

Lacking Pragmatism: Human Rights Policy towards China

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U.S. human rights policy towards China has failed. U.S. government efforts have not helped to improve human rights in China. Moreover, the policy has contributed to growing U.S.-China tensions. As a result, U.S. policymakers face two fundamental challenges. The first is to craft a policy that induces substantive human rights progress in China. The second is to mitigate the pressures of U.S. domestic politics, which continue to restrict innovative policy initiatives.

Over the past decade, foreign policy towards China has shifted in name from "comprehensive engagement" to "strategic dialogue."¹ Despite the name change, the essence of the program has remained consistent: "Positive" initiatives seek to produce desired results through cooperative efforts. Sporadic but vociferous "negative" human rights critiques serve to qualify this otherwise non-threatening program. However, these critiques have functioned largely as fig leaves for U.S. politicians who privately place little faith in the effectiveness of such rhetoric. The public show has imbued Chinese and Americans with a misguided belief that human rights interests and engagement interests are inherently irreconcilable. This misconception has ossified and polarized the debate both within the United States as well as between the United States and China. Resulting tensions

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have had a corrosive effect on U.S.-Sino relations and harmed prospects for human rights progress in China.

An abundance of scholarship has focused on whether an ideological divergence over the understanding of human rights, which is possibly culturally based, lies at the center of the U.S.-China human rights conflict. This discussion is well-documented and I do not seek to add to it in this article. Instead, politically-contrived barriers present a more immediate problem to U.S. human rights policy towards China in particular and U.S.-Sino relations in general. A reorientation of the U.S. approach towards China, guided by the objective of loosening the present deadlock and moving the human rights dialogue from an antagonistic to cooperative mode, will be useful notwithstanding possible ideological disjunction.

The U.S.-China Human Rights Conflict.

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations in 1948. The UDHR was fashioned not as international law, but rather as a "common standard of achievement" towards which all nations would strive.¹ Political scientist and Chinese human rights expert Andrew Nathan describes the UDHR as a "statement of broad principles rather than an enforceable code of conduct."² The "enforcement machinery" of international human rights law is derived from the covenants drafted on the heels of the UDHR.³ The covenants seek to define specific inalienable human rights and restrict state power from infringing on those rights. While most countries are signatories to the UDHR, governments have been more reluctant to sign the various covenants.

The Covenant on Civil and Political Rights and the Covenant on Social and Economic Rights are the pillars of the human rights legal regime. The Covenant on Political and Civil Rights provides for freedoms "to do" and "to have"—freedom to travel, to speak, to vote, to have due process of law. The Covenant on Social and Economic Rights defines freedoms "from"—from hunger, from poverty, from social oppression. Some regard the two covenants as overlapping and mutually supportive. Others see the two promoting potentially conflicting interests when applied within developing and economically-struggling nations.

On one level, the U.S.-China human rights conflict may stem from an ideological debate over these issues. Some suggest that China argues for a more context-sensitive, relativistic understanding of the human rights regime on the one hand, while the United States espouses a more dogmatic interpretation on the other. Others contend that China stresses economic and social rights, while the United States stresses civil and political rights.⁴ Current arguments, however, stress that ideology, while relevant, does not present the most immediate barrier to progress for U.S. human rights policy towards China. Rather, domestic politics represents the most pressing concern.

In the United States, the political climate demands that foreign policy be defensible against human rights criticism. Consequently, China's human rights record has become an oft-used weapon in both domestic and foreign policy debate. The "China stick" is used to attack political opponents for "softness on China." Indeed, the human rights issue has become a political football, kicked around in an effort to garner sup-

port for issues that might have little to do with human rights directly. At times, the stick is used to curry favor with the many constituencies threatened by China's military or economic development or dismayed by its oppressive political system. In such cases, political camps compete to display disgust for China's human rights situation, either because it is their political goal or because they wish to offset their support for trade policies with China. Conversely, political leaders driven by protectionist interests use China's human rights record to support their anti-trade agenda. As a result, human rights policy towards China has become a display of principles rather than a pragmatic effort aimed at eliciting tangible reform. Since the safest and simplest display of political morality in the United States is the advocacy of democracy, this advocacy has come to define U.S.-China human rights policy. Americans may be ideologically averse to conceiving of rights development in any manner other than the abrupt and immediate adop-

political environment requires a prodigious show of principle, but is uninterested in this sort of pragmatism.

In China, both leaders and citizens share a strong opposition to U.S. human rights efforts. Their reaction to the U.S. approach is complicated and understanding it requires a closer look at China's domestic situation.

Why China Rejects U.S. Human Rights Policy.

The survival of the Chinese leadership and the Chinese Communist Party (CCP) rests increasingly on two factors. First, the leadership must ensure economic stability and growth. An economic crisis may lead to untenable levels of unemployment, exposed corruption, and, consequently, social unrest. Second, the leadership must be convincing in its claim that it is fighting corruption, without inciting hysteria over the depth of China's corruption problems. The CCP has been unable to erase widespread evidence of cronyism and graft.

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tion of some critical level of civil and political freedom. Furthermore, our political climate has precluded us from seriously considering the Chinese contention that the pursuit of social and economic rights might conflict with political and civil rights. We demand that both sets of rights be protected, but do not go so far as to suggest how to manage the consequences. The present U.S.

Thus, it must appear to be actively addressing the problem without allowing the entire tree to appear rotten.¹

These domestic concerns, paired with the cultural and educational background of individual leaders, inform the CCP's approach towards U.S. human rights policy. Four elements explain the leadership's perspective. First, Chinese leaders are influenced by a military philosophy

rooted in traditional Chinese statecraft and ideology developed by GCP Chairmen Mao Zedong and Deng Xiaoping. Reflecting these influences, many Chinese military thinkers predict the decline of U.S. global dominance and conclude that China, as a rising power, will become the United States's natural enemy.¹ Thus, Chinese leaders oppose U.S. human rights policy, not merely because they are ideologically opposed to the U.S. interpretation of international law, but also because they perceive geostrategic value in remaining obstinate in the face of U.S. human rights demands.

Second, Chinese leaders recognize that U.S. human rights interests are geared towards catalyzing China's democratization. They claim that democratization under present conditions would be destabilizing. Twenty years of economic and social reforms have divested the center of substantial power. Corruption festers in an environment absent a viable rule of law, a free press, and other mechanisms of bureaucratic regulation. The situation is compounded by a corrosive ideological and spiritual vacuum left by the dissipation of Maoism. Provincial officials and entrepreneurs operate with impunity, often disregarding policy directives from the central government. As the GCP struggles to maintain authority, it views total and abrupt democratization as anathema to its interest in preserving national stability and cohesion. Conversely, leaders perceive strengthening central authority and control as necessary for the survival of the GCP.

Third, the specter of the Soviet Union's disintegration and of Russia's economic collapse contributes to China's opposition to U.S. human rights demands. Chinese leaders attribute Rus-

sia's economic collapse and political upheaval to America's "big bang" prescription for economic reform in the early 1990s. With this legacy as a backdrop, the leadership fears that lurking behind U.S. demands for democracy in China is ignorance of China's problems or, worse, a malignant desire to choke China's development. They fear that the U.S. plan does not take into consideration the practical consequences of its policy prescription.

Finally, the appearance of Western involvement in Chinese internal affairs is particularly alarming to leaders conscious of the imprint left by Western imperialism on Chinese society in the nineteenth and early twentieth centuries. As China joins the Western-led international community, the leadership is wary of historical *xià w.*

Generally, Chinese citizens are also resistant to U.S. human rights policy. As a practical matter, U.S. policy must generate a critical mass of support among the population. Yet the Chinese propaganda machine colors U.S. human rights policy in a manner that generates strong opposition. Ming Wan, a China-born scholar and professor at George Mason University, notes growing antagonism from Chinese citizens in response to U.S. human rights policy: "Contrary to the West's perception that the Chinese government is an illegitimate regime that has survived solely by coercion, there is now considerable public support in China for the government." A survey conducted in 1995 shows 41.6 percent agreed with the statement "I am proud to live under the current political (socialist) [xi] system," while only 3.7 percent disagreed. Approximately 48 percent of those surveyed agreed with the statement "I respect the political institutions in China today," and

only 5.5 percent disagreed. Finally, 62.8 percent answered "agree" to "I think the basic rights of citizens are (relatively well) [well] protected by the Chinese political system," while only 11.4 percent responded "disagree."¹ Self-censorship, or even subconscious denial, may factor into these figures. However, even if we subscribe to the notion that the Chinese would rather have a different system "if they only knew better," we must also acknowledge that it is the role of U.S. human rights policy to encourage the Chinese to see beyond the walls of their present sociopolitical box. At best, current U.S. efforts only reinforce resistance.

Undoubtedly, propaganda plays a major role in amplifying or even choreographing the popular perspective. The 1999 mob attacks on the U.S. government buildings in China following the NATO bombing of the Chinese embassy in Kosovo were not entirely spontaneous. Propaganda resonates within the cultural memory of Western incursion and serves to ignite antagonism. Add to the mix the psychological stress of rapid social modernization and transformation. Unsurprisingly, the image of the United States, a symbol of the destructive modernity that invaded and desecrated China one hundred years ago, becomes a convenient object upon which to project fear and anger.

The Chinese are caught between pride over their unique culture and traditions and a desire for modernity. The Chinese ~~perpetrate~~ struggle to bury insecurity over China's material backwardness by envisaging its developmental deficiencies as reflective of cultural singularity. In this light, China's egregious human rights problems are often rationalized as the product of a great and unique culture, one that places group

interest over that of the individual and values the strength of conformity over the divisiveness of free speech.

Finally, Chinese citizens do not necessarily recognize the extent of China's human rights problems. The Chinese are experiencing greater human rights, more freedom, and economic prosperity. In the past ten years, average per capita income has grown markedly along with the overall standard of living. Most Chinese citizens would agree that life today, on the whole, is better and more secure than it was twenty years ago. Yang Zhong, Jie Chen, and John M. Scheb II recorded that 61.8 percent of those surveyed strongly agreed that they "would rather live in an orderly society than in a freer society, which is prone to disruption."² We must not discount the influence of the Cultural Revolution and, more recently, the Tiananmen Square incident on shaping this attitude. Stability and steady economic expansion have become prized in a society that only recently experienced severe upheaval.

Understanding China's Human Rights Problem.

Apart from instances of political persecution—which are not small in number, especially with the crackdown on the Falun Gong cult this past year—human rights abuse reflects institutional instability and weakness of the leadership, not an express national directive encouraging such behavior. Chinese leaders have made efforts to improve aspects of the human rights problem, but they are unwilling to go far enough, fearing that such efforts would lead to their political ruin.

Generally, human rights transgressions occur at the behest of low- and mid-level bureaucrats, police officials,

and organized criminals. These wayward officials and criminals also represent the "legs" of the CCP and the power bases supporting the top leaders.⁵³ Initiatives from the top have focused on curbing abuses by expanding China's legal administrative and procedural systems. Yet, without an independent judiciary, the law is limited in its ability

external influences further weaken the coercive power of the government, and as corruption continues to wear away at the institutional solvency of the party framework, the central leadership will grow more insecure and will likely react with greater aggression towards perceived political threats. As the Party's own ideological credibility continues to

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to protect civil liberties. Additionally, leaders are unwilling to unleash wide-spread purges aimed at cleansing the party of these malignancies, because they fear the consequences such actions would have on their own power and on the health of the party. Consequently, corruption in China thrives, wearing away at social and economic stability.⁵⁴ What emerges is the following paradox: Initiatives aimed at curbing corruption have become a political and economic imperative of the central leadership. However, until the leadership is willing to take the steps necessary to make the legal system effective—through the establishment of a free press and an autonomous judiciary, and by allowing the courts to interpret legislation and enforce bureaucratic accountability—corruption will be difficult to contain.

As for human rights in the near future, it is likely that through international trade and exchange, China will become an increasingly open society. Civil society will invariably develop and the economic, civil, and even political rights of the average citizen will expand. However, as market development and

thin, it will likely seek to tighten its grip over movements that gain spiritual or ideological momentum because they will be interpreted as politically threatening. The crackdown on the Falun Gong is an example of the phenomenon, as is the continued arrest and persecution of certain religious practitioners. Thus, aspects of human rights in China will not likely improve independently in the short term, and consequently, U.S. policy that assumes "market forces" can erase all evils is misled.

Shaping an Effective U.S. Approach. Chinese opposition to the U.S. human rights *modus operandi* begs the question: How can the United States re-craft its policy so as to eliminate the Chinese "gag-response" while concurrently supporting human rights development in China? At present, human rights policy towards China is overwhelmingly understood in both countries as consisting of criticism of China's civil and political repression. Such a perception would not be problematic except for the fact that it both indicates and perpetuates deadlock. While U.S. pressure was arguably useful

in the early 1990s for extracting minimal concessions from the Chinese, this unilateral pressure has become increasingly unproductive and should be supplemented by alternative programs.

Evidence does suggest that international efforts played some role in encouraging emphasis on human rights in China in the early 1990s. Official sanctions, as well as a general loss of investor interest following the 1989 Tiananmen Square massacre, compelled China to show evidence of reform. In 1991 and 1992, China sent two official human rights delegations to the West and issued a series of White Papers on human rights. In its section on China, the 1994 U.S. State Department report on human rights intimated that the international human rights movement had encouraged the Chinese government to begin accepting the international movement: "[Chinese] officials no longer dismiss all discussion of human rights as interference in the country's internal affairs. In 1993, the Chinese government provided limited information about the status of several hundred persons believed to be imprisoned for their political or religious beliefs."¹¹ In 1993, China also formed a number of human rights research centers, such as the Chinese Society for Human Rights. Finally, in 1997, it signed both the Covenant on Social and Economic Rights and the Covenant on Civil and Political Rights (although it has yet to ratify either), besting the United States, which has yet to sign the former and has signed the latter, but only after attaching significant reservations.¹² It is unlikely that these positive developments would have occurred without external pressure. Therefore, this pressure should continue. Columbia University Law Professor Louis Henkin

states, "No one is prepared to say that human rights would be better without the forces for compliance generated by the human rights movement."¹³

Nevertheless, China's increased attention to human rights in recent years has exacerbated, not mitigated, the controversy. Although China has begun to develop human rights institutions, it has used these institutional outlets to defend its practices and criticize U.S. efforts.¹⁴ In 2000, the State Council in China released a human rights report on the United States in response to what it perceived as an unbalanced U.S. State Department report on China's human rights practices.¹⁵ Co-opting the language of the international human rights regime, the eight page report proceeds to outline areas in which civil and political rights, social and economic rights, rights against racial discrimination, and rights of women and children were violated in the United States. The report charged the United States with "wantonly violating human rights of other countries." Indeed, attacking U.S. hypocrisy has become a favorite theme of the Chinese media.

While international human rights pressure appears to have achieved a modicum of success in planting the seed of human rights in China in the early 1990s, U.S. unilateral pressure has generated within China increasing antagonism towards the United States and its human rights efforts. Such antagonism reduces the expansionary potential for human rights within China and harms U.S.-China relations.

Policy Prescriptions. As Professor Nathan suggests, the United States must work to disentangle its human rights interests from its geopolitical interests.

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In order to be successful, it must "internationalize" the movement. According to Nathan, "The United States should separate human rights from democratization, focus on abuses that are illegal under international law, and preempt the charge of cultural imperialism by framing the issue as one of compliance with international norms."³³ However, due to the U.S. political climate, internationalizing U.S. efforts is, in reality, a political "Rubik's Cube."³⁴ Even if U.S. human rights policy was more internationalized, the Chinese contention that Western interests have co-opted the international regime will still remain. A multi-step process might allow U.S. policy to work towards undoing these knots.

First, the United States should start by looking inward. The key is to spark a new national discussion in the United States in order to generate an understanding that the international human rights standard is distinct from our Constitutional human rights perspective. We must develop a more expansive human rights vocabulary and widen our understanding of human rights. Americans must begin to understand human rights as a nexus of intersecting rights ranging from political and civil rights to social and economic rights. Of course, groups must continue to voice outrage at civil and political human rights violations in China because such outrage helps build a moral standard for the future. At the very least, outspoken criticism has been critical to the freeing of

political prisoners such as Wei Jingsheng, Wang Dan, and, most recently, Bai Ling. However, groups that are concerned with other aspects of human rights in China, but that are currently blocked from adding their voices to the human rights debate, might develop political capital through a national discussion that broadens popular understanding of human rights. China's Ministry of Foreign Affairs outlines areas where China is theoretically willing to cooperate with the world—human rights improvement, environmental deterioration, depletion of natural resources, poverty and unemployment, population growth, spread of diseases, drug abuse, and international crime.³⁵ These are all valid human rights concerns. Thus, we should not write this offer off as a smokescreen.

Next, cultivating a more developed understanding of human rights will press politicians and pundits to speak to the specific issues, rather than simply to demonize without nuance China as a human rights "violinator." Targeted language will be more constructive and less caustic. Perhaps the general term "human rights" could be supplemented by language that both addresses specific rights, such as the right to certain environmental standards, as well as suggests mechanisms for ensuring those rights (for example, rule of law).

Third, the early goal should be to produce a more rational discussion in the United States, or at least to shift the

domestic political calculus in a way that renders the "China stick" more cumbersome to wield recklessly. This shift will, to some extent, help to de-politicize the debate. Subsequently, such a shift in the domestic political landscape will provide politicians with political capital to supplement the negative human rights critique with positive human rights efforts. Then it would not be such a political liability to take what are presently unpopular positions, such as to support funding for the cash-starved "rule of law in China" initiative run through the State Department, or to support initiatives to cooperate with the Chinese on an official level to help with their disastrous environmental problems. Accompanying an expanded conception of human rights, these efforts could be absorbed by the U.S. human rights policy framework. Complementing "negative" policy with the addition of "positive" measures would help the United States appear more ingenuous to Chinese observers and would help reduce the vitriol coming from both countries. Additionally, precise language would allow human rights policy to target areas in which China's record is poor, areas in which it has performed better, and areas in which the United States could help promote human rights development through specific engagement efforts or through negative critique.

Finally, expanding domestic discussion from its present monolithic form would also make U.S. interest in human rights a less appealing target for exploitation by Chinese propaganda. The visceral reaction towards U.S. efforts among Chinese would be dulled. Language that describes specific rights and mechanisms for ensuring rights is used currently by the Chinese government to refer to its own goals, such as

environmental improvement and legal development, but these concepts in China are not linked with U.S. human rights interests. In reality, however, these issues also represent the specific components of U.S. human rights interests. Both the United States and China are talking about many of the same problems. We are simply lacking the linguistic link.

While it will be difficult to dissuade certain U.S. politicians and pundits from crudely chopping at the "red Communist dictators," moderates must supplement this attack with pragmatism. More specific language will be at the heart of a program to make U.S. human rights efforts more effective. The current holistic approach, which has as its goal the democratization and marketization of China, has politicized the debate so that it rings with bitter opposition. While democratization may be the only way to eliminate the most grievous human rights problems in China, the Chinese leadership finds that opposing these pressures conforms to its political needs. A more pragmatic approach on the part of the United States may shift this attitude among Chinese leaders, nudging it towards a platform of greater conciliation. A pragmatic approach aimed at piecemeal improvement would also ease an increasingly strained U.S.-Sino relationship at a time when such tension is inhibiting virtually all foreign human rights efforts. With the right approach, the Chinese may welcome cooperative "human rights initiatives" in certain areas.

To generate political capital for this approach, the United States must begin a new domestic human rights discussion to develop a broader understanding of human rights among Americans. Some

prominent figures are taking the lead. Former President Clinton suggested that the issues of child labor, basic working conditions, and the environment are all concerns for China's human rights interests.¹¹ Clinton's outspoken bundling of these issues under the human rights umbrella suggests that there is room within the U.S. political equation to allow for the development of a more advanced

understanding of human rights, and thus for a more pragmatic human rights policy. But a greater number of politicians and policymakers must join the effort. They must recognize that their position on human rights in China should serve not merely as a display of morality, but can and should be a mechanism for substantively improving human rights in China as well as U.S.-China relations.

NOTES

1 For a brief description of this history see Andrew J. Nathan, *China in Transition* (New York: Columbia University, 1997) 246-247. For a more in-depth history of China human rights policy during the Clinton years, see James Mann, *About Face: A History of America's Curious Relationship to China from Nixon to Clinton* (New York: Alfred A. Knopf, Inc., 1998) chap. 12: 15-16.

2 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990) 29.

3 Andrew J. Nathan and Robert S. Ross, *The Great Wall and the Empty Room: China's Search for Security* (New York: W.W. Norton & Company, Inc., 1997) 179.

4 Henkin 22.

5 Repeatedly official Chinese statements stress the right to development (within the rubric of social and economic rights) as their principal concern; see "Speech by Jiang Zemin at the Banquet to Celebrate the Opening of the '99 Fortune Global Forum in Shanghai," *Beijing Review* (8 October 1999): 8. For analysis of the American penchant for equating human rights with civil and political rights see Henkin 152-53. Note also that there exists strong opposition to this dichotomy, with many suggesting that governments that claim to support social and economic rights over civil and political do not do so in reality; for further discussion see: <http://www.cccia.org/DIALOGG.HTM> (as of 28 August 2000).

6 Thomas Remstein, "Chinese Politics," Class Lecture, Columbia University, New York, 1999.

7 Michael Pillsbury, *China Debates the Four Seasons Environment* (Washington, D.C.: National Defense University Press, 1999) 204.

8 Ming Wan, "Human Rights and Democracy," In *The Eye of the Dragon*, eds. Yong Deng and Fei-Ling Wang (Oxford: Rowman & Littlefield Publishers, Inc., 1999) 209.

9 Ming Wan 206.

10 See Kenneth Lieberthal and Michel Oksen-

berg, *Policy Making in China* (Princeton, New Jersey: Princeton University Press, 1988) 401-406; see generally Susan L. Shirk, *The Political Logic of Economic Reform in China* (Berkeley: University of California Press, 1993).

11 See Seymour Martin Lipset and Gabriel Salzman, eds., "Corruption, Culture and Markets," *Culture Matters*, eds. Harrison and Huntington (New York: Basic Books, 2000).

12 U.S. Department of State, "China Human Rights Practices, 1993," 31 January 1994.

13 I intentionally do not record the release of prominent political prisoners. It seems imprudent to cite the release of prisoners as symbolic of human rights improvement. Releases are tightly tied to political negotiations and generally do not represent or effect a trend or change in perspective.

14 Henkin 29.

15 See <http://www.humanrights-china.org/>, esp. <http://www.humanrights-china.org/en/development/file.d/98-1.html> (as of 3 September 2000) for the Institute's response to the U.S. State Department's report on "China Human Rights Practices, 1999."

16 The U.S. State Department report is published annually and can be found at

http://www.state.gov/www/global/human_rights/hrp_reports_main1p.html (as of 3 September 2000).

17 Nathan, *China in Transition* 246.

18 See *infra* Section I.

19 This document can be found at the Chinese Foreign Ministry Web site:

<http://www.fmprc.gov.cn/english/dhwd/read.asp?no=64870002&key> (as of 2 September 2000).

20 President William Jefferson Clinton, speech at Paul H. Nitze School of Advanced International Studies, 8 March 2000.