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“Values and Strategic Narratives in International Human Rights”

Edited text of the remarks delivered at the panel
“Value of Values: Reconsidering the Role of Human Rights in U.S. – China Relations”
Wilson Center, Kissinger Institute on China
and the United States
Washington, D.C., April 20, 2016

Thank you to Robert Daly, The Wilson Center, and the Kissinger Institute for convening this timely and important discussion. I am very much honored to participate in today’s panel along with Ambassador Stapleton Roy. Speaking as a human rights lawyer and practitioner, I think while governments are key actors with responsibility for respecting, supporting, and advancing human rights, governments are not the only actors. The business and academic communities, civil society, and donors, for example, all have important roles to play. So, thank you to the Wilson Center for opening up this space for exchange of views.

When we discuss the future of human rights in China, we also need to consider the role of Hong Kong. A few years ago, when my organization, Human Rights In China, tried to broker conversations among different constituencies about relationships between mainland China and Hong Kong, there was not much interest, frankly. But now, in the post-Occupy Movement period of local push back on “patriotic” education, looming efforts again to introduce Article 23 security legislation, and the ongoing struggle for universal suffrage in Hong Kong, it is clear that the present and the future of the mainland and Hong Kong are inextricably intertwined. HRIC has had a presence in Hong Kong since 1996, and we continue to address in a constructive way what we view as some of the crossover issues. So I want to speak not only as a U.S. trained lawyer, but also as an ethnic Chinese, a Hong Konger.

Implicit assumptions and either/or paradigms

I want to begin with an exchange I had with the young law teachers in my Corporations Law class at the China University of Politics and Law. It was September 1986, and even in the U.S. then, the issues of corporate governance, accountability, and transparency were not dominant issues taught in a law class. I had assigned, I believe, the only law textbook at the time that included a chapter on corporate governance issues. I had raised the issue of environmental impact statements in the context of corporate due diligence and assessing risks to various stakeholders. I was surprised by the dominant reactions from the class: “The U.S. is a strong economically developed country and can afford to address

environmental issues, but China is a poor developing country—we must first develop, then we can deal with the social impacts.”

My argument that by then, at that imagined future developed time, it might be too late, the costs might be greatly exacerbated, and that now was the time to learn from the choices made by developed countries like the U.S.—did not at all register persuasively.

What struck me about this exchange—and many other similar policy exchanges that I have been engaged in since—are the implicit assumptions about the necessity or even inevitability of specific policy choices and priorities and the framing of choices in a polar either-or paradigm of:

- economic growth versus sustainable environment,
- quiet closed diplomacy (e.g., in various bilateral human rights dialogues) versus public criticism/shaming/blaming (e.g., the country-specific resolutions under the former UN Human Rights Commission),
- to engage or not engage with China (but without clearly defining engagement, how we engage, why we engage, or non-engagement beyond staying in the room, staying at the table, or walking away), or
- to do business in China (along with the necessary compromise) or lose a huge China market.

For human rights activists and practitioners, we often hear these polar choices framed as to work “on-the-ground” inside or to work from the outside. In an Internet-connected world, particularly for China with over 700 million people online, this framing proceeds as if the process for driving change were so siloed, causally clear, and geographically defined that one could ignore the implications of this virtual online space, with Chinese netizens numbering almost twice the population of the U.S. and using almost a billion cell phones, with probably more than half of them smart phones.

This either-or framing policy of choices—whether by governments, businesses, funders, civil society groups, or bar associations—limits our capacity to identify and explore options for developing more effective engagement and interventions, and limits our strategic imagination to envision how we can be more effective in advancing human rights—the central pillar in tackling the overwhelming challenges and threats to peace, security, and sustainability of our planet.

Even when strategic policy interests are framed not in a polarized way, e.g., the U.S. strategic interests of trade, security, and human rights—and I want to echo the importance of the distinction made between interests and values—it still is very challenging to address human rights within these policy baskets. In uncritically assuming the definitive consequences that flow from specific choices, this way of thinking also limits our capacity to see other possibilities, to recognize other stakeholders that need to

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be involved for effective strategies, and to embrace the value of uncertainty, the last of which I suspect may be an anathema to the whole enterprise of predictive and normative policy analysis. But instead of debating the efficacy of siloed choices, we need to seriously rethink this current approach—I mean moving beyond the rhetoric of policy coherence.

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Values are central to moving forward constructively, practically, and effectively. And international human rights—universal, indivisible, interrelated, interdependent and mutually reinforcing—represent core universal values that should be our *aspirational* beginning point and our *accountability* ending point. As the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein recently stated (quoting Lao Tzu) at the Human Rights Council in Geneva on February 29 this year: “‘We join spokes together in a wheel, but it is the centre space that makes the wagon move.’ That central space is our values.”

Value and Cultures

The challenge to universal human rights values often emerges framed as traditional or cultural values in tension with universal human rights. China often presents the issue as Asian values versus Western values. These Asian values are often described as the distinct products of an ancient culture of thousands of years—as the collective values born of respect for family and elders, posited against the individualistic values of the West.

But who is pushing this simplified narrative and why? Who is benefiting from it? What is the impact of this resurgence of cultural relativism with a vengeance—old wine in new bottles—in the human rights space?

Despite ratifying more than a dozen key international human rights treaties, and despite active participation in state-centric human rights review processes such as the Human Rights Council’s Universal Periodic Review (UPR) and participating with increasing technical and procedural sophistication in expert treaty body reviews—including the reviews under the Convention Against Torture (CAT), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention on the Rights of Persons with Disabilities (CRPD), Convention on the Elimination of Racial Discrimination (CERD), and International Covenant on Economic, Social and Cultural Rights (ESCR)—despite these signs of “progress,” the Chinese

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government also invokes with regularity and predictability a kind of strategic essentialism, an appropriation of “Chinese culture,” often as a political maneuver to delegitimize and demonize imperialist “West” or Western values. Of course, this is advanced within a broader soft power strategy

of spreading Chinese language, culture, and a particular version of Chinese history through, for example, the Confucian Institutes.

Domestically, this is echoed by state official media and rhetoric in attacks on “foreign” ties, foreign ideas, and foreign funding, but with increasing resonances of threat and danger to Chinese civil society. The pending draft FNGO Law [1] raised widespread concerns among diverse sectors—including the business sector—as it is clear that the intrusive, controlled regulatory framework outlined in the draft is aimed at tightening the noose around all foreign NGOs, and restricting foreign support for domestic groups to ensure only those FNGOs activities that are officially approved/vetted/controlled will be permitted.

But it is not only the Chinese government pushing this political narrative of Chinese exceptionalism. We have noticed with concern that this narrative is also being advanced by many others voices, often without awareness of the implications of uncritically echoing the official Party line.

A recent example: In the face of the ongoing targeting of lawyers in China, a U.S. lawyer trying to initiate action by a local bar association was met with push back concerns about cultural sensitivity to how the Chinese government views human-rights lawyers as a threat in China, and that this “cultural sensitivity “ might require a very muted response—if any response at all—to the ongoing crackdown.

I have also had the bizarre experience of being told on a radio show by another guest, a non-Chinese person, in response to my remarks about the human rights problems in China, that I needed to be more respectful of different cultures, and to respect Chinese culture (!).

Well, what about Chinese culture? First, as in all cultures, Chinese culture, values, and social practices are not monolithic, static, unchanging, or uncontested, even under authoritarian rule.

You can see this when “traditional” cultural practices, like the butchering of thousands of dogs in the annual Yulin Dog-Eating Festival, has elicited growing opposition by Chinese citizens (and also international animal welfare activists).

But even in imperial China, under an oppressive patriarchal culture, there were women who resisted and attempted to reject dominant values and expectations of women.

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I recently watched a powerful video on China’s “leftover” women: unmarried women over 18 facing family pressures viewed as “leftovers.” The video focused on the marriage markets that parents attended, with one page descriptions of their daughters looking for suitable husbands. The video focused on the takeover of the marriage market by young woman, who sent messages back to their parents claiming their independence, embracing their status, and closing with wonderful and moving images of parents reading these messages under large photographs of their daughters: a mother embracing her daughter—saying my daughter is beautiful. If you want to support this on social media, you can follow #changedestiny.

You may remember the tragic case of Xiao Yueyue, the child killed after being struck by two different vehicles in 2011, while bystanders did nothing. What struck me was the netizen commentary and debates online. And the comment that moved me the most was the following post: “If we can do this, are we even human?” This is a powerful questioning of what it means to be human and to care about another human being.

Today, culture or cultures in China is/are being contested. Notwithstanding official censorship, controls, and pressures of self-censorship, there is a growing rights awareness, and efforts to control one’s own destiny and to contribute to the future destiny of a China that is more fair, just, and open. I am not just talking about a small group of rights defenders.

You can see these efforts among:

- hundreds and thousands of workers protesting and negotiating for fair and safe working conditions,
- young women organizing against gender violence, domestic violence, and sexual harassment,
- citizens bringing precedent-setting cases challenging gender and HIV-related discrimination,
- citizens filing requests for disclosure of government held information despite the lack of results,
- LGBT activists working creatively and often with great humor to raise society’s understanding of and respect for diverse ways of being and loving, and
- lawyers and journalists struggling for an independent professional space.

But efforts to claim and exercise rights protected by Chinese and international law or to reimagine a democratic future or debate changing culture(s) and values are limited and controlled by what the Party leaders have determined as Chinese or, more accurately, Chinese socialist culture.

A case in point is [Xu Zhiyong](#) (许志永), a key advocate for the New Citizens Movement, who is now serving a four-year prison sentence since January 2014 for “gathering a crowd to disrupt order in a public place.”

And [Liu Xiaobo](#) (刘晓波), the only Nobel Laureate in prison, who was critical of both complacent Chinese citizens and the authorities. He also recognized the empowering potential of the Internet. But for his online publications and his role in *Charter 08*, Liu Xiaobo was convicted of “inciting subversion of state power” and is serving an 11-year prison sentence. Liu Xiaobo’s experience underscores the long arc of censorship and surveillance and the unpredictable moment when the censors will strike—especially in the context of the comprehensive scope of the efforts to control freedom of expression and access to information, because the exact number of hits each of his articles got was cited.

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Acceptance of “Chinese culture” as advanced by the Party—together with an enforced historical amnesia of the Great Famine, Great Leap Forward, Cultural Revolution, and June Fourth, and uncritical

acceptance of the official narratives of them—is to conflate Party culture with a dynamic culture that the Chinese people are struggling to define, including redefining what it means to be a citizen. So, to accept or uncritically echo the official Chinese narrative about Western values or Chinese culture contributes to undermining fundamental rights and freedoms that Chinese people are struggling for.

I am challenging the Party leaders' claim to definitively define and restrict what is "Chinese." Here's how I would describe the core values underlying the Party's vision of China. These values are:

- anti-democratic—from Mao as Emperor, to Half Emperor Deng Xiaoping, the group of seniors rulers, Jiang Zemin and Hu Jintao, and now, to uber-Mao, Xi Jinping;
- not rule of law but rule by law, as law is clearly viewed as a tool to maintain Party power;
- anti-openness and complete hostility to diverse views: criticism of the authorities or a position or view that is not aligned with the official Chinese position is deemed to be "*fanhua*," or anti-China, unfriendly, and what "*hurts the feelings of the Chinese people*";
- anti-human dignity: people are simply malleable resources exploited to achieve shifting Party visions, such as the leaders' vision of "Chinese Dream."

So how can we constructively engage this worldview?

First, as I have been suggesting, we need to critically interrogate implicit assumptions embedded in dominant policy debates, especially in either-or, polar paradigms of analysis. To borrow an analogy from theoretical physics, we need to move into the quantum era. Traditional computing is a binary world of ones and zeros, where our computing power and our capacity to solve complex problems are limited. But in the quantum space, something can be simultaneously a particle and an energy wave. That is, in quantum space, the possibilities are infinite. (Prime Minister Justin Trudeau of Canada recently succinctly explained quantum physics in a press interview!)

Second, as this discussion reflects, we need to include affected stakeholders and more diverse perspectives, including practice and field perspectives, into policy debates and decision making at every level. This is really important because China and the "Like-Minded Group" (including the Russian Federation, India, Pakistan, etc.) are leading the efforts to restrict civil society participation in UN and other public processes.

Third, I think we can strengthen and expand the effectiveness of bilateral and multilateral processes that impact on human rights, with respect for human dignity at the core. Here are a few illustrative suggestions:

To begin, we can build more on applicable international human rights law, general international law standards, and human rights mechanisms and processes in which China actively participates. For example, in addressing the serious and ongoing crackdown on lawyers in China, the *Basic Principles on the Role of Lawyers* (1990) are relevant. They set out the importance of the legal profession in ensuring the adequate protection of human rights and fundamental freedoms. They call out the crucial role of professional associations of lawyers in protecting their members from persecution and improper restrictions and infringements.

We can more effectively use the Universal Periodic Review recommendations that China has accepted as a lever to advance rights. For example, the recommendation on ensuring that lawyers and individuals working to advance human rights can practice their profession freely. (The UPR is a new UN mechanism under which all member states of the UN undergo a review of their human rights situation.)

We can also build upon the recommendations of the independent experts on the various treaty bodies that China engages with. For example, one of the Committee Against Torture's recommendations in China's last review in November 2015 specifically addressed the lawyers crackdown and called upon China to ensure the development of fully independent and self-regulating legal professions, and ensure that lawyers can perform professional functions without intimidation, harassment, or improper interference. We have seen in our treaty body engagement over the years that persistent, sustained monitoring and contributing to these processes can result in specific domestic progress, including legislative reforms.

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Finally, we need to speak out collectively and work more collaboratively within and across sectors—government, business, academic, and professional. This is important to counter China's divide-and-conquer, or threaten-and-pressure, strategy and to effectively respond to international and regional efforts led by China to push back on international human rights standards and civil society participation.

A good recent example of governments speaking out collectively: On March 10, 2015, at the Human Rights Council in Geneva, U.S. Ambassador to the HRC Keith Harper delivered a joint statement about China's human rights situation on behalf of a group of countries including Australia, Finland, Japan, the Netherlands, Sweden, the UK, and the U.S. calling on China to uphold its laws and its international commitments, and supporting the UN High Commissioner for Human Rights' call to release all rights activists, civil society leaders, and lawyers detained for peacefully exercising their freedom of expression or for lawfully practicing their profession.

Conclusion and Hope

After more than 30 years of working to contribute in some small way to the building of a rule of law in China, and to support Chinese lawyers and activists in their efforts to press for human rights and social change, and now amidst the worst human rights situation since 1989, I continue to be inspired and humbled by the resilience, creativity, and courage of Chinese activists, rights defenders, and ordinary citizens. And I remain hopeful about the value of our human rights work and the necessity and centrality of values to the survival and flourishing of human dignity.

In the words of the wonderful essayist Rebecca Solnit: "Hope is not the belief that everything is O.K., but lies in the broad perspectives with specific possibilities, ones that invite or demand that we act Creative thinking without hope is cynicism but hope without critical thinking is naïve. . . . Hope locates

itself in the premise that we don't know what will happen and that in the spaciousness of uncertainty is room to act.”

While many thoughtful and provocative expert analyses have been advanced about the future of China, I also see a spaciousness of uncertainty. I look forward to exploring ways we can recognize and leverage the infinite—and specific—possibilities before us.

[1] *The Law on Management of Foreign Non-Governmental Organizations in the Territory of Mainland China* 《境外非政府组织境内活动管理法》 ([“FNGO Law”](#)) was passed on April 28, 2016 by the National People’s Congress and will come into force on January 1, 2107.