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# HUMAN RIGHTS IN ASIA: CHINA AND THE *BANGKOK DECLARATION*\*

*Michael C. Davis*\*\*

## I. INTRODUCTION

At present, Asia is caught in a veritable explosion of human rights discussions. Asian governments are frequently confronted with human rights challenges emanating from within their own communities and from the outside. The responses from the individual governments are as varied as any heard from governments that have been vexed by similar challenges since the modern notion of human rights was first conceived in enlightened thought. Human rights violations in Asia run the whole gambit from harsh crackdowns and political arrests to the diverse intimidations of soft authoritarianism.<sup>1</sup> At the same time, the regimes of the region increasingly offer human rights justifications for their actions through the media, and also, through more formal channels. Asian human rights activists can currently be found on the streets, under house arrest, in the jails and sometimes, already in power.

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\* This article expands upon this author's remarks published in 89 ASIL PROC. 146 (1995), © The American Society of International Law. For further discussion of this issue, see essay, *Chinese Perspectives on Human Rights*, in HUMAN RIGHTS AND CHINESE VALUES (Michael C. Davis, ed., 1995). Many elements of the instant discussion are adopted from this essay.

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<sup>1</sup> See generally Chalmers Johnson, *Political Institutions and Economic Performance: The Government-business Relationship in Japan, South Korea and Taiwan*, in THE POLITICAL ECONOMY OF THE NEW ASIAN INDUSTRIALISM 136 (Frederic C. Deyo ed., 1987); TRANSITIONS FROM AUTHORITARIAN RULE (Guillermo O'Donnell et al. eds., 1986).

In March 1993, the Asian regional meeting in Bangkok was held as a preliminary meeting to the Vienna World Conference on Human Rights. Asian governments offered the *Bangkok Declaration* as a challenge to the applicability of “universal standards” of human rights in Asia.<sup>2</sup> China played a leading role in formulating this challenge. Taking up a cultural relativist position, the *Bangkok Declaration* argued for the importance of unique Asian factors -- historical, cultural and economic -- in determining human rights standards. The position also advocated that such standards were, generally, a domestic matter. The private non-governmental organizations (NGOs) that observed this regional meeting, however, opposed this formulation and argued for the application of universal standards in Asia.<sup>3</sup>

The *Bangkok Declaration* represents the latest international round in a long term, largely domestic, Asian struggle with the modern concept of human rights. The Chinese experience with this issue is particularly revealing, and is thus the focus of the current assessment. Using a discursive approach, this essay challenges the view that Asian governments can legitimately isolate themselves from international human rights practices and values. In many respects, the cultural relativist position presents a false dichotomy and does not account sufficiently for current value discourse. Before addressing the specifics of the Chinese discussion, the next section introduces a discursive model.

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<sup>2</sup> THE BANGKOK DECLARATION, DECLARATION OF THE MINISTERS AND REPRESENTATIVES OF ASIAN STATES, Bangkok, March 29 - April 2, 1993 (hereinafter BANGKOK DECLARATION).

<sup>3</sup> OUR VOICE Bangkok NGO Declaration on Human Rights, Reports (Bangkok, 1993) of the Asia Pacific NGO Conference on Human Rights and NGOs' Statements to the Asia Regional Meeting. This Bangkok NGO meeting included representation from over 150 Asian NGOs, as well as other outside NGO groups.

## II. HUMAN RIGHTS DISCOURSE

Within the parameters of a proper “theory” concerning constitutional development, much can be understood about the Chinese and Asian struggles with modern constitutional values and human rights. Modern literature on constitutionalism suggests that such a “theory” should be communications-based. Essentially, we must ask who is saying what, with what purpose or values, through what channels, with what effects.

The discourse about constitutionalism and human rights is essentially a discourse about values. Its value-based character serves to constrain and direct its evolution in many ways. The full scope of such an evolution cannot be fully considered here.

The approach taken here assumes that human rights values are developed in the context of institutions and processes, as well as the dynamics between them. Values shape processes and institutions, and give them meanings. While modern constitutionalism seeks to integrate institutional and value discourses, it is important to note that constitutional underdevelopment may produce considerable disjuncture. This may cause political conflict, as well as a cycle of activism and repression. As a constitutional system develops, existing processes and institutions may define, if not confine, the possibilities for the transformation of ideas and values.<sup>4</sup> Freedom and democracy, which are often among the aims of constitutionalism, qualify as values and institutions, and also, as ideas and practices.

Many contemporary theories on constitutionalism and human rights have emphasized the role of communications, institutional and otherwise, in the evolution of human rights values. These include: (1) the now classical theory of Alexander Bickel; (2) the so-called “New Haven School” in international law theory; and even (3) modern

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<sup>4</sup> See generally Peter A. Hall and Rosemary C. R. Taylor, *Political Science and The Four New Institutionalisms* (Sept. 1994) (unpublished manuscript, on file with the Center for European Studies, Harvard University.) Paper presented to the Annual meeting of the American Political Science Association, New York, 1994.

critical theory.<sup>5</sup> The first of these, Alexander Bickel's theory, focuses on constitutional theory and the institutions of constitutional judicial review in a fully developed system. The New Haven School focuses on communications in the somewhat more primitive international constitutive process. The modern critical theory focuses primarily on the processes of value discourse on a conceptual and interpersonal level.

In common law countries like Canada or the United States, much of the human rights discourse may eventually find its way into case law. In fact, Bickel's theory suggests that this is so. Likewise, in the civil law world (or in hybrid legal cultures like the European Union), the same point can be made about the accessibility of formal constitutional or human rights discourse in judicial and administrative decisions, even though the systems of legal/constitutional decision-making may be different. Beyond such official reflections, the interpretations of academic discourse are reasonably accessible and thorough. To a large extent, this accessibility reflects the conditions of a developed constitutional democracy.

In an Asian country like China, however, constitutional or human rights discourse may be more scattered and less formalized. This discourse is also less accessible because of the severe political constraints. In less developed systems, institutions may be at a disjuncture with societies' value processes. Nevertheless, students of constitutional and human rights development in Asia will find that much is being said and done, both by officials and by their opposition. Important statements may appear in international declarations, such as the *Bangkok Declaration*, constitutions, legislation and white papers, in peace charters, in the reports of

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<sup>5</sup> See generally ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS*, (2nd ed., 1986); *The World Constitutive Process of Authoritative Decision*, in *INTERNATIONAL LAW ESSAYS: A SUPPLEMENT TO INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE* (Myers S. McDougal and W. Michael Reisman eds., 1981); ROBERTO M. UNGER, *SOCIAL THEORY: ITS SITUATION AND ITS TASK, A CRITICAL INTRODUCTION TO POLITICS, A WORK IN CONSTRUCTIVE SOCIAL THEORY* (1987).

NGOs, in human rights manifestos, as well as in academic or legal discussions. Though the shades of meaning of this vocabulary may be colored by regional differences or the institutional perspective of the speaker, much of the vocabulary of this discourse is similar.

A discursive analysis employs description, but not just the description of static institutions. Rather, it is a description flowing from the value producing process reflected in the dynamic interaction between institutions and the society. As history seems to be repeating itself in the Asian context (for example, the European enlightenment shared similar concerns), this discourse will hopefully give a new platform from which to view the difficult human rights issues in the larger world.

### III. HUMAN RIGHTS IN CHINA

Discussion of human rights discourse in China begins in this section with a discussion of the People's Republic of China (PRC) Constitution and the formal legal requirements under Chinese law (the system as it is). The next section of this article reflects on the emerging human rights debate (the system as it may become). Beginning with the formal legal structure, a student of human rights is immediately struck by the disjunction between the rights promised by the Chinese constitution and the actuality of the situation. Though the PRC Constitution contains a rather long list of standard human rights guarantees, the government and the party are little constrained. Most human rights, therefore, are not enforced. A Chinese scholar has characterized this practice as human rights nihilism,<sup>6</sup> in that the ideological beliefs (e.g. Marxist) challenge and largely vitiate the human rights guarantees. This disjuncture reflects the pathology of

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<sup>6</sup> Du Gangjian and Song Gang, *Relating Human Rights to Chinese Culture: The Four Paths of the Confucian Analects and the Four Principles of a New Theory of Benevolence*, in HUMAN RIGHTS AND CHINESE VALUES, LEGAL, PHILOSOPHICAL AND POLITICAL PERSPECTIVES 35 (Michael C. Davis ed., 1995).

an underdeveloped constitutional order. With institutional channels largely closed off, there has been a radicalization of political dialogue between those who promote human rights values and the rulers, producing a cycle of activism and repression.

In effect, the usual constitutional channels are clogged. There is an absence of a system for judicial review of legislation and/ or administrative acts. Instead, under Articles 62 and 67 of the PRC Constitution, the Constitution is interpreted directly by China's legislative body, the National People's Congress, or its Standing Committee. This interpretation is theoretically carried out through the enactment of laws. While the government has, in recent years, enacted various procedural laws to allow the people some form of redress (in non-sensitive areas), the administrative and judicial processes are yet unproved.

In a system where the government presumes that it represents the collective will, democratic communication is also clogged. In the absence of competitive democratic elections, the government experiences little formal constitutional guidance or constraint. Only recently, China instituted a system of allowing more candidates than there are legislative seats. Though eight parties do exist and have existed throughout communist rule, such parties are required to submit to the leadership of the Chinese Communist Party (CCP), which is constitutionally mandated.

This system permits little individual resistance or criticism. The PRC Constitution mandates, in Article 51, that citizens' exercise "of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens." This provision allows the government to resist the free speech claims raised by those who have been critical of the government and those who are charged with crimes relating to their political activity. Although there are some procedural laws (noted above) which may offer some relief, this potential is still

largely untested.<sup>7</sup> In essence, the independence of the judiciary with respect to the human rights violations is a major concern.<sup>8</sup>

Though freedom of speech, of the press and of assembly are guaranteed in Article 35 of the constitution, the press also offers little challenge to China's rulers. This is largely due to governmental or collective ownership nationwide and to a rigorously enforced media ethic which emphasizes the propaganda role of the press and strict official secrecy.<sup>9</sup> When this iron control was broken by several

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<sup>7</sup> China's law reform exercise has aimed at insuring the availability of adequate legal process and at least the rudiments of the rule of law. In this context, a range of process related laws have been passed in recent years. *See generally*, THE CRIMINAL PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA, July 1, 1979 (Rev. 1984); THE ADMINISTRATION LITIGATION LAW OF THE PEOPLE'S REPUBLIC OF CHINA, April 4, 1989; THE CIVIL PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA, SEPT. 4, 1991; THE PROCURATOR GENERAL'S LAW OF THE PEOPLE'S REPUBLIC OF CHINA, Feb. 28, 1995; THE ARBITRATION LAW OF THE PEOPLE'S REPUBLIC OF CHINA, May 12, 1994. *See also White Paper on Criminal Reform*, in STATE COUNCIL INFORMATION SERVICE, Aug. 10, 1992 translated in FOREIGN BROADCAST INFORMATION SERVICE DAILY REPORT SUPPLEMENT: CHINA, FBIS-CHI-91-255-S, Nov. 21, 1992. At the same time, it has been reported that prosecutors powers to fight corruption will be enlarged under a new draft law on Penalties for Corruption and Bribery and the above Procurator General's Law. *New Laws to Target Corrupt Cadres*, S. CHINA MORNING POST, INTERNATIONAL WEEKLY, Dec. 3-4, 1994, at 1. The new Detailed Regulation on the Implementation of State Security Law issued in July 1994, gives almost unfettered power to arrest those alleged guilty of "hostile activities." *Detailed Regulation on the Implementation of State Security Law*, DA GONG BAO, Jul. 30, 1994, at 4; *Law Sparks Fears of Police State*, S. CHINA MORNING POST, Jul. 14, 1994, at 10.

<sup>8</sup> The official legal newspaper, LEGAL DAILY, recently published an article entitled "A Call for Judicial Independence." This article, surprisingly admits that China's supposedly independent judiciary is far from free (of party interference). *Call for Free Judiciary*, S. CHINA MORNING POST, May 24, 1994, at 8. The editors responsible for article have reportedly been reprimanded.

<sup>9</sup> CCP vigilance over newspapers usually produces sackings of offending editors. *Independent Minded Editor Sacked in Purge*, S. CHINA MORNING POST, Apr. 30, 1994, at 7. This same scrutiny extends to film makers. Those who are uncooperative, may be banned from making movies or have their films banned. *Blitz on the Film-makers*, S. CHINA MORNING POST, Apr. 16, 1994, at 19.



newspapers during the 1989 student demonstrations, which included reporters from the *People's Daily* (China's leading newspaper) marching in the square and publishing unauthorized reports, control was restored almost immediately.

Professors Andrew Nathan and Randle Edwards have emphasized several characteristics in China's human rights tradition: (1) rights are not inherent in humanhood as under natural rights doctrine but are created by the state; (2) rights provisions will generally be worded in the positive, as an express agent; (3) greater emphasis is placed on welfare rights while political rights are more restricted; (4) rights are juxtaposed with duties, a sort of contingent notion of rights; (5) instead of rights being a limit on the state, the state's interests are often a limit on the rights; and (6) rights are subject to restriction "according to law."<sup>10</sup> A recent official white paper on human rights seems to bare out this view.<sup>11</sup>

To some extent, the Chinese government has begun to convey a liberalizing message in its economic reform process, allowing for some movement away from complete human rights nihilism. As is generally true in the context of liberalizing authoritarian regimes, it is expected that public pressure would fill any discursive space created (especially with the above channels largely clogged). In this context, the government can be expected to make moves to shape its liberalizing message either through crackdowns (the historical practice), or else by conveying some increased attention to human rights (i.e. further liberalization and possibly democratization). While efforts at the former are well known, some movement on the liberalization front has also occurred.

On a formal level, while still not acceding to the two general international human rights covenants, the government has declared its adherence to the *Universal Declaration of Human Rights*. It has also recently agreed to various specific international human rights treaties, including the *Convention Against Torture* and the *Convention to*

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<sup>10</sup> R. RANDLE EDWARDS ET. AL., HUMAN RIGHTS IN CONTEMPORARY CHINA 43-47, 121-22 (1986).

<sup>11</sup> HUMAN RIGHTS IN CHINA (Beijing 1991).

*Eliminate Discrimination Against Women.* On the legislative front, as noted above, it has enacted many laws on legal and administrative procedure and the economy. Also, China has recently enacted the *Law for the Protection of Women's Rights and Interest*<sup>12</sup> and a law to protect prisoners' rights. As with the constitution, the problem of enforcement is serious. It is important to note that when it comes to the issues of livelihood, there has been increasing restiveness -- especially from peasants and laborers.<sup>13</sup> The government's reform in domestic legislation is more likely to be a response to restiveness in the evolving civil society,<sup>14</sup> rather than in response to dissidents. This also produces some incentive to seriously implement law reform.

Most striking in regard to moving off of the nihilist position, are the public pronouncements of the government in the face of the public human rights challenge. In doing so, the government has embraced the standards it often rejects on ideological grounds. China has especially been called upon to explain itself to the Hong Kong and foreign press (while persisting in acts of intimidation of the same press through arrest and expulsion) and to foreign governments and human rights NGOs (which often convey back messages originating from dissidents in China). Thus while continuing to crack down hard on dissidents, labor activists and journalists, the government has demonstrated a tendency to justify its policies in human rights terms. These justifications are seen in the form of frequent press briefings and, on a more formal level, official human rights policy pronouncements in the media, the various white papers on human rights, and the *Bangkok Declaration*.

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<sup>12</sup> Ann D. Jordan, *Women's Rights in the People's Republic of China: Patriarchal Wine Poured from Socialist Bottles*, 8 J. CHINESE L., 47 (1994).

<sup>13</sup> *Beijing in Fear of a Peasants' Revolt*, S. CHINA MORNING POST, Mar. 9, 1994, at 1.

<sup>14</sup> Zhu Feng, *Human Rights and the Political Development of Contemporary China, 1979-1994*, in HUMAN RIGHTS AND CHINESE VALUES, LEGAL, PHILOSOPHICAL AND POLITICAL PERSPECTIVES 116 (Michael C. Davis, ed., 1995).

IV. INTELLECTUAL DISCOURSE CONCERNING  
HUMAN RIGHTS VALUES

Many private voices in China challenge and supplement official government pronouncements, producing evidence of incipient evolution of human rights values. Earlier writings tended to be critical of Western bourgeois notions of human rights and sought to develop socialist theory. Serious attempts were made to understand Marxist theory on human rights. The Chinese socialist critique of human rights is significant in light of the fact that a traditional feudal society, guided significantly by elitist Confucian principles, was operative until very recently in China.

Recognizing that classical Confucianism has a strong humanistic component, some recent scholarship has sought to also identify human rights ingredients.<sup>15</sup> It is important to recognize that this is taking place in a period of revival of Confucian values (especially neo-Confucianism promoted by governments favoring soft authoritarianism) that cuts across Asia; this represents a significant backdrop to the cultural relativist strains in the *Bangkok Declaration*. Such scholarship acknowledges the elitist nature of Confucianism, but seeks to identify other humanist values compatible with modern human rights values. This aims not to prove the establishment of human rights in classical China, but simply to defeat arguments that human rights are alien to Chinese soil.

Many dissident elements in the Chinese intellectual community have severely challenged official attachment to the mandates of political reality, tradition and Marxism. It is important to note that many (so-called) dissidents in China are Marxist, yet many of other intellectuals have embraced more clearly liberal notions of democracy and human rights, and the application of universal standards. The official shift off of the human rights nihilist position noted above has been in no small part caused by the pressure from intellectuals in

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<sup>15</sup> Du and Song, *supra* note 6.

China. While the student-led democracy movement in Tiananmen Square in 1989 is the most well known example, there have been others, including the Democracy Wall movement in the late 1970s. These movements, to the extent that they found a ready audience may verify that some of the values being expressed of justice, of public accountability and of the right to openly express ideas have penetrated beyond the elite to the masses, at least in the urban areas.

Less well known are the more subdued attempts by leading intellectuals, both within and outside the government, to encourage political reform. In the mid-1980s, scholars at People's University conducted political surveys on the role of the media and encouraged media reform. In the late 1980s, under the leadership of former CCP General Secretary, Zhao Ziyang, government think-tanks (including one led by the recently released dissident, Wang Juntao) encouraged electoral and press reform. At the same time, more liberal factions within the ruling elite in the government were promoting similar political reform, though this effort appeared to fail in late 1986 and early 1987, culminating in the deposing of CCP General Secretary Hu Yaobang. In February 1989, forty intellectuals led by astrophysicist Fang Lizhi wrote a letter demanding reform.

More recently, in March 1994, seven intellectuals, led by Xu Liangying, sent a similar letter to President Jiang Zemin demanding that the government release "all citizens detained because of their thoughts and expression of opinion."<sup>16</sup> The letter, entitled "An Appeal for the Improvement of Human Rights in Our Country," asserted that "the right of the freedom of thought and the expression of opinion is an inalienable right of modern man which brooks no interference." A similar message was repeated in letters to the NPC

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<sup>16</sup> *Alarm at Challenge to Leaders*, S. CHINA MORNING POST, March 11, 1994, at 1. Detention of China's most famous dissident, Wei Jingsheng, who has recently again been charged with a crime (this time attempting to overthrow the government), has often been the target of such dissatisfaction protest of intellectuals. *Scholars urge Jiang to free dissident Wei*, S. CHINA MORNING POST, Dec. 1, 1995, at 10.

during its session in February 1995.<sup>17</sup> When China's leaders are known to be concerned about popular unrest among workers, such messages touch a sensitive cord.

## V. DISCOURSE WITH THE OUTSIDE WORLD

The final weapon in China's formal arsenal is its conception of sovereignty, which seriously resists outside interference. This was recently emphasized in the official white paper *On Human Rights in China* and in the *Bangkok Declaration*. In addition to sovereignty, the white paper emphasized the importance of the right of subsistence over other rights. Under this view a country must have sovereignty to rule itself without outside interference and be able to secure the subsistence needs of its people before it can aspire to other human rights achievements.

The Chinese government effectively carried these and others themes relating to economic development and culture into the *Bangkok Declaration*. These themes, however, failed to get adopted in Vienna. The *Bangkok Declaration* reflects Asia's official view on human rights -- a view which was challenged by the Asian NGOs attending the meetings in Bangkok and Vienna. At the Vienna meeting, the Chinese Delegation Head, Liu Huaqiu, articulated China's views as follows:

The concept of human rights is a product of historical development. It is closely associated with specific social, political and economic conditions and the specific history, culture and values of a particular country. Different historical development stages have different human rights requirements . . . . Thus, one

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<sup>17</sup> Patrick E. Tyler, *12 Intellectuals Petition China on Corruption*, N. Y. TIMES, Feb. 26, 1995, at A1. There have also been recent reports that liberal scholars have set up on Hainan Island another reform minded think-tank called the China (Hainan) Reform and Development Institute.

should not and cannot think the human rights standard and model of certain countries as the only proper ones and demand all other countries to comply with them. It is neither realistic nor workable to make international economic assistance or even international economic cooperation conditional on them. . . .

For the vast number of developing countries, to respect and protect human rights is first and foremost to ensure the full realization of the rights to subsistence and development. . . .

Nobody shall place his own rights and interests above those of the state and society, nor should he be allowed to impair those of others and the general public. This is a universal principle of all civilized societies. . . .

To wantonly accuse another country of abuse of human rights and impose the human rights criteria of one's own country or region on other countries or regions are tantamount to an infringement upon the sovereignty of other countries and interference in the latter's internal affairs, which could result in political instability and social unrest in other countries. . . .

State sovereignty is the basis for the realization of citizens' human rights. If the sovereignty of a state is not safeguarded, the human rights of its citizens are out of the question, like a castle in the air.<sup>18</sup>

Western governments, international and regional NGOs, and numerous scholars have fostered a significant challenge to these sovereignty arguments in China's human rights policy. China's

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<sup>18</sup> Speech by Liu Huaqiu, Head of the Chinese Delegation at the World Conference on Human Rights in Vienna (June 15, 1993), in HUMAN RIGHTS AND CHINESE VALUES: LEGAL, PHILOSOPHICAL AND POLITICAL PERSPECTIVES, *supra* note 6, at 13.

argument was also ultimately rejected by the Vienna Declaration and Programme of Action.<sup>19</sup> The UN establishment of the office of the UN High Commissioner for Human Rights some six months later (in December 1993), confirmed this international resistance.

The challenge to China's theory of nearly absolute sovereignty was begun in the early twentieth century when the international treaty regime began to expand dramatically in a shrinking world. The realm of exclusive state control retreated as the inclusive order expanded. In this context, the distinction between interference and non-interference posed by China's claim should be recognized as a false dichotomy. In a shrinking world, the more realistic question relates to the extent of interference, rather than its occurrence. In the present age, notions of popular sovereignty encourage the trend to expand the regime of human rights and self-determination to better secure the exercise of popular will from both internal and external displacement.

Asia is the only part of the world not united by a *regional* human rights treaty, and is, thereby, the weakest link in the international human rights regime. Recently, several East Asian countries -- like Myanmar (Burma), Cambodia, Vietnam, Indonesia, North Korea and China -- have all been widely criticized for their human rights records.

In this context, the *Bangkok Declaration* may represent a form of progress. While the many Asian hard-line regimes and a few Asian democracies joined hands in advancing an argument against complete application of universal standards, they also acknowledged wide scope for universal standards and the processes of human rights. We should rightly fear that given the human rights records of several of the governments involved, the cultural and developmental exceptions are taken more seriously than the affirmations of universal standards.

Another aspect of the external dimension includes the effectiveness of pressure by Western developed countries. In recently

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<sup>19</sup> United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action, *adopted* June 25, 1993, 32 I.L.M. 1661 (1993).

de-linking the allowance of Most Favored Nation (MFN) trading status from China's human rights practices, the United States administration has questioned the continued use of trade sanctions in periods of more stable relations. There are indications that the United States will target more trade specific issues in the future. At the same time, the administration has tried (but failed) to set up a bi-lateral Human Rights Commission. Attempts are still being made to establish a U.S. monitoring body. Many countries, the U.S. included, have also sent human rights delegations to China.

The more serious external pressure in the 1990s will probably come from the international NGOs. NGOs have become increasingly effective in drawing attention to human rights violations and identifying prisoners of conscious. There appears to be a rectangular relationship between dissidents, NGOs, foreign governments and China, whereby the dissidents export their message through NGOs who disseminate it and pressure Western governments, who in turn pressure China. It is unlikely that the Chinese government would listen to dissidents otherwise. NGOs are instrumental in causing the demand for the governments to justify their policies. NGOs have lobbied governments at almost every international meeting where China's human rights record has been at issue. Likewise, Chinese dissidents overseas have emphasized the importance of this effort.

## VI. CONCLUSION

Human rights discussion in the modern age reveals a complex dialogic process which is essentially about political values. In constitutional development, this process takes on institutional components. In political systems that are underdeveloped, institutional resistance (or lack of formal channels) tends to displace such value discourse, and instead, channel it into the more volatile public arena -- often producing resistance from actors with a stake in maintaining the existing system. China's current dialogic process reveals symptoms of constitutional dysfunction; however, the cultural



relativist arguments offered at this stage may reveal the seeds of transformation. As Alexis de Toqueville discovered long ago in America, it may be too late to turn back to the old order that no longer exists.<sup>20</sup>

The dialogic process reflects a complex debate that defeats the claim that human rights values are completely alien to Chinese society. China has already conceded much more in its above statements and the *Bangkok Declaration* than it attacks. At the same time, Chinese scholars, officials and society have already assimilated far more of modern human rights values than either the government or the drafters of the *Bangkok Declaration* would care to admit, and it remains to be seen if the disjuncture between practice and the emerging transformative human rights values discussed in this essay will ultimately be closed.<sup>21</sup>

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<sup>20</sup> See generally ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (1945).

<sup>21</sup> Questions surrounding China's current political transition will certainly have a bearing on this.