

BUCHBESPRECHUNGEN / BOOK REVIEWS

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The Case for Liberal Democracy in China, Basic Human Rights, Confucianism and the Asian Values Debate*

Schweizer Studien zum internationalen Recht, herausgegeben von der schweizerischen
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This work is an updated version of the author's 2004 "Menschenrechte aus westlicher und asiatischer Sicht – Zu den Grundwerten der liberalen Demokratie" (Human Rights in Western and Asian Perspective – on the Basic Values of Liberal Democracy). Both titles pack an argumentative punch, of key political concepts which have been at the heart of domestic struggles in China and have also formed the core of controversies between the communist government in Peking and numerous foreign critics from various quarters. The People's Republic of China (PRC), established in 1949 and since morphed – in the sights of official Washington – from post-WW2 "Red China" and foe on the battlefields of Korea to substantial trading partner and post-9/11 "responsible stakeholder", remains a major power in complicated systemic transition. China's constitutional mould, not least as regards respect for human rights, is likely to shape not only the future of her people but can also be expected to impinge significantly on how her wider Asian neighbourhood will fare in the epochal venture of several old civilisations' (Japan, China, India) resounding entry into global modernity. Assertion of 'Asian values', in particular in Southeast Asian countries whose historical background admits of no easy definition of their cultural identity, adds to the complexity of how far the writ of human rights may run. The case for liberal democracy in China is far more than a doctrinal debate.

The book divides into four large chapters, on the historical development of human rights in the West, civil and political rights within the 'international community' (chiefly the United Nations), a case study of China, and a chapter of assessments and conclusions. The guiding theme of the author's study is a critique of the assertion, ascribed to Asian opponents of 'Western'-style human rights, that home-grown Asian concepts – in China mainly those of Confucian teachings – furnish an alternative political philosophy which rejects cardinal

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tenets of 'Western' democratic doctrine in favour of a model allegedly more in tune with, in Peking parlance, "national conditions" (*guoqing*).

The first chapter presents a familiar review of the genealogy of human rights in the West, from the principles of "natural law" from which in the late Middle Ages Francisco de Vitoria opposed Spanish conquest in the Americas; to the rational theories of constitutions as compacts between the people and their rulers for the preservation of domestic peace and security in the doctrines of Thomas Hobbes and John Locke; the first historical appearance of human rights in the establishment of bodies politic, in the newly independent United States of America and the revolutionary French Republic; and Kant's contention that only "republican" government, based on the separation of powers, is wholly compatible with the "rights of man".

The second chapter traces human rights in the United Nations, from the 1948 Universal Declaration of Human Rights and the 1966 International Covenants, on Civil and Political Rights and Economic, Social and Cultural Rights, to the World Conference on Human Rights in Teheran (1968), the Bangkok Declaration (April 1993) issued by some forty Asian countries' representatives and its qualification of the universality of human rights in favour of "national and regional particularities and various historical, cultural and religious backgrounds" and the subsequent World Conference on Human Rights Vienna (June 1993) where this universality was at least verbally affirmed by the participating delegations and again endorsed by ratification of the Vienna Conference's Declaration and Programme of Action by the UN General Assembly (December 1993).

The third chapter, as the centrepiece of the study, looks at China's philosophical tradition, principally the teachings of Confucius and their subsequent elaboration into intellectual orthodoxy in ancient China and what *Albertini* calls the "modern" period, from 1821¹ onwards. While 'Confucianism', in its emphasis on hierarchy and the essential distinction between 'gentlemen' (*junzi*) and 'small men' (*xiaoren*), is found wanting as a source of human 'rights', its core precepts of emphasis on ethically good conduct and chivalrous insistence on doing right even in the face of impossible odds² continue to make it a powerful traditional mainspring of political morality even in modern times. In the late imperial period, Chinese reformers often saw Western-style human rights merely as yet another incident of the superiority which enabled the foreign powers' imperialist encroachment on an enfeebled 'Celestial Empire' and attempted to absorb human rights among the many

¹ Chinese historiography is customarily divided into early ancient history (*shanggu* – until China's unification under the Qin Dynasty, in 221 BC), ancient history (*gudai* – from 221 BC until the First Opium War, in 1840-42), modern history (*jindai* – from 1842 until the May-Fourth Movement in 1919), and contemporary history (*xiandai* – from 1919 to the present, with the period after 1949 sometimes also referred to as *dangdai*, contemporary history).

² As encapsulated in the proverbial comment on the Sage as the "one who knows it's no use, but keeps on doing it" [*zhi qi bu ke er wei zhi zhe* 知其不可而為之者] (translation *Arthur Waley*, *The Analects*, Beijing: Foreign Languages Teaching and Research Press, Beijing: 1997, pp 192-93).

other tools China would need to borrow in her quest for renewed 'wealth and power'. After 1949, autarchic rule by the Communist Party of China (CPC) again relegated human rights to an ancillary state – building-blocks in an edifice shaped by unfettered CPC authority rather than bulwarks shielding individuals from government power. Intimately connected with this case study of China is the assertion, voiced less in China herself than in the predominantly Chinese society of Singapore, of "Asian values" in the shape of community-centred rather than individual-centred concepts of rights and duties coupled with the assumption that a largely self-co-opting leadership, legitimised in its pre-eminence through educational selection, would manage the commonwealth according to their own superior lights. To the conundrum of how to choose such a leadership, the author finds no satisfactory answer from the proponents of this political vision. To the question of whether human rights and government based on the equal consent of the governed may flourish in 'Asia' she does, however, see a forceful affirmative response from Kim Dae Jung, the former President of South Korea³ who denied the incompatibility of democracy with 'Asian' values, considering on the contrary that Asia offers a rich treasure of "democracy-oriented philosophies and traditions" that can help found modern democratic government.

While one may find little reason to disagree with the overall conclusions formulated by *Albertini*, the reader is left wishing to learn more of just how the advocates of 'Asian' benign paternalism envisage the legitimacy of such a system of government. The author would have done well in this regard to expand her choice of sources beyond Singapore, including in particular the brief, and jejune, intellectual flirtation in the PRC during the late 1980s with "new authoritarianism" (*xin quanweizhuyi*), received there as model of governance inspired by the example of Singapore and other Asian "tiger economies".

The 2004 amendments to the PRC constitution now include – Art 33 (3) – an express commitment by the state to protect human rights. The PRC has signed, but not yet ratified, the safeguarding human rights in China, albeit tightly bounded by the "Four Cardinal Principles", also enunciated in (the preamble to) the constitution, whereby "leadership by the CPC" is hard-wired into the matrix of governance, stopping the country's present constitutional dispensation distinctly short of the Kantian requirement of 'republican' government as a necessary condition for safeguarding human rights. Still, almost thirty years of "reform and opening" have greatly diversified the socio-political landscape of China. The vastly increased number of administrative and economic actors within this new environment has been accompanied by equally growing variety in the ways these numerous elements interact. Environmental degradation, waste of resources and massive encroachment on the rights and interests of individuals (irregular transfers of rural land or forced removal of inhabitants in urban areas earmarked for 'development') and enterprises (violation of intellectual property rights, deficient enforceability of contracts) and corruption

³ Page 94ff of the work reviewed here, quoting extensively from Kim's article "A Response to *Lee Kwan Yew*: Is Culture Destiny? The Myth of Asia's Anti-Democratic Values", *Foreign Affairs*, November-December 1994, Volume 73, No 6.

flourishing in the absence of an independent and vigilant press are generating numerous conflicts and, with increasing frequency, violent confrontation: all signs that a lack of representation in the political processes is straining the fabric of government. The CPC leadership has acknowledged the existence of these problems clearly enough⁴ but, locked into its own premises, shied away from conceding to the population at large effective participation in the decision-making processes beyond the village level. While "enriching forms of participation" in limited ambit is officially seen as desirable, "big democracy" (of the electoral, multi-party kind) is decried as a bringer of harm and chaos⁵. China's fast-paced change may, however, well not allow this to remain the last word on the matter.

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Das politische System Indiens

Eine Einführung

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Als Europäer vergleicht man bei gedanklicher Beschäftigung mit Indien dieses Land unwillkürlich mit dem eigenen relativ kleinen Nationalstaat, statt sich der Ausdehnung und Unterschiede ganz Europas bewusst zu sein und dessen Bevölkerungszahl fast zu verdreifachen. Beurteilt mit Blick auf die sich anbahnende weltpolitische Mächtekonstellation ist Indien strukturell Europas zur Zeit 27 EU-Ländern weit voraus: 1,1 Mrd. Menschen sind in einem Staat mit 28 Ländern integriert und insofern mit den USA und China zu vergleichen. Zu fast derselben Zeit, als Europa begann, sich zusammenzuschließen, gliederte das unabhängig gewordene Indien seine Fürstentümer ein und spaltete im Westen und Osten die islamischen Gebiete ab, die sich nicht einordnen wollten.

Dabei ist der indische Staatsaufbau durchaus dem von europäischen Nationalstaaten her gewohnten Strukturdenken zugänglich. So teilt *Christian Wagner* seine Darstellung auch ein:

⁴ Cf, in particular, the White Paper on Democracy of 19 October 2005 (http://www.gov.cn/zwgk/2005-10/19/content_79539.htm), and the report of 11 October 2005 on the 5th plenary session of the 16th Central Committee of the CPC (<http://news.sina.com.cn/c/2005-10-11/21127142603s.shtml>).

⁵ Cf the essay by Zheng Bijian, former deputy director of the Central Party School of the CPC, People's Daily, overseas internet edition, 22 November 2005 (<http://www.people.com.cn/GB/paper39/16225/1433134.html>).