

DANIEL FUNG SBS SC QC JP

HUMAN RIGHTS IN CHINA: SIXTY YEARS AFTER THE REVOLUTION

I feel greatly honoured and privileged to be asked to address this audience. The last time I was here was as a student 31 years ago. I left in October 1978 after 11 years in this country to return home to Hong Kong, perched off the Southern coast of China, little suspecting that my cultural and ethno-linguistic motherland, then not yet my nation – that transformation had to await another two decades – was on the cusp of undergoing a paradigmatic shift and change the world in the process.

This year 2009 is a year of anniversaries - the 60th anniversary of the founding of the People's Republic China when, according to legend, Mao Zedong pronounced on the podium of the entrance to the Forbidden City facing Tiananmen Square that "the Chinese people have stood up", the 30th anniversary of the Opening-up of China kick-started by Deng Xiaoping's Four Modernizations Movement, launched in December 1978 and implemented in January 1979 with the establishment of the first of some 15 coastal Special Economic Zones starting with Shenzhen, then a sleepy border town and farming community with a population of approximately 20,000, snoozing just north of the Lowu border crossing.

January 1979 witnessed also the normalization of relations between China and the United States, the fruits of a grand strategic bargain reached between Deng Xiaoping and United States President Jimmy Carter as advised by his National Security Advisor Zbigniew Brezinski as the linchpin of an overarching architecture that aligned China with the United States in their joint venture to contain and counterbalance what was then perceived an overweening Soviet Union.

Last night, 9th November 2009 is also the 20th anniversary of the Fall of the Berlin Wall, an event that triggered the end of the Cold War, the dissolution of the Soviet Union three years later, and the inevitable cresting of a wave of

MIRIAM ROTHSCHILD AND JOHN FOSTER HUMAN RIGHTS TRUST

Western triumphalism marked by the extraordinarily prescient publication in the summer of 1989 of Francis Fukuyama's paper "The End of History and the Last Man" in the *National Interest*, subsequently expanded into book format in 1992, the year following the implosion of the Soviet Union.

Equally unsurprisingly, when the People's Republic of China defied the weight of collective Western punditry in failing to follow Soviet precedent into the dustbin of history, China slowly but surely as the last surviving communist behemoth was transmogrified from strategic ally of the West into a competitor and later a strategic threat, politically, economically, militarily as well as, as I'll later canvass this evening, possibly intellectually.

Fast forward ten years and the world witnessed 9/11 intervening to slow, if not entirely reverse, this process of China's transmogrification in western strategic perception, but today, in this Autumn of Our Discontent, the anniversary of 9/15 - September 15, 2008 being the day Lehman Brothers filed for Chapter 11 bankruptcy - has once again revived the specter of China as bogeyman to stalk the corridors of power occupied by Central bankers and financial and economic planners in the original G7.

We are told by no less an authority than Fareed Zakaria that, whereas all other governments have responded to this financial-cum-economic crisis defensively, China has used it to move aggressively forward. This analysis makes sense in the context of China's injection of over US\$580 billion into its economy to stimulate domestic consumption, reduce unemployment and to build infrastructure such as airports, ports, highways and high speed rail links and develop second-tier cities in the interior as well as in the Far West. We are also told that such expenditure is about four times more effective in rescuing China's economy than the US\$700 billion TARP rescue package *vis-a-vis* the American economy, given that the US economy is over four times the size of the Chinese one.

Nevertheless, the West is well aware that China is catching up fast, that China overhauled Germany last year to become the world's third biggest economy, is poised to overtake Japan as the world's second economy by next year, and that its trajectory is set to overhaul the US as the world's biggest economy in

absolute terms by 2030. In terms of purchase power parity, Chinese is poised to surpass the US economy by 2015 and, according to OECD prognosis, the renminbi is poised to replace the US dollar as the world's reserve currency around the year 2050.

Notwithstanding that for 18 out of the past 20 centuries, China was the biggest and most advanced economy in the world, that in 1820, it still accounted for 22% of the world's GDP which then collapsed ignominiously to 4% at the turn of 20th Century and has today merely started on the path to regain its historical position, nevertheless it is understandably unsettling for established Western Powers occupying pole position over the last two hundred years to feel its position come under challenge.

However, what is truly disturbing is not so much China's displacement of the West under standard indicia of economic power referred to earlier, nor even the fact of Chinese research and development of clean and renewable forms of energy surpassing that of the United States recently exemplified by the export of wind power technology to West Texas, nor the scramble for resources in Sub-Saharan Africa, nor the development of deep space satellite destroying military capacity, nor even China's stated ambition to develop a blue water navy replete with aircraft carrier and hunter killer stealth submarines. Rather, what is truly unsettling about China's re-emergence onto the world stage is the fact that China has failed to conform to the Western expectations of the world order, more specifically, China's failure to follow the script of Western triumphalism presaged in Fukuyama's thesis building on Hegel's theory that the ultimate stage of human social and political development can only be free market liberalism. On the contrary, China's re-emergence is coupled with a subtle - and sometimes not so subtle - assertion of Chinese exceptionalism, particularly in the intellectual sphere, and more particularly translated into the plane of political philosophy. Clearly the attainment of classical free market liberalism forms no part of China's agenda, former Party General Secretary Zhao Ziyang's admiration for Milton Friedman and the Chicago School in the mid-1980's notwithstanding.

Nowhere is this sense of discombobulation felt more acutely than in the field of human rights discourse between China and the West, often characterised by the foot soldiers in the trenches as the dialogue of the deaf.

1. Western Perspective of Human Rights in China

In Western eyes, the development of human rights in China over the past 60 years has been fraught with controversy. In certain Western narratives, China's attitude towards human rights has veered from denial to at times outraged rejection. The Chinese Government's track record has long been a target of highly vocal criticism by the international community, nowhere more vociferously than by Western NGOs.

To give but one example, the annual American Country Reports on Human Rights Practices in 2007 states that the human rights record of the Chinese Government has not only remained poor but has, in certain areas, actually retrogressed. There has been an increase in cases of monitoring, harassment, detention, arrest, and imprisonment of journalists, writers, human rights activists, and defense lawyers. There has been a tightening of restrictions on freedom of speech and the press; stricter control and screening of the internet. NGOs face more restrictions than ever before. There have been numerous accounts of ill treatment of prisoners and endless varieties of harsh interrogation.¹ The Chinese Government's vaunted religious tolerance came under attack, the criticism being that numerous religious organizations unregistered with the Government were subject to threats, harassment, and detention.² Human rights issues ranging from freedom of speech, minority rights, the death penalty, the harvesting of organs from executed prisoners, the question of judicial independence, and fair trial rights remain the object of criticism by the West. The received wisdom of the West, regardless of whether it is an official report or the views of human rights NGOs is that the

¹ See The Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, China (Includes Tibet, Hong Kong, and Macau), Country Reports on Human Rights Practice 2006, March 6, 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78771.htm>.

² See The Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, China (Includes Tibet, Hong Kong, and Macau), Country Reports on Human Rights Practice 2006, March 6, 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78771.htm>.

condition of human rights in China is grave, indeed declining in many respects.³

A report from Taiwan also identified the atrocious state of China's human rights. First, the GINI Coefficient in China – the gap between the rich and the poor - is one of the biggest in the world - and growing. A social security safety net is non-existent, and relief is not to be expected from a judicial system mired in bribery and corruption, leading to episodic instances of civil resistance arising from the disenfranchised.

Second, the Chinese Government, being an authoritarian regime, facing civil resistance movements, ultimately resorts to violent means of suppression of any movement that might pose a challenge to the position of the Chinese Communist Party.

Third, Chinese citizens do not enjoy basic civil liberties, and China's policy-making processes remain as opaque as before. Citizens do not have freedom to elect or be elected, and lack the freedom of speech, assembly and association. China has yet to have an active opposition party.

Fourth, the distribution of community and educational resources is becoming more rather than less unequal, stretching the urban-rural divide.

Fifth, the acute problem of occupational safety continues, accidents persist, and the state of environmental degradation and pollution worsens.

Sixth, freedom of religion has yet to be enjoyed by all, in particular, Uighurs and Tibetans in particular coming under rigid limitations. Economic growth did not deliver equal benefits to ethnic minorities as compared with the Han majority. Seventh, the Chinese Government has not relaxed its persecution of Falungong followers. Eight, many of the basic due process rights failed to acquire the respect they deserve. Ninth, China strictly enforces the one-child

³ 参见财团法人台湾民主基金会：《2007 中国人权观察报告》，财团法人台湾民主基金会 2007 年出版，第 7 页。

policy. Not only is it a violation of human rights, moreover the harm to society are starting to emerge.⁴

Such a depressing litany of the poverty of the human condition in China is surely founded on some level of reality. Nevertheless, whether that is a comprehensive reality is another issue entirely. A good example of where the use of intemperate language by advocacy groups leads to a reassessment by the larger community can be found in the attempt to boycott the Beijing Olympics. In fact, long before China's hosting of the Olympics in August 2008, a movement was started to boycott the Beijing Games as early as 2001 when *Reporters Sans Frontieres* launched a boycotting movement to disqualify China from hosting the games by reason of its massive violation of human rights.⁵ However, when the world came to Beijing either physically or electronically to participate in or watch the Olympics, they discovered that Beijing, the Chinese capital "devoid of human rights", was markedly different from what they have imagined. The Beijing Olympics delivered substantial international dividends to China, considerably increasing China's stature in international politics, economics, and culture.⁶ Not the least of the reasons for such positive feedback is that the extreme image of a China "devoid of human rights" as portrayed by some in the Western media, was not in fact the true face of the country, albeit that plentiful human rights problems existed.

2. The 60 year-long Chinese Road to Human Rights began with the Right to Life⁷

No objective assessment of China's human rights record can be made without considering China's addressing of the most fundamental of human rights, the right to life. Put another way, the right to food. Later on, it became the right to sustenance and shelter (溫飽問題). This was the biggest challenge faced by the People's Republic in October 1949.

⁴ 参见财团法人台湾民主基金会：《2007 中国人权观察报告》，财团法人台湾民主基金会 2007 年出版，第 16 页。

⁵ Patrick Goodenough, "Boycott Beijing China Olympics Boycott over Rights," Agence France-Presse, August 8, 2007, http://china-corner.com/forum_posts.asp?TID=2455&PN=1。

⁶ <http://sports.sohu.com/20090912/n266671824.shtml>

¹⁰ 对生存权的理解，有广义的生存权，是指包括生命在内的诸权利总称。本文不采行广义上的生存权，而采行狭义概念，即应是不能维持“最低限度生活者”生存的权利。可参见马岭：《生存权的广义与狭义》，载《金陵法律评论》2007 年第 2 期。

Throughout the Century of Humiliation beginning with the First Opium War with Great Britain in 1841, China underwent untold suffering and loss of life and property and was saddled with war reparations amounting to one hundred billion taels (兩) of silver, not to mention loss of territory. Under the Boxer Protocol signed with the eight Great Powers in 1901, reparations were imposed of 1.93 billion taels of silver, corresponding to 16 times of the revenue of the Qing Government in that year. In 1895, Japan, through the Treaty of Shimonoseki imposed extorted reparations of 230 million taels of silver, corresponding to 4.5 times the annual revenue of the Japanese Imperial Government. During the Japanese War of 1937-1945, some 930 cities and towns were devastated, causing direct economic loss of US\$62 billion and indirect economic loss of US\$500 billion.⁸

In 1942, 3 million starved to death in Henan province alone, another 15 million survived by eating grassroots and tree bark. In 1946, 10 million starved to death. In 1947, about 100 million suffered from famine, constituting 22% of the national population at that time.⁹

In the winter of 1948, Chiang Kai-shek physically removed from the Central Bank of China 2.27 million taels of gold, 15.2 million silver dollars, and foreign exchange US\$15.37 million and deposited the same in the United States. The value of gold at that time was US\$35/oz. The above three amounts totalled US\$1.35 billion, corresponding to US\$10.5 billion today.¹⁰

The People's Republic founded in October 1949 was bankrupt. The most pressing issue to be addressed was that of food and clothing. For the bulk of the 20th century, China's principal preoccupation was providing enough food for her people. In 1997, China was still addressing the issue of breaking away from poverty. "After resolving the sustenance problems of 70 million of impoverished people, the number of those in poverty had been reduced from 250 million in 1978 to 58 million, with almost 200 million people breaking out

⁸ 董云虎主编：《中国人权白皮书总览》，新华出版社1998年版，第4-5页。

⁹ 董云虎主编：《中国人权白皮书总览》，新华出版社1998年版，第6页。

¹⁰ 喻权域，简论“亚洲四小龙”，<http://www.studa.net/Socialism/030425/2003425150402-2.html>

of poverty in 18 years. The poverty-stricken in China relative to world population had been reduced from 25% in 1970 to below 5% today.”¹¹

There is a famous story, perhaps apocryphal but nevertheless penetrating of the Chinese psyche, told of Zhou Enlai's sentimental journey in 1961 to the caves in Yanan where the survivors of the Long March in 1935 had holed themselves up for the next 14 years. He was greeted by one person who had taken over the cave where he had lived throughout those years. When asked where the others in his family were, the man apologized that they had to stay home because the entire family owned only one decent suit of clothes which all of them had to share and take turns wearing.

The following year 1962 witnessed the biggest famine in the history of the People's Republic when over 5 million died from starvation. *I remember people bringing food to the border to feed the masses streaming across from Guangdong.*

Four years later, mass assertions of political rights against the establishment erupted in the Great Proletarian Cultural Revolution which brought the country to its knees and which only ended 10 years later with the death of Mao in October 1976. *I belong to a Club of 1953...*

With the death of Mao and the rehabilitation of Deng Xiaoping in 1977, the country began slowly – later much more rapidly – to pick up the broken shards and the rest is history. Is it to be wondered that China in its human rights discourse puts economic rights at its core and tempers its political rights development with caution, to the great frustration of its many critics?

But let's fast forward 30 years, given we have limited time this evening. China has of course moved way beyond 1962, 1966 or 1978. Today, it is important to look beyond media headlines to recognize the less visible but equally significant social processes through which the Chinese people are developing their own ideas about human rights and the rule of law. Like many other aspects of Chinese life, the nature of this discourse is complex and evolving. While the Chinese Communist Party advocates a historically-

¹¹ 董云虎主编：《中国人权白皮书总览》，新华出版社1998年版，第90页。

rooted vision of human rights development in its discourse with intellectuals pressing for democratic change and legal reforms, the newly emerging elite appear curiously disengaged. Many have decided that they care more about making money and getting rich. Indeed, the range of different ideas in China right now is such that rights advocacy at the grassroots level also takes on a wide variety of forms, occasionally resulting in interesting and unexpected phenomena. Contrary to what flashy headlines might suggest, the Chinese people are in the process of developing their own ideas on the values that are important to them and how they want to be governed. While the Chinese people do not show definite signs of wanting to converge toward a liberal democratic model, at the very least, this process of exploration itself needs to be respected and recognized. Notwithstanding the possibility that different peoples of different cultures in different stages of development may indeed care more about certain rights over others, the simple fact is that it is by and large these subtle processes in Chinese villages, towns and cities that will determine future political and legal developments in China.

Indeed, the focus in the international media on issues such as Xinjiang and Tibet this year, Darfur and Taiwan last year (important though all those issues are) risks detracting from a deeper understanding the social processes through which the Communist Party, Chinese intellectuals, the emerging elites and ordinary people are all contributing to a lively ongoing discourse on human rights and the rule of law.

First, as much as other actors are shaping ideas, the Party's official line remains central to this discussion. And while it is tempting to dismiss "Asian values" as a convenient excuse for authoritarianism, the Communist Party's views on human rights is not as unsophisticated as many in the West might blithely assume.

The official Party line begins with the argument that the right to survival is the most basic of all human rights, without which it is impossible to enjoy other human rights.¹² The key point here is that the Chinese interpretation of the term "survival" includes not only individual survival in term of physical subsistence, but also national survival in term of being free from foreign

¹² 乔晓阳 "中国人权法律保障的重点和特色" 人权杂志 2006 年第 1 期

occupation.¹³ From the Party's point of view, the individual survival of a person is intricately linked to the national survival of a country.¹⁴ Hence, when China was in a "half-feudal half-colonial state", it was deprived of its national independence, making it impossible for Chinese people to enjoy their human rights.¹⁵ In this regard, the Party argues, the Chinese government has granted its people the right to survival by establishing the People's Republic of China at the national level¹⁶ and lifting 230 million rural people out of poverty at the individual level.¹⁷

It would seem to be a natural extension of the Party's dual interpretation of the right to survival, then, that the Party's second argument about human rights is that it is inseparable from sovereignty.¹⁸ Referring to "the painful lessons of Chinese history," the Party argues that national sovereignty is the foundation for the protection of human rights, flatly criticizing Western countries for the idea that human rights should be above national sovereignty.¹⁹ In large part, this echoes the official version of Chinese history in secondary schools where students are taught that the half-century of national humiliation from the Opium War to the establishment of the People's Republic of China was in effect foreign trampling of the human rights of the Chinese people.

Also in line with its emphasis on the right to survival, the Party also argues that there needs to be an "equal emphasis on socio-economic rights and political rights."²⁰ Again criticizing Western governments for "singularly focusing on political rights," the Party argues that it has a more "balanced" view of human rights.²¹ After securing the collective survival rights of the country by establishing the People's Republic of China, the Party argues, the government moved toward a focus on economic development, thereby

¹³ 钱振林, 程林辉 "中国共产党的人权观" 南昌航空工业学院学报第3期

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Xinhua News. "Human rights group criticized." April 3, 2008.

http://www.chinadaily.com.cn/china/2008-04/03/content_6588071.htm

¹⁸ 钱振林, 程林辉 "中国共产党的人权观" 南昌航空工业学院学报第3期

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

improving the socio-economic rights of its people.²² The Party also claims to have improved the political rights of the people.²³ As it recently said, “The Chinese people are enjoying more protection of their rights to survive and develop, of their civil rights and political rights, and of their economic, social and cultural rights than before, which is obvious to all countries, organizations and persons without prejudice.”²⁴ The key to understanding these statements may well be the words “than before.” Indeed, the constant reference to China’s “semi-feudal semi-colonial times of humiliation by the West”²⁵ suggests that the Chinese Communist Party takes that particular period of history as a baseline against which it measures its record in human rights.

Chinese intellectuals, on the other hand, would probably beg to disagree. Even under their limited political freedoms, Chinese intellectuals have played an important role in shaping ideas on human rights and the rule of law in China. One example would be the China Central Television (CCTV) production “The Rise of Great Powers” (大國崛起) in 2007, a thoughtful 12-part documentary series that examines how Germany, France, Portugal, Spain, the Netherlands, Great Britain, the United States, the Soviet Union and Japan rose to become significant global players. As much as the producers were Beijing professors whose aim was to educate the Chinese public about the facts of these histories, and not to interpret,²⁶ the huge response it generated among the public was such that it began to shape public discourse on the kind of government China should have and the kind of country China would become.

As former Singapore’s Minister Mentor Lee Kuan Yew has observed, the episode on Britain may be particularly illuminating in this regard,

“You should watch the one on Britain, because I think that gives you an idea of how far they have gone in telling their people this is what made Britain great. I was quite surprised. The theme was [doing away with] the Divine

²² Ibid.

²³ Ibid.

²⁴ Xinhua News. “Human rights group criticized.” April 3, 2008.

http://www.chinadaily.com.cn/china/2008-04/03/content_6588071.htm

²⁵ 钱振林, 程林辉 “中国共产党的人权观” 南昌航空工业学院学报第3期

²⁶ Lynn White. Syllabus for the Policy Conference on U.S. Policy Toward the Rise of China. Spring 2008.

Right of Kings, a Britain that was challenged by the barons who brought the king down to Runnymede and then they had the Magna Carta, and suddenly your “Divine Right” is based on parliament and [the barons] are in Parliament. That gave the space for the barons to grow and the middle class eventually emerged. When the King got too uppity, Charles the First got beheaded.

Now this series was produced in a communist state, you know. In other words, if you want to be a great nation, so, if the leader goes against the people’s interests, you may have to behead him! They also said that because there was growing confidence between the people and the leaders, the country grew.”²⁷

As others have pointed out, the issues of good governance that Lee refers to were often overshadowed by the documentary’s emphasis on a country’s economic power and military strength. Indeed, while praising the series for its high quality of production, Peking University law professor He Weifang (何卫方), a prominent activist for legal reform and judicial independence, asks,

“More worth pondering is what constitutes the rise of a nation. Is it merely a matter of the amount of wealth it possesses? Or that its army has become invincible enough to take possession of cities and territories? ... Are the human constructs of rule of law and democracy simply designated to facilitate the amassment of wealth, glory or global power, and the submission of other nations?”²⁸

Critiquing the television series for not paying enough attention to the role of the rule of law in the long-term prosperity and stability of great powers, He argues,

“the people’s control over their government, the restriction and control of power under constitutional government, an independent judiciary imposing strict limitations on public

²⁷ Full Transcript: Tom Plate and Jeffrey Cole Interview Lee Kuan Yew. October 9, 2007. <http://www.asiamedia.ucla.edu/article.asp?parentid=79541>

²⁸ 贺卫方 “法治与所谓大国崛起” http://article.chinalawinfo.com/article/user/article_display.asp?ArticleID=36157

power and the will of the people, and the political openness and transparency resulting from a free press.”²⁹

Indeed, if the production of “The Rise of Great Powers” was a “soft” way of influencing public discussion, intellectuals like He are shaping it in a more direct way by advocating for change in the current government.³⁰ As recently as November 2007, He led a group of seventy scholars, lawyers and activists in writing a constitutional review proposal to the Standing Committee of the National People’s Congress (NPCSC), calling for the abolition of the re-education through labor system, an administrative detention system for minor crimes.³¹ The letter argued that the existence of the system outside the normal criminal justice system made it a violation of article 37 of the Chinese Constitution, which guarantees the freedom of person.³² It also argued that the system contradicts laws on criminal justice passed in 1996 and 2000, and violates international treaties on human rights to which China is a signatory.³³

He has remained a widely respected figure in various circles in China, regularly featured in the state media and named by Nanfang Zhoukan as one of the top fifty most influential public intellectuals in China in 2004.³⁴ Unlike critics who seek to radically change or even overturn the current government, He, himself a Communist Party member, has chosen to work within the system rather than outside it. In the words of Xu Zhiyong, a young intellectual who has also pressed for constitutional reform, “I have respect for those who raised human rights issues in the past. But now we hope to work in a constructive way within the space afforded by the legal system. Concrete but gradual change – that is what most Chinese people want.”³⁵

Indeed, there does seem to be some space for Chinese intellectuals to shape the ongoing discussion by pushing for change that is not seen as a threat to the regime. In this regard, the internet has emerged as an important forum for discussion. In last year’s controversy over Tibet, for example, a group of

²⁹ Ibid.

³⁰ Xinhua News. “Judicial independence should come first.” http://news.xinhuanet.com/english/2005-11/15/content_3782181.htm

³¹ 关于废除劳动教养制度的公民建议书 <http://www.ccwlawyer.com/center.asp?idd=1293>

³² Ibid.

³³ Ibid.

³⁴ 影响中国的公共知识分子 <http://business.sohu.com/s2004/zhishifenzi50.shtml>

³⁵ Erik Eckholm. “Petitioners urge China to Enforce Legal Rights.” New York Times. June 2, 2003.

leading intellectuals circulated a petition on the Internet, urging the government to stop a “one-sided” campaign and initiate dialogue with the Dalai Lama. Extracts of the twelve suggestions on Tibet reveal both a respect for international organizations and the desire for China to be respected by the international community:

“3. In order to change the international community’s negative view and distrustful attitude, we also suggest that the government invite the United Nation’s Commission on Human Rights to carry out an independent investigation of the evidence, the course of the incident, the number of casualties, etc.

4. As the Chinese government is committed to integrating into the international community, we maintain that it should display a style of governing that conforms to the standards of modern civilization.

8. In our view, the current news blockade cannot gain credit with the Chinese people or the international community, and is harmful to the credibility of the Chinese government. If the government grasps the true situation, it need not fear challenges. Only by adopting an open attitude can we turn around the international community’s distrust of our government.”³⁶

Contrast this, however, with the attitudes the emerging elite in China who have benefited most from the country’s astonishing growth, top graduates from Tsinghua or Fudan who go onto undertake graduate work at Harvard and Princeton and land lucrative contracts with Goldman Sachs and Carlyle before returning to Beijing and Shanghai.³⁷ Many profess little interest in human rights issues and care more about their personal development. “We care about human rights, just not the rights that the US talks about. We care about the right to move up the economic ladder and get rich.”³⁸

³⁶ Leading Chinese Intellectuals ask China to rethink Tibet policy.

<http://savetibet.org/news/newsitem.php?id=1245>

³⁷ These are personal friends whose names have been altered to protect their privacy.

³⁸ Ibid.

Contrary to the wishful thinking of foreign observers who hope that free markets will lead to liberalism and democracy, the majority of those who have benefited the most from China's incredible growth appear to be quite comfortable with the status quo. "I don't understand why the US keeps telling us we don't have freedom," one says. "I'm very happy with my life. It's never been better for us."³⁹ Indeed, a survey conducted by the Pew Global Attitudes Project in 2005 concludes that "despite their limited political freedoms, the Chinese people, surveyed in six major cities and surrounding rural areas, are optimistic about the future and confident that the growing opportunities they have experienced in recent years will continue to expand."⁴⁰ More than 70% of Chinese citizens expressed satisfaction with their national conditions, while 76% said they expected their personal position to improve over the next five years.⁴¹

In a survey conducted by Dr Guo Liang at the Chinese Academy of Social Sciences in 2007, over 80% of respondents said they thought that the internet should be managed or controlled, and another 85% said they thought that the government should be responsible for doing it.⁴²

Could it be that the West has really got the Chinese wrong? Or is this the self-interested pragmatism of the Chinese elite? Whatever the case, the fact is that a majority of China's new elite does not seem to be interested in advocating for personal liberties or democratic reform.⁴³ As Baopu Liu warns, "China's rise could eventually prove that an illiberal and undemocratic free market can actually be stable and even prosperous ... No one today questions the political stability of Singapore. Why should China be any different?"⁴⁴

Yet, if the Chinese Communist Party maintains a historically-rooted view of human rights, Chinese intellectuals push for ideas more similar to those in

³⁹ Ibid.

⁴⁰ Pew Global Attitudes Project. "China's Optimism – Prosperity Brings Satisfaction and Hope." November 16, 2005. <http://pewglobal.org/reports>

⁴¹ Ibid.

⁴² Deborah Fallow. "Most Chinese Say They approve of Internet Control." Pew Internet and American Life Project. March 26, 2008. http://www.pewinternet.org/PPF/r/246/report_display.asp

⁴³ Baopu Liu. "Pragmatism of China's Elite Stalls Progress of Liberalism." China Rights Forum. No.1. 2007.

⁴⁴ Ibid.

liberal democratic countries, and the Chinese elites claim that they are apathetic toward political values, where, then, is China headed for the future? We know that rights advocacy at the grassroots level also takes on an extremely wide variety of forms, occasionally resulting in interesting and unexpected phenomena.

On the one hand, peasants and workers in the countryside appear to advocating for precisely the kinds of rights to subsistence that the Chinese Communist Party emphasizes in its views.⁴⁵ As Elizabeth Perry notes, contrary to Western perceptions of Chinese labor protests as signals of a new “rights consciousness,” the peasants appear to be fighting for socio-economic rights based on traditional ideas from Chinese culture and philosophy.⁴⁶ In particular, Perry gives the example of a petition that was launched by displaced workers at a knitting mill in Chongqing when the factory went bankrupt in 1992.

“The retired workers who led the demonstration procession knelt down before the armed policemen, pleading tearfully that they only wanted to lodge a petition to be able to receive their original pensions and only hoped for **the right of subsistence**... The retired workers said that the pensions represented the work accumulation that they had made in the past decades and belonged to part of the surplus value they had created ... Workers on the job said: We just worked according to order, and business losses were caused by mistakes in the economic plan for guiding production; the blame should not be placed on the workers. The state should be responsible for the future of the workers and should provide them with jobs and training, thus guaranteeing workers’ **basic rights of survival**.”⁴⁷

There is also some evidence to suggest that peasant ideas about the rule of law seem to be rooted in historical ideas of seeking qingtians (青天) in the

⁴⁵ Elizabeth Perry. “Chinese conceptions of rights: from Mencius to Mao – and Now.” Perspectives on Politics. March 2008.

⁴⁶ Ibid.

⁴⁷ A. Niu. “A Strike Takes Place in Chongqing Knitting Mill.” In Zheng Ming (no. 186). Quoted in Elizabeth Perry. “Chinese conceptions of rights: from Mencius to Mao – and Now.” Perspectives on Politics. March 2008.

central government and the Party rather than through a modern legal system.⁴⁸ Qingtian, a concept from time immemorial, refers to someone to whom the people could turn to seek justice. In over two thousand years of dynastic rule, this has always been someone in the government. No wonder, then that peasant Xiong Deming turned to Premier Wen Jiabao for help recovering her husband's more than two thousand renminbi in back wages in 2004.⁴⁹ The result was that she received her back salary within six hours.⁵⁰

Yet another example is that of Zhang Piren, a judge in Kai County People's Court, who went to Beijing on two occasions and wrote a letter to Premier Wen Jiabao in 2004 to help more than two hundred peasant laborers receive 3.55 million in back salaries that had been withheld for more than three years.⁵¹ While the court had judged that the employers should pay the migrant workers back wages, they had been unable to enforce the decision.⁵² It was only under pressure from the State Bureau for Letters and Calls that the back salaries were appropriated to the account designated by the court.⁵³

On the other side of the spectrum, however, are citizens like Du Dongjing, a financial engineer who filed the first lawsuit in China against internet censorship in a Shanghai court in March 2007.⁵⁴ Du sued his service provider China Telecom when it refused to allow him to access the site <http://www.realcix.com> even after repeated requests on his part.⁵⁵ Asking his Western friends to translate his case for him, his arguments can be found on his online blog titled "A practical lawsuit against China internet censorship." An extract of his blog is copied below:

"Many people know that internet censorship in China is a big obstacle to the progress of democracy. How can we use law

⁴⁸ Xiaoping Chen. "The Difficult Road for Rights Advocacy: An Unpredictable Future for the Development of the Rule of Law in China." *Transnational Law and Contemporary Problems* 2006-2007.

⁴⁹ 新华社“总理为农民追工钱” http://news.xinhuanet.com/newscenter/2003-10/27/content_1145427.htm

⁵⁰ Ibid

⁵¹ 为200名民工讨血汗钱 开庭法官上书总理追薪三百万
<http://www.cnhubei.com/200412/ca636365.htm>

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Very beginner: A practical lawsuit against China internet censorship.

<http://yetaai.blogspot.com/2007/05/practical-lawsuit-against-china.html>

⁵⁵ Ibid.

to improve this situation? I want to show to everyone that democracy can be reached by peaceful methods.

“Can we improve the Chinese Constitution to contain a statement that the government should protect the human right to know the truth or approaches to the truth? If censorship is unavoidable, how it can be monitored and made transparent? With monitoring and transparency, errors can be corrected.”⁵⁶

While experts note that the lawsuit is unlikely to bring changes to the Chinese Government’s lawsuit, Du’s case is nonetheless both an example of the role of the Internet in fostering a nascent Chinese civil society⁵⁷ and a positive step toward using the law to address problems.⁵⁸ Interesting to note, however, is the way in which Du expresses his ideas about the rule of law, government transparency and the Chinese Constitution. Du’s statements, for the large part, fit into the Chinese intellectuals’ approach of pushing for change within the system instead of going outside it. In fact, as an after-note, Du adds that he wants to “give a special thanks to the Chinese Government” because he “could not raise this lawsuit without today’s peaceful environment in China.”⁵⁹

Indeed, as China simultaneously undergoes the processes of urbanization, industrialization, privatization and globalization at astonishing speed, perhaps it should be no surprise that there should be such a variety of ideas about human rights and the rule of law in the same country. And in such a context, the interaction among all these ideas may even result in self-contradictory phenomena. One of these is the recent surge in defamation litigation in China. While conventional wisdom suggests that this would be just another lever of state control over the increasingly autonomous Chinese media, a recent study of 223 defamation cases by Benjamin Liebman shows that the use of defamation litigation by powerful plaintiffs to suppress the media is

⁵⁶ Ibid.

⁵⁷ See Guobin Yang, “The Internet and Civil Society in China: a preliminary assessment.” *Journal of Contemporary China*. 2003.

⁵⁸ 亚洲周刊 “中国网民对抗网络封堵第一案：起诉总共电信”

⁵⁹ Very beginner: A practical lawsuit against China internet censorship.
<http://yetaai.blogspot.com/2007/05/practical=lawsuit-against-china.html>

encouraging ordinary persons to use such cases to protect their interest.⁶⁰ Liebman divides the cases into Track I cases of public officials, government and Communist Party entities suing the increasingly aggressive Chinese media and Track II cases of ordinary persons suing Communist Party mouthpiece newspapers, concluding that the media lose the overwhelming majority of cases in both tracks.⁶¹ This results in a self-contradictory phenomenon where defamation litigation is empowering individuals against state authority while serving local interests in control at the same time.⁶²

A third type of case that Liebman leaves out, however, is the suing of ordinary citizens by ordinary citizens. One of the flagship cases in this area is that of a Chinese university professor who successfully sued one of the country's largest blog websites after it carried defamatory remarks on a blog written by one of his students.⁶³ The "insulting material" in blogger K007's diary claimed that "Chen Tangfa is indeed an uncouth person. I can see this from his book. He wrote the worst textbook."⁶⁴ Chen's remarks are revealing of his attitudes toward freedom of expression and the rule of law. "My purpose in filing a lawsuit against the blog website is that I want to remind Blogcn that it has a role to play in supervising its on-line content," he said.⁶⁵ "People can freely express themselves in cyberspace as long as their comments do not infringe on the rights of others. The case shows that personal dignity outweighs freedom of speech, and it proves a significant example that bloggers can be controlled by law."⁶⁶ Chen received RMB10,000 for emotional damage as well as an apology from K007. "I feel guilty and it is my own responsibility to wipe out the comments," K007 wrote.⁶⁷ Chen's case was only one among the many defamation cases that sparked discussions in China on the boundaries between "the right to an honorable reputation" and the right of freedom of expression.⁶⁸

⁶⁰ Benjamin Liebman. "Innovation through Intimidation: An Empirical Account of Defamation Litigation in China." Harvard International Law Journal. Volume 47, Number 1, Winter 2006. 网上被骂流氓副机

⁶¹ Ibid.

⁶² Ibid.

⁶³ 网上被骂流氓副教授怒告博客网站 http://news.xinhuanet.com/video/2006-04/06/content_4390389.htm

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Personal Interview. Spring 2008.

As overwhelming as it is to survey the whole range of ideas about human rights and the rule of law in China, the burden of my talk this evening is to show that there is a complex, ongoing process through which Chinese people are exploring their political values and legal ideas. While it would be foolish to jump to any specific conclusions save to observe that the situation is complex and evolving, at the very least this process of exploration itself needs to be respected and recognized. After all, as much as many in the West would like to see China become a liberal democratic state, it is people in China who by and large will determine the kind of state that China will become.

Faced with this complex reality, it is not surprising that the West is today a little more nuanced in its criticism of China's human rights record. Quite apart from strategic considerations arising from such political architecture as the Sino-American Strategic and Economic Dialogue, the West also faces more than a little discomfiture generated by its loss of moral standing resulting from military misadventures in Iraq and Afghanistan coupled with the implosion of the free market model which had its apotheosis on 9/15, the day Lehman Brothers filed for Chapter 11 bankruptcy.

The loss of moral authority stems from crises such as the Abu Ghraib debacle which broke as a news story in 2005 and the financial meltdown in the autumn of 2008 which called into question the two greatest achievements of modern Western civilization following the end of the Second World War, namely, the rule of law and the free market. As at the end of last year, these twin pillars of modern world civilization appeared like those famous "trunkless legs of stone" so graphically portrayed by Shelley in "Ozymandias".

The question we need to ponder is why China has rejected the Western script or, more accurately, why China insists with its own narrative, not just of history but also by way of a vision for future development. In particular, why has China in its headlong rush to re-establish itself as a world power, not embraced Western concepts of human rights? One clue lies, if I may suggest, in the dichotomy posed of the fox and the hedgehog by the Greek philosopher Archilochus more than two millennia ago round about the time when China

MIRIAM ROTHSCHILD AND JOHN FOSTER HUMAN RIGHTS TRUST

first became unified as an empire in 221 BC. He observed that "The fox knows many things but the hedgehog knows one big thing."

The modern exposition of the meaning such an enigmatic observation we owe to Isaiah Berlin in his essay "The Hedgehog and the Fox" published in 1951, shortly after the founding of the People's Republic of China, where he classified Plato and Dostoyevsky as hedgehogs and Aristotle, Shakespeare, Goethe and Pushkin as foxes and, famously, Tolstoy as a fox who not only disguised himself as a hedgehog but fooled himself into thinking that he was a hedgehog.

If the celebrated MIT Sinologist the late Lucian Pye is correct in his observation made 35 years ago that "China is a civilization masquerading as a nation state", then Chinese civilization is a fox and not a hedgehog. For indeed China's vision of self and civilization is multifaceted and communal in contradistinction to Western Judaeo-Christian concepts of individualism, free choice, the pursuit of personal growth or, etched into an American slate, the pursuit of happiness. This is not to disparage the truth of Western concepts of human rights, nor to apologize for Chinese ones. On the contrary, the truism remains that no understanding of the human rights situation in China is complete without an understanding of culture and history.

Permit me to end with a set of statistics.

Measure of a Nation

Then	Now
<u>POPULATION</u>	
542 million	1.3 billion
<u>LIFE EXPECTANCY</u>	
36.5 years	73.4 years
<u>GDP PER CAPITA</u>	
\$51*	\$2,770
<u>FOREIGN-EXCHANGE RESERVES</u>	
Negligible	\$2 trillion

STUDENTS IN HIGHER EDUCATION

117,000

20.2 million

MATERNAL MORTALITY PER 100,000

1,500

34.2

*1952 figure, from earliest official data

These figures speak far more eloquently about the state of human rights in China than I can ever hope to canvass in a single lecture.

© The Author