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Human Rights in the People's Republic of China

Arthur C. Helton*

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Abstract

This Book Review looks at Chinese human rights developments in light of the aftermath of Tiananmen Square.

BOOK REVIEW

HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA. By Yuan-li Wu, Franz Michael, John F. Copper, Taling Lee, Maria Hsia Chang, A. James Gregor. Boulder and London: Westview Press, 1988. 332 pp. ISBN 0-8133-7439-1. US\$38.50.

Reviewed by Arthur C. Helton*

The brutalization in June 1989 by the Chinese military of protestors in Tiananmen Square in Beijing and its aftermath have revealed fundamental human rights problems in the People's Republic of China. According to Amnesty International, over 1,000 civilians were killed by security forces in Beijing in the crackdown, and 300 were killed in Chengdu in the South.¹ Official Chinese sources confirm over 6,000 arrests; unofficial estimates range as high as 30,000.² Those arrested have included students, teachers, ethnic activists, workers, and intellectuals.³ Although Chinese authorities have announced several executions, Amnesty International claims that many more have been executed in secret.⁴ A subcommission of the United Nations Human Rights Commission has voted to have the Commission examine whether China's actions in suppressing the pro-democracy movement violated the Universal Declaration of Human Rights.⁵ Many were surprised by the brutality of the crackdown, which was extensively reported in the West-

* Director, Refugee Project, Lawyers Committee for Human Rights. Member, Association of the Bar of the State of New York. B.A., 1971, Columbia University; J.D., 1976, New York University.

1. N.Y. Times, Aug. 31, 1989, at A3, col. 4.

2. Asia Watch, Newsletters (Aug. 29, 28, 22, and 17, 1989) (available from Asia Watch, 485 Fifth Avenue, New York, N.Y. 10017).

3. *See id.* (Aug. 29, 28, 22, 17, and 6, 1989, July 26, 24, and 6, 1989).

4. N.Y. Times, Aug. 31, 1989, at A3, col. 4.

5. G.A. Res. 217A, 3(1) U.N. GAOR at 71, U.N. Doc. A/810 (1948) [hereinafter Universal Declaration of Human Rights]; *see* N.Y. Times, Sept. 1, 1989, at A8, col. 1. The People's Republic of China is not, however, a signatory to the Universal Declaration of Human Rights. *See* Y. WU, F. MICHAEL, J. COPPER, T. LEE, M. CHANG, A. GREGOR, HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA 16 (1988) [hereinafter HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA].

ern press and media. Others regarded the outcome as inevitable.

Human Rights in the People's Republic of China surveys the human rights situation in China from 1949 to 1984, providing a fascinating background for recent developments. The authors undoubtedly would consider the recent suppression to be an inevitable and characteristic recouping of power by the authorities. Early in the book, the basic theme that runs throughout is advanced:

Some perceive that continued participation by the People's Republic of China in the United Nations, good relations with the United States, and Beijing's efforts to establish a Western-style legal system in China (mainly for the purpose of facilitating trade and foreign investment), plus the present government's emphasis on incentives, a free market, and economic growth, eventually will result in a redefinition of human rights more in consonance with Western ideals. To date, there is little tangible evidence that this is happening. In fact, there may well be inherently logical obstacles to such a development. Clearly, it is difficult to see, if one believes the PRC position on human rights is likely to change, why the PRC position on human rights documents affirmed by most nations in the world remains unchanged and why the PRC remains the worst violator (in numbers at least) of human rights in the world.⁶

Among the "inherently logical obstacles" revealed in the book are the legal and political systems in the People's Republic of China. In terms of the legal system, the authors find illusory the protections set forth in China's four constitutions (originally promulgated in 1954, and re-written in 1975, 1978, and 1982)⁷ and various codes.⁸ Law in China is characterized as an instrument of the Communist Party.⁹ The concept of inalienable individual liberties, which is central to Western notions of human rights (and even Confucian order), is absent in communist doctrine. Law is designed to serve political ends. Opponents can be subjected to administrative commitments or confined in labor camps for several years without any form of

6. HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 5, at 17.

7. *Id.* at 45.

8. *Id.* at 47-48.

9. *Id.* at 35.

meaningful due process.¹⁰ Mass killing and abuses without redress have been committed in the context of campaigns against “anti-rightists,”¹¹ for example, or of “drives” to achieve political purity.¹²

In terms of the political system, the authors find a basic congruence between the Communist Party and the government—the machinery designed to implement party policy. As they explain:

[T]he party is in complete command and . . . political power is not shared and competition is not tolerated. There are no checks and balances in the Chinese political system. The party has said that it intends to maintain control and indeed tries very hard to do so. The granting of individual human freedoms and rights other than on a temporary or ad hoc basis would challenge the party’s control. This fact alone makes the formulation and practice of human rights virtually meaningless.¹³

Repression in the People’s Republic of China has, at times, been severe. The authors chronicle a series of campaigns by the Chinese authorities to eradicate various groups or movements (including ideological or democratic movements).¹⁴ Examples include the persecution in 1957 of the One Hundred Flowers Movement, which entrapped many intellectuals who had sought to engage in apparently tolerated artistic or political expression,¹⁵ as well as student protests, including a demonstration in 1976 in Tiananmen Square.¹⁶

No example of repression is more notorious than the Cultural Revolution of the 1960s and 1970s.¹⁷ Cruel physical abuses and murders were committed by rampaging bands of youthful Red Guards who sought to eradicate “bourgeois” elements. These forces were set loose by Mao Zedong, then Chairman of the Chinese Communist Party, in furtherance of his concept of “perpetual revolution” and to fortify his posi-

10. *Id.* at 49-50, 124.

11. *Id.* at 177-78.

12. *Id.* at 36-37.

13. *Id.* at 74-75.

14. *Id.* at 154-92.

15. *Id.* at 178-79.

16. *Id.* at 183.

17. *Id.* at 178-82.

tion against enemies in the party. Intellectuals, mainly teachers, were targeted as were many within the party. Estimates of the number of persons killed range from three to twenty million.¹⁸ As many as 600 million may have been affected.¹⁹ Democratic elements, similar to the current democracy movement in China, previously have been singled out for persecution.²⁰ In surveying this history,²¹ the authors, writing last year, were particularly prophetic:

In the current policy of alternating tight control and brief relaxation, intellectuals may not be experiencing wholesale physical persecution as they have many times in the past, but the calculated denial of a free mind remains an integral part of the unchanged system. Intellectuals, deprived of their most precious human rights, continue to exist in mainland China as an underclass.²²

Human Rights in the People's Republic of China raises fundamental questions about the nature of "human rights." To what extent is the concept related to Western traditions and forms of government? To what extent is it universal in character and applicable to countries such as China?

In the Western tradition, human rights law should be considered a derivative of classical notions of natural law.²³ The authors find an analogue in the Confucian Mandate of Heaven, a philosophical tenet that serves to protect the individual by limiting otherwise unrestrained governmental authority.²⁴ The basic notion is that people have intrinsic and inalienable rights on which government may not tread. The authors thus view the current situation in China as one at odds with both Chinese and Western traditions.²⁵

18. *Id.* at 202.

19. *Id.*

20. *Id.* at 23.

21. The authors of *HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA* take a very comprehensive approach to chronicling the human rights situation. The book includes discussions of matters as diverse as economic organization (chapter 5), party factions (chapter 12), women and the family, including population controls, forced abortion and sterilization, and infanticide (chapter 13), and the treatment of non-Chinese nationalities and religious communities, including Tibetans (chapter 14).

22. *HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA*, *supra* note 5, at 185.

23. See J.S. MILL, *ON LIBERTY* (1859); J. LOCKE, *THE SECOND TREATISE OF GOVERNMENT* (1690).

24. *HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA*, *supra* note 5, at 2.

25. *Id.* at 35.

What, then, are human rights? The Universal Declaration of Human Rights,²⁶ adopted by the United Nations in 1948, is the first comprehensive human rights instrument proclaimed on an international basis and seems to contain entitlements that are both universal in character and reflective of specific Western values. Although not originally carrying with it a legal mandate for its observance, many commentators believe that the Universal Declaration of Human Rights has achieved a binding normative character under international law.²⁷ The presumed legitimacy of the nation state²⁸ and the right to own private property²⁹ may show a Western orientation. The Universal Declaration of Human Rights also contains political provisions, including in Article 21 an individual's right "to take part in the government of his country, directly or through freely chosen representatives."³⁰ That provision also declares that "[t]he will of the people shall be the basis of the authority of government" and requires "periodic and genuine elections" by universal suffrage.³¹

While these precepts reflect the values of Western-style democracies, they also have roots in broader notions of self-determination and intrinsic individual worth. The basic entitlements respecting the right to life, liberty, and security of person,³² the prohibition of slavery, torture and cruel, inhuman or degrading treatment,³³ the right not to be subjected to arbitrary arrest, detention or exile³⁴ reflect a clearly universal character. China joined the United Nations in 1971 but has not yet become a party to the Universal Declaration of Human Rights or to any other basic United Nations human rights instrument.³⁵

26. Universal Declaration of Human Rights, *supra* note 5.

27. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 702 (1986); Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U.L. REV. 1, 16-17 (1982).

28. Universal Declaration of Human Rights, *supra* note 5, arts. 13-15, at 74.

29. *Id.* art. 17, at 74.

30. *Id.* art. 21(1), at 75.

31. *Id.* art. 21(3), at 75.

32. *Id.* art. 3, at 72.

33. *Id.* arts. 4-5, at 73.

34. *Id.* art. 9, at 75.

35. HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 5, at 16. The authors note specifically that China has also failed to ratify the International Cove-

The authors begin their inquiry on human rights in China by asking a number of questions:

Is it possible to reconcile this system and its doctrine with the realities of a modern economy — to fuse communist planning and control with free-market experiments — so as to reconcile the communist doctrine of social advancement with human rights? Or is this effort comparable to squaring the circle? Must the system be irrevocably changed? This remains the problem that faces the communist leadership of China at the end of this century. Success or failure will affect not only China, but East Asia and the world.³⁶

These questions not only remain; they are all the more pertinent today given the recent events in China. *Human Rights in the People's Republic of China* provides very useful background for this continuing assessment.

nant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the Optional Protocol on Civil and Political Rights. *Id.*

36. HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 5, at 6.