

Comparison of Human Rights Values Between the East and the West

A contextual view at human rights

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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 and the abuse of power to name a few and which surround the topic, this paper will argue that the key characteristics of HR stand for a fundamental human rights whose protection cannot be absolute.

The protection of HR cannot be absolute for a number of reasons. Following are 4 of many which the paper would consider in short and complement with a few references: 1) The historical background. 2) The language aspect and the fact of formulation in broad terms. 3) The fact of non resolvable contradictions. 4) The non scientific origins of HR concepts.

The 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, a *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*.

Considering the fact, that current geopolitical and geoeconomical environment is characterized by the absence of trust, dialog, absence of commonly accepted values and national interests and the concept of HR lacks scientific base[1], any comparison of HR between the East and the West can only have a limited and theoretical value. In best case a comparison could be used in the future, should a science dealing with the conduct of peace - *The paxology* would be established and included into educational programs.

A Contextual View at Human Rights

Given issues like the absence of trust in geopolitics and international relations, ruthless competition between states and civilizations and which surround the topic, this paper will argue that the protection of HR concept cannot be absolute.

The protection of HR cannot be absolute for a number of reasons. Following are 4 of many, 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 4) the non - scientific origins of concepts of HR.

In general we can use for general description of the state of ECHR a play with words one can find on Chinese internet: *meizhong buzhu*. It means in my 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 the WTO in 2001 the discussions about preferences were governed by HR 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 not only 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 really HR mean and why HR became an international topic of a great concern in everyday life politics.

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, Russia and China included 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.

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, for instance the last century. 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 old history of China and consider for instance 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 therefore also for the question related to the existence of conceptions of rights. Nevertheless, we can come closer to the answer when we look carefully 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 has to 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). ECHR therefore 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.

The Eastern and Chinese concepts differ from corresponding Western concepts. From this follows that we needed to 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 more messy and 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 Mr. Liu Huaqiu, head of the Chinese delegation to Vienna had written about *quanli* - his term for rights - in June 1993, 26 years ago.[2] I decided to use his statement as a reference and for reason of respect.

The statement made by His Excellency 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 much frustration 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 in and then returned home, and American and European thinkers visited and lectured in China.

HR in Russian Empire, USSR and current RF will not be considered in this paper for reasons of time, although their consideration could enhance the conference and the subsequent dialog.

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* 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.[3] This is in contradiction to the current trends and state of 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. These days visa to USA have been cancelled in hundreds, even in thousands by US authorities. 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, for instance writers, with themes from contemporary western rights discourse. Hundreds of thousands 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 at the same time also complex risk to be managed by themselves and politicians in times of sophisticated manipulation, fake news and ruthless competition between individuals, states and civilizations.

It seems to me important to remind that we all need to know better what to make of these two main claims. They without doubt influence politicians, activists and international lawyers outside and within China today. They would influence them tomorrow and also in the future. Therefore there is a need for complementary arguments. They may allow get more complete picture of immediate, practical and broadly theoretical HR issue.

Exactly 30 years ago (1989), the journal *National Interest* published well known essay written by Francis Fukuyama – *The End of History?*[4] 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 context of the developments during the period of the last 30 years, that the essay is essentially a Christian eschatology and of restricted reference value.

The main events of the period which represent 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 cannot be put out of consideration of HR issues now and also in the foreseeable future.

Beside this the Fukuyama's essay does not sufficiently take into account the power of ethnic loyalties, religious and Islamic fundamentalism and radical Islam. Fukuyama's idea and ideals, as the concept of HR, both are not demonstrated by empirical evidence. Why? They can never be demonstrated as 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 not traditional sciences.

It is therefore obvious that there is *moral pluralism in our world*. It is there because the 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 and context 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[5] have different concepts of rights than speakers of another? If speaker's concepts are different, can they still communicate with

one another?[6] 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 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 and their influence on thinking, believing and behaving cannot be ignored in the rights discourse.

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 all archetypes of eastern and other languages and formulations.

Considering the historical background of concept of HR in East and West, the fact of broad term formulation of ECHR, reasoning of judgments and their implications, all became more important as they were in the past. In context of developments and trends in the world in which the absence of trust and dialogue and the need for communication and security of information form a very complex contradictions and paradoxes the language and formulation aspect became a priority. It transformed the idea, ideals and Western concepts of HR into a multi-use tool. It can be seen daily how this tool has been used in manipulation of public, the production of fake news and also 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 conceptual differences not only intern between us, but also between the East and the West, and even if we speak the same language. This does not mean that differences stand in the way of successful communication and quality relation between individuals, communities, states and civilizations.

There is no doubt, that the knowledge and characteristics of Chinese language[7] and literature stand for a serious challenge to everyone dealing with Chinese text, documents, people and organizations. Similar applies to other Eastern countries. 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 serious linguistic challenge with all its consequences, but much more also in regard to HR, politics and cooperation.

The non - resolvable contradictions within the ECHR

The contradictions[8] indicated in this paper have been mainly created by the variety of formulations of HR, judgments produced by ECHR as *living instrument* not formally bound by precedents, and ECHR 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

its variety of moral, ethics and other standards, *reasons of conflict* with rights entrenched in other provisions of the Convention (the right to freedom of expression frequently collides with the right to private life a. o) and *paradoxes* resulting from *double standards* and *hypocrisy* applied in politics, the *deficit of new markets* for an economic system based on expansion and the ECHR *autonomous interpretation*.

The autonomous interpretation which stands for a non - resolvable contradiction and paradox at the same time allows a protection much wider in scope than the protection offered under national laws. The ECHR imposes *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. The concept of protection and positive obligations, both deliver a result representing limitations or restrictions of national sovereignty. Already for this reason the current concept of HR can never enjoy an absolute protection. Sovereignty is not negotiable for states like USA, PRC, RF and a few more like Israel. Therefore the ECHR as an international convention to protect human rights and political freedoms in Europe can only function and be considered as a guide, never as the last instance, equal to Good.

The fact that traditions divide communities into We and They, the ECHR tends to be *inclusive and equalizing*. 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 and it does not allow tuning of economic and political realities). All this and much more support the argument to consider ECHR as a guide.

No scientific origin

Considering all said previously and including the current geo-political and geo-economic environment with its absence of commonly accepted values and national interests, one cannot ignore the fact that the concept of HR lacks a scientific base. What does it mean? The concept of HR which has been based on politics, effective democracy and beliefs and promoted controversially over decades belongs to the category of *pathological science*.^[9]

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 of things that aren't so.*

Conclusions

Any comparison of HR values between the East and the West can only have a limited and theoretical value. In best case it could be used in the future, for instance in educational programs and science called the *Paxology*.^[10]

My answers to H.E. Liu Huaqiu claims are affirmative. There have been continuities and changes in the ways that rights have been conceptualized in China 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 concepts in West are West's own. In East are East's own. Therefore concepts in China are China's own. All concepts in contexts within which they have emerged and been contested, have in common *central episodes in history* of the East and the West. In addition 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. As a result 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.[11] Both are these days non-starters should we really need and want to build and enjoy a common house in which the peace would be the master and the war just an episode.

The activities and expectations of West and the East governments, to say nothing of other actors, would therefore need to be modified and trimmed for a lasting dialogue. A discussion about HR would not very much help as there is a qualitative difference between both: the time aspect, the way of thinking and arguing are different. Under the assumption that all involved in the rights discourse do not think of HR values as parochial, and no one wishes a global war, 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. Consent not needed.

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Notes

[1] HR concepts belong in the understanding of the author of this paper to the category of pathological science as defined by Nobel Price laureate (1932) Irving Langmuir (1881-1957).

[2] 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]

[3]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>

[4] Fukuyama, Francis (1989). "The End of History?". *The National Interest* (16): 3-18. ISSN 0884-9382

[5] 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.

[6] Margaret Thatcher once stated, that there is no need to agree with the other party in order to find a common language.

[7] 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.

[8] Campbell J., Consent Not Needed (Zustimmung nicht noetig, Souhlasu netřeba, Сoгласие не требуется), 2016, ISBN 978-3-00-052470-7

[9] Langmuir Irving (1881-1957), Nobel Price 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.

[10] Āernoch 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.

[11] 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."

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