

# A contextual view at Human Rights

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## A CONTEXTUAL VIEW AT HUMAN RIGHTS

### Abstract

*The European Convention on Human Rights (ECHR), drafted in 1950 and entered into force on 3 September 1953, is an international convention to protect human rights and political freedoms in Europe.*

*Given issues, like the absence of trust in geopolitics and international relations, ruthless competition between states and civilizations to name a few and which surround the topic, this paper will argue that the key fundamental human rights cannot be protected in absolute terms. The paper considers four reasons: 1) The historical background. 2) The language aspect and the formulations. 3) The fact of non resolvable contradictions and paradoxes. 4) The non scientific origins of HR concepts. And two central arguments:*

*A) Judgments of ECHR as living instrument not formally bound by precedents, the position, trying to establish a legal certainty and foreseeability of rulings by not changing its jurisdiction without compelling reasons, the number of reasons of conflict with rights entrenched in other provisions of the Convention and last but not least the ECHR autonomous interpretation, allowing a protection much wider in scope than the protection offered under national law, lead practically to limitations of national sovereignty;*

*B) The current geopolitical and geoeconomical environment which could be characterized by the absence of trust, dialog, linear technological development, commonly accepted values and national interests, and the concept of human rights lacking scientific origin<sup>1</sup> make any result of comparison of human rights of only limited and theoretical value (not quantifiable and of quality). Nevertheless, the result could be used in the future should a science theory dedicated to the conduct of peace – The Paxology as a complementary science theory to Clausewitz On War<sup>2</sup> would be established and included into educational programmes.*

**Key words:** ECHR, HR in PRC, contradiction, paradox, pathological science, paxology.

The absence of trust in geopolitics and international relations, ruthless competition between states and civilizations which surround the topic compel to argue that the protection of HR concept cannot be absolute. Following are four of many reasons which would be considered briefly and enhanced with a few references: 1) The historical background of ECHR. 2) The language and the fact of formulation in broad terms. 3) The fact of non - resolvable contradictions and paradoxes. 4) The non - scientific origins of concepts of HR.

In general, and for general description of the state of ECHR at present time we can use a play with two words: *meizhong buzhu*. It means (in author's own interpretation) something like – *in the beauty there is a deficit*. Deficit in understanding the fundamentals in relations between the East and the West seems to grow by day. Even before the entry of PRC into

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<sup>1</sup> HR concepts belong in the understanding of the author to pathological science as defined by Nobel Price laureate (1932) Irving Langmuir (1881-1957).

<sup>2</sup> Clausewitz, Carl von. Vom Kriege. Berlin: Dümmlers Verlag, 1832 and Howard, Michael; Paret, Peter (eds.). On War (trans. ed.). Princeton: Princeton University Press. ISBN 978-0-691-05657-9.

the WTO in 2001 the discussions about preferences were governed by human rights on behalf of USA.

## **The historical background of concepts**

If you ask when rights discourse began in Europe, you can receive many answers. They would differ by centuries, depending on which stage of the ongoing evolution of concepts and practices related to *rights*, and to its correlates and predecessors in a half-dozen languages one counts as the beginning. But also, by understanding of what does human rights really mean and why human rights became an international topic of a great concern in everyday life, politics and economy included.

If you ask when rights discourse began in the East, including Russia and China, you would receive not many answers. Why? Many of us think that the beginning of rights discourse in the East would be easier to locate as there was no concept of rights in traditional thought. Unfortunately, this is only partially true. Why? Let's look at China only.

Firstly, we need to look at the moment when the idea of rights was introduced to China from Europe and ask: Can we in fact find in China today a distinctive conception of rights? Secondly, we need to look into the recent history. It includes the period before and after the establishment of People's Republic of China (PRC) in 1949. Those wishing to find more about the rights discourse in China may turn into the older history of China and consider Confucius teachings as one of a few other teachings.

Unfortunately, also the moment when the idea of rights was introduced to China from Europe is rather difficult to identify precisely. Similar applies to other countries of the East and to the existence of conceptions of rights. Nevertheless, we can come closer to the answer when we look responsively at early translations of European texts concerning rights into eastern languages including Chinese, and consider historical facts. The following brief introduction indicates where to go for a help and what should be considered.

Chinese discussions of rights emerged and developed in a distinctive way, sharing some but not all features with developments outside China. Concerns over the satisfaction of legitimate desires, the construction of a nation, the protection of individuals' abilities to develop their personalities, to mention a few all played important roles in the Chinese rights discourse.

In the West, the ECHR was drafted in the aftermath of the 2nd WW under the auspices of the Council of Europe with two purposes: 1) To ensure the protection of certain fundamental rights and freedoms and 2) to contribute to the establishment of stable democracies governed by the rule of law across Europe. Therefore, ECHR relates explicitly to politics, effective political democracy and the belief, that the rule of law stands for a pre-condition for peaceful cohabitation of peoples and states. Ideas of ECHR were developed and based on the strongest traditions in the United Kingdom, France and other member states of the Council of Europe.

Therefore, there shouldn't be doubt that Eastern concepts differ from corresponding Western concepts. From the difference follows that we needed understand what it means for concepts to differ from one another. Concepts are usually emerging from relatively stable agreements in a community's norms, rather than as single, unchanging things that people had to share for communication to succeed. Concepts are messier and more complex than one may imagine. It should be enough for one to begin understand the complexity of the question – *What makes the difference between concepts* – by analysing what His Excellency *Liu Huaqiu*, head of the Chinese delegation to Vienna had written

about *quanli* – his term for rights – in June 1993, 26 years ago.<sup>3</sup> The statement includes two important claims supported by the history of Mankind: 1) Countries can have different concepts of human rights. 2) We ought not to demand that countries comply with human rights concepts different from their own. Both claims form a part of current policy of PRC and the arguments made by Chinese.

Over the time and since the claims were made 26 years ago in Vienna *quanli* discourse underwent important changes. The Confucian source of *quanli* discourse and the Western stimulus to that discourse were of approximately equal importance during the dynamic changes in the 1910s. From the mid-1910s to the mid-1930s we can identify some progress and a lot of frustrations toward the realization of a stable, empowered state and society in China. China was wracked by invasion and civil war. Despite this, the period 1915 through 1935 were years of enormous intellectual vitality in which theories that could help people to understand and improve their world were subjected to serious debate and rigorous analysis. Western philosophies were interpreted and adopted with increasing sophistication, many young people studied abroad and then returned home, American and European thinkers visited and lectured in China and so on.

Comparison of the situation in Russian Empire, USSR and current RF, which has been similar but will not be considered in this paper, could enhance any conference and subsequent dialogs.

Since the establishment of the People's Republic of China (PRC) in 1949 the rights discourse has continued. It was influenced by the ambivalent attitude that Marxism has in general toward rights. Although the developments have been neither simple nor continuous the human rights issue in PRC enjoys a serious attention by the Government, specialised local NGOs, like *Charhar Institute*<sup>4</sup> and by a variety of academic and student's institutions. In general, it could be said, that most participants in Chinese rights discourse continue to perceive rights in ways familiar from earlier in the century.<sup>5</sup> This is in contradiction to the current trends and state of world affairs which seems to be very different. How different?

Quanli lost most of its explicit connections to the Confucian tradition. This increased distance from Confucian vocabulary and sources of authority. At the same time the potential for international cooperation vanish, the potential for regional and even global confrontation grows. All this happens despite the fact that there has been increasingly direct and complete engagement of Chinese with themes from contemporary western rights discourse. Hundreds of thousands of students from PRC studied in the West and became influenced not only by the discourse of HR in their host countries. Many of them went back to PRC and represent today a multi-use potential, and at the same time also a complex risk to be managed by themselves and politicians in times of sophisticated manipulation, fake news, misuse of technologies and ruthless competition between individuals, states and civilizations. It is therefore obvious that we all need to know better what to make of these

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<sup>3</sup> In June of 1993, His Excellency Mr. Liu Huaqiu, made the following statement in the course of his remarks to the United Nations World Conference on Human Rights in Vienna: The concept of human rights is a product of historical development. It is closely associated with specific social, political, and economic conditions and the specific history, culture, and values of a particular country. Different historical development stages have different human rights requirements. Countries at different development stages or with different historical traditions and cultural back-grounds also have different understanding and practice of human rights. Thus, one should not and cannot think of the human rights standard and model of certain countries as the only proper ones and demand all countries to comply with them. [Liu Huaqiu 1995, p. 214]

<sup>4</sup> Founded in October 2009, Charhar is a non-governmental and non-partisan think-tank focusing on foreign policy and international relations. Headquarters: Shiyuan Garden, Jia No.1, Changle Village, Shangzhuan Town, Haidian District, Beijing 100094 Tel : +86-10-68290431, [secretariat@charhar.org.cn](mailto:secretariat@charhar.org.cn),

<sup>5</sup>Angle Stephen, Human Rights and Chinese Thought: A Cross-Cultural Inquiry, Cambridge University Press, Print publication year: 2002, Online publication date: August 2009, Online ISBN: 9780511499227, <https://doi.org/10.1017/CBO9780511499227>

two main claims as formulated by His Excellency. They without doubt influence politicians, activists and lawyers outside and within China today. They would do the same tomorrow and also in the future (with its past).

30 years ago (1989), the journal *National Interest* published well known essay written by Francis Fukuyama – *The End of History?*<sup>6</sup> In it Fukuyama argues that following the ascendancy of Western-style liberal democracy, following the Cold War and the collapse of the Soviet Union, humanity was reaching *not just ... the passing of a particular period of post-war history, but the end of history as such: that is, the end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government.*

There is no need for a deep analysis of the language, content and philosophy of the essay to state convincingly in the context of developments during the period of the last 30 years, that the essay is essentially a Christian eschatology and of restricted reference value. Fukuyama's essay does not sufficiently take into account the power of ethnic loyalties, religious and Islamic fundamentalism and radical Islam. His idea and ideals, as the concept of human rights are not demonstrated by empirical evidence. Why? They can never be demonstrated because they belong to the realm of philosophy or religion, owing their birth to the Gospels of Philosophy of Hegel, thus belonging to the category of non - traditional sciences.

The main events of recent times, like the attacks on September 11, 2001, the global financial and economic crisis in 2008, the appearance on world stage of countries like Russia and China as serious competitors to the West (jointly strong in economic, political and military terms), the Brexit and last but not least the actions of president Trump and his administration, cannot be put out of consideration of human rights issues now, and also in the foreseeable future. They demonstrate the obvious: There is *moral pluralism in our world.*

Concepts with which different groups make moral judgments are different from one another. It does not matter whether they are radical or simply different in more mundane ways. In this sense the claims like those of His Excellency are valid, even after critical analysis of what moral pluralism is, and what its implications might be.

The other aspect to be considered represents the history and archetypes of language, psychology, behaviour and a few important questions. Like: What does exactly mean to say that speakers of one language having different mother tongues<sup>7</sup> have different concepts of rights than speakers of another? If speaker's concepts are different, can they still communicate with one another?<sup>8</sup> Is it even true that all speakers of a given language share the same concepts, especially of terms like rights, love, sins? From simple answers to these questions follow that: 1) Conceptual content depends on the inferential commitments we take on when we use language, 2) the norms governing these inferences are instituted by

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<sup>6</sup> Fukuyama, Francis (1989). "The End of History?". *The National Interest* (16): 3–18. ISSN 0884-9382

<sup>7</sup> The term mother tongue should not be interpreted to mean that it is the language of one's mother. In some paternal societies, the wife moves in with the husband and thus may have a different first language than the husband. Mother in this context originated from the use of "mother" to mean "origin" as in motherland. Also in Malaysia and Singapore "mother tongue" refers to the language of one's ethnic group regardless of actual proficiency, while the "first language" refers to the English language that was established through British colonization. The first language of a child is part of their personal, social and cultural identity. Another impact of the first language is that it brings about the reflection and learning of successful social patterns of acting and speaking. It is basically responsible for differentiating the linguistic competence of acting. One can have two or more native languages. The order in which these languages are learned is not necessarily the order of proficiency.

<sup>8</sup> Margaret Thatcher once stated, that there is no need to agree with the other party in order to find a common language.

the practices of the groups to which we belong and 3) as our commitments and we change, so too can change the meanings of our words, or even the words we use themselves. Therefore, the implicitness, explicitness and specificity of a language, their influence on thinking, believing and behaving and the variety of feedback we have been receiving cannot be ignored in the rights discourse either.

## **The broad term formulation of ECHR**

The ECHR is *drafted in broad terms* in a more modern manner to the English Bill of Rights, the U.S. Bill of Rights, the French Declaration of the Rights of Man, or the first part of the German Basic law. Therefore the formulations of statements of principle are from a legal point of view not determinative, require extensive interpretation by courts to bring out meaning in particular factual situations, and therefore they are different and far distant not only to Eastern and China history, traditions and values, but also to the key archetypes of eastern and other languages, formulations, psychologies and behaviour. Considering the historical background of concept of human rights in East and West, the fact of broad term formulation of ECHR, reasoning of judgments and their implications, all became more important these days as they were in the past. The developments and trends in the world as mentioned before, including the need for communication and security of information form a very complex contradictions and paradoxes, in which the language and formulations became a priority. It is the language which transformed the idea, ideals and Western concepts of human rights into a multi-use tool. We can see daily how it has been used in manipulation of public, the production of fake news, within the concept of abuse of power in political, economic, military and technical sense. There is no doubt that it would be more ecological, efficient and economical if we had accepted that there are always inner conceptual differences and therefore differences between the East and the West, even if we speak the same language. This does not mean that language differences stand in the way of successful communication and quality relations between individuals, communities, states and civilizations. A humble example of validity of the claim represents for example Indonesia.

There is no doubt that the knowledge and characteristics of Chinese language<sup>9</sup> and literature stand for a serious challenge to everyone dealing with Chinese text, documents, people and organizations. Similar applies to other Eastern countries and languages. And as the globalization is undergoing a complex transformation process with a new multilateral world at its end, we all are facing not only a linguistic challenge with consequences in regard to human rights, politics and cooperation, but also a complex challenge: to solve contradictions.

## **The non - resolvable contradictions within ECHR**

The contradictions<sup>10</sup> mentioned in this paper have been mainly created by the variety of reasons: Formulations of human rights, judgments produced by ECHR as *living instrument* not formally bound by precedents and position trying to establish a legal certainty and foreseeability of rulings by not changing its jurisdiction without compelling reasons. In addition, there is a number of *contradictions resulting from the pluralism* in the world with

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<sup>9</sup> One of the major literary heritages in the world with an uninterrupted history of more than 3,000 years. The main characteristics of the Chinese language are: linguistically analytic and isolating, word units do not change because of inflection, idioms and allusions from traditional Chinese culture.

<sup>10</sup> Campbell J., Consent Not Needed (Zustimmung nicht noetig, Souhlasu netřeba, Согласие не требуется) 2016 ISBN 978-3-00-052470-7

its variety of moral, ethics and other standards, *reasons of conflict* with rights entrenched in other provisions of the ECHR. For example, the right to freedom of expression frequently collides with the right to private life. Besides contradictions there are *paradoxes*.

They result mainly from *double standards*, *deficit of ethics*, *widespread hypocrisy* in politics, the *deficit of new markets* (for a system based on expansion) and the ECHR *autonomous interpretation*. They make a challenging pair: non – resolvable contradictions and paradoxes.

At the same time the pair, which allows a protection much wider in scope than the protection offered under national laws, is supported by the ECHR imposed *positive obligations*. This means that states can be obliged to act and to take active steps to ensure an effective enjoyment of the rights protected by the Convention. Both, the concept of protection and positive obligations represent limitations or (and) restrictions of national sovereignty. Already for this only reason the current concept of HR can never enjoy an absolute protection. Sovereignty is not negotiable for really sovereign states. Therefore the ECHR (as an international convention), which tends to be inclusive and equalizing, thus ignoring the fact that traditions divide communities into *We and They*, can only function and be considered as a guide, never as the last instance, equal to Good.

Europe as a part of the West wears more US accessories and follows the way to unipolar world made in USA. *America First* is more brutal than the ex – bipolar world. It does not allow tuning of economic and political realities, to name a few. All this, and much more support the argument to consider ECHR as a guide only.

## No scientific origin

Considering all what has been said and including the absence of commonly accepted values and national interests, one cannot ignore the scientific aspect as such. In fact the concept of HR lacks a scientific origin. This means that a concept based purely on politics, effective democracy and beliefs and promoted controversially over decades cannot meet scientific criteria. It belongs therefore to the category of *pathological science*.<sup>11</sup> This term defined Nobel Prize laureate Irving Langmuir (1881-1957) as follows: *Scientists risk stumbling into a particular kind of pitfall when they encounter „the science if things that aren't so.”*

## Conclusions

No comparison of HR values between the East and the West should ignore the addressed criteria. Therefore, the results of a comparison of HR values can have a limited and theoretical value only. It could be used in educational programs and science called *Paxology*.<sup>12</sup>

My answers to His Excellency (Liu Huaqiu) claims are therefore affirmative. There have been continuities and changes in the ways that rights have been conceptualized in China

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<sup>11</sup> Langmuir Irving (1881-1957), Nobel Prize laureate (1932): There are cases where there is no dishonesty involved but where people are tricked into false results by a lack of understanding about what human beings can do to themselves in the way of being led astray by subjective effects, wishful thinking or threshold interactions. These are examples of pathological science. These are things that attracted a great deal of attention.

<sup>12</sup> Černoch Felix: Theory of Peace as a Contradiction to War Science, Czech Military Review, volume 2014, issue 4. The peace is a state of affairs among states, nations and mankind, characterized by a friendly coexistence, solving matters in dispute by means of negotiations and accords, without use of armed and physical forces or psychological coercion. For preserving peace it is important to respect state sovereignty, independence, the right of nations to define their own courses. The theory of peace, dealing with those items is called paxology.



with its rich and distinctive rights discourse over the course of time and exposed to a lot of positive and less positive developments and trends in both the West and East.

The resulting concepts in West and East have the potential to enrich both. In contexts within which they have emerged and been contested, they have in common central episodes in history of the East and the West. The concepts in West are West's own, as those in East are East's own. China's cultural and political history have always drawn on pre-existing concepts and concerns – even when they criticized some of the commitments central to those existing values promoted by the West. The only way a state or community can unilaterally declare its values and practices immune to the scrutiny of others is through victory in war or parochialism.<sup>13</sup> Both are non-starters.

Should we really need, want build and enjoy a common house in which the peace would be the master and the war just correcting episode, all activities and expectations of West and the East governments, not to mention other actors like transnational companies, would need to be modified and trimmed for a lasting dialogue, and not never ending discussions. There is a qualitative difference between dialog and discussion: the time aspect, the way of thinking and arguing are different. They and other form the diversity: the beauty of our life.

Under the assumption that all involved in the rights discourse do not think of human rights values as parochial, and no one wishes a global war without winners, no one can be immune from criticism. Though there is no guarantee that any accommodation, much less constructive engagement, will be forthcoming from one or more parties involved in the rights discourse in the near future, if we do not change. Consent not needed.



*Jan Campbell (1946) – studied construction engineering, architecture and philosophy; post-gradually also biocybernetics, Islamic banking and insurance. Professionally he was active during mid and long term in several countries including Great Britain, Italy, Switzerland, Malaysia, ex-USSR, Kyrgyzstan, Kazakhstan, Russian Federation, Czech Republic and Germany, of which he is a citizen. Professional activities and experiences allowed to accept positions like a Head of EC Co-ordinating for TACIS programme, personal advisor to PM and analyst of political – economic risks including issues of Science diplomacy and work designated for narrow professional and public audiences, including university students. He obtained an honorary professor's degree at the Ural State Agrarian University. In Slovakia he was awarded the Golden Biatec for 2014 for humanizing society through publishing about the development and solutions of civilizational problems and global priorities.*

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<sup>13</sup> Parochialism is the state of mind, whereby one focuses on small sections of an issue rather than considering its wider context. More generally, it consists of being narrow in scope, like a synonym of "provincialism."