Comparative Analysis of International and Chinese Human Rights Law--Universality Versus Cultural Relativism

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A COMPARATIVE ANALYSIS OF INTERNATIONAL AND CHINESE HUMAN RIGHTS LAW -- UNIVERSALITY VERSUS CULTURAL RELATIVISM

Melanne Andromecca Civic*

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I. INTRODUCTION

At its most fundamental level, the current debate over the universality of human rights legal standards versus cultural relativism is the result of the Western and Eastern nations, and capitalist and socialist countries each speaking a different language of human rights. When a Chinese government official refers to human rights law in China, he means something different from that which is understood as human rights in the Western context or human rights as defined by the international community of the United Nations. Human rights in the Chinese cultural context does not mean inherent, inalienable rights owed to the individual by sole virtue of being human and under duty of the state, as it does in the West. Instead, the Chinese rights refer to the intricate web of social and political duties of citizens owed to the community at large. Furthermore, in direct contrast to the international model, human rights law -- indeed all law in China -- is controlled by and at the service of the authoritarian political system and prevailing state ideology.

In June 1993, more than 180 nations met in Vienna, Austria\(^1\) in order to hammer out differences in national perceptions of international human rights law that had evolved over the past twenty-five years since the last World Human Rights Conference. Their goal was to reach a mutual understanding and universal approach to human rights norms, fundamental freedoms and enforcement mechanisms. The two governments most ideologically polarized from each other and most vocal in their positions were the United States of America and the People's Republic of China.

This paper will examine the Chinese perception of human rights and the Chinese human rights legal system. It will compare and contrast it with the international human rights model embodied in the Universal Declaration of Human Rights\(^2\) and the International

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Covenants of Civil and Political Rights,\(^3\) and Economic, Social and Cultural Rights.\(^4\) It will also examine the concerns voiced by the Chinese government over international human rights norms and enforcement mechanisms. Finally, it will evaluate the culturally relativistic model which is claimed by China, and compare it to the Universality principle, which was endorsed by the international community at the 1993 United Nations World Human Rights Conference.

II. INTERNATIONAL HUMAN RIGHTS STANDARDS

A. The Evolution of International Human Rights from a Domestic Prerogative to an International Concern

Prior to World War II, human rights *vis à vis* the individual were not considered a valid concern of international law. Traditional international law regulated relations between states, and the only international human rights abuses that were recognized and capable of being addressed were those committed against a foreign national. Even then, any government abuse against the alien was considered to be a violation against the foreign government, not against the individual. No international human rights norms existed, and standard-setting and enforcement were considered to be the prerogative and under the sole and exclusive jurisdiction of domestic government.\(^5\)

Even where international cooperation was formalized in the treaty which established the League of Nations in 1920, human rights were not directly addressed by any provision in the League treaty.\(^6\)

\(^4\) Id.
\(^6\) THOMAS BUERGENTHAL, INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL 5 (1988).
The League of Nations did establish international jurisdiction over and protection of specific displaced peoples, which, despite the fact that it addressed "peoples" and not individuals, marks the beginning of the internationalization of human rights law and individual freedoms. The League set into place a Mandates System for the citizens of the former colonies of the defeated nations of World War I, whereby the victorious powers administered the territories for the "well-being and development of the native peoples." The League also accepted the responsibility for enforcing post-World War I treaties for the protection of minority groups within newly independent nations.

During World War II, mass numbers of individuals were victims of violence and suffered deplorable human rights abuses. The victorious Allied Powers declared international jurisdiction over the atrocities committed by the governments of the defeated nations. They then proceeded to establish international human rights norms and instruments of enforcement in order to guard against the repetition of such mass-scale governmental abuses. The process began at the San Francisco Conference in 1945, with the drafting of the Charter of the United Nations organization.

B. The United Nations as an International System for Protecting Human Rights

The United Nations Charter is an international legally binding treaty establishing mutual obligations for the government signatories

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7 League of Nations Covenant art. 22.
8 Buergenthal, supra note 6, at 8-11.
9 One impetus for the international community to begin to address human rights across states boundaries was the result of the shared paternalistic sense of duty the victorious powers felt toward the peoples who had been formerly under the jurisdiction and control of the defeated nations of World War I. This international jurisdiction over the protection of specific peoples was, in a sense, affirmatively adopted colonial jurisdiction, acquired from the defeated powers and justified by victory in the War.
to act jointly and separately to "respect,"10 "protect,"11 and "promote"12 "human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."13 The Charter neither specifies nor defines the human rights that it proposes to protect and promote.

International human rights norms and principles were finally articulated in the Declaration of Human Rights,14 a non-legally binding document15 drafted by the United Nations Commission on Human Rights and adopted by the United Nations General Assembly in 1948. The International Covenants on Human Rights, which include the Covenant on Civil and Political Rights16 and the Covenant on Economic, Social and Cultural Rights,17 provide a highly detailed list of specific internationally sanctioned rights.

Unlike the Universal Declaration,18 the Covenants19 are legally binding treaties and as such, signatories are bound to honor the provisions of the Covenants by instituting appropriate domestic legislation.20 To date, the People's Republic of China has not ratified either of the Covenants.21

It must be noted, however, that despite the fact that China has not ratified either Covenant, as a full member of the United Nations and signatory to the United Nations Charter, many human rights and international law authorities maintain that China has constructively declared its commitment to the promotion and respect of international

10 U. N. CHARTER art. 56.
11 Id.
12 Id.
13 Id. art. 55 (c).
15 BUERGENTHAL, supra note 6, at 25.
17 Id.
human rights norms, as well as its acceptance of international jurisdiction over human rights abuses.22

C. China's Objections to Internationally Prescribed Human Rights Standards.

The principal objections articulated by the Chinese government to the provisions of the two Covenants and to internationally prescribed human rights standards are:23

(1) International standard setting and regulation is a relinquishment of national sovereignty over domestic affairs.

(2) The Universal Declaration and International Covenants define rights in a Western-biased manner that is not directly applicable to the Chinese cultural, political, or legal system.

1. International Jurisdiction over Human Rights: Is this an Infringement on National Sovereignty over Domestic Affairs?

China's concern that international human rights enforcement is an infringement on their national sovereignty is in direct opposition to the international and United Nations view of human rights enforcement. The more significant question, however, is not whether international protection of human rights is an infringement on domestic sovereignty, but whether it is an unlawful infringement and further, whether the benefits to the world community outweigh the

22 Derived from the UN Charter, art. 56: "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55." UN CHARTER art. 56. Human rights scholar Burns H. Weston notes that it may be argued that the human rights provisions of the United Nations Charter, because they are part of a legally binding treaty, "clearly involve some element of legal obligation." Burns H. Weston, Human Rights, 6 HUM. RTS. Q. 257, 272 (1984).

23 For a general discussion, refer to HUMAN RIGHTS IN CONTEMPORARY CHINA (R. Randle Edwards et. al. eds., 1986).
measure of national sovereignty which is relinquished.

The internationalization of human rights described above means that the international community, through the United Nations system, has declared that human rights issues cross national boundaries and are valid international concerns. China is a voluntary member of the United Nations community and a signatory to the United Nations Charter, and as such, is subject to its international human rights enforcement decisions. A policy which fiercely protects the integrity of domestic sovereignty at the expense of human rights may result in harm to many individuals. A balancing test of potential benefits to harms tips the argument in favor of international protection and enforcement.

2. Are United Nations Human Rights Standards Western-biased? The initiative to create a United Nations organization and draft a Universal Declaration were, at first, Western driven and the initial working draft of the Declaration was heavily Western influenced. Despite this fact, the core drafting committee, which painstakingly reviewed and reformulated the document over a

24 Weston notes the argument proposed by human rights authorities that "whatever isolation [human rights] may have 'enjoyed' in the past, no longer can be considered matters 'essentially within the domestic jurisdiction' of states." Weston, supra note 22, at 272.
26 John P. Humphrey, representative from Canada to the United Nations and the first director of the United Nations Division of Human Rights, recounts his personal experiences in producing the first draft working document for the Universal Declaration. He was advised by P.C. Chang, representative from Nationalist China, who was concerned over the potential for Western bias in the document, to put aside all his other responsibilities for six months in order to study Chinese philosophy. By his own account, Humphrey made light of this suggestion and commenced drafting without any research into Asian philosophical distinctions. Humphrey drew upon predominantly Western democratic sources and the resulting draft, according to Humphrey, was a "combin[ation] of humanitarian liberalism with social democracy." John P. Humphrey, Memoirs of John P. Humphrey: The First Director of the United Nations Division of Human Rights," 5 HUM. RTS. Q. 387, 403-08, 412-15 (1983).
nearly three-year period, consisted of Commission members from diverse cultural and political backgrounds. Representatives came from Australia, Chile, China, France, Lebanon, the United States, the United Kingdom and the Soviet Union. During the drafting process, ideological conflicts and political divisions arose between capitalist and socialist, Western and Eastern, and Northern and Southern nations. Some conflicts were resolved through compromises in the language of specific articles; others were left overly vague, with broad room for interpretation by a given country.

Thus, the final United Nations Charter, Universal Declaration and the two International Covenants indeed were joint efforts, synthesizing the input of the eighteen member countries of the United Nations Human Rights Commission. Ultimately, the Declaration was adopted with nearly full support of the General Assembly. Only nine member nations out of fifty-six abstained or refused to vote at all, including the Soviet Union, but not China. The end result is that the document itself and the number and types of rights espoused, encompassing civil and political as well as economic, social and cultural rights, is not patently Western-biased.

This being said, a strong counter-argument can now be made that in the nearly thirty years since its adoption, the Universal Declaration and the Covenants have been interpreted by the United Nations community from a heavily Western dominated perspective, in part because of the overbearing political strength and influence of

27 "China" refers to Nationalist China, i.e. Taiwan.
28 The Soviet Union was the sole Communist representative of the core Drafting Committee. At that time, China was in the grip of a civil war between the Nationalist government and Communist forces.
29 Indeed, the International Covenant on Economic, Social and Cultural Rights, in the vague language of Article 2, can be interpreted to mean that such "rights" are merely long-range goals and aspirations: "Each State Party . . . undertakes to take steps, individually and through international assistance and co-operation . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant . . . ." G.A. Res. 2200A, supra note 3, art. 2.
30 HUMPHREY, supra note 5, at 17.
31 Id. at 71.
the United States within the United Nations system. This Western influence has resulted, until recently, in the United Nations human rights division emphasizing civil and political rights, while economic, social and cultural rights were delegated to the status of "second generation rights." In fact, some Western nations, the United States in particular, have refused to recognize in both their international and domestic dealings, economic rights, as rights, at all.

Therefore, in actual practice, international norms and enforcement mechanisms of human rights have indeed been biased in favor of the Western emphasis on civil and political rights to the detriment of economic, social, and cultural rights.

III. THE DEVELOPMENT OF THE CHINESE CONCEPTION OF HUMAN RIGHTS LAW

The significance of the debate over civil and political rights versus group rights and duties is revealed by the distinct historical contexts of rights in the West and the East. The Western historical tradition is premised on the belief that those who rule will seek to keep and aggrandize their power at the expense of the common person; that power corrupts. This cynicism and basic distrust of the ruler leads to a culture of "us against them," and a popular concern with controlling the power of the ruler. Traditional European feudal society established a hierarchical social and political structure with the sovereign at the apex of this conceptual pyramid. The European sovereign was answerable to no one and no "heavenly" checks circumscribed his power.

Political human rights represent a transfer of power from the ruler to the individual, thereby providing some check on the ruler's power. The Magna Carta in the thirteenth century was the first popular curtailment of the sovereign's power. In the eighteenth century, the American Declaration of Independence and the French Declaration on the Rights of Man and of the Citizen were each a symbolic and practical "taking" and transfer of power. In Western democracies, this taking of power has resulted in the transfer of political sovereignty from a single ruler or ruling class, to the
populous, with the ultimate goal directed toward individual rights and political liberty. Human rights, particularly civil and political rights, have become a powerful tool for controlling power and protecting individual freedoms.

The Chinese tradition, by contrast, begins with the Confucian presumption that the leader is good and wise: a benign patriarch; a father figure on-high; and the "son of heaven."\textsuperscript{32} Within this scheme, the traditional Chinese political system existed to maintain peace and harmony on earth and between heaven and earth. Toward this goal, the emperor was duty-bound according to the precepts of Confucianism\textsuperscript{33} to promote the moral virtue and well-being of the community. Beginning in the Chou Dynasty (1027-770 B.C.), the Mandate of Heaven\textsuperscript{34} emerged as a natural check on the emperor's power. Where the emperor was moral and just, and the people obedient, harmony would prevail between heaven and earth and the emperor would be supported by the Mandate of Heaven.\textsuperscript{35} If the ruler proved not to be just and moral, and did not act for the good of the people, then natural disasters, such as droughts or floods, and human upheavals such as rebellions, might indicate a disruption in the natural order and a possible heavenly withdrawal of the Mandate.

Affirmative political human rights have no place in the traditional Chinese group-oriented and benign patriarchal heritage. The Confucian culture attaches no importance to and creates no impetus for such an artificial check on political power. The sovereign is presumed to be the ultimate father who himself has duties mandated by heaven. Instead, rights take the form of duties for all men and define what one must do as a member of society, not what one may do or what one has a right to do as an individual.

Three elements of Imperial China's social and legal tradition

\textsuperscript{33} Confucianism emerged as the dominant social, political and moral philosophy of traditional China during the Han dynasty (206 B.C. - 220 A.D.). It continues to exert a powerful moral and ideological influence to this day in modern Communist China.
\textsuperscript{34} Fairbank, supra note 32, at 17.
\textsuperscript{35} Id.
are particularly relevant to human rights law in modern China:36

(1) The internalized and self-regulating social behavior system described by Confucianism and Daoism.
(2) The predominance of ideology over rule of law.
(3) The social policy in which community harmony supersedes all other purposes for law and society.

These elements will now be discussed in the context of an historical overview, beginning with the time of the first unification of China through the present.

A. The Chinese Imperial Tradition

Any system of human rights law presupposes an established legal system. In the absence of a system of law, human rights remain amorphous concepts or mere aspirations, without clear definition and with no means for defining or regulating them. The view of law which emerged from China's Imperial history and which continues to influence modern China's politics and human rights, rejected the systematization of law in favor of an ideology-based, internalized, self-regulating system of rites, rituals and customs.

For more than 2000 years, Imperial China rejected any legal system that was based on external rules. Legal rules were viewed as both inadequate to serve primary social goals and dangerous to these goals. They were considered inadequate because positive law was

viewed as too rigid, externalized and artificial to regulate properly the realities and complexities of social relationships. Positive law could be downright dangerous because it was too easily manipulated by a ruler to suit his own personal ends.

What we in the West would identify as rule of law\textsuperscript{37} would be translated into Chinese as \textit{fazhi} or "rule by law."\textsuperscript{38} This distinction is important because modern democracies, particularly Western democracies, generally view law as a body of rules and principles which exist autonomously from, yet bear on, those who rule. When changes are made in the law in a democratic legal system, extensive procedural safeguards exist to protect against arbitrary or discriminatory results. Of course, such procedural safeguards have not always been in place in the West and even where they have existed, their protective purpose has not always been achieved.\textsuperscript{39} The Chinese perception of rule by law reflects the concern for potential abuse to which any externalized legal system is vulnerable. Positive law, according to the traditional Chinese view, exists to serve the ruler in his personal interests, and rule by law is perceived as the tool of the despot.\textsuperscript{40}

A sophisticated rules-based legal system was established briefly in Imperial times during the Qin Dynasty (221-207 B.C.) by Emperor Cheng, the first unifier of China. Legalism, as it is referred to, was a rigid code system, supplemented with clearly defined rewards and punishments.\textsuperscript{41} In practice, rule of law under Emperor Cheng quickly deteriorated into despotism. The common man and

\begin{footnotes}
\item[37] Rule of law refers to a legitimate, predictable system of law.
\item[38] Rule by law indicates a legal system which controls the masses and may be manipulated by the ruler for domination and subjugation. Turner, \textit{supra} note 36, at 2.
\item[39] During feudal times in the West, the word of the sovereign was the law, with no procedural safeguards to protect the interests of the common man. And, in the not-so-distant past of the United States, during the Jim Crow era, positive law and procedural safeguards were manipulated by those in power to subjugate African-Americans.
\item[41] \textit{Id.} at 81.
\end{footnotes}
scholars alike came to distrust Legalism because instead of the legal code circumscribing the actions of the Emperor, Cheng manipulated the legal system to serve his own ends and aggrandize his personal wealth and power.\textsuperscript{42}

Repercussions from this brief interlude with a system of rule of law persist in China to this day. Emperor Cheng is remembered by Chinese historians\textsuperscript{43} as a "monster"\textsuperscript{44} and an enemy of the people. Rule of law has never been rehabilitated in the eyes of the Chinese people.

The legacy of this early experience under the Legalists is an overriding distrust of rule of law and of legally based systems. The favored legal philosophy which has preempted the rule of law idea in China for over 2000 years emerged during the Han\textsuperscript{45} Dynasty (206 B.C. - 220 A.D.), and was based on Confucianism, which valued the judgments of the moral scholar for good governing, and Daoism, which depended on natural law.

Confucianism functioned in unison with Daoism. The purpose of human society was to reflect the harmony or equilibrium of nature -- the Dao -- by following the social precepts of Confucianism.\textsuperscript{46} The Dao has no direct translation into Western languages and is loosely described as the "Way," or the proper order of the universe. The Jingfa, an ancient Chinese text on the art of ruling, describes the Dao as a "timeless, universal, impartial standard and the law that it generates as a reliable guide for the hard decisions

\textsuperscript{42} Id.
\textsuperscript{43} Western historians generally have been far less harsh in their evaluation of Emperor Cheng and Legalism. In fact, the West continues to commemorate Cheng's unification feat and his empire of Qin (pronounced "Chin") by the Western name for the country: "China."
\textsuperscript{44} Frederic W. Mote, INTELLECTUAL FOUNDATIONS OF CHINA 109, 112-13 (1989).
\textsuperscript{45} In direct contrast with the Western terminology identifying China with the despotic Qin Dynasty, the Chinese refer to themselves as the "Han," in recognition of the flowering of Confucianism during the Han Dynasty.
\textsuperscript{46} Turner, supra note 36, at 42.
that fall to any ruler." The Emperor, as the "son of heaven," guided human behavior in the service of the Dao. He stood at the apex of the social hierarchy and served as the premier Confucian scholar, as interpreter of Confucian tenets, as principal sage, as moral and ethical leader, and as enforcer of the social code. The social hierarchy extended the ruler-subject relationship downward through society, figuratively linking every family head with the emperor himself.

During the second century of the Han Dynasty, the rituals and prescribed duties of Confucianism came to dominate the Classical Chinese legal system and the Daoist philosophy became an ideological force supporting Confucian precepts. A limited body of positive law and legal sanctions was utilized only as a last resort for severe violations committed by the common man. Where severe disputes arose that could not be satisfied by community sanction, formal mediation was employed. The moral codes and social duties of Confucianism, as interpreted by the intelligentsia and ultimately by the Emperor himself, became internalized by both the common man and the official alike. Confucianism became the primary method by which rulers maintained social order and discipline. This self-policing approach to social regulation was preferred absolutely over the Legalist external system of rules and laws. As Confucius wrote in the fifth century B.C.

Guide [the common man] by edicts, keep [him] in line with punishments, and [he] will stay out of trouble but will have no sense of shame. Guide [him] by virtue, keep [him] in line with the rites, and [he] will, besides having a sense of shame, reform [himself].

47 Id. at 23.
48 FAIRBANK, supra note 32, at 59.
50 Such severe violations included murder of a social superior, or social insurrection.
The Confucian socio-political-ethical system served as an effective social regulator throughout the Imperial Period and until the nineteenth century A.D. During the nineteenth and twentieth centuries, when the traditional political system was defeated by the combined effects of Japanese invasion, the influx of foreign ideas and the general deterioration and corruption of Imperial leadership, there existed no formalized system of legal restraints to curb the whims of the new leadership.

B. The Emergence of Communist China

In 1912, China's Dynastic period came to an end and the old Confucian-based social and legal order fell under attack from the competing ideologies of the modern era, including Nationalism and Communism. Nationalism began as a revolution of the intelligentsia, unified by the powerful warlord and later President of Nationalist China, Chiang K'ei-Shek. Between 1919 and 1949, Nationalism struggled to establish itself against the rising and ultimately successful Chinese Communist movement. Since 1949, the Communists have ruled China and Marxism-Leninism-Mao Zedong Thought has been the dominant ideology. It marked a new approach to government, law and politics in China, but simultaneously retained many familiar characteristics of the uniquely traditional Chinese approach to law and society.

The Chinese Communist revolution, led by Mao Zedong, was a grass-roots rebellion in the tradition of Imperial Chinese rebellions. The rebels implicitly invoked the Mandate of Heaven because Chiang K'ai-Shek's Nationalist government failed to restore social harmony once it took power. Unlike traditional rebellions, however, Mao sought a complete social revolution, not merely an overthrow of the existing government leaders. He tore down the 2000-year-old Confucian construct and replaced it with a new Communist-based ideology. After a brief alliance with the Soviet Union in the early 1950s, China split with the Soviets and searched for its own ideological model of Communism, law and society.

The mid-1950s through 1976 was a period marked by radical
shifts in ideology and power base. Chinese-style Communism declared itself a new and improved version of all that had preceded it. This new ideology rejected, just as had Confucianism during the Han Dynasty, formal law as a tool of the oppressor classes. Mao abolished any legal codes that had been established under the Soviet alliance, declaring that there was no need for such codes because the people would be brought into line by following the Communist Thought.\(^52\)

The first Constitution of Communist China was promulgated in 1954, but in practice was never referred to as a legally authoritative document. A system of people's courts was established for purposes of trying and reforming the "bourgeois" elements of society. All aspects of law, including the courts, were ruled by the new ideology, at the exclusion of all other legal tools. As announced by Chao Yuan, President of the Higher Provincial People's Court of Fujian to the Fujian People's Congress: "[t]he people's courts must not only observe the policy and directives of the Party, but also obey the direction and supervision of the Party over adjudication of actual cases."\(^53\) In 1957, the few law schools that were in operation altered their curriculum from legal disciplines to political ones.\(^54\) By 1967, during the Cultural Revolution, all law schools were shut down entirely.\(^55\)

In 1958, Mao decided to accelerate the Communist transformation of China. With the "Great Leap Forward" he instituted a policy of rapid mass collectivization of rural areas, forming multiple agricultural and industrial collectives. All citizens were to serve the communal goals of their collective and of the society at large and to find motivation exclusively from the Communist ideology. The Great Leap Forward suffered from a lack of appropriate planning and technology and it stretched the capacity

\(^{52}\) David F. Forte, Western Law and Communist Dictatorship, 32 Emory L. J. 135, 204 (1983).
\(^{53}\) Id. at 190.
\(^{55}\) Id. at 32.
of Maoist ideology past its limits. By 1962, the Great Leap Forward was shown to be an economic disaster with widespread food shortages and mass discontent. As Professor John King Fairbank noted, "If the revolution collapsed from general overwork and exhaustion, the damaging of incentives and the incapacities of management." Political factions within the Party competed with Mao and favored instituting a more pragmatic and systematic approach to economics, law and social reform.

Mao decided, however, that his revolution simply had not gone far enough and he led the masses in the direction opposite to pragmatism. During the Cultural Revolution, 1966-76, Mao declared that all policies that were aimed at rationalization of government, systemization of laws and even technical development were revisionist and a plot against Communist revolutionary principles. The Cultural Revolution was Mao's final attempt to institute his personal conception of the purely ideology-driven state in perpetual revolution. Mao organized a civilian force of unarmed revolutionaries, the Red Guards, to spread Mao Zedong Thought and weed out all counter-revolutionary and "revisionist" elements in the government and universities. Top government officials, scientists and intelligentsia were removed from their posts and sent to the countryside for "re-education" in the ways of the peasant masses. Such "enemies of the people," as many as 100 million by some estimates, were subject to censure, discipline, public humiliation and even death at the hands of the Red Guards. As Chinese scholar Wang Xizhe noted: "the more inhuman and cruel the manner in which one behaved toward[s] 'class enemies,' the more one showed the firmness of one's 'proletarian class standpoint.'"

What few positive laws existed after two decades of total politicization were denounced in 1967 in the Communist Party newspaper, the People's Daily, as class-based bourgeois restraint

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56 FAIRBANK, supra note 32, at 408-12.
57 Id. at 413.
58 FOX BUTTERFIELD, CHINA, ALIVE IN THE BITTER SEA 17 (1982).
59 Id. at 18-19.
60 CHEN, supra note 54, at 31.
against the revolutionary masses.\textsuperscript{61} Government was run without any formal laws and received little or no "guidance" from the constantly shifting, inherently unstable and radically based ideology of Maoism. Government posts were filled by Maoist revolutionaries; the sole criterion for appointment was devotion to Mao Zedong Thought. The 1954 Constitution was declared invalid. A new Constitution, an ideologically self-serving document, was not promulgated until the final year of the Cultural Revolution. Legal disputes were handled by peasant groups following Mao Zedong thought.\textsuperscript{62}

The Cultural Revolution was to be the ultimate period for perpetual class struggle, an armageddon of ideology that was to culminate in widespread doubt regarding any ideology, be it Confucian or Communist. As noted by scholar Xu Xing:

\begin{quote}
Human rights and dignity were . . . deliberately trampled upon; the theory and practice of class struggle eroded the traditional values of benevolence, compassion, sympathy and trust and brought into being a society filled with suspicion, hostility and the revolutionary "virtue" of "class hatred."\textsuperscript{63}
\end{quote}

Shortly after the death of Mao in September of 1976, the ideology of perpetual revolution was fully denounced and repudiated. Marxism-Leninism-Mao Zedong Thought and the radical and frequent shifts of ideological position and power plays destroyed the self-regulating potential of this ideologically based system. Its capacity for protecting the people or preserving harmony during a volatile period was exposed as inherently fragile. The period 1977 to 1989 saw a shift away from exclusively ideologically based law and politics and a move toward systemization and rationalization. In 1980, Deng Xiaoping emerged as the leader of Communist China.

\textsuperscript{61} Id.
\textsuperscript{62} LAW IN THE PEOPLE'S REPUBLIC OF CHINA: COMMENTARY, READING AND MATERIALS 12 (Ralph H. Folsom and John H. Minan eds., 1989).
\textsuperscript{63} CHEN, supra note 60, at 31.
IV. THE FRAGILITY OF HUMAN RIGHTS PROTECTION IN MODERN CHINA

As shown in the discussion above, the Chinese perception of rights has always been driven by ideology and viewed from the perspective of group interests. These culturally based perceptions have had important implications for the character, nature and stability of human rights in China. Our discussion now proceeds with an analysis of the effects this heritage has had on human rights in modern China.

A. The Effect of Ideology Over Rule of Law on Chinese Human Rights.

Throughout the Imperial era, China's preference for ideology over rule of law thwarted the development of an independent legal system. Ideology defined correct action and state ideology reigned above the law. The natural law of Confucianism backed by Daoism nominally set a limit on the Confucian leader's discretion to make and interpret law. However, since it was believed that only the ruler, the supreme sage of the worldly order, had the capacity to comprehend the Confucian Classics and the Dao, the leaders answered to no one but the mystical forces of the universe.

As discussed above, Confucianism established a state-mandated correct moral behavior which was merged with the social necessity of law and order. The law manifested itself primarily as an internalized system of control through enforced moral "persuasion," supplemented by a limited positive legal code of sanctions. This tradition of self-policing persists in Communist China's merging of political institutions and power. The power to make and pass laws, and to amend the Constitution rests with the

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64 Turner, supra note 36, at 24.
65 Id. at 42.
National People's Congress. The power to interpret the Constitution and review laws for their constitutionality resides in the Standing Committee of the National People's Congress. The Standing Committee is completely controlled by the National People's Congress, whichelects and has the power to recall all members of the Standing Committee. Thus, the same political organ that makes laws, and amends the Constitution, has complete control over Constitutional review, thereby removing any institutional safeguard against the legislature drafting laws that may be in violation of any of the "rights" declared in the Constitution.

While Confucianism was strong during much of the Imperial era, its precepts and demands on the common man were basically predictable. As foreign ideologies came to compete with Confucianism during the nineteenth and early twentieth centuries, however, the populous was still predisposed to follow ideology over rule of law and could be manipulated by the most powerful ideologue. In modern China, Mao, while ostensibly rejecting Confucianism's precepts, maintained that society could be re-made through education under his new Communist ideology: "[A person] should be both red and expert" was Mao's battle-cry. During the first 27 years of Communism under Mao, the traditionally based commitment to ideology and the lack of an independent legal system left the people vulnerable to Mao's manipulations. As China scholar Alice E. S. Tay noted, "[the central concept of law] is that of steering society."  

66 ZHONGUA RENMIN GONGHEGUO XIANFA [Constitution] art. 62 (P.R.C.) [hereinafter P.R.C. CONST.].
67 Id. art. 67.
68 Id. art. 65.
70 "Red" refers to political goals; "expert" refers to professional characteristics. Speeches at the Supreme State Conference, excerpts Jan. 28 and 30, 1958, in 9 CHINESE L. & GOV'T 71 (1976).
71 Alice E. S. Tay, The Struggle for Law in China, 21 U. BRIT. COLUM. L. REV. 561, 580 (1987). Professor Tay was referring generally to all Communist legal systems. Tay's comment is particularly applicable to Communist China.
The radical and constantly changing ideological shifts under Maoism left the people distrustful of any system based exclusively on ideology. For the first time since the age of Legalism in the 3rd century B.C., upon the death of Mao in 1976, rule of law became an attractive alternative to the chaos of modern ideology. As this new pragmatism was becoming defined, a new Constitution was promulgated in 1978. In December 1978, Deng Xiaoping asserted his official position on rule of law at the Third Plenary Session of the Eleventh Central Committee of the CPC:

In order to safeguard people's democracy, the legal system must be strengthened. Democracy needs to be institutionalized and legalized so that such a system and such laws would not change merely because of a change of leadership or a change in the leaders' views and attention. Still, however, ideology continues to compete with the rule of law in the hearts and minds of modern Chinese leaders as the preferred approach to social regulation. As Professor Surya Prakash Sinha recently noted: "Law is resorted to only when all else has failed . . . . Law is for the morally perverse, the incorrigible criminal, and the foreigner who is alien to Chinese values." Even the most recent Communist Constitution, which replaced the 1978 version in 1982, describes an ideologically motivated legal system, albeit tempered by the new pragmatism. Several sections within the text of the Constitution itself are actually in conflict with one another regarding the status of ideology relative to law. Article Five, for example, seems to place rule of law above the Party and its ideology: "[a]ll state organs, the armed forces, all political parties and public organizations and all enterprises and

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72 CHEN, supra note 54, at 33.
undertakings must abide by the Constitution and the law.\[74\]

The Preamble indicates, however, that the Party and Communist ideology must be the nation's guiding force: "[u]nder the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and follow the socialist road . . . ."\[75\]

Article One furthers the Preamble's priority of ideology over rule of law. It declares that the working class -- the alliance of workers and peasants -- is the leader of the "democratic dictatorship."\[76\] The Party and its guiding ideology is thereby established as the preeminent force, because it is through the Party structure that this democratic dictatorship is exercised.\[77\]

The skepticism and distrust of rule of law has been integrated into the modern Communist "class struggle." Recently, Justice Minister Cai Cheng declared that, "China must jettison the concept of 'the supremacy of the law' because the judicial code and system must be at the service of the proletariat class."\[78\] The President of the Supreme People's Court, Ren Jianzin, stated, "[i]t is a mistake to think that, because there is law, justice can be executed without the guidance of [Party] policies."\[79\]

Strong indications exist, however, that certain sectors of the population genuinely do support a system based on rule of law. A 1982 editorial in the People's Daily extols the following warning which is most significant for human rights in modern China. "Not to empha[z]e the legal system, not following the law and acting as if there were no law above oneself -- this benefits bad elements and does not benefit the people. This painful lesson is one which we must

\[74\] P.R.C. CONST. ch. 1, art. 5.
\[75\] Id. pmbl.
\[76\] Id. ch. 1, art. 1.
\[77\] BASIC PRINCIPLES OF LAW 102 (Central Party School Law Unit ed., 1984).
\[78\] Willy Wo-lap Lam, Justice Minister Rejects Supremacy of the Law, S. CHINA MORNING POST, Nov. 12, 1991 at 12.
\[79\] FOLSOM, supra note 49, at 93.
always remember.\textsuperscript{80}

B. Universal Harmony and its Implications for Individually Based Human Rights.

The supreme goal of universal harmony has had three important effects for modern perceptions of human rights in China. First, it established a firm preference for formal mediation over litigation for questions of rights and violations of law.\textsuperscript{81} In the absence of arbitration, rights, if they are recognized at all, are never clarified or enforced by the courts. The adversarial nature of arbitration has indirect, but highly significant benefits for human rights development because it aims at illuminating and refining the legal issues; where rights are involved, they are defined, refined and acknowledged. The judge's decision decides which legal argument is best and most indicative of justice and by his holding, the judge identifies and authorizes the existence of a right. As China scholar Alice E. S. Tay noted:

\begin{quote}
A social ethic oriented toward mediation and compromise, toward recognizing the extent to which another person's emotions and dignity are involved in his claim, rather than toward the abstract question of the justice of his claim, is likely to avoid any clear, uncompromising definition of rights or claims \textit{ab initio}.\textsuperscript{82}
\end{quote}

Since community harmony and the hierarchical social code demanded strict submission to the authority of one's superiors, even the most seemingly trivial challenge to the hierarchy was unacceptable. Challenging one's father was viewed as a threat to

\begin{itemize}
\item \textsuperscript{80} CHEN, \textit{supra} note 54, at 35.
\item \textsuperscript{81} Tay, \textit{supra} note 71, at 561.
\item \textsuperscript{82} \textit{Id.} at 561-62.
\end{itemize}
society similar to rebellion against the emperor.\textsuperscript{83} Only where one was morally justified in challenging authority, as under the Mandate of Heaven when the emperor was deemed to be acting contrary to the interests of the community, could such a challenge be acceptable. Even then, whether the rebellion was justified was directly dependent upon the success of the challenge. An unsuccessful rebellion was, retroactively, an unjustified one.

Maintenance of harmony, in the modern context, has come to mean political repression. The government strictly regulates political participation so as to avoid the possibility of rebellion. During the Tiananmen Square protests of 1989, students, teachers, workers, government employees and the press peacefully assembled and called for official recognition of civil, political, economic, social and cultural human rights.\textsuperscript{84} In response, the government declared martial law approximately one month into the protest, which remained in effect for nearly eight months. Two weeks following the imposition of martial law, a clash between the protesters and government troops led to the killing of at least one thousand unarmed civilians.\textsuperscript{85} It is difficult to justify such extreme repression even in Chinese culturally based rights terms.

\textbf{C. Human Rights as Citizens' Duties at the Service of the Communist State}

While individual human rights offended traditional China's hierarchical social order and the goal of universal harmony, individual duties advanced these traditions. One's duties were derived from one's place in the social order. Rights existed, if at all, only as a reflection of the duties owed in a reciprocal Confucian relationship. For example, a son owed a duty of filial piety to his father, and the father had the right to have this duty fulfilled.\textsuperscript{86} The

\textsuperscript{83} FAIRBANK, \textit{supra} note 32, at 71-74.
\textsuperscript{84} KENT, \textit{supra} note 36, at 1-2.
\textsuperscript{85} Id. at 1.
\textsuperscript{86} HYUNG I KIM, \textit{FUNDAMENTAL LEGAL CONCEPTS OF CHINA AND THE WEST} 120 (1981).
ruler owed a duty to heaven and earth to maintain social harmony. The subjects, in return, owed the emperor a duty of loyalty to follow his example in ordered living and submission to his greater judgment. The state did not owe any duty to any individual and no person could demand individual rights from the state. No concept of rights existed apart from these social and moral duties.

Like the traditional conception of rights as duties, the rights granted in the 1982 Communist Constitution are directly linked to individual duties. "Rights" are conferred by the state to its citizens. This means that "rights" in China exist at the prerogative of the state, and are only awarded to those who are legally recognized and participating members of society who fulfill their duties to the state. Since they are granted by the state, with certain provisions attached, "rights" may also be modified or lifted by the state. As China scholar, R. P. Peerenboom notes:

[T]he existence of duties per se does not account so much for the detriment to the individual as the fact that duties are owed to the state and the demands upon the individual in the name of socialism are essentially unlimited, defined primarily by the transitory dictates of the Party.  

The first forty-nine articles of the Chinese Communist Constitution cite more rights than are expressly stated in the United States Constitution and nearly as many rights as are contained in the Universal Declaration of Human Rights. Despite this fact, the

87 Peerenboom, supra note 36, at 49.
88 The 1982 Chinese Communist Constitution addresses a substantial number of the economic, social and cultural rights articulated by the Universal Declaration of Human Rights. Some of the internationally recognized human rights which are articulated in the 1982 Chinese Communist Constitution include the following:

(1) Popular sovereignty, in article 2;
(2) Respect for and non-discrimination of ethnic minorities, in article 4;
(3) Right to own property, in article 13;
(4) Promotion of medical care and public health and sanitation, in
Chinese Constitution cannot be interpreted as a guarantor of rights. Rather, it is more nearly a descriptive statement of goals, a blueprint of sorts describing what may be and can be, but not what must be. As Professor Louis Henkin describes:

[T]he Chinese constitution does not claim to be a contract among the people establishing the state, or a contract between the government and the people setting forth the conditions under which the people are prepared to be governed. It is a manifesto, by the leaders to the people, describing the society that exists and its institutions, and proclaiming its values, goals and aspirations.

China scholar Jerome Cohen characterized the Communist

article 21;
(5) Protection of the natural environment in article 26;
(6) Equality among citizens in article 33;
(7) Right to vote and participate in elections, in article 34;
(8) Freedom of speech, press, assembly, association, procession and demonstration, in article 35;
(9) Freedom of religious belief in article 36;
(10) Freedom of person in article 37;
(11) Freedom from unlawful search and seizure, in articles 37 and 39;
(12) Freedom and privacy of correspondence in article 40;
(13) Freedom to criticize the government, in article 41;
(14) Right and duty to work, in article 42;
(15) Right to rest and leisure time, in article 43;
(16) Right to subsidized retirement, in article 44;
(17) Right to material assistance from the state and society when old, ill, or disabled, in article 45;
(18) Duty and right to receive education, in a mother and child, and old people, in article 49.

P.R.C. CONST. (1982).

89 EDWARDS, supra note 36, at 52-53.

90 HENKIN, supra note 36, at 26.
Constitution as: a formalization of existing power configurations rather than an authentic institutional framework for adjusting relations among political forces that compete for power.  

Professor Owen Fiss, in comparing the Chinese Constitutions with the United States Bill of Rights, concludes that it is the "quantity and quality of [the] limits" that distinguishes the Chinese Constitution. The 1982 Communist Constitution permits a significant number of limits on citizens' rights. All individual rights are qualified by Article fifty-one, which asserts the unequivocal priority of group interests over individual rights:

The exercise of citizens of the People's Republic of China 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.

Rights are also circumscribed by Article fifty-four: "[i]t is the duty of citizens of the People's Republic of China to safeguard the security, honor and interest of the motherland; they must not commit acts detrimental to the security, honor and interests of the motherland."

Qualitatively, individual rights are greatly restricted in their practical scope. For example, Professor Fiss discusses the qualitative difference between free speech under the Chinese and American Constitutions:

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91 Cohen was referring to the 1978 Communist Constitution, but his comments are applicable to the current Constitution.


93 Owen M. Fiss, Two Constitutions, 11 YALE J. INT'LL. 492, 495 (1986).

94 P.R.C. CONST. art. 51.

95 Id. art. 54. This provision is utilized by the government to justify suppression of democratic demonstrations, such as Tiananmen Square in 1989, which are considered counter-revolutionary and threats to the security, honor and interests of the motherland.
Free speech in America imposes a limit on statutes or executive or judicial action; it cuts into the law. In China, even under the new constitution, free speech appears as a residue; it remains after we have reached the outer boundary of the statute (or other form of law). Article thirty-five tells citizens what they might do, but is not a restriction on the power of the state. They are allowed to engage in speech that is lawful. In America, individuals are not told what they might do -- it is understood that they could do everything not denied -- but limitations are placed on the state.

The Preamble of the Universal Declaration of Human Rights, in contrast with the Chinese Communist Constitution, pronounces individual rights to be inherent and supreme. Article twenty-nine limits rights only where they are in direct conflict with group interests, and only to the extent necessary to preserve such interests:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Thus, we see that the fragile protection of rights in modern China harks back to a Confucian-style tradition of self-policing among the people, the leaders and organs of government. Such protection suppresses individualism and evades rights definition. The Chinese perception of human rights is propelled by the Communist

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97 Fiss, supra note 93, at 497.
98 P.R.C. CONST. art. 29.
ideology and emphasizes the interests of the community at the expense of individual interests. Finally, the "rights" of the individual are defined relative to his duties to the community, and are subject to qualification, restriction and repression, as defined by the Communist Party elite.

V. UNIVERSALITY VERSUS A CULTURALLY RELATIVISTIC APPROACH TO HUMAN RIGHTS

The Chinese priority of group interests over individual rights leads to a preference for group-oriented rights and privileges. This priority results in the suppression of individually based political rights. Political rights are viewed in a similar capacity as China has viewed rule of law: they are artificial constructs, which are unnecessary in an ideologically sustained culture, and serve only the interests of the individual. Group rights, such as subsistence rights, on the other hand, benefit all of society. China asserts that economic and social rights serve advance the national interest and that their implementation must take priority over any political rights concerns.

Scholars in the fields of politics, philosophy, law and human rights have debated the culturally relativistic approach to human rights. The next sections will examine some theories of cultural relativism and then proceed with a discussion of the new universality principle.

A. Cultural Relativism

The general argument in support of cultural relativism

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99 Group-oriented rights generally include subsistence economic rights, as well as social and cultural rights. For a catalogue of these rights as recognized by the international community, see the International Covenant on Economic, Social and Cultural Rights, supra note 3.

100 Individually based rights, or "first generation rights" are described by the international community in the International Covenant on Civil and Political Rights and its Optional Protocols, supra note 3.
maintains that an individual nation should have the prerogative of prioritizing rights in a manner appropriate to its culture and political and economic circumstances.\(^\text{101}\) Cultural relativist theorists tend to focus on those nations that prefer economic rights over political freedoms. Opponents to cultural relativism normally attack the theory by showing the importance of political rights even where economic concerns are present.

Particularly for economically poor nations, the cultural relativist asserts that the satisfaction of sustenance needs is of far greater concern than individual political interests.\(^\text{102}\) Where political institutions are either weak or so new to the culture that they are ineffective, political participation normally results in social chaos. Distribution of sustenance needs is made more difficult, if not impossible by such social chaos. Once economic development is attained and all people are fed, clothed, have a job and a place to live, then the priority may possibly shift to political rights and institution-building, depending upon the particular circumstances of the nation. According to the "full-belly" thesis, a man's belly must be full before he can indulge in the "luxury" of worrying about his political freedoms.\(^\text{103}\)

Rhoda Howard patently denies the proposition that the resolution of economic and political human rights in developing countries should or even can be a sequential process. She notes that without political rights, no checks exist on government to ensure the equitable distribution of the products of economic development. Howard asserts that "psychological sustenance," as distinct from physical sustenance, requires that citizens feel a sense of personal dignity and individual control or influence over their own lives.\(^\text{104}\)

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\(^\text{101}\) See Jack Donnelly, Cultural Relativism and Universal Human Rights, 6 HUM. RTS. Q. 400 (1984).


\(^\text{104}\) Id.
This human dignity can be guaranteed only through civil and political human rights. Thus, Howard states, "suspension of civil and political rights in these countries until after economic development has been achieved will in effect mean that neither development nor rights will be attained."  

Han S. Park proposes a dialectic or mutually reinforcing relationship between economic and political human rights and development. "Human dignity," Park notes, "cannot be guaranteed by political rights alone, nor are the political rights perfectible without economic and social rights." According to Park's thesis, the suspension of any one of the categories of human rights -- economic, social or political -- retards the development of all human rights.

Clearly, there is validity to the argument that sustenance rights are important. Neither sustenance rights nor political rights, however, are the exclusive domain of particular cultures. A culturally relativistic approach should not disfavor either body of rights.

105 Id. at 490.
107 Id.
B. The Universality Principle

The Universality position consists of four elements. First, universality condemns the practice of prioritizing human rights within a country or community, and particularly disdains the repression or exclusion of one or more "generation" of rights. Second, universality holds that human rights are inherently universal and that international human rights instruments provide a basic minimum standard of compliance. This means that regardless of the cultural context, the human rights contained in the Universal Declaration of Human rights, among other international instruments, are universally applicable and universally morally binding. As stated in the Vienna Declaration:

All human rights are universal, indivisible and inter-dependent and inter-related. The international community must treat human rights globally in a fair and equal manner in the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.


110 Civil and Political rights are referred to as first generation rights; economic, social and cultural rights are "second generation," and group rights, including national and world peace and economic development are "third generation." *Kent, supra* note 36, at 5-6.

111 Universal rights extend across national boundaries and embrace all cultures and peoples.


Third, where international norms and national standards are in direct conflict, the international standards must prevail.\textsuperscript{114} Finally, it is the duty of the international community to enforce international human rights, and such enforcement must not be considered an unlawful intrusion on domestic sovereignty.\textsuperscript{115}

Of the 180 nations that attended the World Conference and debated over the drafting stage of the Vienna Declaration, all participants approved of the final document. It is important, however, to note that the Vienna Declaration, like all United Nations declarations, is not a legally binding document. It is merely a morally persuasive declaration of principles. Furthermore, in the face of unanimous approval, many of the nations that approved the document also registered formal reservations and disagreement with select words or passages.

The debate over universality versus cultural relativism is not at an end with the approval of the Vienna Declaration. It has merely shifted to subtler expressions of position. To a large degree, cultural relativism has been dressed up in new terms which ostensibly favor universality, but in reality reject it.

For example, Counselor Timothy E. Wirth, Director of the United States Delegation to the World Conference, in support of universality has stated:

\begin{quote}
[The United States] respect[s] the cultural differences that make all societies and countries unique. But when we talk about human rights, we cannot qualify them by making exceptions. No accident of birth, culture or geography limits a human being's inalienable rights . . . . Our commitment to human rights is global, just as the United Nations Declaration is universal.\textsuperscript{116}
\end{quote}

\textsuperscript{114} Muntarbhorn, \textit{supra} note 109.
\textsuperscript{115} \textit{Id.}
\textsuperscript{116} Materials from the United States Delegation to the Vienna Conference (on file with the author).
Yet, in a United States Delegation Fact Sheet distributed at the World Conference, the United States position on universality asserts that, "[Respect for and protection of individual human rights] must be the *basis* for economic growth and development -- not an end-product of prosperity."

This latter statement appears to separate the concept of human rights from economic growth and development although economic growth and development are integral elements of the rights described in the Universal Covenant on Social, Economic and Cultural Rights. This policy of separation belies the spirit of the Vienna Declaration and the universality principle as it distinguishes economic and development rights from the greater body of human rights. Indeed, the United States appears to continue to place political freedoms above economic rights and fails even to recognize explicitly economic growth and development as a right. Compare this with China's official statement on Universality: it is a simple truth that, for any country or nation, the right to subsistence is the most important of all human rights, without which the other rights are out of the question.

At the Bangkok Conference, representatives of forty-nine Asian nations revealed their preferences for cultural relativism in the Bangkok Declaration:

> [We] recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of International norm-setting, bearing in mind the significance of national and regional particularities and various

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117 Fact Sheet: US Human Rights Goals and Objectives (on file with the author) (emphasis added).
118 Vienna Declaration, supra note 108.
120 The Bangkok Conference was a preparatory meeting to the Vienna World Conference for leaders of Asian nations.
historical, cultural and religious backgrounds . . . .

*Human rights must take into account a nation's historical background and culture.* Western-based "international" human rights threatens Asia's right to sovereignty (to choose what rights they deem to be important) and right to development (because under international instruments, political rights must be instituted with no delay, and economic rights may be instituted at the pace and within the resources of the given country).\(^{121}\)

Like the Bangkok Declaration, the Tunis Declaration\(^{122}\) reflects the culturally relativistic views of African leaders and states, in relevant part:

The observance and promotion of human rights are undeniably a global concern and an objective to the realisation of which all states, without exception, are called upon to contribute. However, *no ready-made model can be prescribed at the universal level* since the historical and cultural realities of each nation and the traditions, standards and values of each people cannot be disregarded.\(^{123}\)

Yang Xiyu, a member of China's delegation to the World Conference and an officer of China's Institute of Contemporary International Relations expressed his culturally relativistic views: "Who can say which is the best? We should allow people to think about human rights in different ways . . . we should follow national

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\(^{121}\) *Bangkok Declaration on Human Rights*, English version, item 8, adopted by Asian States, March, 1993 (emphasis added).

\(^{122}\) The Tunis Conference was a preparatory meeting of African States to the Vienna World Conference and was held in 1992.

\(^{123}\) *Tunis Declaration*, Item 5 (emphasis added).
conditions, situations and uniqueness."\(^{124}\)

A political activist at the Bangkok Conference accused the Universality principle of Western bias, asserting that only cultural prejudice, not cultural relativism, could "explain why a country which feeds 1.2 billion human beings -- an unparalleled accomplishment in the annals of human history -- is dismissed contemptuously as a country which has no human rights record."\(^ {125}\)

Thus, the debate between universality and cultural relativism rages on.\(^ {126}\) China perceives all rights as privileges awarded by, and subject to the discretion of the state. When rights are discussed in China, China's leaders unequivocally favor economic and other group-oriented privileges and reject political freedoms. Xiao Qiang, director of Human Rights China\(^ {127}\) proposes one resolution to the conflict: "[t]here are cultural differences and specific differences between countries, but that doesn't mean that citizens cannot enjoy human rights standards. It just means [that non-governmental organizations] and governments must find their own practical solutions to achieve it."\(^ {128}\)

VI. TOWARD AN INTEGRATED APPROACH OF UNIVERSAL STANDARDS AND CULTURAL SENSITIVITY

This paper has attempted to show how the different nations of the world community speak distinct languages of human rights. At the United Nations World Conference of Human Rights, when


\(^{125}\) Sidney Jones, *Culture Clash*, J. HUMAN RTS. CHINA, Summer 1993, at 8-9, 22.

\(^{126}\) The United States continues to resist recognizing or guaranteeing economic rights on the same footing as political rights.

\(^{127}\) Human Rights China, China's only officially recognized human rights organization, participated in the protest which was suppressed at Tiananmen Square in 1989.

Chinese delegates declared acceptance of the Universality principle, they were saying, "all rights that we recognize to be rights are universal." Since "rights," as such, are translated as duties in the language of Chinese human rights, and political human rights, in particular are not part of the Chinese cultural tradition, China can assent to the principle of Universality. Meanwhile, it can guarantee no human rights at all, and instead grants a select group of rights as qualified privileges at the discretion of the state. Such an approach to rights compromises the integrity of Universality and threatens its usefulness as a principle of international human rights.

One step toward a solution may be for the world community to formally acknowledge China's distinct cultural heritage and social needs and to recognize its accomplishments in human rights on Chinese terms. This solution would be an integration of the Universality principle with a measure of cultural sensitivity. Such an acknowledgment, however, must not excuse violations of international norms. Culturally based Chinese rights must not be at the expense of the fundamental rights defined by the international community.

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129 This statement applies not just to China, but also the United States and most other nations.

130 The Communist Party can certainly be credited with making significant advances toward meeting its citizens basic subsistence needs of food, shelter, work and medical care.