

AUSTRALIA-CHINA AGENDA 2013

Human Rights and Politics

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THE AUSTRALIAN Centre on China in the World engages with the public and policy discussion of relations with the People's Republic of China and the Chinese world. Australia-China Agenda 2013 is our contribution to this important election year and the on-going consideration of the bilateral relationship.

This is a relationship that touches on virtually every aspect of our national life. A mature and beneficial engagement of such breadth and depth requires the leadership and support of government at all levels, as well as public stewardship, media understanding, educational enhancement and the strategic involvement of the business community.

Australia-China exchanges are also profoundly influenced by regional and bilateral relationships. Australia and China trade in goods as well as culture, politics and people, ideas and education, community and personalities.

Australia-China Agenda: 2013 brings to the attention of the public and the media, politicians and specialists some reflections and policy ideas authored by specialists with a professional interest and involvement in the relationship.

—Geremie R. Barmé
Founding Director, CIW

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AUSTRALIAN CENTRE ON
CHINA IN THE WORLD



Australian
National
University

ANU College of Asia & the Pacific
Canberra, Australia

2013

JANUARY 一月

FEBRUARY 二月

MARCH 三月

APRIL 四月

MAY 五月

JUNE 六月

JULY 七月

AUGUST 八月

SEPTEMBER 九月

OCTOBER 十月

NOVEMBER 十一月

DECEMBER 十二月

二〇一四年

DEBATE ON human rights in China today is as contentiously connected to politics as it has been for decades. China's transition to a market economy has opened up a larger arena for individuals and different social groups to express their views. But the scope and nature of this space remains circumscribed by the willingness of the Chinese party-state to reform and 'open up' politically.

The issue of social instability informs how the party-state manages discontent and social unrest and how it responds to individual and collective quests for justice.

Outside China, the place that human rights occupies in Western liberal discourse continues to locate the problem of abusive practices against targeted groups and individuals at the heart of the Chinese state-society relationship. In their annual reports international human rights organisations highlight the treatment of ethnic minority groups, particularly Tibetans and Muslim Uyghurs in China's west, and religious freedom for Christians and adherents of Falungong, as well as describing the plight of lawyers, dissident artists, scholars and others who speak up against social injustices.

Official Chinese discourse, of course, sees the state-society relationship as much more harmonious than is portrayed in Western human rights reports and in the international media. Over the last decade, however, the social fallout of rapid and highly uneven economic development has expanded the domestic rights debate within China to incorporate the issue of social disharmony, or what party-state rhetoric refers to as 'social instability'. The issue of social instability informs how the party-state manages discontent and social unrest and how it responds to individual and collective quests for justice.

Rights Discourse

Three main concepts dominate official Chinese approaches to human rights in the international and domestic arenas:

- 'Non-interference', a concept which informs China's usual response to international criticism. A diplomatic 'mind your own business', this principle calls for the international community to respect the domestic jurisdiction of each country, especially in relation to sensitive matters like human rights. China's official human rights policy emphasises strict dependence upon local conditions that vary across the nation and across time according to economic development and socio-cultural and historical circumstances;

- ‘Mutuality of rights and duties’: Article 33 of China’s 1982 Constitution sets out the principle of mutuality of rights and duties which implies that rights are inseparable from the duties prescribed by the Constitution and other laws. In 2004, the 1982 Constitution was revised to include in Article 33 the statement that ‘the state respects and protects human rights’, although it is not specific about whose and which human rights it intends to protect or what ‘respects and protects’ means in practice. The flexible interpretation of this statement accommodates ideological shifts in party-state policy as well as subjective understandings; and,
- Citizens’ economic and social rights take precedence over their political and civil rights. In Deng Xiaoping’s time (1980s and early 1990s), and in line with socialist tradition of past years, the official discourse emphasised economic and social rights at the expense of civil and political rights. Economic and social rights were to be developed in lockstep with increasing national economic development and wealth. China’s first White Paper on Human Rights in 1991 stressed that the right to subsistence was the nation’s primary human rights goal, while the state gradually withdrew from what had been its responsibilities as ‘provider’ of social services to enable the market to play a greater role.

Subsistence was indeed still a critical problem for many Chinese in the 1980s and early 1990s. The government’s most impressive feat over the last two decades has been to lift out of poverty hundreds of millions of people from rural areas across the nation, an accomplishment of truly historic proportions. But the social and economic fallout of this feat has also threatened many people’s social and economic rights. Uneven distribution of wealth, unequal access to justice and forms of corruption that are entrenched throughout the political system have sparked widespread discontent in the last decade. Many feel that their health, property and wages are no longer adequately protected by the legal system or government. They are aggrieved when the government and courts protect the economic interests of big and small business over the rights and interests of the Chinese people. They want the state to take action to deliver justice and protect their rights as citizens. This situation has resulted in a decade-long period of stability-obsession on the part of the party-state.

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Rights and Social Discontent

Since the early 2000s, an increasing number of protesters have taken to the streets rather than seeking redress through the courts or local governments. They see that the economic and social rights provided by the law are not respected in practice and their

ability to access formal avenues of justice is limited. It is estimated that well over 100,000 and possibly up to 180,000 mass protests are now staged each year, with rallies or sit ins ranging widely from ten to 10,000 and sometimes over 50,000 protesters.

A major source of the social discontent fuelling protest is land grabs. Typically, local officials sell land rights to developers for low prices and a substantial kickback, then sometimes hire thugs to remove residents who receive a mere fraction of what their property is worth. The Chinese Academy of Social Sciences in Beijing estimates that land was seized from fifty million farmers in 2010, with the figure increasing by roughly three million each year.

The people's lack of access to reliable avenues for redressing injustice has exacerbated problems that have emerged as a result of the rate and extent of social and economic change.

Environmental and labour disputes also push aggrieved citizens onto the streets. Thousands of people in communities whose wellbeing is harmed by industrial pollutants in soils and rivers have protested en masse, largely over corrupt government behaviour or in relation to weak oversight mechanisms at the local level that allow corporate malfeasance. Labour disputes over unpaid wages also feed social discontent and public protest.

In China, weak oversight and control at the local level have encouraged government and judicial corruption as well as corporate abuses. The people's lack of access to reliable avenues for redressing injustice has exacerbated problems

that have emerged as a result of the rate and extent of social and economic change. But rather than tackling the root causes of such problems through political reform, the party-state has chosen to focus on controlling the social and political fallout created by market reform. It has politicised the consequent sharp rise in social unrest and protests, casting them as forms of 'social instability'.

Stability Maintenance

In a move to reduce the number of protests, the Party leadership launched what they call 'weiwen' (Stability Maintenance) operations in the early-2000s. First, they concentrated their efforts on policing operations, containing and breaking up protests using civil and military personnel as well as hired private security agents. By the mid-2000s, authorities also began to reshape dispute resolution mechanisms, extending Stability Maintenance well beyond its policing origins into the entire justice system.

In recent years, the human rights knock-on effect of this stability obsession has seen the party-state readjust policing and justice practices to fit what it calls Stability Maintenance. But just as this rhetoric and practice of Stability Maintenance has shaped human rights issues, so too have the practices of the people shaped the politico-legal landscape. Protests and petitioning by millions of citizens across the country over the last decade have significantly affected not only the direction of politics, but also the legal mechanisms used to maintain order and control.

This expansion of *weiwen* also justified increasing the budget for Stability Maintenance operations that was used to resource the expansion of police, parapolice, CCTV surveillance technology and Internet surveillance to billions of Renminbi (RMB). By 2011, RMB 624 billion was budgeted for Stability Maintenance, a figure exceeding the official national defence budget. With the Stability Maintenance agenda ensconced as the number one political priority for the party-state, courts and governments at local level extended their political duties to cover the stability imperative. They did so by changing the way that they addressed land, labour and environmental disputes. Courts and local governments were given a new role in preventing unrest using approaches such as favouring out-of-court government or judicial mediation over litigation. Mediation was seen as an effective tool for controlling complaints at the local level and preventing them from escalating into organised protests. Unlike in a court trial where there is scope for appeal, once a complainant agrees with the terms of a mediation agreement, it is difficult for them to seek further redress or appeal to the court or to successfully petition to provincial or central authorities in Beijing. In this way, any potential source of instability could be contained locally.

The Rule of Law in Xi Jinping's China

The new post-2012 Party leadership under Xi Jinping appears to be reluctant to embrace any form of political liberalism. Yet, it recognises that the excesses of Stability Maintenance that encroached on the legal system and state-sanctioned rights had gravely impaired public trust in the law. After November 2012, the newly installed Party leadership began realigning the politico-legal agenda by retreating from the hard stance on Stability Maintenance and emphasising return to building a 'rule of law'.

This emphasis is on building a socialist not a western-liberal rule of law. Consistent with President Xi Jinping's rejection of the 'deviant path' of westernisation, a Party document internally circulated in May 2013 entitled 'Concerning the Situation in the Ideological Sphere' forbids universities and media offices to discuss the 'seven unmentionable topics': universal values, press freedom, civil society, citizen's rights, historical aberrations of the Party, the 'privileged capitalist class' and judicial independence. This 'situation in

the ideological sphere' is set to induce and enforce antipathy towards liberal political practices. So while the new Xi leadership is off to an early start in strengthening the legal system after the stifling agenda of Stability Maintenance, the freedoms and other entitlements recognised as human rights in the West are unlikely to gain significant ground in the near future. Contention and politics will continue to run thickly through the issues of human rights and justice in China's newly re-forming 'ideological sphere'.

Conclusion

In whatever political direction Xi Jinping takes the nation in the years to come, it is clear that human rights will remain a sensitive though crucial issue for Australia-China relations. Mutual differences in perceptions and ideas about the scope and meaning of human rights are born of each country's political values, ideology, social systems and history. Acknowledging this is consistent with China's official human rights policy emphasising variation according to local conditions. It is also consistent with a view that human rights are fluid, usually volatile and shaped by ideas about 'national vision' strictly intertwined with politics.

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The Australian Centre on China in the World (CIW), College of Asia & the Pacific (CAP), The Australian National University (ANU) is an initiative of the Commonwealth Government of Australia in collaboration with ANU, a university with the most significant concentration of dedicated Chinese Studies expertise and the publisher of the leading Chinese Studies journals in Australia. CIW is a national research centre that is jointly managed by a body of academics that includes scholars of China at universities in Adelaide, Brisbane, Hobart, Melbourne and Sydney.

The Centre is a humanities-led research institution that is engaged with the broad range of social sciences to produce academic work that, while relevant to the full spectrum of demands of international scholarship, also relates meaningfully to those in the public policy community, and to the broader interested public, both in Australia and overseas. It values a New Sinology, that is an intellectual, cultural and personal involvement with the Chinese world (be it in the People's Republic, Hong Kong, Macau, Taiwan or globally) that is underpinned by traditions of academic independence, local fluency and disciplinary relevance.

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<http://ciw.anu.edu.au>

<http://www.thechinastory.org>

CIW publications (also available online)

China Story Yearbook 2013: Civilising China, October 2013

China Story Yearbook 2012: Red Rising, Red Eclipse, August 2012

Stephen Fitzgerald, *Australia and China at Forty—Stretch of the Imagination*, 澳大利亚与中国已届四十年—舒展的想象力, February 2013

Australia and China: A Joint Report on the Bilateral Relationship 中国和澳大亚：关于双边关系的联合报告, with the China Institutes of Contemporary International Relations (CICIR), February 2012

CIW journals

China Heritage Quarterly

(<http://www.chinaheritagequarterly.org>)

East Asian History

(<http://www.eastasianhistory.org>)

The China Journal, co-published

(<http://ips.cap.anu.edu.au/chinajournal/>)

Danwei, affiliated

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