taken.

## CONFRONTING THE ASIAN VALUES CRITIQUE

Much of what was said both in the Bangkok Declaration itself but more especially in the course of the discussions and debates that surrounded it hit home precisely because of the underlying legitimacy of many of the basic points that fuelled the antagonism of the sceptics.

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<sup>5</sup> Ibid, p 491.

<sup>6</sup> Eg Human Rights Watch, *World Report 2006* (New York, 2006), esp Part 3 on Asia.

*Human rights as a subject had taken a shape that was largely the creation of the governments and NGO activists of the big economic powers in Europe and north America.*

This was not just a point about the influence of European thinkers on how the idea of human rights was conceptualised; nor was it solely about how instrumental the United States had been in the forging of the framework of international human rights that had been put in place after the Second World War. Rather the perspective in the early 1990s was of a US-European hegemony that, post Cold War, seemed likely to extend into the indefinite future and that was determined to reconfigure the world in its own image. The falling away of the Soviet version of human rights, so prominent as a competing discourse on human rights during the 1948-89 period, was of critical importance in this regard. Now it seemed that the 'first world' human rights protagonists were being given the nations of the globe as their ethical playground, to mould in their own human rights image. And this, or so the argument went, led to the imposition of American/European versions of personhood, leading in turn to very particular kinds of lived experience (certain types of childhood for example) being turned into universal obligations on everyone, and to demands that systems of government that worked in these powerful countries (democracy, civil rights) being made part and parcel of everywhere else as well.

*None of this was as easy to discount as it would have been had it been utterly unfounded in fact.*

The international human rights law that was either in place or under development was largely the work of 'first world' scholars.

The nations of Europe and north America which were now insisting on the subjugation of the right of development to universal human rights norms were exactly the places that had built their prosperity on internal and external domination, or on what in today's terms would be termed a culture of systemic human rights abuse.

The double standards point reached further as well, in that from the Asian leaders' perspective the language of human rights rarely seemed to turn inwards to engage in a critical way with how these countries were behaving today, toward their indigenous people,

their immigrants, their own minorities or their asylum seekers: human rights morality seemed to them to be distinctly one way.

The critique was effective and managed to put human rights protagonists on the defensive for a while precisely because the particular version of the subject upon which it fastened was – within its own narrative space – largely true.

### BUT NOT UNIVERSALLY TRUE....

With the benefit of hindsight we can now see that the Bangkok Declaration made the mistake of generalising a set of overall truths from a particular reading of the human rights story. This was perhaps understandable given that the subject of their analysis lays claims to precisely such universality, and that by taking this line other more challenging versions of human rights could be neatly avoided. But the result was that the Declaration did not deliver any kind of knock-out blow.

It made some telling points about a *version* of human rights and thought that as a result it had dealt the whole subject a deadly body blow. In fact it had grazed only a part of the body, leaving the vital organs untouched.

*For the features of human rights that are fundamental to the medium to long term well-being of the subject go much deeper than the use to which the term has been put by this or that state power, and in doing so reach towards a set of universal statements about the human condition that transcend the local.*

The meaning of the term 'human rights' has changed over time but in its essentials it stands for a perspective on human conduct that is the exclusive preserve of no single culture or peoples.<sup>7</sup>

This is the point of view that asserts that it is wrong to engage in cruel or inhuman or degrading treatment towards another person, that humiliation along these lines is to be

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<sup>7</sup> I develop these points further in *Can Human Rights Survive?* (Cambridge University Press, Cambridge, 2006) as well as in many of the TRACKS on this project..

prohibited whoever the victim might be, in other words whether he or she is friend or foe, neighbour or stranger is neither here nor there.

This attitude flows out of a commitment to respect the humanity of the other, to see in the person outside of oneself an image of oneself, and not to depersonalise the other by replacing this species-solidarity with other images (rooted in nationality, or ethnicity, or beliefs for example) that emphasise difference.

If this prohibition on cruelty and humiliation represents an important part of what is meant by human rights, so too does a second line of conduct captured by the phrase – the behaving well towards the other in the sense of facilitating the opportunity to lead a full life, to grow as a person and to do the best that can be achieved with the talents that are to hand. This is the bit of the human rights story that not only forbears from hostility but positively welcomes as well, that not only does not slam the door in the stranger's face but gives him or her a chance to carve out a decent niche in the accommodation within.

The foundations of this stance towards humanity matter less for the present than the fact of its pervasiveness:

*there are few cultures in the world that have not got some consistent strain within them that preaches this kind of species solidarity, this openness to the stranger, this willingness to give everyone a chance to flourish.*<sup>8</sup>

Now clearly this is not the same as saying that a human-rights-abiding culture is inherently pacifist – these tropes of hospitality do not require a family, tribe or peoples irrationally to drop its guard or to overcome its (stronger?) tendencies both towards ensuring the survival of its own people and in the direction of mixing only with those it knows, its own kind within a human family made up of many strange members.

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<sup>8</sup> This explains the ease with which practically every country in the world embraced the Universal Declaration of Human Rights: leaving aside enforcement it was possible for everyone to believe in the rights (whatever about rendering them real in specific situations: a different task altogether).

*In its universalist shape, human rights stands for the capacity for outreach and for empathy with the stranger that is in evolutionary terms at least as important to the success of the species as the more short or medium term emphasis on the survival in isolation from others of this or that community, ethnic group or nation.*

Just as a family relishes its autonomy and collective solidarity while knowing at the same time that to survive and to grow it has to welcome strangers into its very core, so too have gatherings of peoples since the start of time known that to reach out and intermingle with strangers is to grow stronger as a people, different perhaps but all the better for the intermingling that openness to the stranger has allowed.

Human rights is one of the terms that we use today to describe this posture of empathy, this curiosity towards the stranger, that has been such an important thread in human development: see [Track three](#) and [Track four](#). There are others of course; often these are religious in form, relying upon divine assertions or some other kind of spiritual guidance from outside or even deeply within the self. Human rights has no objection to the deployment of other language to capture its account of humanity, indeed has drawn strength in the past from exactly such foundations, but in today's mode it does not *depend* on any such interventions, celestial or otherwise.

## DIVING PAST APPEARANCES

To identify this as the core of the human rights message is not to deny the subject its place in cut and thrust of history. Of course the term has been abused in the past, and continues to be distorted today: see [common track one](#)<sup>9</sup> It does not follow from this concession, however, that one must argue for a jettisoning of the entire human rights vocabulary. The politicisation of the past (the use made of the work of Locke and Rousseau by English and French revolutionaries for example) has helped with the overall human rights project, by reducing opportunities for cruelty (through creating a momentum for democracy) and by theorising a perspective on the person that has highlighted the individual's entitlement to

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<sup>9</sup> And C Douzinas, *Human Rights and Empire. The Political Philosophy of Cosmopolitanism* (Routledge-Cavendish, London, 2007).

pursue his or her own life plans, thereby bolstering the important human rights idea of personal freedom.

And even where the term is manifestly being abused, used to underpin colonial aggression for example or the abuse of strangers as necessary to a civilisation's survival, the essential meaning of the phrase can be deployed to expose as a lie this attempt to make the term the servant of the particular. If human rights as a subject cannot claim this universal core then it has no basis to fight off those who would plunder its substance for selfish gain.

When we analyse the Asian values critique from this perspective, we can see that it misses many central points.<sup>10</sup>

- At an abstract level, it is manifestly clear that the values of hospitality, active compassion and respect for the person that underpin this idea of universal human rights are not absent from Asian culture; rather they are a vital element in that culture, the thread in the narrative that makes these places and peoples warm and open to the stranger, that emphasises solidarity with (rather than hostility towards) the other.
- The notion of representative government too is not alien – many communities have enjoyed this kind of autonomy in the Asian region in the past and increasingly many are managing to secure it in the present as well. It would surely be condescending, even fatuous, to say to a South Korean, a Taiwanese or (these days) a Singaporean that their determination to secure a collective say over their destinies is merely to display their commitment to foreign values.
- And while the *format* of judicial review of the exercise of governmental power may be a result of relatively recent interactions with imperial and colonial power, the *substance* of what is being secured – government according to pre-ordained rules – is hardly a western invention.

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<sup>10</sup> And for a strong critique developing fresh points as well as those covered here see J Donnelly, *Universal Human Rights in Theory and Practice* 2<sup>nd</sup> edn (Cornell University Press, Ithaca and London, 2003), ch 7.

In truth, as with all nations, cultures and peoples, there are different stories supporting not one but various understanding of themselves and while some of these are 'human rights' accounts, others are not – and the two can sometimes be in a tense relationship with each other.

So the thread of patriarchy that is undeniably to be found in Asian society is not easily reconciled with a commitment to human rights that values individual freedom in a gender-free way.

Nor is the paternalistic version of Asian society that emphasises leadership and downgrades individual choice easy to fit within democratic models of decision-making with its commitment to the equal involvement of all.

The point to draw from this is not that the human rights perspective is therefore inauthentic or in some way invalid; it is rather that there are different threads to a culture and these are not always consistent. It is of course exactly the same with any Global North country that one cares to mention: the human rights abiding nation that kills prisoners after shambolic trials; the constitutional democracy that locks up foreign suspected terrorists without trial; the freedom-loving state that uses military power to kill hundreds of thousands of foreigners to secure its interests on the world stage; and so on.

*Double standards are not the result of some malfunction in the rationality of government; rather they are what occur when different parts of a country's story produce conflicting outcomes at the same time.*

This takes us to the final observation on 'Asian values' – the question:

*who benefits from their being adopted in a way that crowds out all the other threads in a culture's history and tradition?*

The answer is invariably that it is the powerful who stand to gain from reliance on alleged indigenous traditions to see off external criticism:

- the state leadership that is disinclined to subject its power to internal scrutiny;

- the family head that enjoys the control that a particular reading of the culture gives him over his family members;
- the business executive who sees in such 'tradition' an attractive way in which to hold organised labour at bay;
- the industrialist whose version of his country's past allows him to say that basic health and safety standards need not apply in his factories.

Human rights standards are not an alien intrusion in such circumstances. They are the vital means by which countries subject to such practices can reassert the better parts of their culture's history and thereby recover and secure their own version of the universal good.

### BUT WHAT ABOUT CHINA?

Some years ago, on a trip to Shanghai, I met the Chinese Communist Party official responsible for tracking the human rights record of the United States. His job entailed a careful reading of the American newspapers from which he drew the data for the then annual critique that China mounted of the breaches of rights that were, it said, to be laid at the door of the Americans.

The commentary issued by the State Council Information Office on 3 April 2003 was typical of the genre.<sup>11</sup> Starting with a reference to the Washington administration's own annual report, the document excoriates the US for 'pretending to be "the world's judge of human rights" ... without mentioning even a word of the serious human rights problems in the United States itself.' Because it was 'necessary to announce to the world the human rights violations in the United States in 2002', the report proceeded at great length to itemise these, starting with the right to life (murder; gun crime), dealing then with due process and privacy infringements (wiretapping; death row; crowded prisons), before moving on to 'money-driven democracy', 'poverty, hunger and homelessness', attacks on women, neglect of children, racial discrimination, and ending with human rights violations abroad. The final section 'double standards in international field of human rights' takes the US to task for having 'turned a blind eye to serious violations of human rights on its own soil,' a 'double

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<sup>11</sup> State Council information Office, 'The US Human Rights Record in 2002' Xinhua Domestic Service, 3 April 2003

standard on human rights issues [which] cannot but meet with strong rejection an opposition worldwide, leaving the United States more and more isolated in the international community.’ Copiously footnoted with references to US sources, the report mimicked its American model, and also drew its literary inspiration from NGO documents of this sort which have also become such a feature of international human rights in recent years.

*And what of China’s own record?*

We do not need to rely on the US for an objective analysis. The UK’s own Annual Human Rights Report for 2006 gives the following bleak overview, with little having changed in the course of the past few years:

The Chinese authorities continue to violate a range of basic human rights. The use of the death penalty remains extensive and non-transparent; torture is widespread; there is a lack of judicial independence; obstacles to fair trials include administrative detention and re-education through labour (RTL); prison conditions are poor and prisoners are treated badly; human rights defenders, worshippers and Falun Gong adherents face harassment and detention; human rights violations occur frequently in Xinjiang and Tibet; and there are increased restrictions on freedom of expression and severe restrictions on freedom of association.<sup>12</sup>

UK report after report, the most recent [for 2009](#) draw particular attention to the control imposed on internet use and to the pressure being exerted on religious groups after promulgation of new laws on the regulation of religious affairs.

The challenge for human rights that China represents is perhaps the most important of all of the tests faced by the human rights movement in the world today.<sup>13</sup> It engages human rights thinking on three key questions.

*First*, how much should the hypocrisy of the Global North/West/US be allowed to damage the integrity of the demands being made of China by human rights protagonists, be the government, international institutions or NGOs?

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<sup>12</sup> Foreign and Commonwealth Office, *Human Rights. Annual Report 2006*, p 42.

<sup>13</sup> For general studies see R Foot, *Rights Beyond Borders. The Global Community and the Struggle over Human Rights in China* (Oxford University Press, Oxford, 2000); S C Angle, *Human Rights and Chinese Thought. A Cross-Cultural Inquiry* (Cambridge University Press, Cambridge, 2002).

*Second*, how do advocates of human rights meet the assertion that economic progress – agreed to be essential if many human rights are to be achieved – can only be realised through a breach of other fundamental human rights?

*Third*, what should the international community have to say about a country which appears to be moving slowly in the direction of better human rights practices – should this be rewarded by a lightening of pressure or is it evidence that this kind of heavy criticism works and should be ratcheted up?

## DOUBLE STANDARDS?

Here the response that is made depends to a large extent on who is making it.

The international NGOs have the least difficulty on this score: they can point to an unwavering critique of all human rights breaches across the world, including those in the Global North. A good example of their lack of partiality towards the US would be the enormous criticism that was visited upon the Bush-Cheney administration for its policy of detention without trial supposedly in relation to its self-styled 'war on terror.'<sup>14</sup>

Governments are inevitably more hamstrung in their replies because of the tension that lies at the heart of human rights in international diplomacy: is it an ethical tool for the reshaping of foreign policy on moral lines, or merely a clever way of pushing a realist agenda under the cloak of high-flown rhetoric?

As with most tensions in international affairs it ends up being both simultaneously:

- President Carter believed in human rights and saw it as a handy way with which to undermine the Soviets;
- President Reagan saw no contradiction between supported the National Endowment for Democracy and the Contra rebels in Nicaragua;

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<sup>14</sup> Eg Human Rights Watch, *World Report 2006* pp 501-512.

- President George W Bush turns his commitment to democracy on and off, depending on the US line on the country in which at that moment he is taking an interest.<sup>15</sup>
- The first Foreign Secretary in the Administration of Tony Blair the late Robin Cook got into great trouble when it was believed he had committed his country to an ethical foreign policy when in fact all he had called for was a foreign policy with an ethical dimension: just a tinge of morality, in other words, rather than an exclusive commitment to (universal) right over (self-interested) wrong.

No state can avoid hypocrisy on human rights: they would not be national entities if they did not, self-interest being part of the definition of statehood and not a luxury accessory.

*The really interesting question is not about the fact of double standards but about the extent of the gap between the two.*

This can be roughly measured by the degree of stress that a government feels when it departs from its human rights commitments. The UK administrations of Tony Blair and latterly Gordon Brown for example were particularly susceptible on this score since each has been serious about the idea of human rights at the core of policy; it has not been for show only. Even the Coalition government recently elected in the UK has felt it has had to create an advisory board of human rights experts to meet the criticism that it is putting trade above human rights.

Having adopted a respect for human rights as one of its foundational principles (in the absence of any coherent statehood), the European Union is open to being embarrassed by evidence of its duplicity on human rights, and keen where this is demonstrated to narrow the gap.<sup>16</sup>

So too is the Council of Europe, another supra-national body with human rights at its centre. So when it can be shown that members of either of these European entities have acted in an egregious human rights way, such as by providing torture camps for a third power for

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<sup>15</sup> See N Guilhot, *The Democracy Makers. Human Rights and the Politics of the Global Order* (Columbia University Press, New York, 2005).

<sup>16</sup> See A Williams, *EU Human Rights Policies. A Study in Irony* (Oxford University Press, Oxford, 2004).

example, or dumping mentally disturbed people in appallingly managed asylums, there is general outcry – and consequently the possibility of reform. Hypocrisy of this sort is a good thing, a passing blip on the way to a better world.

*The double-standards of China appear of a different order of magnitude, more like those of Burma of which I am so critical in [Track Six](#).*

Is the commitment of China to international human rights nothing more than an empty concession to secure the global business that it is perceived to be in the state's interest to attract? This gives the human rights idea the most precarious of footholds in Chinese culture. The question is whether a slippery foothold is better than none at all, with the job of diplomats and NGOs being to work the space left open by the limited adoption of human rights into something larger, an ideal that moves beyond law to embrace civil and political rights as well, so as thereby to cause an awareness of embarrassment – the first step on this particular roadway to reform.<sup>17</sup>

This does need local support as well as foreign pressure: the roots of human rights need to be nurtured with the bravery of activists.<sup>18</sup>

## MUST ECONOMIC PROGRESS EXACT A HUMAN RIGHTS PRICE?

The countries of the Global North, it is said, have got where they are today by what would now be seen as egregious breaches of human rights.

- Their own workers were horribly maltreated in the first phases of capitalist development: the factories were hell and the living conditions of those forced by circumstance to labour in them were appalling even by contemporary (much less modern) standards.
- Children were used as workers, health and safety standards were minimal and leisure time was non-existent.

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<sup>17</sup> See K Barysch with C Gant and M Leonard, *Embracing the Dragon. The EU's Partnership with China* (Centre for European Reform, London, 2005).

<sup>18</sup> G Zhisheng, *A China More Just. My Fight as a Rights Lawyer in the World's Largest Communist State* (Broad Press, San Diego, 2007).

- The Kantian prohibition that people not be used merely as instruments was flouted throughout each and every one of these new capitalist lands.
- Many of them – the UK in particular, but also France, Belgium, the Netherlands and later Germany – also enjoyed the prosperity that came from the control of the resources of overseas territories, maintained as imperial or colonial outposts for the advantage of the European power but at a huge price so far as the life chances of the natives of those places were concerned.

To sum up this criticism:

*the ethical perspective of the North today has only been made possible only by the sufferings of those who have gone before; so the North-based critique of the practices of contemporary China and other developing states must as a result lose weight.*

But how persuasive is this argument?

It is undeniably true that the past of advanced capitalist countries is mired in abuse and exploitation. It is also the case that slowly these countries generated a critique of such practices that rendered it impossible for them to continue.

The use of child labour was gradually cut back and then outlawed.

Conditions in factories were improved over time as various regulatory frameworks were put in place.

The shocking pollution of the atmosphere and the rivers that swooped in on agrarian society in the first decades of industrialisation led to a legislative fight-back in all the emerging capitalist states, and this eventually grew into a reasonably coherent anti-pollution strategy.

Above all there was the rise of the democratic and the labour movements, now regarded as separate but then thought off, rightly, as two sides of the same coin: the fight for the franchise was a battle for a better life for all, since who given the choice would vote for a perpetuation of the horrors of the (undemocratic) present?

The important point was that none of this came about after economic prosperity had been secured: there was no phase A (necessary exploitation) followed by phase B (a Nirvana of prosperous camaraderie). Most of the rich opposed the changes that were to make capitalist countries attractive places in which to live. The achievements that made the constraint of capital possible were not easily conceded by those who were the beneficiaries of the unjust status quo. It was the same with the eventual collapse of the colonial system. It is certainly the case that world war and indigenous revolt were key factors, but internal opposition to the iniquities of imperial oppression within the colonial powers themselves also played an important part.

*The human rights answer to the Chinese challenge is to say that the issue is being looked at the wrong way round, the true lessons of the European experience being missed.*

What history shows is how a society – even one mired in exploitation and oppression – can change from within, can transform itself through the determination of a few committed activists into a place where wealth can still be made but now in a way that is reasonably fair. The early nineteenth century visionaries of a future just order had no comparative examples upon which to rely: their imagination had to bear the weight of their rhetoric, persuading their listeners on the basis of what could be, not what clearly was, albeit somewhere else. In later phases of capitalist reform, a strong sense of labour solidarity had set in: workers could compare their situation with those of others, working towards goals that had been delivered elsewhere.

*This is the strong position in which those arguing for change in China find themselves.*

They have the examples of the activists of the old capitalist countries on which to draw, and a vast amount of labour solidarity to tap as they argue for the weaving into China's economic model of a much higher degree of human rights protection.

*There is no contemporary necessity which requires the benefits of the freedom that comes with the capitalist system to be purchased at a price of oppression and exploitation.*

Coming back to the market at this late juncture in its history, China have the benefit of knowing something that was not understood by its late 18<sup>th</sup> and early 19<sup>th</sup> century European

comparators: belief in profit need not be incompatible with a lived commitment to respect for human dignity.<sup>19</sup>

Having done this groundwork in history, the contemporary proponent of human rights can afford to go on the offensive. The underlying philosophy of the market is individual choice. More than any other economic system, it celebrates the decision-making capacity of the autonomous person. This is why the capitalist method has been so well-suited to democratic cultures, both helping to create and also often drawing strength from societies organised along representative lines.

To those schooled in the value of consumer choice it is but a short step to embrace political choice as well: why be allowed select every product except the one with the greatest control over your life, the government whose decisions have the capacity radically to affect you (for good or ill)? The Chinese authorities, in practice the governing Communist Party, may applaud themselves for having shown in Tiananmen Square in Beijing in 1989 that they were not prepared to tolerate *glasnost* as well as *perestroika*, that the Soviet route to reform via political as well as economic openness pioneered by Mikhail Gorbachev was not for them.

But they have done so by creating a radical disjuncture in Chinese society, between the person as market player (trusted; independent; wise; energetic; engaged) and the person as citizen (mistrusted; coerced; passive; voiceless).

The jailing of dissidents, the hounding of minority groups, the imperial expansion beyond the country's historic borders, the death penalty, and all the other ravages of China's contradictory twin tracks of consumer freedom and political despotism are neither necessary to capitalism nor in that economic system's long term interests.

Oppression makes a lot of sense to a gang of plutocrats who want to hold on to power at all costs, but to a thoughtful capitalist it represents such a terrible squandering of human capital. The dissonance caused by this tension cannot continue indefinitely.<sup>20</sup>

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<sup>19</sup> A C Grayling, *Towards the Light. The Story of the Struggles for Liberty & Rights That Made the Modern West* (Bllomsbury, London, 2007) is very good on the historical background.

## IS SLOW MOVEMENT TOWARDS CHANGE WORTH SUPPORTING?

It may be because the authorities realise this that China is making its very slow movement towards a credible engagement with human rights, though how credible is one of the questions I ask on [Track Six](#).

The starting point for this may be the dawning realisation of the importance of the rule of law, not from an ethical so much as from a capitalistic perspective. It is the same conundrum that market-enthusiasts have always faced, albeit from a different direction. Whereas in the West the commitment to personal freedom (with its anti-state assumptions) made the concession of the need for a regulatory framework rather grudging, in China the compromise emerges from a state apparatus that reluctantly accepts that it cannot do everything itself, that business actors need certainty with regard to the agreements they conclude and the property purchases that they make.

In 1997, the government committed itself to governing the country according to law and in March 1999 the National People's Congress (NPC) included the concept of the rule of law into China's constitution. And as I point on on [Track Six](#) human rights are now protected under the Chinese Constitution.

Working the small openings that has been made by this tentative acceptance of human rights and the rule of law, further liberal reforms have been wrung out of the government. The Criminal Procedure Law was revised in 1996 to state that 'no person shall be found guilty without being judged as such by a people's court according to law', and it may be that over time the pre-existing culture, deeply damaged by past malpractice, will accommodate itself to this new, procedurally more just reality.

On 1 January 2007, the Supreme People's Court (SPC) took back authority to review all death sentences.

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<sup>20</sup> B Gilley, *China's Democratic Future. How it Will Happen and Where it Will Lead*(Columbia University Press, New York, 2004) makes a persuasive case for the inevitability (or at least extreme likelihood) of change.

Many of these advances will seem minute, especially to those who continue to be on the receiving end of China's unequivocally intolerant approach to dissent, to protest and to attempts to exercise the freedom of religious worship.

## HOW TO REACT?

The third challenge China poses is as to the right attitude to strike in the face of this glacially slow movement towards a human rights culture: should we applaud what is happening and encourage more or should we discount the positive stories, disregard the government's human rights 'advances' as propaganda and push for far more radical change to be achieved far more quickly than promises to be the case?

I think that the latter approach, though understandable and attractively straightforward, carries a great number of risks. For all its faults, the Chinese leadership is not the same as the Junta that runs Burma.

*And anyway how can 'Westerners' bring about change?*

Even if all human rights activists had not appreciated the point in the past, the invasion of Iraq is a warning of what can go wrong if something is broken up because out of the resulting chaos it is believed that something great will grow. This would be a foolhardy approach to take to a place as gigantic as China, especially with its history of internal political instability.

Only China and the Chinese can change China, with support from the outside for sure, but support must never become a subtle form of domination – China has had enough of that kind of 'help' in centuries gone by.

It is for the Chinese themselves to reach a language of human rights that best captures the universals which the country needs to rediscover if it is to achieve true harmony as well as capitalist satisfaction, to tame capitalism even if the country's leadership no longer wish to defeat it. But if capitalism is to be truly tamed, and not turned into a gangsters' kleptocracy, it needs political as well as consumer freedom.

