Chapter 1

Universalism and Exceptionalism in "Asia"

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The purpose of human rights is, or should be, about increasing human freedom as an intrinsic good (see Sen 1999b). This is not freedom in the sense of personal irresponsibility, or the model where one is free to trample on the lives of others, but freedom from oppression and exploitation and, more positively, to explore one's personal capacities and human potential. Such freedom does not exist in only abstract terms; however, on the political spectrum it is at the opposite end of power. Given that power in itself does not seek approval for its actions, a functional freedom requires certain guarantees in relation to power to be able to exist. These guarantees are usually referred to as civil and political rights.

This chapter will consider the claims made for both universalist conceptions of human rights, in this case civil and political rights, that are taken to represent "Western values," and counterclaims based on cultural exception, most commonly identified with "Asian values." It will note the distinctions and commonalities within such claims, notably the understanding of supposed monolithic Western and "Asian" perspectives, and the commonalities found between peoples across both the "West" and "Asia." Within this, the chapter will address the logic of the competing claims.

Universal Rights?

In the sciences generally and mathematics particularly, there is a considerable body of universals, and where there remains debate about some theoretical applications this tends to be at the more arcane or "fuzzy" fringes. The capacity to count, for example, is universal. Like

mathematics, logic may not be universally employed, but it has a functional universal method. Similarly, where there are minor variations between people, human physiology is common as are its responses to external inputs. Intellectual capacities may vary from individual to individual, but it is the key marker of the human condition that people share intellectual capacity and a conscious awareness of self.

The question, then, is whether it is possible to extrapolate from such universals to establish a set of "rights" that continue to constitute such universality or, if as claimed by some, whether cultural distinction—in this case being of "Asia'"—supersedes such claims. In this, there are two sets of issues, the first concerning the quality of being human, and the second concerning the logic of power. If human beings share a common physiology (accepting that beyond child-bearing the principal difference between men and women is cultural), then all people have similar fundamental physical needs. This includes the basics of adequate nutrition and shelter, and the equal value of health care. But basic nutrition and shelter are, of themselves, adequate only to sustain life, potentially in constrained circumstances. As Filipino jurist Jose Diokno noted, food and shelter alone are not enough; "many prisons do as much" (1981: 54).

Beyond basic physiological needs, people have consistent physiological responses to negative stimuli (allowing for individual tolerance). Physical torture afflicts people equally and other forms of depravation have consistent negative effects. So all people respond similarly to imprisonment, isolation, death, and loss, consistency of responses speaking more to social psychology than individual psychology. There may be minor variation between individuals, but alienation, fear, and trauma apply consistently in like circumstances. The intended effect of such conditions derives from a similarly common set of motives: compulsion, fear, hatred, ignorance, greed, and psychosis. These are the handmaidens of unrestrained power.

Again, if language varies but a capacity for speech is inherent, and speech is the principal mechanism by which people communicate needs, desires, and emotions, then limitations upon speech constitute a restriction on a basic expression of the quality of being human. The next question then arises as to acculturated acceptance of imposition. If acculturation is a consequence of resolving social dissonance, for example, by accepting a situation because of a lack of capacity to change it, this does not legitimize the situation but rather just explains why it is unchallenged. If that lack of capacity is a consequence of unequal power relations, then the situation is not one of culture as

such but one of politics. This is not to deny the capacity for the acculturation of political methods and values, but that its explanatory method is primarily political and not cultural. Nor is it to deny the subtlety and impact of interplay between culture and politics and the deeply rooted forms of acculturation that might exist despite the objective interests of the respective parties. But acknowledging that a hegemonic framework exists does not then exculpate the actors within it. Rather, it acts as an analytic tool for understanding that framework.

The claim to human rights, in particular civil and political rights, is based upon assumptions about universal political values. These values were initially expressed in universalist terms during the period of the European Enlightenment, although their antecedents derive from antiquity, and across a range of cultures. Contrary to some claims, conceptions of human rights (of which civil and political rights are seen as the first generation; second-generation rights include economic, social, and cultural rights; and third-generation rights include peace and a sustainable environment) are neither culturally specific nor especially recent. Moreover, while the codification of human rights ensures that there is a specific set of criteria by which they can be measured and applied, human rights do not necessarily rely on codification in order to retain validity. The conception of "natural rights" applies here, parallel to natural law (e.g., see Hobbes 1962; Locke 1960; Rousseau 1973), as those rights that pertain in a range of circumstances in which each is an interpretation of the same or a similar original first principle. Such rights are claimed to exist as a consequence of freedom in a state of nature. This implies a natural moral order (sometimes said to be under God) in which humans are equal in a state of nature, as the application to others of self-regard (moral coherence and consistency) or, most forcefully and without reference to God, as a practical consequence of having a capacity for ethical reason (e.g., see Kant 1997; Locke 1960).

In this respect, the earliest claims to human rights were not codified, and where codification did exist, it often did so in an indirect or incompletely articulated sense. Religion was a principal area in which conceptions of rights were indirectly codified, but which categorically required adherence to particular moral codes. Such moral codes required certain forms of behavior of oneself but also, implying rights, toward others. Examples of such rights for others can be found in The Decalogue (20: 1–21) of the Bible and the Torah, Exodus (22–26, 22: 20–27, 23: 6–7), Leviticus (19: 13–19, 33–37), the edicts of sixth-century BCE Persia under Cyrus the Great, Buddhism especially

under third-century BCE King Ashoka, throughout the Qur'an, within the works of the Greek Stoic philosophers Epictectus and Hierapolis, Socrates, Plato (1955: V, IX: 6), Aristotle (1953: IV), Sophocles (1947), Cicero (1998), and within the Analects of Confucius (see Leys 1997; Ping-Chia 1965: 19–23; Schurman and Schell 1977: 10–11, 48). Following the gross humanitarian abuses of World War II, these values were formally endorsed in the Universal Declaration of Human Rights (UDHR 1948), a document supported by 48 member states, with no votes against and eight abstentions (the Soviet Bloc states, South Africa, and Saudi Arabia). Since then, the declaration has been endorsed by almost all member states, with critical Islamic states adopting the conceptually similar Cairo Declaration on Human Rights in Islam (CDHRI 1990), which sought to establish Islamic law as the basis for such rights (which constrained rights within Islamic law). All this stands in support of the claim that there is now a universal rhetorical agreement that human rights exist, or should do so, and that they are or should be universal in application.

Despite some observations that it contains conceptual flaws (such as those addressed in the CDHRI), UN Declaration remains the key human rights document. There is broad agreement that any effort to address perceived flaws in the document would diminish the declaration in other respects, recognizing that its strength is the protection it offers for the plurality of views that might criticize it. It is, then, nothing if not implicitly reflexive. It has thus been left intact. There has, however, been similar recognition of a broader range of human rights, including the right to development (UN 1986). The addition of rights does not contradict or diminish the quality or scope of the original declaration, but rather enhances it. Importantly, despite some other rights being championed by particular political interests, there is no hierarchy of rights, in which one set of rights may take precedence over others; all are considered to have an equally valid and universal claim.

The Exceptionalist Claim

Since the 1980s, claims to universal human rights have been countered by what has been termed the "Asian values" paradigm specifically and, somewhat separately, a post-structural analysis that has favored relativism over universal assumptions. This latter group includes academics who wish to defend the cultural particularities of their site of interest from a more generalized absorption into Western or global culture (the *authentic* local as opposed to the presumed neo-imperial

global). The former main group, who are sometimes uncomfortable bedfellows with the first, comprises political figures who use culturally relativist arguments about rights to sustain unequal power relationships or to rationalize otherwise inexcusable abuses. Such individuals or groups may draw on preexisting conceptions of power relations that may be "reified" (see Pemberton 1994) or "naturalized" so as to preclude the conception that another possibility could exist (e.g., see Lukes 1974). Within this, the proposition of "Asian values" reflects particular power relationships. But, portrayed as cultural rather than political, such "Asian values" have in some cases attracted the implied support of academic relativists.

These overlapping positions reject the universal claims of human rights; instead they posit that political values are relative to the cultures (worldviews) in which they arise. This in turn rests on a claimed category of linguistic distinction around the embeddedness of culture in language, and that as languages are different and not immediately or sometimes at all mutually intelligible. According to this position, at base there is a point of untranslatability; hence cultures and forms of social organization that arise from such cultures are also mutually and fundamentally unintelligible and untranslatable (Whorf 1956; Sapir 1955). This "linguistic turn," deriving from the structural anthropology of the 1950s and 1960s (e.g., de Saussure 1959; Levi-Strauss 1963) and the semiotics of the 1960s, came to influence literary studies where it was revised and relativized, returning to anthropology as the "reading" of cultures or a "retreat into the code" and related promotion of "form over meaning" (Giddens 1987: 84, 86). This culturalist "incommensurability" perspective was given substantial support by the development of post-structural (or postmodernist) theorizing generally and the deconstructionist project of the 1980s and early 1990s in particular. In linguistics, the "outsider" and "insider" perspectives were sometimes referred to as "etic" and "emic," relating to capacities to identify incommensurable difference, or exceptionalism, following the Prague Linguistic Circle (see Hymes 1982), which refers to the distinction between phonetics (classification according to acoustic properties, or "explanatory") and phonemics (function of sound in language, or "interpretive"—see Wacquant 1992: 20, nb 19). This has been loosely applied in anthropology to differentiate local and authentic knowledge from external and presumably inauthentic knowledge (e.g., see Geertz 1993: 56–57), or the legitimate culturally specific as opposed to the illegitimate universally general.

As such, this varied body of linguistic thought, and in particular its post-structuralist elements, broadly agreed on the epistemological

position that knowledge is always contingent on the perspective of the observer and as such is always subjective. Hence one could only know one's own thoughts and never truly those of another. In some way, this took the form of one's own thoughts even being the product of a range of other influences and capacities and, as such, one might not even truly know oneself. Indeed, for many who accepted this premise, the whole notion of "truth" became at best problematic and at worst ceased to exist altogether. Further, rather than arriving at concrete truths, post-structural investigation into meaning deferred to constituent questions about such meaning, and constituent questions about the meanings of the answers to those second-order questions. In such a "deconstructionist" mode, the logic of the process was not to answer a question finally, but to continue to unpack both the question and its premise, and the premise for that, and so on, thus deferring meaning in perpetuity. If meaning was thus permanently deferred, one could never truly know. This was especially the case in relation to "other" in general and "other" in particular. Values become not just different, but unknown, and unknowable. According to this logic, any and all expression is culturally embedded, especially including that which refers to social values as the expression of cultural organization. As such, claims to universal civil and political rights are rather a reflection of a particular worldview, in this case one dominated by a specific form of Western thinking, and did not apply in non-Western, in this case "Asian," contexts. Ipso facto, assertions of particular values, in this case "Asian values," could not be countered on the grounds of unsustainable claims to an impossible universality. An assertion of "Asian values" by an "Asian," then, was self-legitimizing (on relativism and human rights, see, e.g., Tilley 2000; Milner 1999; Heard 1997; Ayton-Shenker 1995; Renteln 1985).

From a less power-centric and more intellectually engaged perspective, a relative conception of rights thus assumes that what is understood by one might not (or cannot) be understood by another, and that neither understanding is privileged over the other. No particular meaning can assert its authority if meaning is constantly deferred via a chain reaction of questioning away from the source. However, there is an internal contradiction of deconstructing relativism's own proposition (that all propositions are relative, including this one) and its implicit lack of engagement with demonstrable realities. Beyond this, where such relativism (or relativisms) acknowledges and respects difference, it could be understood as "positive relativism," of the type favored by Foucault (1982), Derrida (1980, 1997), and

Lyotard (1984). "Positive" relativism in this approach implies an affirming quality, in that such difference seeks liberation from imposition. Assuming that positive relativism involves acceptance of plurality (or pluralities), it positions individuals or groups in ways that cannot be regarded as the same. This then differentiates within groups, with further assumption being that all individuals are both somewhat different but, if they are not to comprise a fundamentally differentiated and hence totally fragmented or atomized and internally alienated society, must be regarded as forming part of an overarching cohesive whole. This use of such differentiation, then, assumes that there is some fundamental distinction between human beings beyond the ways in which we go about organizing our lives relative to our circumstances. People are different but, as Evans-Pritchard described, not in ways that are terribly important (in Geertz 1989: 70) or, as noted by Riceour, not radically so (1981: 49–50). The important point here, then, is not difference as such, but the protection of difference as a quality of freedom.

More disconcertingly, though, the deferrals of meaning implied in relativism can also be adopted to support "negative relativism." Negative relativism positions people according to a subjective cultural or physiological scale, at the far end of which blurs the categories of value of existence. This can manifest as, for example, institutional racism, and can be applied in gross numbers as part of a specific program, the Holocaust and Apartheid being cases in point. But beyond a rationalization for amoral power it still suffers from arbitrary categories of victims that can, logically, turn upon itself or elements of itself (e.g., Stalin's USSR, China's purges in the 1950s and again during the Cultural Revolution, Nazi Germany, and Cambodia's Khmer Rouge). That is to say, if relativism is consistent it must respect difference through the establishment of an egalitarian plurality as a guarantee of freedom, or else devour itself.

Postcolonial Responses

At approximately the same time as the shift toward post-structuralism in which relativism featured so strongly, Western hegemony was being challenged by the rise of a number of postcolonial states, notably in East Asia. In the immediate postcolonial period, many decolonized states had opted for a plural democratic or other "liberating" system as methods of government in which civil and political rights were implied. However, the postcolonial experience was commonly beset by a series of similar problems. The first problem was that the removal

of the colonial yoke did not automatically produce all—or in most cases many—of the benefits that liberation was supposed to guarantee. In this, expectations grossly exceeded capacity, which was often reduced rather than enhanced by independence.

The common postcolonial experience was of political failure, especially in cases where plural democratic structures that had taken decades or even centuries to formulate and refine in Western countries were expected to take immediate hold in postcolonial countries. The emphasis within human rights on claims to free expression and assembly are seen in some political environments to not just challenge the status quo but to create an unstable political and economic environment and inciting already restive populations to illegal activity. In circumstances where the state struggled to construct basic institutions, to provide services and to head down one consistent development path, such political distractions were often unwelcome. Set against the background of often arbitrary and increasingly fractured polities fighting increasingly desperate internal battles, it became both a convenience and arguably a necessity for political elites controlling the levers of power to abandon or violently repress plural democratic or other emancipatory processes in exchange for the "stability" of one-party or one-person authoritarian rule. The functional claims of plural democracy or other forms of actual liberation, and the civil and political rights that are inherent in them, were thus discarded as impeding the changing expedient political practice.

Combined with and rationalizing the imposition of authoritarianism, many critics of human rights, especially in developing countries, opposed universal conceptions of human rights as being specific rather than universal and as reflecting a type of cultural imperialism (e.g., see World Conference on Human Rights 1993: 3; Suh 1997). These critics claimed that rather than being universal, claims to human rights were a reflection of specific cultural values and, as such, amounted to the imposition of an alien culture. This argument was usually advanced in association with claims to other forms of imperialism or neo-imperialism, such as economic or strategic relations that favored former colonial or Western powers over postcolonial states. Notably, the issue of perceived or claimed imposition of an alien culture led to rejection. However, arguments about the imposition of human rights, as with the imposition of democracy, contradict their liberating principles so that such imposition, if it existed, would contradict the principles it was trying to support. It would further call forth rejection based on the fact of the imposition, rather than for the inherent quality of the rights in question. Such rejection would itself

be couched in terms of "rights," in this case the "right to resist imposition."

There is also the further problem of an inherent egalitarian assertion underpinning attempts to delegitimize conceptions of universally valid human rights. That is, detractors of universal civil and political rights argue that their view is of equal validity to views expressed in support of such rights. Yet implicitly, a relativized understanding should logically not accept such equality of the value of assertions. To accept such equality is to accept the equal legitimacy of the right to express it as a freely held value and the universality of such equality. This in turn implicitly supports the underlying principle in favor of universal civil and political rights.

The only circumstances under which claims to relativization that propose an inequality of values can be sustained is where there is the aforementioned hierarchy of value claims, for example, that the individual is less important than the community, or that some individuals have less value than others. While hierarchical ordering has the potential to separate and privilege particular value claims, and thus avoid the egalitarian principles that underpin universal claims, there is nothing in this that presupposes that claims against universal civil and political rights would be privileged or sustained. That is, cultural relativism opens the door not just to difference, but to persecution rationalized by such difference. The argument of a particular ordering of human value based on cultural exceptionalism is thus logically inconsistent.

Claims to the relativism of rights continue—if decreasingly—at an official level. Like claims to democracy, the widespread acceptance of the terminology around civil and political rights has, on the one hand, tended to be devalued and, on the other hand, has been all too often observed in the breach. But despite such rhetorical if not actual acceptance of civil and political rights, there continue to be moments where, especially in specific cases, arguments are put to "explain" the special circumstances of particular cases. Atrocities against civilians in conflict zones are a principal example of "explaining" such "special circumstances," often accompanied by dissembling rhetoric such as the "necessity" of torture in the "War on Terror."

Assuming the claim for the relativization of civil and political rights overcomes these hurdles, this claim then implicitly raises the question of different sets of rights for different people in different circumstances. That is, it assumes cultural or state-specific rights, rather than rights predicated upon the universal quality of existing as a human being. Yet the universalist claim of civil and political rights

pertains not to the specificity of one's circumstances but to the quality of being human, which is commonality (*consensus gentium*) (see Geertz 1993: 43, 50, 60, 350–351; Geertz 1989: 15, 70; Todorov 1986: 374).

"Tiger" Values?

In some cases, and for a variety of often similar reasons, some postcolonial states that adopted authoritarian or dictatorial political models succeeded in economic terms, in East Asia known as the "Asian Tigers." South Korea built a strong economy under military rule as did Taiwan, while Singapore flourished under quasi-authoritarian one-party rule while the colonial anomaly of Hong Kong similarly flourished with access to plural democratic processes. It was but a short step from such economic success to a conclusion that it was not just linked to but a direct product of a particular "Asian" way of doing things.

The main contributing factors to economic success among what came to be termed the "Asian Tigers" included, as well as guaranteed political stability, substantial economic inputs from the United States through its involvements in the Korean and Vietnam Wars and the West's massive consumer purchasing thereafter, a legacy of Japanese economic infrastructure in both South Korea and Taiwan, Singapore and Hong Kong's histories as key free ports in a global trading network. But most importantly, it also included Japan's economic leadership, in which regional economies picked up discarded Japanese industries, often with Japanese finance, as Japan moved higher up the technology scale. More culturally focused, each of these societies reflected Confucian concerns with education, reflected in high education spending, and a work ethic allied with private business. In this last instance, private business was also assisted by government support, partnerships, soft-loans, and other forms of economic inducements.

Regardless of the varied reasons for these specific economic successes, it was relatively easy for governments presiding over economic prosperity to accord it to political style, in turn claimed to be based on a specific "cultural" heritage. The logic of such claims was that such political style reflected cultural values that did not accord with Western ideals of plural democracy and civil and political rights. In this, states could assert a "national" pride based on economic success that countered cultural ignominy that was a product of colonial imposition. Thus an exceptionalist claim that initially reflected unity,

in this case around Confucian economic success, came to be adopted by governments of states that could claim neither a cultural affinity nor, in many cases, economic success. What they could claim, however, was an assertion of legitimacy of an authoritarian political model. Indeed, for many postcolonial one-party states, rejecting plural democracy and civil and political rights became a further method of asserting a noncolonial state identity. For such states, the common claim of economic efficiency took precedence over civil and political rights. If the "luxury" of civil and political rights was to be granted, or returned, it would only be after the establishment of prerequisite economic success.

The assumption that democratization was contingent upon economic development ("full bellies thesis") was undermined by many postcolonial states having neither "rice" nor "rights." The assumption of structural determinism between economic development and democratization has since been contradicted by economically successful Singapore failing to democratize while Indonesia and the Philippines both returned to democratization despite being in the depths of economic crisis. As Sen has noted, there is no necessary link between political forms and economic development (see also Przeworski et al. 2000; Barro 1996; Przeworski 1995). Moreover, political freedoms, as implied in a representative, transparent, and accountable political system that not only allows but encourages a high degree of public participation, have helped ensure that no democratic state has ever suffered a famine that, he claims, is due to the accountability of governments (Sen 1999b; see also D'Souza 1990; Dr'eze and Sen 1987; HRW 1992; RC 1994), nor has a democratic state gone to war with another (there are marginal exceptions in an extensive field of conformity). Corruption, too, appears to be significantly more prevalent in states in which there is no or little accountability. Economic development may actually go backward as a consequence of a lack of political openness as implied in plural democracy and civil and political rights (see Sen 1999a).

Tensions within Rights

It has been a basic assumption of democratic government, in which the interest of the majority prevails (if not at the absolute expense of the minority) that it should pursue policies that produce the most favorable outcome for the greatest number of people. This utilitarian position of pursuit of broadly favorable outcomes, or "public good," assumes the existence of an overarching political unity, usually understood as

"nation," which is intended to secure and preserve its interests (i.e., the "national interest") within the context of a territorially bounded and institutionally capable territory (the "state").

Such good can be construed in purely material terms, such as economic benefit, security of economic conditions, strategic (sovereign) security, and access to the benefits of the state, such as a consistent and equitably applied law, infrastructure, and social services. This good may also be construed in terms of security of political benefit, including political participation and representation, and the associated rights to freedom of speech and communication, and assembly, and from arbitrary arrest, detention, torture, and so on. However, in a generally open society, the public good of rights that secure political goods may be in tension with the public good of rights that secure utilitarian goods, especially where those utilitarian rights are more narrowly conceived (e.g., by limited private interest). That is, political debate in favor of some economic redistribution might potentially limit absolute economic accumulation or growth. The two may coexist and, indeed, in most rights-based societies do so with relative equilibrium between them. However, this is only in an unending contest for supremacy based on orderings of individual and group interest.

The fundamental assumptions underpinning utilitarianism are that there is a political cohort to which its value applies and that the utility applies to most of the people in a given community most of the time. This in turn assumes a unity of purpose, which in a fully realized form may constitute a nation within the institutional context of a state. This is not to suggest that the nation, the state or the "nation-state" are a political ideal or absolute political ends in themselves. Rather it suggests that the fully realized form of a bonded political community may be called a "nation," but may potentially be less or greater than contemporary conceptions, being less than represented by a state (e.g., economic class) or by being spread across states (e.g., multilateral organizations). A nation may be a devolved or relatively evolved political community, either less or greater than the rather static interpretations of nation (and also state) that tends to apply. The general tendency has been for specific political unities to devolve to their constituent parts, while larger unities have tended to form as the result of perceived or actual economic or security benefit. The idea of nation then has tended to reflect a devolution, or largely a return to aspects of primordialism, rather than evolution, and as such reflects vertical (ethnic, cultural) rather than horizontal (class, economic) interests.

Assuming a common bonded political identity, that is, a nation, the focus on the welfare of the community within an agreed sovereign territory supports the utilitarian proposition. However, the degree to which the community is bonded may not apply equally to all elements of the community. To ensure the good of the constituent members, the community must allow all individuals the opportunity to express their preferences (where there is no harm to others) and protect them from the potential imposition of a singular communitarian will. This could be understood in particular in the case of a postcolonial state in which neither language, economy, or security are absolute unifiers in themselves, but which through sufficient proximity (colonial geospatial organization) identify enough in common to maintain the value of the point of overlap. This could be said to imply a tendency toward vertical social integration, with the areas where there is no overlap comprising assertions of local identity or, potentially, vertical disintegration.

Alternatively, assuming that these interests are all economic, for example, around sectors of capital, technology, and labor, but with a common language and security focus, there might be greater common ground to form a single community, creating the horizontal conditions for national identity, but a particular point where unity of purpose is contested by specific economic interests. The points at which these respective interest groups do not overlap suggest a probable desire to preserve or promote specific interests, and the capacity to be able to do so. Given the tendency of the center or middle ground to act as a median point of interest, utilitarianism assumes that the greatest number of people receive at least some benefit, while relatively few are disadvantaged. This implies mutual acceptance of legitimate plurality.

Assuming that each interest group will assert their primary interest, or at least assert a claim to what constitutes a fair balance of interests, the middle ground and definitions of "greatest good" become contested. Even where there is agreement about the greatest good, there may be instances where the greatest common good remains deleterious to constituent members. That is, it may be necessary to sacrifice the interests of a few for the greater good of many. This then suggests an inconsistent application of agreed codes (law) or the expedient abrogation of the interests of some members of the community for the benefit of others. Due to either the inconsistency of this application, or the institutionalization of expediency, abrogation of the rights of some is likely to lead to social discord, potentially at high and destabilizing levels. Ensuring that both judicial inconsistency or

institutionalized expediency are constrained therefore requires the institutionalization of a counterbalance, that is, the rights of the constituent member to freedom from such impositions and the freedom to fully engage as an equal in the process of determination of the common good.

The contrary position to community rights and interests, then, is to assert the "right" of the social constituent—the individual—against a presupposed uniformity of interest or the assumed overarching welfare of the community. This then sets up a competition between community rights, which are said to comply with "Asian values," and individual rights, which are said to comply with "Western values." In putting forward a claim to individual freedom, Bentham (e.g., 1781: Chapter 16) and Hobbes (1962: Chapter 21) argued that every law diminished freedom, even if the purpose of such law was to prevent a greater loss of freedom. Yet recognizing the practical value of majority claims, especially in a functioning democracy, the rights of an individual must on occasion be required to give way to wider social benefit. Rejection of this compromise of absolute individual rights neglects the reality that individuals live within communities, and the rights of all cannot be compromised, without exception, by the rights of one.

The balance between community necessity and individual claims, then, posits liberalism, a preference for freedom, against libertarianism, an absolute freedom—particularly in the economic sphere—and recognizes that the rights of one are bounded by their capacity to negatively impact on others. That is, freedom, which rights are supposed to make available, does not equate to freedom from law (see Larmore 1996: 108), but rather freedom for all under law. In this respect, the rights of a community are best preserved by guaranteeing the rights of its constituent members within the context of the rights of others, or the substance of liberalization (O'Donnell and Schmitter 1986: 7). As noted by Berlin, in arguing for a balance betweens rights, "Every law curtails some liberty, although it may be a means to increasing another" (1958: 123, nb xlix). Similarly, the judicial theorist Rawls did not see freedom (or "liberty") as an absolute, but as "a certain pattern of social forms" (Rawls 1971: 63), or as what might be described as the positive right of rational individual autonomy along with freedom from domination or unnecessary interference as a result of the absolute rights of others. Indeed, not only is the idea of individual rights not contrary to a sense of community, and hence certain communitarian values, but as Larmore suggests, the community is the safest place in which rights can reside. "Take our fate out of the hands

of individuals," he said, "and give our immunity to interference an impersonal or collective basis" (Larmore 1996: 114).

Such "impersonal" civil and political rights are generally divided into "positive" and "negative" rights, or rights "to" (e.g., freedom of expression, gathering, political activity) and rights "from" (such as arbitrary arrest, detention, or torture), and between natural (implied) rights and positive (codified) rights. These correspond to the capacity for and potential restrictions upon agency, although it is easy in a theoretical discussion to overstate the practical implications of the distinction. Freedom from limitations creates the practical opportunity of freedom to engage in activity. Noting this value of protection from (negative rights) to allow the opportunity to (positive rights), Weinstock noted that "citizens need a bundle of rights that ensure that their freedom will not be encroached upon [negative rights] in ways that make the realization of their projects [positive rights] impossible" (Weinstock and Nadeau 2004: 2). The claim of "Asian values," in which communal rights must take precedence over individual rights, caricatured individual rights while removing the "collective basis" of rights and, in fact, restored responsibility for such "rights" to the hands of powerful individuals. In the case of the "Asian values" claim, this responsibility devolved to Singapore's Lee Kuan Yew, Malaysia's Mahathir Mohammad, Indonesia's Suharto, and like authoritarian leaders.

Legitimacy and Rights

The claims of such political leaders that there were or can be specifically "Asian values" in relation to rights, and thus rejecting the universality of rights has, however, been contradicted by the commonly expressed preferences of those people if and when they have an opportunity to do so. In Indonesia in particular, the view that the "little people" did not need open democracy was contradicted by their embrace of it in 1999. That is, if the universal claims of human rights have a measurable basis, it is not so much in what people in common wish for, even though there is a high degree of commonality in basic aspirations. Rather, the most absolute point of consistency in human rights is in what people do not wish for, or, more to the point, wish to avoid at all cost. If there are quibbles about some universal claims, one that stands up irrespective of time, place, culture, or other circumstances is abhorrence of personal torture. That is, no one likes it, no one would willingly put up with it, and everyone would wish that it did not exist should they be subject to it (see Singer 1979).

Similarly, being jailed is for most people a negative experience and few people would willingly surrender themselves to incarceration. This is particularly so if incarceration is outside of the due process of law and if it includes not the relative comforts and security of some of the more enlightened prison systems, but is constructed around the bare minimum to sustain life, and perhaps then not for the long term.

The question of normative forms of and respect for civil and political rights is best addressed by being directly tested against a specific universal set of criteria, and whether political rule meets the test of legitimacy (see Morris 1998: 24, 105–111). Broadly, "legitimacy," in the positive sense, complies with the exercise of power in accordance with a broadly socially accepted set of principles, procedures, or method of conferral of authority. As this is generally codified in order to achieve some standardization of application, it implies the existence of law. Indeed, the word "legitimacy," like that of legal, derives from the Roman *lex* (law), and its original application did not distinguish between the legitimacy and legality of a regime; in order to be one it had to be the other, in contrast to arbitrary rule or tyranny. In later discussion, especially under the influence of Christian theology, the idea of legitimacy was linked to natural law, and through the Enlightenment gradually democratized. Weber's theory of legitimacy of rule canvassed different ideal models obtaining to different preconditions, but throughout asserted that legitimacy either arose through acceptance of a precondition, imitation, rational belief in its value, or its legality (Weber 1946: 130).

Another set of criteria might construe legitimacy as being comprised either of a normative natural order that translates as political order. For example, such criteria can be found in traditional forms of rule and elements of "organic" political corporatism or in a liberal-minimalist model dependent upon a state's capacity to maintain peace under rule of law, characterized by the "small state" approach of neo-liberalism. They can also be located in a democratic-proceduralist model of agreement between free and equal citizens, based on individual self-determination (as the only rational basis for morality) as outlined by Kant (1997) and as construed as social contract by Rousseau (1973).

In this, there is a parallel between the somewhat artificial separation of positive and negative rights, the distinction between the individual and the community, and between freedom and equality. A community is no more than a collective of individuals, just as an individual is no more or less than a constituent member of a community. A conceptual differentiation may be required of both for

theoretical purposes, but in practice the community and individuals overlap and live within each other. As the individual goes forward, within a framework of respect for the rights of others, so too does the community; when the community regresses and diminishes its access to rights, so to do the individuals who comprise it. In that the "Asian values" position proposes a dichotomy, it is therefore a false one.

There is, of course, a claimed paradox between conceptions of freedom and law: to the extent that freedom is understood as the absence of domination, just laws form its precondition (Weinstock and Nadeau 2004: 105). Yet this "sense of paradox is due to confusing the absence of domination with the absence of interference" (106), which is most often associated with the utilitarianism of Bentham. Moreover, in ancient Greece, "Demokratia was committed to the rule of law because it recognized that the rule of law protected the interests of the poor as well as the rich" (Ober 2000). This is to say while law imposes some limitations upon freedom, normatively such restrictions are only to the freedom to restrict the freedom of others. In that, law normatively guarantees protection from such arbitrary restrictions, it enhances real freedom. Under the "Asian values" paradigm, law is itself a restriction upon freedom, marking the differentiation between a normative rule of law and, in the "Asian values'" context, rule by law.

Freedom from arbitrary arrest, detention, and torture, which find themselves more commonly applied under "rule by law," are among the first-generation civil and political rights, as legal protection from authoritarian excesses intended to quell challenges to the authority of an oppressive state. These freedoms "from" are necessary rights alone, but are especially important as protective measures in concert with rights "to" freedom of speech and assembly, and so on. Freedom from arbitrary arrest, detention, and torture also imply the existence of the consistent and equal rule of law. Beyond that, structures against the use of inhumane or degrading punishment, including torture, reflect the positive values of a society in relation to its own members, and imply a broadly benign approach and a degree of mutual respect as human beings, even for law breakers. Taken from a negative perspective, strictures on the use of torture or other cruel, degrading, or inhumane forms of punishment also reflects an awareness that it is not possible to separate one aspect of a society's behavior from others, and that what occurs in prisons, and the means by which citizens might get there, says much about how a society more generally treats itself, its capacity for empathy and its sensitivity or otherwise to human suffering. Singapore and Malaysia's Internal Security Act

(ISA), by which people can be jailed without charge, and other legalistic devices of repression, speak directly to the type of political society they remain. So too do Indonesia's draconian defamation, "hatred," and treason laws, along with its continuing restrictions on political parties.

None of this, however, was discussed by the founders of Indonesia, Malaysia, or Singapore, each of whom employed the rhetoric of "liberation," or freedom. Such freedom implies the capacity and intention for the improvement of peoples' lives based on a wide-ranging sense of voluntary inclusion and participation through practical recognition of the validity and implementation of civil and political rights. The key components of civil and political rights, as both rights "to" and rights "from," ensure the capacity for constituent members of a polity to communicate with each other without fear over matters of individual or mutual relevance and importance. Such rights have been demonstrated not to apply just to the West or other cultural constructs, nor have they been established as immune from "Asia." The right to meet, to discuss, to express views, and to disseminate those views amongst one's community is basic not just to political freedom, but to the full and fair manifestation of the human condition.

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Chapter 4

Chinese Values and Human Rights

Ann Kent

From its emergence as a fully fledged idea in the early 1990s, the concept of "Asian values" appeared as a cultural construct erected by authoritarian political leaders in the Asian region to fulfill various instrumental goals (Kausikan 1993; Kent 1999: 22; Tang 1995). It was devised to achieve legitimization of their authoritarian rule at a time when authoritarian communist regimes in Europe were crumbling. It was also designed to ward off the threat of cultural, political, and social change posed by an increasingly globalized world. At the same time, it was an understandable reaction by non-Western states to the emergence of the international human rights regime as a major focus of international politics in the West. Global politics became clad in the garb of culture, replacing the ideological clothing of the rapidly warming cold war.

An analysis of China's post-Tiananmen position on "Asian values," and the subsequent fate of this concept in its diplomacy, throws light on this retrospective study of overall Asian policy. How China has construed the concept, how it has used it and related its official theory to its actual practice of human rights are important questions that will help test whether or not the concept of "Asian values" was entirely instrumental, or only partially so. To clarify such questions, this study will compare and contrast China's theory and practice of human rights from 1989 to the present. It will also compare the official governmental approach to the concept of the universality of human rights with the perspectives of China's citizens, whether intellectuals, dissidents, workers, peasants, or minorities.

In China's case, from the beginning there was less talk of "Asian values" and more of "Chinese values." Nevertheless, the two concepts were similar and mutually reinforcing. The emphasis on "Chinese" rather than "Asian" values was not so much a reflection of a difference

in approach as an expression of Chinese exceptionalism, apparent in other commonly used concepts such as the "market economy with Chinese characteristics." Since the coming to power of a socialist government in 1949, China had stressed the collective rights of antidiscrimination, anticolonialism, the right to self-determination, the right to development, and the economic and social rights emphasized in socialist thought, itself initially a Western construct.

Other than such rights, and China's criticism of the notion of "bourgeois right" embraced in the Western capitalist system, "human rights" were not normally part of domestic political discourse. However, to defend itself from international criticism after the Tiananmen Square Massacre, and to meet the Western challenge of human rights delegations, initiated by Australia and China in June 1991, China launched a national version of "human rights" in its first White Paper on human rights in November 1991 (Information Office of the State Council of the People's Republic of China 1991). This placed a priority on "subsistence" rights, rather than merely economic, social, and cultural rights. While not denying the universality of human rights, it made clear that civil and political rights were second-order rights, to be bestowed only gradually according to the historical circumstances of each country and as its economic base developed. In this way, Chinese views both stimulated, and fed into, the body of theory that was developing more generally in the Asia-Pacific region.

Apart from the timing of this new Chinese theory, the most obvious pointer to its instrumental character was that it stood in direct contradiction to existing Chinese practice. Whereas during the era of the Democracy Movement of 1978–1980 economic and social rights had indeed prevailed over civil and political rights, which at that time were in abeyance, by the late 1980s, China's actual hierarchy of rights had been reversed. China's initiation of an era of economic modernization in 1978 had brought creeping marketization and, with it, the rationalization of the urban and rural work force and an end to the "iron rice bowl," which had hitherto dispensed economic and social rights to all working people. The cataclysmic change this represented for the individual Chinese citizen was exemplified by the replacement in practice of the right to work (an economic right guaranteed by the state) by the (qualified) civil right to freedom of movement (i.e., the freedom of the individual either to look for a job for himself/herself or to be unemployed). More generally, the civil and political rights of citizens expanded, with increased access to freedoms of speech, of the press, and of movement, while economic, social, and cultural rights steadily contracted (Kent 1993: 93).

China's Human Rights in
Practice, 1991–1997

Even after the suppression of the Democracy Movement in 1989, this contradiction between China's theory and practice of rights was maintained. Apart from breaching innumerable obligations that China had voluntarily assumed when it ratified international human rights treaties in the 1970s and 1980s, the violent suppression of the Democracy Movement set back the gradual improvement that had been occurring in China's civil rights, and further entrenched the government's tendency to subordinate economic, social, and cultural rights to the imperative of economic growth. It also reinforced the leaders' determination to retain control over the transition process. To this end they invoked long-held popular fears of *luan*, that is, "social disorder."

The suppression thus proved to be a turning point in the relationship between China's leaders and the led. Rather than opting to slow down the modernization and globalization process, thereby allowing Chinese society the chance to adjust more gradually to economic and social change, and rather than expanding popular access to civil and political rights, as the students had demanded, China's leaders chose to accelerate economic reform, while reaffirming their authoritarian Leninist political system (Kent 1993: 209–211). Influenced by the free market ethos of globalization, they also made a deliberate decision to pursue stability through the "trickle-down effect" of economic growth, rather than through more egalitarian redistributive forms of economic and social development. They embarked on a move to downsize and "rationalize" the inefficient state-owned enterprise sector (SOEs) and to speed up China's accession to the WTO. In exchange for the structural instability and human insecurity such a choice entailed, China's leaders struck an implicit social contract with the people to maintain an annual high growth rate of at least 7–8 percent in China's GDP (Kent 1993: 193–194).

The government's undertaking to maintain a high annual growth rate placed it in a triple bind. The more social instability its international and domestic policies generated, the more its leaders clung to the globalization mantra of economic growth to mask that instability and the more, in turn, China's economy became tied in with the processes of globalization. While this produced a new class of affluent, middle-class consumers, its negative effects domestically were that, in deference to its new market-driven policies, the government became even more prepared to sacrifice social values that were seen as peripheral to the

globalization process. The physical and social well-being of its citizens was imperiled by new policies privatizing the provision of health, education, and social welfare, as well as the toleration of high unemployment in the cause of overall national prosperity. Likewise, the government felt free to ignore the civil rights of workers, as well as the citizens' need for greater autonomy from the state. Critical to this hiatus was the government's continuing denial of the right to freedom of association, central both to workers' rights and the opening up of civil society. This blind spot permitted, for instance, governmental persecution of the Falungong, a religious sect charged with attempting to set up a center of power independent of the Party and state, as well as ensuring that workers were unable to establish independent trade unions to defend their rights.

The suppression of the Democracy Movement thus brought the regime time to continue to modernize without excessive civil disturbance and without having to worry about redistributive policies and inequality. However, because of the government's lack of attention to social justice, and to the constitutional guarantee of employment, from the mid-1990s, as the rationalization of industry proceeded, civil unrest became an increasing problem. Unlike 1989, the protesters were now primarily workers and peasants, and their grievances were articulated more in the name of economic and social rights than of civil rights. From 1994, the intensity of industrial unrest was ratcheted up. By 2002, a veritable explosion of industrial unrest and demonstrations had broken out in the industrial rust belt areas of Daqing, Sichuan, Hunan, Hubei, and Liaoning, which was quickly suppressed. The protests, most of them directed against SOEs, were usually over actual and feared job losses, wage or benefit arrears, or allegations of management corruption. Labor disputes, which could be anything from a wage conflict to a full strike, were a potent indicator of dissatisfaction. From 1992 to 1999, the number of registered disputes in a year increased 14 times to over 120,000 (ILO 2004). Since other cases were not heard and not officially registered, the actual number was probably even higher. In addition, despite a new work safety law enacted in 2002, in September 2003 alone, 11,449 workers died in accidents, an increase of 9 percent over September 2002 (Kahn 2003).

This unprecedented degree of industrial unrest, disputation, and loss of human security reflected the enormous economic and social changes that China's workers were enduring. It also underlined their lack of industrial rights, such as the rights to collective bargaining and freedom of association and their need for greater protection

under the law (Chang Kai 2000). With the rationalization of industry and the downsizing of SOEs, between 1982 and 2000 China was estimated to have laid off 25 million workers (UNDP 2005).

By contrast, China's theory of its human rights value, embedded in its 1991 Human Rights White Paper and those succeeding it presented a strange mix of Maoist norms, new and old priorities of rights and guarantees of rights that were purely aspirational, which no longer existed in substance or which were already on the point of being formally abandoned. Thus, the 1991 paper not only insisted that "the Chinese people have gained extensive political rights," but also identified the "right to subsistence" as "the most important of all rights, without which the other rights are out of the question." In other words, while continuing to stress the old value system, it also implicitly acknowledged that, under the new system, access to the full gamut of economic and social rights had diminished. Nevertheless, it still stressed the right to work, and the "social security benefits guaranteed to every worker," despite the fact that these rights were a product of the pre-1976 Maoist era and were currently being dismantled.

Response by the West, 1991–1997: Multilateral Monitoring and Human Rights Delegations

At the international level, however, Western powers chose not to expose the increasing dissonance between the theory of "Chinese values" and prevailing Chinese human rights practice. Rather, while disputing alleged Chinese priorities as wrong-headed, they accepted the Chinese theory at face value. This was not only because they themselves had a stereotyped notion of the "China difference," which derived from their knowledge of China under Mao rather than from any understanding of current policies, but also because to raise distributional issues of economic and social rights with China's leaders could possibly have been seen as challenging China's new market reforms, which Western states themselves were enthusiastically supporting. It therefore suited both sides to accept the theoretical East-West divide. The latter became the subsequent focus of the diplomacy of the human rights delegations and of debates over Chinese human rights in the UN human rights system (Kent 1999: 20–25). In particular, it suited both sides to accept the alleged "trickle-down" benefits of the market economy, and to promote China's economic growth through the expansion of civil rights like the right to freedom of movement and the right to "choose" one's job, rather

than stressing the continued provision of economic and social rights (Kent 1993, 2004). The theory of "Chinese values" therefore remained strangely disembodied, existing in the rarified international and diplomatic stratosphere, but separated from Chinese realities on the ground. Despite this dissonance, no foreign power was prepared to point out that the Chinese emperor had no clothes.

Because they faced no external challenge, from 1991 to 1997 "Chinese values" served the Chinese government well as a diplomatic device. China's suppression of the 1989 Democracy Movement had made it the subject of sanctions by international organizations such as the World Bank and the ILO, and attracted condemnation and sanctions from individual states. For a considerable period, Tiananmen also stymied China's bilateral relations with the United States, Japan, and Taiwan. To offset the effect of such international and unilateral sanctions, China embarked on the initiative to establish "human rights" delegations with Western states, an idea originally issuing from consultations between Australian and Chinese diplomats. Between 1991 and 1992, Australia sent two parliamentary delegations to China to discuss human rights. These were followed by similar delegations from the United States and a host of European states. They were open, accountable missions that produced objective public reports on their findings. They also occurred in parallel with international debate and votes critical of China's human rights in the UN Human Rights Commission. Thus, for a time, China's human rights were subject not only to multilateral monitoring by international human rights bodies like the Human Rights Commission, the ILO Freedom of Association Committee, the UN Committee Against Torture, the Special Rapporteur on Torture, the Committee on the Elimination of Racial Discrimination and other treaty bodies, but also to unilateral oversight by the United States, United Kingdom, Australia, Norway, and other European states (Kent 1999). While China's use of the concept of "Chinese values" helped protect itself from excessive international criticism, the outside world still managed, through these multifarious monitoring mechanisms, to probe and politely critique the situation of civil and political rights in that country

The year 1997 marked a turning point in the fortunes of "Chinese values" and "Asian values" diplomacy. For Asia in general, in late 1997, the Asian financial crisis suggested the weakness, rather than the strength, of "Asian values," and thereby decreased its attractions (Ghai 1999: 255). For China specifically, a shift in approach had already occurred some months earlier. Since 1995, the Chinese

government had been aggressively lobbying both developing and developed states against the draft resolution on China's human rights that, since 1990, had been annually sponsored by Western states in the UN Human Rights Commission. The vigor with which it approached its task was in itself evidence of the effectiveness of commission oversight. By 1997, China was even threatening loss of trading and diplomatic opportunities to those preparing to cosponsor the draft resolution, while, to those who decided against cosponsorship, it offered the carrot of future dialogue, as well as the possibility that China might sign the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Kent 2001: 616). In the end, Australia, Canada, France, Germany, Italy, Spain, and Japan failed to cosponsor the resolution as they had in previous years, leaving the responsibility to the northern European states. On the final vote, a number of Latin American and Eastern European states also changed from their previous positions of support. Thus, the final vote on the no-action motion against the 1997 resolution was 27 in favor, 17 against, and 9 abstentions (Kent 1999: 75–79). Following this success, China proceeded to implement its threats against the sponsoring states. The decision by the United States and the European Union not to even sponsor a China resolution in the 1998 Commission represented the final nail in the coffin of this monitoring route.

The 1997 commission vote had a profound impact on the effectiveness of the UN human rights system as it applied to China. For one thing, the failure of the resolution against China bilateralized what had hitherto been an objective, multilateral process. It not only enabled China to bypass monitoring by an important part of the UN human rights system, but also ushered in the current period of bilateral human rights dialogue, which did not require China to mount such a vigorous international defense of its human rights policies as had the original human rights delegations.

Thus, from 1997 the importance of "Chinese values" to China's diplomacy lessened, both because China had discovered a way to compartmentalize its human rights diplomacy, and because, like other Asian states, it now saw the negative side of stressing such values, even though, for a range of reasons, China had been less affected than others by the Asian financial crisis. However, although no longer trumpeting those differences, China continued to insist on the priority of economic and social rights in its human rights White Papers, and thereby maintained the theoretical fiction. Where necessary as an adjunct to its diplomacy, it also occasionally reanimated the

concept of "Chinese values," as in its ripostes to the annual U.S. human rights reports, where it rebutted U.S. criticism of China's human rights with a vigorous critique of the condition of economic and social rights in the United States.

China's Human Rights Dialogues

The post-1997 era of bilateral human rights dialogues between China and many Western states both highlighted the change and facilitated the compartmentalization of human rights into a discrete corner of international diplomacy enabling China's return to full participation in the international community (Human Rights in China 1998). As one specific example, the Australia-China human rights dialogue, which began in Beijing in August 1997, was not as transparent as the human rights delegations of the early 1990s, nor did it publish a report. It was neither representative nor accountable, being conducted entirely in camera by government officials, who included only one China specialist. In response to domestic criticism, efforts were made in subsequent dialogues to include more parliamentary representation: but the most that participants have claimed privately was that their dialogue was held at "a more senior level" (Kent 2001: 616–620) than those of the Europeans and that it had the advantage of establishing continuity.

Although China sent reciprocal human rights dialogue delegations to Australia, their achievements were also more symbolic than real. In sum, the human rights dialogues could scarcely match the achievements of the 1991–1992 human rights delegations. Not only was the "human rights dialogue" not accountable, it did not make policy recommendations. In comparison with the United States, which continued to hold regular talks on human rights through its embassy in Beijing after May 1994, and which maintained its public accountability through regular human rights reports, Australia emphasized the style of its dialogue at the expense of content and outcome (Kent 2001: 620–622). While the money and effort directed to technical human rights assistance were useful for China, the dialogue itself, as Australian Foreign Ministry submissions on Australia-China relations made clear, made no discernible progress (616–619). Most importantly, it narrowed Australia's tactical options, as it did those of European dialogue partners, because of China's insistence that continuing bilateral dialogue was conditional upon states refraining from cosponsoring a China resolution in the UN Human Rights Commission.

The beginning of the "War on Terror" also diminished international pressures on China to improve its human rights. This was especially true with respect to China's minorities. China's agreement on 21 September 2001 to work with the United States in combating terrorism had the unanticipated effect of legitimizing China's suppression of minorities, particularly those in Xinjiang and Tibet (Congressional Research Service 2003). Moreover, to the extent that it focused the attention of Western states on security issues rather than on the human rights concerns that had been its preoccupation in the 1990s, the "War on Terror" also diverted Western attention from China's human rights in general.

From 2003 to the Present: The Realignment of China's Theory and Practice of Human Rights

The main challenge to the gap between China's theory and practice of human rights thus came primarily not from outside, but from within, and then not until the early twenty-first century, when the social, environmental, and political downside of economic progress had became glaringly obvious. By 2002, although the number of people in absolute poverty had dropped from 250 million before modernization to 26.1 million, China's Gini coefficient, measuring the inequality of income distribution, had risen from 0.30 in 1982 to 0.46. China thus ranked ninetieth among 131 countries for which data was available, leaving only 41 countries with a greater income inequality than China (UNDP 2005: 1–2, 13).

By 2004, an estimated 26 million Chinese people had been laid off from their jobs because of SOE reform alone (ILO 2004: 1). Particularly disadvantaged were unskilled workers in the forty-fifty-year-old bracket from the Cultural Revolution generation. Competing with them for jobs were 10 million new graduates entering the market each year and migrants from rural to urban area, estimated at 140 million people by 2005 (UNDP 2005: 2). Women were also laid off at a higher percentage than men. According to International Labour Organization (ILO) figures, unemployment and underemployment in China also afflicted over 30 percent of the rural population, who had no unemployment benefits (ILO 2004). As a result, peasant unrest, particularly over forced resumption of land for developmental purposes, also became an increasing problem.

Apart from the UN Development Programme (UNDP) and the ILO, international organizations advising China on its economic and financial development also became increasingly outspoken about

China's future. As early as 1997, the World Bank's China Program Director, Yukon Huang, had observed that, "China's economy looks like a huge giant perched upon a three-legged stool." As he saw it, the three legs—financial reform, state enterprise reform, and social protection—were interrelated and could not be improved in isolation from each other (China Securities Bulletin 1997). This view was in keeping with long-time efforts by the bank to persuade China that it should be emphasizing more equitable development, and not just growth (Kent 2007: 142–143). By 2001, A World Bank report, *China and the Knowledge Economy*, was urging China to create "at minimum" 100 million jobs by 2010, for people moving out of agriculture and those laid off by SOEs (Dahlman and Aubert 2001). From 2001, IMF directors were also urging China to strengthen the social safety net and reduce widening income disparities (Kent 2007: 137–139).

Remedies to these problems, however, had to await the emergence of China's new leadership line-up in 2003. From that time, economic and social rights returned as a practical focus of Chinese political life. The concern of the new leaders, President Hu Jintao and Premier Wen Jiabao, to promote redistributional policies was not based on principle, ideology, or their discomfort about the conflict between China's human rights theory and its practice. It was primarily dictated by political pragmatism and the regime's need to stem mounting social dissent. Even international advice from the World Bank and the IMF was accepted only when China's domestic situation appeared to its leaders to warrant a change. The new approach, however, represented not so much a return to the former socialist institution of the "iron rice bowl" as a readjustment of priorities and the establishment of the type of welfare state commonly associated with developed Western economies.

In the face of such radical socioeconomic challenge, the new government moved to address the roots of growing inequality. At first, its promises to redress the economic and social imbalances were more rhetorical and aspirational than real. However, it began slowly to adjust its labor policy and improve labor conditions. While, before February 2002, only 13 million people received the minimum social insurance, by the end of 2004, according to Chinese government estimates, the numbers of people (in a population base of 1.3 billion) participating in basic pension insurance, unemployment insurance, medical insurance, and industrial injury insurance in urban areas had reached 164 million, 106 million, 124 million, and 68.4 million respectively. By contrast, in the rural areas that still constituted the majority of China's population, only 55 million people participated in the social old-age pension system and only 2.2 million farmers actually received old-age pensions

(Information Office of the State Council 2005). The minimum wage was increased and a plan to directly elect union representation in foreign and privately owned factories with less than 200 employees was instituted, even though these unions were still under the leadership of the official union, the All China Federation of Trade Unions (ACFTU). Increasingly, China cooperated with the ILO branch in Beijing, which worked to alleviate problems of unemployment and the lack of social security. However, the three prongs of China's attempts to remedy the situation—the growth of the nonstate sector, the "reemployment" project, and the program of social insurance—were still largely inadequate to the task (Solinger 2002).

At the same time, civil and political rights deteriorated. The government's reemphasis on economic and social rights was offset by increased political supervision of intellectuals, particularly lawyers, of the Internet, and of alleged terrorists in Xinjiang and Tibet. Such regression was in part facilitated by the relaxation of international pressures on China. It was also hastened by the U.S. agreement to work with China to combat terrorism. Both developments inevitably returned the onus of human rights scrutiny onto China's own intellectuals and dissidents, who worked hard to gradually liberalize the government's increasingly hard-line position on dissent. In particular, the start of the one-year countdown to the 2008 Beijing Olympics provided the impetus for an open letter to Chinese and world leaders signed by thirty-seven prominent Chinese writers, academics, and lawyers. In it, they complained that

> Little has been done, in practice, to carry out the promises that have been made on paper. On the contrary, we have experienced and witnessed violations of human rights many times—in press censorship and control of the Internet, in the persecution of human rights defenders and of people who expose environmental or public health disasters, in the exploitation of poor or disadvantaged social groups in retaliation against them when they protest, and even in abuses by corrupt officials who are involved in the construction of Olympic facilities and city beautification projects that are aimed to prepare for the Olympics. All of these actions violate not only international standards but provisions of the Chinese constitution as well.

Referring to China's "One World, One Dream" slogan for the 2008 Beijing Olympics, they pointed out that

> Without the protection of the human rights of all Chinese citizens equally—i.e., without abolition of the rural-urban residential control

system, without an end to discrimination against women and sexual, ethnic and faith minorities, and without ending the suppression of political dissent—it is senseless to talk about "One Dream" for all of China. (China Rights Forum 2007: 71)

China's new practical emphasis on economic and social rights saw its clearest expression in the report by President Hu Jintao to the Seventeenth Party Congress on 15 October 2007 (Hu Jintao 2007). This emphasized Hu's determination in his second term to address more vigorously the challenges of social fissures, a degraded environment, and official corruption. His main emphasis was on the need for harmony in society; his insistence that development must now be "people-centered" was the most conspicuous shift in his report. For the first time, he replaced the party's original goal of quadrupling the overall GDP from 2000 to 2020 with the far more ambitious plan of achieving a fourfold increase in "per capita GDP," thereby signaling an official change from overall growth to redistributional, sustainable, or what he called, "scientific," development. The connection between this new concept, which was to be inculcated in China's constitution, and the need to neutralize growing urban and rural social unrest was underlined by his insistence that "scientific development and social harmony are intrinsically related. Without scientific development there will be no social harmony. Without social harmony, it will be difficult to materialise scientific development" (ibid.: 9). In arguing for this linkage, Hu stressed not so much socialist ideology as "pragmatism." Human rights were mentioned in his report, but the emphasis was almost entirely on economic, social, and cultural rights. Significantly, he now believed that "the people's standard of living has developed from below subsistence to *generally* well-off" (ibid.: 5, emphasis added). With the enhanced power of a second term, what he wanted now was to achieve "a well-off society in an *all-round* way" (ibid.: 10, emphasis added).

By implication, such a society would address the outstanding problems he still found in China:

[China's] economic growth is realized at an excessively high cost of resources and the environment. There remains an imbalance in development between urban and rural areas, among regions, and between the economy and society. It has become more difficult to bring about a steady growth of agriculture and continued increase in farmers' incomes. There are still many problems affecting people's immediate interests in areas such as employment, social security, income distribution, education, public health, housing, production safety, administration of justice

and public order and some low-income people lead a rather difficult life. (Ibid.: 3)

By contrast, he called only for greater "intraparty" democracy and insisted on the need to maintain the party's monopoly on power (Kahn 16 October 2007). No timetable was given for the expansion of grassroots democracy beyond the choice of village chiefs.

Conclusion

The concept of "Chinese values" was a diplomatic device that, from 1991 to 1997, helped China to deflect the intensity of international scrutiny in a post–cold war period of human rights diplomacy. Like "Asian values," it was a deliberate measure to allow the country time to develop while maintaining its authoritarian political structure. The fiction that it propagated, that economic and social rights were prioritized in China's human rights practice, was by and large accepted by the international community. In the year 1997the value of this diplomatic device began to diminish. For China, it was weakened first by China's own success in diverting Western attention away from strong multilateral and unilateral oversight of its human rights to the secretive and uncritical forum of the "human rights dialogue," and later the same year, by the Asian financial crisis. The onset of the "War on Terror" in 2001 further weakened international pressures on China to improve the condition of its civil and political rights.

Where international pressures were most effective, paradoxically, was in the arena of economic and social rights. Thus, both the World Bank and the IMF urged China to adopt a social safety net to protect the weak from the rigors of an unregulated market economy. Coinciding with these pressures, by the early part of the twenty-first century, the huge expansion of its economic power, and the achievement of such goals as entry into the WTO, allowed China the "luxury" of returning to earlier socialist values of social justice and equity. In this case, however, its policy shift was derived from pragmatic concerns about social unrest rather than from ideological scruples. It was paradoxical that this shift should occur on the eve of the 2008 Olympics, when the international community fully anticipated that, as a result of enhanced international scrutiny, China would become more sensitive to the civil rights of its citizens. On the contrary, while China responded to international pressures to be more proactive on human rights issues in the international arena, leading it to be more sensitive, for instance, about the breach of civil rights in Darfur, about

the suppression of protests in Burma, or even about its own treatment of foreign workers employed in Chinese businesses abroad (Kamm 2007: 1–3), its concern to stage a peaceful Olympics led it in the opposite direction domestically. To China's leaders, it made more sense to suppress citizens' civil and political rights, and, at the same time, to expand their economic and social rights. This, after all, had been the standard formula used to enforce and encourage social harmony, from the declaration of the People's Republic in 1949 until the onset of economic modernization in 1978.

The result is that, after almost three decades, China's human rights theory and its practice have come back into closer realignment. Once again, as they did before 1978, China's leaders are emphasizing economic and social rights in practice and downgrading civil and political rights. This convergence, however, has only been made possible at the expense of the freedom of China's academics, dissidents, and minorities, and at the cost of depriving its workers and peasants of a voice in their own—and their country's—future. As China's academics and dissidents currently indicate in their writings, and its minorities, workers, and peasants through their protests, economic and social rights are vital, but insufficient. China's leaders are clinging to the notion projected in the concept of "Chinese values" that economic and social rights are prior rights, to which civil and political rights must be subordinated until the country attains its full economic potential. By contrast, China's citizens have made it clear that they believe in the universality of all human rights, irrespective of historical conditions. They, like the rest of us, also want to enjoy civil and political rights, not just in the distant future, but now.

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