

Opinion

Human Rights and "Asian Values"

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In recent a gesture timed to coincide with a state visit to Washington by Chinese resident Jiang Zemin, China became a signatory to the International Covenant on Social, Economic, and Cultural Rights (ICSECR). Like much else in US-China diplomacy, the decision to sign the treaty was open to multiple interpretations. At one level, Chinese leaders were conceding the existence of universal human rights, whose protection is not merely an "internal matter" or a cultural norm. But in doing so, they hoped to forestall American criticism of their human rights record—and even to embarrass the United States, which had only just signed (and has yet to ratify) the 30-year-old treaty. Moreover, these same leaders conspicuously refused to sign the International Covenant on Civil and Political Rights (ICCPR). This allowed President Jiang to appear unyielding to outside pressure, while reaffirming his government's view that the struggle for development and social-economic rights should take precedence over the exercise of civil-political rights.

More recently, China has hinted that it might take a more balanced view. In an interview shortly before the annual meeting of the U.N. Human Rights Commission, the Chinese foreign minister suggested that eventually his government would sign the ICCPR. In response, the United States dropped its support for a resolution criticising China's human rights practices. But most observers doubt that the foreign minister's remarks signalled a genuine change in policy, and there has been no retreat from official statements asserting the priority of socio-economic rights over civil-political rights.

China's emphasis on social-economic rights has been echoed by other Southeast Asian leaders, and defended as an expression of "Asian values". But this does not mean that all Asians agree with it. Prior to the International Human Rights Conference in Bangkok in 1993, Asian human rights groups issued a joint declaration demanding "a holistic and integrated approach to human rights". In particular, they insisted that people must not be compelled to sacrifice their civil and political freedoms in exchange for promises of economic well-being. "One set of rights," they pointedly warned, "cannot be used to bargain for another."

It is not difficult to see why these Asian groups uphold the doctrine that human rights are indivisible. From their own monitoring activities, they know that serious abuses of social-economic rights— exploitation of workers and peasants, lack of assistance to the poor and needy, failure to provide adequate education in poor rural regions— are often committed by the very governments who claim to give priority to these rights. They are not deceived, therefore, by the claim that citizens in these countries have won protection of their social-economic rights by forfeiting their civil-political liberties. Moreover, these activists often campaign for civil-political freedoms that can help to expose and correct violations of

social-economic rights. In urging governments to tolerate criticism of official policies, to safeguard freedom of expression, and to begin democratic reforms, they recognize the extent to which the two sets of rights are interrelated.

A New Challenge

By making social-economic rights an explicit part of their agenda, however, the Asian activists have also departed from the standard approach of the major international human rights organizations. These organizations have long recognized the distinction, embodied in the covenants, between two classes of rights. But unlike the Chinese leadership, they have appeared to assign priority to civil-political rather than social-economic rights. Amnesty International, for example, has campaigned to "free all prisoners of conscience," "ensure fair and prompt trials for political prisoners," "abolish the death penalty, torture and other cruel treatment of prisoners," and "end extra-judicial executions and 'disappearances.'" Its members have not usually been urged to write letters to protest lack of protections of the right to food, housing, medical care, or education. Such priorities are consistent with the founding mission of these organizations: to monitor political repression in totalitarian countries during the Cold War. Human Rights Watch was created as "Helsinki Watch" in 1978 to defend "freedom of thought and expression, due process and equal protection of the law," to document and denounce "murders, disappearances, arbitrary imprisonment, exile, censorship and other abuses of internationally recognised human rights" in the Soviet Union and Eastern Europe. But as these groups have devoted greater attention to human rights violations in the developing countries of Asia, their emphasis on civil-political rights has made them vulnerable to charges of cultural imperialism. Governments of these countries have been able to dodge criticism by noting Western activists' apparent lack of interest in social-economic rights, and to respond that they are concentrating on the promotion of these rights instead.

For this reason, some human rights organizations are now asking whether they ought to adopt a more "integrated" and balanced approach. Their aim is not to retreat from advocacy for civil-political rights, but rather to address social-economic rights more consistently and forcefully than in the past. In exploring this option, they must reassess one legacy of international human rights law: the idea that civil-political and social-economic rights are two distinct classes of rights, and that civil-political rights should take precedence since social-economic rights can only be progressively realized. This essay offers a historical and conceptual analysis of this legacy.

The Affordability of Rights

The two international covenants on human rights were adopted in 1966, almost twenty years after the United Nations' Universal Declaration of Human Rights. Although the covenants were a historic landmark in making international human rights standards legally binding, they also planted the seeds for much dispute on the question of priority between the two sets of rights. The usual assumption has been that if there are two sets of rights, there must be a hierarchical relation ordering them. In general, the language of these documents seems to recognize an absolute obligation to respect civil-political rights, but only a relatively less-committed obligation to respect social-economic rights. Civil-political liberties are treated as relatively independent of economic resources. For example, the ICSECR obligates each state "to take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized" (Article 2.1). In contrast, the ICCPR obligates states more stringently. Each is to "respect and to ensure to all individuals within its territory and

subject to its jurisdiction the rights recognized" and "take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to [these] rights."

The wordings give legitimacy to the interpretation that full respect for social-economic rights is largely a matter of resources, whereas full respect for civil-political rights is largely a matter of self-restraint on the part of governments. When resources are simply not there, poor developing countries should not be expected to honour their obligation to protect social-economic rights, which often requires extensive public provision and services. Protection of civil-political rights, however, remains their absolute obligation, since such protection requires only toleration of individual liberties.

The covenants, then, assume that the two classes of human rights can be distinguished according to their affordability. But when we examine civil-political and social-economic rights, we do not find that the most "expensive" rights appear in one class, and the "cheap" rights in the other. Rather, there are expensive rights (as well as cheap ones) in both categories. For example, poor societies may not have the necessary resources to build legal institutions that safeguard everyone's right (as specified in the ICCPR) "to a fair and public hearing by a competent, independent and impartial tribunal established by law," "to have adequate time and facilities for the preparation of his defense," "to defend himself in person or through legal assistance of his own choosing" or "to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any case if he does not have sufficient means to pay for it" (Article 14). Implementing these rights requires large public expenditures and well-trained judges, lawyers, and law enforcement officers.

Other civil-political freedoms, it is true, are not so expensive to implement. The right to free expression can, under normal peaceful circumstances, be duly respected if a government refrains from interfering with its exercise. Likewise, the right not to be tortured and not to be held in slavery, the rights to freedom of thought, conscience and religion, and the right to freedom of association do not need significant public expenditures to be enjoyed. Nor is the cost prohibitively high for a host of other basic civil-political rights, such as the right to liberty of movement or the right to peaceful assembly (though countries afflicted by political violence may have to spend public funds on security personnel to protect the peace when people exercise these rights). Still, the distinction between rights that must be "progressively achieved" and those that can be immediately protected does not correspond neatly to the distinction between social-economic rights and civil-political rights. Certain social-economic rights are relatively independent of available resources and can be immediately protected. Workers' right to form autonomous unions, and the right of men and women to enter freely into marriage, are two such examples.

Degrees of Urgency

Another way to support the distinction between the two classes of rights, and to justify a priority-ranking based on that distinction, is to say that violations of rights in one category are more profoundly destructive of human life and dignity than violations of rights in the other category. To judge this claim, we must consider the range of rights encompassed under each covenant. As our earlier discussion indicates, the civil-political rights enumerated in the ICCPR include the right to life, the right not to be held in slavery or servitude, and the right not to be subjected to arbitrary arrest or detention; the rights to freedom of thought, conscience and religion; and the rights to freedom of movement, expression, association, and peaceful

assembly. The social-economic rights enumerated in the ICSECR (the issue of cultural rights are not discussed here) include each person's right to work; to form and join trade unions; to enjoy an adequate standard of living, including "adequate food, clothing and housing" and "the continuous improvement of living conditions"; the right "to the enjoyment of the highest attainable standard of physical and mental health"; and the right to education.

Now, it is hard to imagine anyone believing that all the civil-political rights recognized in the ICCPR should be given priority over all the social-economic rights recognized in the ICSECR, or vice versa. Human rights groups, for instance, have never contended that the right to free legal counsel is more important than the right not to be starved. Similarly, those who criticize such groups for emphasizing civil-political rights are presumably not hoping that Amnesty will abandon its campaigns against torture and capital punishment in order to lobby for health insurance reform and paid vacations for everyone. What the critics presumably have in mind is a fundamental core of social-economic rights (to basic subsistence, for example) that they think should be accorded as much importance as, say, the right not to be arbitrarily detained.

All sides should be able to accept some rough priority-rankings within each of the two sets of human rights. The right not to be tortured should inspire a more stringent prohibition than, say, the right of the accused to have a public hearing. But this example yields a further lesson as well. Human rights are interrelated; if an activist group is trying to prevent torture and "disappearances," one strategy is to insist on public hearings for accused persons. Some seemingly less urgent rights may thus be important because of their instrumental role in securing other, more urgent rights. In choosing their objectives and tactics, then, human rights groups cannot simply select the most urgent rights and campaign exclusively for them. Decisions about what issues to emphasise will not rely solely on judgements of how critical individual rights may be for protecting life and the dignity of the human person.

The Interdependence of Human Rights

So far, we have examined two rationales for giving priority to one class of human rights over the other. The first emphasised resources, asking how promptly a society could afford to implement particular human rights. The trouble with this approach is that the differences in affordability within each category are as significant as any differences between them. The second approach tried to determine which class of rights was more fundamental or necessary to human life and dignity. But here again, we found that degrees of importance vary within each category, as well as between them. We will now consider a final approach, which may be understood as a variant of the first. Some advocates of a distinctively "Asian way" of economic modernization tend to stress that protection of human rights is contingent upon successful economic development. But then, they go on to make two further claims:

- 1) Any meaningful exercise of civil-political rights depends on the attainment of social-economic rights, and so must be deferred until the latter have been realised. In the words of one Chinese government statement, "The right to subsistence is the most important of all human rights, without which the other rights are out of the question."

- 2) The economic development necessary to protect social-economic rights can only be achieved by tightening up controls over civil-political freedom. This argument has also been made by Chinese authorities. For example, in an official statement issued two years after the Tiananmen Square crackdown in 1989, the Chinese government claimed:

“The people's right to subsistence will still be threatened in the event of a social turmoil or other disasters. Therefore it is the fundamental wish and demand of the Chinese people and a long-term, urgent task of the Chinese government to maintain national stability, concentrate their effort on developing the productive forces, . . . strive to rejuvenate the national economy and boost the national strength.”

The statement assumes that the exercise of civil-political freedoms would disrupt "national stability" in a way that threatens economic development. It also assumes that development can be counted on to secure "the people's right to subsistence." How shall we assess these various claims? In contemporary theories of liberal democracy, one can find strong statements suggesting that without basic social-economic rights, civil-political freedom is indeed out of the question. "It is true," wrote Isaiah Berlin, "that to offer political rights, or safeguards against intervention by the state, to men who are half-naked, illiterate, underfed, and diseased is to mock their condition; they need medical help or education before they can understand, or make use of, an increase in their freedom." John Rawls, no less concerned about an imbalance between liberty and equality, developed his two principles of justice to address it. The first principle governs civil-political liberties; the second guarantees the "worth of liberty," acknowledging the importance of social justice and economic well-being in determining whether the first-principle liberties have any actual value.

But liberal social democratic theory does not rest with the observation that civil-political liberties depend on the protection of social-economic rights; it also understands the extent to which this latter group of rights depends upon the first. At least a subset of civil-political rights is indispensable for securing basic subsistence rights (if not all social-economic rights) and therefore essential for human life and dignity. It is this principle of mutual dependency that is missing from the emphasis on the priority of social-economic rights over civil-political liberties. When rapid development in an authoritarian society becomes a national priority and an end in itself, overriding civil-political liberties, those who are subjected to social-economic injustice (which may sometimes be hard to avoid) will have no say in policy-making and no power to protect themselves. An authoritarian government will have little incentive to create even a modest "safety net" for its poorest and most vulnerable citizens. On the other hand, it will have a strong incentive to relax regulations on its labor market and employment protections, and to restrict workers' rights to bargain and to form autonomous unions, in order to exploit the country's cheap labor advantage in a global economy. Maximisation of aggregate growth and neglect of the poor tend to work neatly together. Thus, it is false to assume that economic development translates automatically into protection of social-economic rights.

It is equally false to assume that suppression of civil-political rights necessarily enhances sustainable economic development. Without democratic accountability, the ruling elites are virtually unbound in their power to advance personal interest through their political control of bank loans, public funds, tax revenues, and vital investment information. Cronyism becomes endemic. The government-business-bank alliance in East Asia, for example, has fostered institutional corruption and nepotism and is opposed to the fair and open dealings that are key to free trade. Bad-faith loans, inefficient resource distribution, and the control of information vital for free trade, cultivate unfairness and public distrust of the system, threatening governance and social stability in times of economic crisis.

Strategies for International Monitoring

Recently, major human rights organisations have begun testing new waters in their monitoring work to recognise the complexity of human rights violations, where social-economic rights and civil-political rights are often intricately entangled. Amnesty International has investigated and reported on violations arising from China's population policies, for example. The focus of such investigations remains on civil-political rights violations such as violence against women and arbitrary detention. But there is also a recognition of the special vulnerability of women, given their unequal social, economic, and political status in Chinese society. Human Rights Watch/Asia has reported on child abuse in Chinese orphanages and forced relocation in the Three Gorges Dam Project, again with a focus on abuses of civil liberties and violations of the human person. Moreover, in a 1996 letter to Board members, Human Rights Watch executive director Kenneth Roth proposed new policies on monitoring social, economic and cultural rights. He sought and received approval to experiment with "a very limited incursion into the ESC [social, economic and cultural] rights field" -- that is, only "in situations in which there is a clear connection to violations already within our primary CP [civil-political] rights mandate."

In arguing for this experiment, Roth did not seek to erase the distinction between the two classes of rights. Echoing the language of the international covenants, he maintained that civil-political rights impose "a more absolute obligation," whereas social-economic (and cultural) rights must be "progressively realised" in accordance with available resources. Civil-political rights, he went to say, have "greater clarity," and the expertise developed by Human Rights Watch in "exposing and highlighting" rights violations is "better suited to CP rights." It was for these reasons that he favored making the incursion into social-economic-cultural rights a "very limited" one.

On prudential grounds, the cautious approach outlined in the letter is understandable. It would be unfair to expect a specialised organisation to extend its mandate into a new area all at once. One must also remember that much of the effectiveness of human rights monitoring lies in shaming abusive governments into action by publicising their violations through public media and international forums. Certain civil-political rights violations have the "clarity" that makes such publicity effective. In contrast, criticism of a nation's failure to provide for indigent children or the homeless may be less stigmatising, particularly in the case of poor countries where the causes of deprivation— social, economic, and political— are numerous and complex. However, the principled reasons for limiting the experiment are less persuasive. As we have seen, the distinction between civil-political rights and social-economic rights is not supported by the distinction between "absolute" and "imperfect" obligations, or between rights that can be immediately implemented and those that can only be progressively realised. Not all civil-political rights can be immediately implemented, whereas some social-economic rights can. Human Rights Watch confronts this reality when it monitors problems associated with prison overcrowding in poor countries, or with the devastated judicial system in Rwanda. In such cases, it acknowledges that certain civil-political rights are expensive and can only be progressively realised, at least in some contexts.

It is important for human rights groups to make a realistic assessment of their strengths and effectiveness in specific areas of civil-political rights and social-economic rights, rather than adhering to a principled partition between the two. In the process, they may decide that certain

basic rights, however crucial, fall outside their mandate; the principle that human rights are indivisible does not commit activists to monitoring and protesting and seeking redress for violations of every right recognised by the covenants. But such decisions are best justified on prudential or strategic grounds. They do not follow from controversial categorical differences between civil-political and social-economic rights. There is every reason to think that human rights organisations can gain strategically, and improve their overall effectiveness, by taking on certain social-economic rights abuses— restrictions on union rights, failure to eradicate child labor, failure to promote women's educational and economic opportunities, and failure to provide even minimal assistance for the poor— in carefully chosen contexts. Such a move would draw international attention to a secret well-guarded by authoritarian governments in Asia: their record of violating social-economic as well as civil-political rights. It would also address the concerns of Asian activists who have justly called for a more inclusive approach to human rights monitoring around the world.