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HUMAN RIGHTS IN CINA

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INTRODUCTION: The Issue of Human Rights in China

This dissertation investigates the issue of human rights in China. We ask whether it is viable to assess violations of human rights in China following a universalist approach based on the notion of a global human rights standard. We conclude that this is indeed the case, notwithstanding some important qualifications. These concern the specificity of China's history and system of social and cultural values, which must be taken into account. Such cross-cultural issues must be carefully considered, avoiding a wholesale application of western principles. To understand the role of human rights in China we are going to address how they are perceived and recognised in the People's Republic of China and discern if we can assess the existence of a Chinese human rights discourse. This will be done through an analysis of Chinese history and philosophy and through the practices conducted by the socialist Party since its rise to power in 1949.

The research question of this qualitative analysis is to verify the existence of a Chinese human rights discourse and whether it can be adopted to evaluate its importance when it comes to judging the human rights record of the People Republic of China. Further questions that arise from this discussion are the following. Why Asian states should share values that are at the centre core of the liberal and democratic tradition against which they oppose their Asian constructed values. Why should Asian countries share human rights's universalism? As human rights derive from the system of values and culture of each country, how can China recognise the fundamental freedoms that are not part of its tradition?

One of the reasons that give salience to the issue of human rights in China derives from the geopolitical power that the People Republic has accumulated in the last decades. The post-cold War unipolar world, where Western human rights discourse has for a time seemed indisputable, is gradually being replaced by an ever-more multi-polar system, where emerging power with different cultural background challenge the cultural, political and economic hegemony of the West. The crucial importance of human rights also derives from their political backdrop: human rights discourse often turns into a powerful weapon that Western states use to implement sanctions and isolate hostile regimes, or in the most extreme cases, to justify military intervention. The political repercussions of human rights discourse is a particularly thorny issue in China, where any criticism of the government is depicted as a Western infiltration aimed at destabilising the authority of the communist regime.

The analysis of Chinese human rights discourse adopts a comparative perspective, aimed at offering a comprehensive overview of the differences between the Western conception of human rights and the Chinese one. Admittedly, this is no easy task: the complexity of China's culture, as well as its particular historical experience, makes any simplistic parallel with the West impossible. Several concepts of Western legal thought result untranslatable into Mandarin and have no direct correspondence in Chinese philosophical-political tradition. Equally difficult for a Westerner is to grasp with adequate precision the ideas inspiring Chinese human rights discourse, and to familiarise with the fundamental tenets of Confucianism and Taoism. For this reason, the lack of access to the Chinese literature and sources is therefore the greatest limitation of any similar analysis concerned with the Eastern country. The asymmetries between the Indo-European languages and Chinese derive from a diverse conceptual tradition which forecloses the possibility of a real sharing of the content. Ideograms in the Chinese language represent different and articulated meanings which can be hardly translated only through a large number of clarifications. In addition, having ideograms a variable meaning in relation to the context, the translation will produce communicative difficulties in the intercultural dialogue. Given this substantive diversity, the only possible solution is to communicate through a shareable intelligibility, that is to make intelligible in an other language the values of a different culture.

My research therefore draws from a diverse body of study, both Western and Chinese, including reports, journal articles and monographs, in the attempt to shed lights in the most impartial manner on China's record in terms of human rights. Works like *Human Rights in Chinese Thought: A Cross-Cultural Inquiry* by Stephan Angle have been important points of departures for my discussion, as they combine extensive analysis of sinological scholarship with cross-cultural comparisons and philosophical critique. Additionally, Peerenboom, Petersen and Chen's *Human rights in Asia: a comparative legal study of twelve Asian jurisdictions, France and the USA* has been determinant for my subjective understanding of the topic as it compared the historical, political, cultural, religious, and legal institutional factors that have shaped human rights in the Western as well as in the Eastern world and have highlighted as rights have increasingly become the medium through which different factions struggle for power. All the literature taken into account share the same critical and analytical perspective through this sensitive issue is handled. Although the diverse monographs and review articles tend to the same ideological direction, impartiality has been always the common denominator as a primary Western position would have implied the human rights universalisation which is questioned.

The intent of the analysis conducted is to demonstrate that, contrary to what is often argued, Chinese politico-philosophic thought has a long-standing tradition of ideas and beliefs related to notions of basic entitlements grounded in Confucian and Neo-confucian ethics. The specificity of Chinese culture rules out the possibility of any sweeping and imprudent generalisations regarding the respect or disrespect of human rights in modern day China. Only by analysing the key aspects of the Chinese history and philosophy can we situate human rights discourse in Chinese sociocultural context. We will do this through the most significant historical periods, respectively Confucianism, Neo-Confucianism, the nineteenth century, the period prior to 1949 and the half of the last century, especially after 1989.

This is not to deny the abusive practices perpetrated by the Communist government since the establishment of the People Republic. The second part of the dissertation will precisely assess the shortcomings of China in terms of human rights, such as the Tiananmen Square protest of 1989 or the Tibetan political and cultural subjugation. It was after the forced suppression of the Tiananmen movement that China issued its first paper related to human rights through which it rejected the strong international criticisms received. This event is considered as a turning point for the Chinese discussion of human rights. Moreover, what must be stressed is that every kind of analysis must always take in consideration the closure of the PRC towards the rest of the world which is translated in a lack of information or in distorted and not reliable information. There is a serious gap of information regarding the contemporary and past social, political and economic activities of the Communist authority.

These violations do not fail to create in Europe and America waves of indignation. Too often, this charge is made on the questionable premise that the Western conceptualisation of human rights is the only universal standard of cross-cultural comparison. In fact, as the first chapter of the dissertation demonstrated, China does have an idiosyncratic, well-established tradition of human rights discourse, dating as far back as Confucius. It follows that any progress in terms of human rights will stem from an active reinterpretation of Chinese philosophical tradition and not from an uncritical acceptance of Western ethical systems. Moreover, western critics of China often overlook the fact that Chinese human rights discourse is not a closed, static system, but has instead demonstrated a remarkable degree of flexibility and sensitivity to external influences, not least from Western tradition and ideologies. Similarly, the Chinese government has not failed to implement some tentative reforms when it comes to its own humanitarian shortcomings.

While there is still much way to go, this change in attitude suggests that progress in terms of human rights is nonetheless possible and, to an extent, it is already taking place. Thus, western critics of China must take into account the rootedness, flexibility and peculiarity of Chinese human rights discourse when blaming China for its human rights records, and acknowledge that any progress in this ambit will happen within the logic of Chinese value system.

This dissertation is divided into three parts. Part one will first present the concept of human rights as it has been passed along by western legal and political thought, and it will later turn to Chinese human rights discourse. It will be shown that China does have an authoritative humanist tradition, distinct from the Western one and characterised by distinctive ideas and concepts. Part two and three will review Chinese record in terms of human rights looking at different areas. Specifically, part two deals with the Tiananmen uprising and the limitations of civil liberties, as well as the status of lawyers and journalists. Part three instead looks at the conditions of women, homosexual and religious and ethnic minorities. Some final reflections will highlight how the distinctiveness of the Chinese conceptualisation of human rights mandates a shift in perspective on the West's part and requires the adoption of a new cross-cultural perspective when dealing with human rights.

CHAPTER ONE

1.1 Western human rights Conceptualisation

Discussions about human rights are, nowadays, very common and central. The head of States and the Governments remind us constantly of their existence and they use them to judge the political activities and qualities of the different countries. Human rights are, in fact, regularly used as means to approve or critique states's behaviours. That the theme has become in the twentieth century of primary importance is disclosed by the creation of control and monitoring agencies. Human rights are rights that belong to an individual or group of individuals simply for being human, or as a consequence of the inherent human vulnerability, or because they are requisite to the possibility of a just society. The history of the defenders of human rights, the history of the movements that have sustained and affirmed them, the history of the laws that derive from them and from which the international tools are produced, clearly points out that you reflate to human rights when the violation of the fundamental goods is attributed to the behaviour of the authority. Therefore, human rights assume a juridical connotation when the transgression is committed by an authority, that is to say when the transgression is carried out by a State. A clear example of this essential component is illustrated in article 34 of the European Convention in which it is specified that the protection concerns exclusively the abuses and the infringements committed by the State and, therefore, from any authorities that posses public powers.

The connection between the violation and its author is however not enough for a complete definition. A right subsists only if it is defined by the law. And in the absence of a law you can speak about an interest to defend, of the existence of a "natural base" that imposes an obligation to foresee a right. At the basis of the notion there are commons rights which are generally recognised and protected by the internal legal system of the civilised Countries. Such rights assume the quality of 'human rights' when they are enacted by international Conventions that impose their protection towards the sovereign power of the State.

Each State assures and grants human rights according to the principles that define their internal legal system. Human Rights in the United States of America are safeguarded by the United States Constitution in the paragraph concerning the charter of rights and especially by the articles defined as the "Bill of Rights". Civil rights as religious freedom and the freedom to expression are totally covered while the US systems lacks some social rights of different kind. There are no guarantees

regarding the right to work, to education, to healthcare. Moreover, the US government has been frequently accused of violating human rights for their practices related to torture, illegal extradition, incarceration without trial and support to foreign dictatorship. Human rights in the US are therefore subject of continuous debates and critiques.

The guarantee of the fundamental rights is one of the basic principles of the internal juridical system of the European union. The Court of justice of the European Union contributed broadly with its jurisprudence to the development and the recognition of the fundamental rights. With the entry into force of the Lisbon Treaty at the end of 2009, the situation is sensitively evolved as the union is now judicially bounded by the Human Rights charter.

Considering instead the Chinese internal legal system, there are several articles in the Constitution of 1982 which reflect the existence and the guarantee of human rights. However, several information and academic references suggest us that this is not the Chinese reality. We are talking about a state in which freedoms are severely limited and few civil rights are in reality guaranteed.

Article 35 is in fact controversial as it assures freedoms that the Chinese population do not enjoy. According to Article 35 “Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration”.¹ Moreover, Article 41, which states that “Citizens of the People’s Republic of China have the right to criticise and make suggestions regarding any state organ or functionary” is again unrealistic as citizens are continuously constrained by the strong sovereign power to sustain the communist party and any kind of political or ideological peaceful revolution is crushed with the use of force. Article 36 points out instead that “Citizens of the People's Republic of China enjoy freedom of religious belief;”² This is certainly not the case as only five are the religions admitted in China and no other form of religious belief is accepted and consequently repressed by the communist force. Finally, Article 37 is the last point through which the Chinese constitution of 1982 can be condemned: “Freedom of the person of citizens of the People's Republic of China is inviolable. No citizen may be arrested except with the approval or decision of a people's court,” According to this article, the People’s Republic of China ensures to its citizens a liberal and free condition. However, this discussion will report many events and examples in which situation is exactly the opposite.

¹ People's Republic of China, Constitution of the People's Republic of China of 1982.

² People's Republic of China, Constitution of the People's Republic of China of 1982.

1.2 Human Rights in Chinese History and Philosophy

1.2.1 Introduction to Chinese History

As we have seen from the previous discussions, human rights present some specific and clear-cut characteristics, as well as historical precedents, that led us to define them in a definitive and peculiar way.

Generally speaking, human rights are usually proclaimed in a declaration, they include freedoms to and freedoms from and are claimed against a political authority. Though these three basic conditions are essential, not all declarations of rights embody them. However, recalling to the most important announcements of human rights as the Magna Carta, the Bill of Rights, the Declaration of Independence or the Universal Declaration of Human Rights, they all present the main genetic, contextual and sanctional aspects that define human rights. Furthermore, each of these declarations hinge on a philosophical background which makes its justification possible.

Having discussed and analysed the existence of human rights declaration in the Western world, one might ask whether there is something similar in the Chinese tradition. Are there comparable declarations of human rights in Chinese history? Are there some philosophical or intellectual ideologies which presuppose the existence of human rights? How have the philosophical or political positions reacted to human rights? Which are the principles governing the citizens' freedoms?

The only attempt we can undertake to answer the questions and to address philosophically the context through which human rights are conceived is to rely on the political and social Chinese reality.

Our premise and starting point is surely that there are no explicit Chinese human rights declarations in the sense they are perceived in the West. The first step for this discussion must be the analysis of the historical sources and developments from which the Chinese System of values derive. As we have stressed before, the values of a country are the origin of the development and the understanding of human rights. This is true for the West as well as for the Eastern world. Thus, human rights derive from the development of the so-called Asian values. However, the recognition of heterogeneity in Asian traditions does not, according to Amartya Sen, settle the issue of the presence or absence of a commitment to individual freedom and political liberty in Asian culture.³

³ Sen, Amartya. "Human rights and Asian values". New York: Carnegie Council on Ethics and International Affairs, 1997.

Since the birth of the ancient Chinese society, the people, referred as an entity as MIN or SHU-Min, did not enjoyed a large measure of freedoms and collective rights. As for all the Chinese history, there is little information available due to the Chinese limitations and its unwillingness to open up their culture for the threat of a Western ideological invasion. Having in mind this premise, three are the important terms related to the nature of human rights in ancient China: the term *min* or *shu-min* is a collective term referred to the totality of the ruled people; the term *t'ien* refers instead to the theme that the virtue of the rulers must be that of protecting the people (*min*); and finally, the term *Shang Shu* suggests the people's rights to bequest the decisions of the rulers.

Albeit the existence of these three, in some sense liberal values, the subjugated civilian society lacked any economic or ideological source to develop ideas about rights and freedoms due to the constraints imposed by the rulers. The formation of independent military states and the ruler's desire to expand land and power caused the decline of the feudal system and a corresponding rise of social mobility. The emancipation of the civilians from the feudal order started along the creation of the commercial class and the establishment of private property of lands which led the ruled to search better wealth and employment through the territory. The education of the masses was finally necessary and the stream of ideas and ideologies was welcomed and, as a consequence, changed the population's minds concerning freedoms and rights. Therefore, the development and the existence of philosophical schools indicated the birth of social and political consciousness.

1.2.2 Human rights in Confucianism Tradition

Among these new schools of thought, Confucianism is surely the most influential. To assess if the Chinese rights discourse finds its origin in Confucianism we will rely on Chung-ying Cheng's work *Human Rights in Chinese History and Chinese Philosophy*, a research article which proposes a transformative conception of Confucian ethics to make a comparison between Western and Chinese philosophy. Since the beginning of his work, Confucius (551-479 b.c.) searched a new order for the transforming society. Although he wished to preserve the values of the old order, he answered by "proposing a moral universalisation of the ancient aristocratic values for all people, without presupposing distinctions among feudal ranks" (Chang 1979).⁴ The most important Confucian contribution to the human rights discourse is the establishment of a new kind of *li* (rule of properties). It is a doctrine that implies that human relations must be independent of ranks and

⁴ "Cheng, Chung-ying. "Human rights in Chinese history and Chinese philosophy." *Comparative Civilizations Review* 1 (1979): 1.

statutes. In this view, relationships among men are universal and it is in the men's right to produce this kind of relationships. "The result of this is *te* (virtue) according to which men would be able to enjoy a harmony, an orderly community, and a prosperity which would fulfil both human nature and the norms of society".⁵ As men are equal and have common nature, they are capable of achieving the same results. The theme that every man is equal can be considered as an affirmation of human rights through a moral philosophy of man.

An other contribution towards the path of human rights made by Confucianism is the doctrine of *jen* (benevolence): every man can cultivate their inclination to love all men and embrace them with benevolence. The definition of *jen*, clearly suggests that Confucius "not only holds that men must be treated equally, but that the superior man must treat them equally in order to perfect himself: "In order to perfect oneself, one must perfect others; in order to establish oneself, one has to establish others."⁶ This humanistic approach to man, independent of rank and status, could already lead to a formulation of human rights in the sense of a philosophical recognition of the worth man and his potentiality.

Thus, the analysis around human rights in the Chinese tradition proposed by the Chung-ying Cheng in 1979 seems to suggest that the Chinese model is inconsistent and adverse to the Western one. In conclusion, we can formulate some characteristic of the Eastern model considering the rights that the Chinese population have actually enjoyed and that the Confucian thinkers recognise.

The first point that can be stressed is that human rights are, in this model, relational. This is exactly the opposite to the substantive quality provided by the Western model. In the Confucian thought, social and civil rights are defined inside a system of relationship between individuals and it is through this relationships that one develops oneself. Therefore, there is no recognition of the absolute principles of virtues that the natural condition of the man present in the Western model. This is a distinctive condition of the differences between the two schools of thought. In the Confucian ethics, the notion of *li* (rules of propriety) defines the relational nature of Chinese human rights and although individuals share between them the potentiality of *jen*, the latter is not a human right per se. According to the notion of *jen*, citizens should not claim rights for themselves but accept others in order to achieve their personal development. On the ground of this ideology, "The

⁵ Cheng, Chung-ying. "Human rights in Chinese history and Chinese philosophy." *Comparative Civilizations Review* 1 (1979): 1. p.9

⁶ Cheng, Chung-ying. "Human rights in Chinese history and Chinese philosophy." *Comparative Civilizations Review* 1 (1979): 1.p. 11

ultimate right in the substantial sense is the right of self-cultivation and self-perfection.”⁷ Therefore, natural relationships between individuals are governed by *li* on the basis of the recognition of their human existence rather than on claim to rights.

Secondly, human rights are particularistic. In the absence of a universal declaration of the human being’s essence, what justifies individual’s actions and willingness is the particularistic analysis of the context, relationships and time. In short, human rights are relevant when they are granted and applied in particular contexts, relationship and time. Moreover, human rights are defined as collective. That is, they are rights of the people as a whole rather than as individuals. This characteristic is without doubts one of the most outstanding feature of the Chinese tradition as opposed to the Western one. The term “man“ is referred to a single entity and, in general, it is not centripetal in Chinese philosophy. It is “ through the affirmation of the human rights of a group that the members of the group naturally benefit”. The nature of human rights presupposes the interest of a collective group rather than individuals. This condition is represented by the protection of the people as a whole by the ruler and by the safeguard of the family as a mean to achieve individual virtues.

Finally, human rights are to be recognised by the authority. This means that individuals cannot claim them by oneself even against a coercive and inhuman use of force or limitation of freedoms. Basically, “Chinese individuals are self-effacing, but this is not to say that they joy or need human rights. These are assumed to be rationally and normally required of and provided by a good social system or a good system of rule. When these rights are perceived to be lacking, there is risk of social disorder”.⁸ Only after the 1919 May 4 Movement, Chinese citizens started to claim the recognition of these rights.

Some authors, on the basis of Chinese cultural traditions, affirmed that the Chinese legal tradition is inconsistent with Western human rights, and often they have formulated severe criticisms towards the western models as they are too centred on the role of the individual. Other authors, instead, have rather looked to reconcile the Confucian tradition with the conception of rights accepted at the international level. As suggested by the great majority of thinkers, nevertheless, the objective should not be to find a human right conception in the Confucianism system but rather to recognise inside it

⁷ Cheng, Chung-ying. "Human rights in Chinese history and Chinese philosophy." *Comparative Civilizations Review* 1 (1979): 1. p.10

⁸ Cheng, Chung-ying. "Human rights in Chinese history and Chinese philosophy." *Comparative Civilizations Review* 1 (1979): 1. p.17

the presence of fundamental human values. Confucianism, in fact, contains several elements assimilable to the key concepts of human rights accepted by the international level as the value of respect and compassion.

An author which is very relevant for our discussion related to human rights and Confucianism is Joseph Chan. The work of Chan aims to find a human right conception inside the Confucian philosophy. In his last book, *Confucian Perfectionism: To Political Philosophy for Modern Times*, Chan proposes a direct relationship between the Confucian foundation and notions of human rights and democracy. As other interpreters, Chan reconstructs the Confucianism through references to Confucio, Mencio and Xunzi. From a methodological point of view, he has been inspired by John Rawls and, particularly, by the distinction between ideal theory and non ideal theory.

Starting from the “ideal theory” perspective, Confucianism is for Chan a better political and human perspective than liberalism. The western theory of human rights follows a metaphysical approach according to which rights are attributed to individuals independently from the historical and social context. Confucianism, instead, points out to the well-being of the society and of the individuals rather than to the recognition of rights. In the Confucian ethics there is the problem of relating values to the empirical reality. According to Chan there is the necessity of introducing a “non ideal” theory that relates to the problems through a historical view. He proposes a political perfectionism that relates Confucian values to the liberal and democratic institutions. To achieve this goal, Chan has tried to demonstrate that human rights are compatible with the Confucian tradition.

There are, in his view, two ways of interpreting human rights. The first theory views human rights as a mean to protect the fundamental interests of the people while the other stresses that they are necessary expressions of the dignity and virtue of the human being. Chan follows the first interpretation attributing to human rights an instrumental function. Moreover, he suggests to reduce the number of human rights only to civil rights and political freedoms. The preference for this kind of reduction has been already favoured by Rawls in 1999. He argued to establish a restricted conception of citizenship through which society respects civil and political freedoms without the necessity of being liberal. In the Chinese case, instead, the reduction indicates the establishment of a society in which human rights are seen as a barrier against the despotism of the governments. In short, the Confucian perfectionism sustained by Chan tends to build a society upon the virtues of the individuals. “The political authority exist for the people and it is partially justified from its

ability to protect and guarantee the well-being of the population. The mission of the rulers is to serve the people and the ruled accept this voluntarily through their support to the government.”⁹

However, this ideal vision does not exist. Therefore, it is necessary to consider real alternatives, and democracy can serve to this purpose. It is understood as the method for *selecting virtuosos politicians which can provide the common good* (Chan).¹⁰ We need to investigate, however, if it is compatible with Confucianism. The thesis of Chan is that Confucian political perfectionism and the democracy are complementary.

To conclude, we find two different interpretations within Confucianism. The first affirms the idea of the existence of a human nature (*ren*) and this basis provides the recognition of human rights as universal qualities independent from the social, cultural and religious contexts. The second views rights as a mean to reach the common good and rejects the idea that they are a quality of the human kind. The western perspective appears therefore 'abstract' because it does not consider that the human being is a being in relationship, it belongs to a context. This double and contrasting Confucian vision of human rights recalls perfectly Hegel's critique of the Kantian doctrine. Essentially, Hegel accused the Kantian categorical imperative of overlooking the most embodied and situated aspect of ethics and therefore of falling in abstractness. Therefore, Hegel contrasts his idea of *Sittlichkeit*, a historically and socially situated morality, with the more abstract and universalistic Kantian *Moralitat*.

1.2.3 Human rights in Neo-Confucianism Tradition

Going on in the centuries, we can observe how the human rights discourse has again developed according to the values and virtues of the period. However, what is absolute uncontroversial is that there is no word that can be translated as rights in the Chinese tradition. There were only concepts and ideas whose meanings could had been related to human rights, but in general, in the absence of a concept related to Chinese human rights, what else there was to indicate those benefits and powers society had during the long Chinese history? Again Confucianism, and especially Neo-confucianism

⁹ Chan, Joseph. 1995. *The Asian Challenge to Universal Human Rights: A Philosophical Appraisal* ed. Human Rights and International Relations in the Asia-Pacific Region, Pinter.

¹⁰ Chan, Joseph. 1995. *The Asian Challenge to Universal Human Rights: A Philosophical Appraisal* ed. Human Rights and International Relations in the Asia-Pacific Region, Pinter.

could be an excellent source for our exploration of the human rights discourse. The discussion will focus more on desires than on *quan* and *li* as Confucianism relies more on the individual's motivations and desires rather than on their specific goal.

I shall begin with Zhou Danyi (1017-73) because he is the first one among Confucians that expressed the idea of desires and no desires (*wuyu*). He started from the analysis of abstract metaphysics to bring up the notion of "desire". Essentially, in chapter 33 of his book "Comprehending the Book of Changes" his thought is developed around the idea that seeking desires is what rulers should avoid for the well-being of society. If individuals lack these desires than prosperity will arouse, that is no desire (*wuyu*). This idea is interpreted by one of the most significant Zhou's advocates, Zhu Xi. In his passage, human desires are seen as evil and leading society to decline: "A mind that has never known right learning is muddled by human desire. Having known right learning (...) human desires will gradually be eradicated. This is truly a good thing."¹¹ Individuals should therefore have fewer and fewer desires until one has none; No one but the sage can reach the point of having no desires. Controlling the self, for the prosperity of society and the recognition of each human being's interest, is expressed in terms of self-regarding desires.

Dai Zhen (1723-77) is considered the greatest philosopher of the Qing dynasty. His core conception around desire is expressed in his words: "whatever comes from desire is always for sake of life and nurture".¹² This idea goes directly against the previous thinkers as Dai considers desires as dangerous but he believes that in their origin they are good and motivated by virtues. Moreover, Dai's thought on desires is found in other passage: "Self-regard comes from feelings and desires. To be without self-regard is humaneness, and to be without becloudedness is wisdom-but it is not by getting rid of feelings and desires that one become wise."¹³ This means that the two great afflictions of human beings, self-regard and becloudedness, arise from faults in desiring the former and faults in knowing the latter. In short, Confucians strongly affirmed the existence of legitimate desire and the necessity to fulfil them. This idea is incurably similar to conception exposed in the "On the Law and War and Peace" of Hugo Grotius. Grotius argued that the laws of nature were

¹¹ Zhu, Xi Zhang Boxing Extended Reflection on Things at Hand. 1974 (1710), p. 99

¹² Dai Zhen. Complete Works on Dai Zhen, Zhang Dainan 1995, p. 211

¹³ Dai Zhen. Complete Works on Dai Zhen, Zhang Dainan 1995, p. 211

rooted in our sociability: *We desire society, and thus we appropriately desire-as confirmed by our reason-to respect one another's rights, without which there would be no society.*¹⁴

He combines this idea with the very Confucian notion that our rights can be exchanged via contract; even the rights to self-defence can be transferred to the sovereign.¹⁵ However, Confucianism lacks concepts that can assume this role and view our natures and our needs as uniform. The idea that desires are precursors of the human right discourse is perfectly summed up by Stephen C. Angle in his work *Human Rights in Chinese Thought: A Cross-Cultural Inquiry*: “Embracing the value of dishes in one way to defend the legitimacy of people’s self-regarding interests; another way is to assert that people have rights to enjoy these same interests”.

1.2.4 The Nineteenth Century and the Period prior to 1949

As there are no concepts of rights in the Chinese cultural tradition, someone could suggest that our analysis should focus more on the moment in which the idea of rights arrived to China. Actually, it is rather difficult to identify a time period which classifies this ideological transition. If we look at the first translations of European human rights works, we must highlight that the norms through which concepts are translated are instituted by the practices of the group to which they belong. That is to say that the commitments of every individual differ from what meaning he or his community give to that expression. In other words, the comparisons of concepts across cultures will develop different meanings from one another. The difference of community is therefore the most relevant aspect to be considered in the kind of analysis. In the absence of a concept of rights in pre-nineteenth century, we can only observe which words have been used to translate what I consider as rights.

The translation of Henry Wheaton’s *Elements of International Law* by the American missionary W.A. Martin is our starting point. Martin published his translation in 1864 as the *General Laws of the Myriad Nations (Wanguo Gonfa)*. What is pertinent to our discussion is how the author has translated in the Chinese language the concept of rights. Frequently, he used the term *quan* to translate rights as the previous tradition suggests. He refers instead to *ziran zhi quan* for natural rights, to *siquan* for personal rights and to *pingxing shin quan* for rights of equality. What is striking

¹⁴ Grotius *On the Law of War and Peace* (1625); Schneewind, J. trans. 1990, p. 91,100. Cambridge University Press

¹⁵ Angle, Stephen C. *Human Rights in Chinese Thought: A Cross-Cultural Inquiry*. Cambridge, UK: Cambridge University Press, 2002. p. 98

is that *quan* does not always correspond to “rights”; in a number of places it is used to translate “authority”¹⁶. Its meaning is therefore controversial both literally and figuratively. In the Confucian writing of Mencius, for example something it has been referred to as a moral judgement.

In addition, in many contexts *quan* has no connection with morality, and often comes to mean simply “power”¹⁷. Although this variation of meaning, the term *quan* continues to be utilised till now. However, a new term has been accepted throughout the twentieth century as the translation of rights: *quanli*. Also introduced in the *General Laws*, the term *quanli* has as well a long history as it occurs in the classic Confucianism of Xunzi (c. 220 b.c.). These ambiguities around the right term are explained by the author of the “General Law” himself. He argues that in his book *quan* means not only the kind of power one has over the others, but also the lot (*fen*) that moral pattern (*li*) prescribes to each person. Occasionally we would add *li* as in the expression “the original *quanli* of the common people. Nevertheless, in China it is *quan* rather than *quanli* that continues to be used. Even though the Chinese rights discourse seems to be moving dynamically towards the meaning perceived in the Western ideology, it remains a uniquely Chinese construct. Certainly the conception of relating rights to a collective group of members and not to individuals is a misunderstanding of its values.

The Twentieth century represents the first real engagement between Western and Chinese traditions. The rights discourse takes from now on a crucial direction that relinquishes some of the so-called Asian values. The arrival of Western ideas has again slightly changed the notion of Chinese rights, merely *quanli*. The most relevant Chinese author of this period is Liu Shipei (1884-1919), an anarchist that has strongly influenced the rights discourse of the first part of the century. In his two major works, respectively *Zhongguo Minye Jingyi or Essentials of the Chinese Social Contract (1903)* and the *1905 Lunli Jiaokeshu or Textbook on Ethics*, Liu Shipei explores the history and the variations of *quanli*. Coauthored with Lin Xie, a revolutionary and propagandist educator, the “Essential of the Chinese Social Contract” is a significant work which relies on all the ethical and political Chinese writings compared to Rousseau’s Social Contract. The authors have chosen this comparison because they are interested in the reflection of their tradition from the point of view of Western concepts.

¹⁶ Martin, W.A.P. 1864, *General Laws of the Myriad Nations* vol.1, pp.1b,19b

¹⁷ Zhang et al. 1973, *Encyclopedic Dictionary of the Chinese Language*. vol. 5, pp. 524

According to Stephen Angle's *Human Rights in Chinese Thought: A Cross-Cultural Inquiry* Liu's perspective about *quanli* is that "by adding *quanli* to his vocabulary, Liu was able to stress the importance of affirming both individual interest and abilities, and the satisfaction gained by exercising responsibilities, more easily than he could have without the concept of *quanli*. That is, the author is going against the Confucian theme of relating rights only to collective groups in the favour of individual's human rights. Liu therefore cares about the *quanli* of the individuals because it contributes to the legitimate good of the individuals themselves. Although Liu Shapei has been strongly influenced from the Western writings, he theorises a conceptualisation of rights purely Chinese as neither laws nor conflicts between individuals and state are centripetal in his theory. Moreover, he concludes his statement arguing that rights are concepts grounded in historically contingent Western philosophical traditions, and that the rights movement is based towards secular liberalism, which is at odds with and preclude states based on religious worldview and communitarian or collectivist viewpoint that do not privilege autonomy, choice and individual interests to the same extent as liberals do."¹⁸

As China moves towards the middle of the century, the concepts of *quanli* and the Chinese rights discourse underwent important changes. Generally speaking, there has been a shift from Confucianism towards Western liberal ideologies. The core of the discourse is no more Confucian texts and vocabulary but Western writings and rights definitions. The most relevant authors in the *quanli* discourse of the period prior to 1949 are Chen Duxiu and Gao Yihan. They are the more central, sophisticated and representative author of this new mainstream. Essentially, they believed that *quanli* are the "powers and benefits that an individual or group must enjoy in order to reach its ultimate goal—a goal which they tend to describe as the fulfilment of its personality (*renge*)."¹⁹ They see *quanli* as means to further ends as they include political power as the freedom to speech and the participation in the decision-making along the primarily economic benefits. How it is clear, Chen's and Gao's conceptions do not differ so much from Western ideas and therefore, the so demanded Western influence, has finally arrived in the East.

¹⁸ Peerenboom, Randall P. "Human rights, China, and cross-cultural inquiry: Philosophy, history, and power politics." *Philosophy East and West* 55.2 (2005): 283-320.

¹⁹ Angle, Stephen C. *Human Rights in Chinese Thought*. Cambridge University Press, 2002. p. 179

In addition, the advent of the Marxist ideology in China has brought a new critique towards the potential establishment of Chinese rights. Especially through the founding of the CCP, *quanli* have been criticised to be class-based and its conception to belong only to revolutionary forces. This idea was stressed even more with the birth of the Nationalist Party (Guomindang or GMD) as it based upon the Leninist vision.

1.2.5 From 1949 to Today: the Last Decades

Since the establishment of the People's Republic in 1949, the rights discourse persisted to evolve. In this period, the questions about what and who has rights has become even more outstanding than ever. Coming back to the claim that there is in the Chinese tradition a peculiar and emblematic conception of rights, we have assured how they share only some of the features of the Western world. Among the factors that had strongly inspired the development of their interpretation we remember the satisfaction of legitimate desires, and the right of individual's to develop their personalities. Nevertheless, the strikingly convergence between the East and the West at the beginning of the century may suggest that Liu's claim can be in reality questioned. Even if the Chinese rights discourse has advanced through Chinese concepts and concerns, this does not define it as isolated from outside influences. In fact, there are several aspect and issues that presuppose a cross-cultural dialogue and an authentic engagement. In the XX century, and especially during its last quarter, diverse discussions over rights occurred. Two are the most outstanding movements that led to the birth of a right 's social consciousness in China: the Democracy Movement of 1978-79 and the Tiananmen Democracy movement in the spring of 1989.

Randall Peerenboom, an American philosopher and legal scholar, has made in his various works a distinctive and notable claim: that rights are considered in the Chinese contemporary ideology as a kind of interest. He contrasts this idea with the theory that natural rights are deontological (based on duties) rather than utilitarian (based on interests): "rights precedes interests, both in the sense that rights trump interests and that rights are not based on utility or social consequences but on moral principles whose justification is derived independently of the good".²⁰

He also argues that Chinese thinkers wrongly assume that individual and collective interests, and thus collective and individual rights, are not antithetic. Peerenboom explicit this positions relating

²⁰ Peerenboom, Randall, Carole J. Petersen, and Albert HY Chen, "Human rights in Asia: a comparative legal study of twelve Asian jurisdictions, France and the USA". eds. Routledge, 2006. p. 361

to Confucian ideas: “the central role of rites (*li*) in the tradition helps to explain the enduring appeal of the utopian myth of harmony, which had blinded rulers and reformers alike to the realities of disharmony, and thus retarded the development of Eastern theory of rights (Peerenboom 1998)”.²¹ Therefore, Peerenboom’s theory can be summed up as follows: rights and interest have more complex interrelations than one can imagine.

Indeed, the fact that *quanli* has been frequently adopted as equivalent for rights, as its covered both the notion of legitimate desires and legitimate benefits, represents perfectly Peerenboom’s theory that rights are closely tied to interests. There are, however, several ways to explain this relationship between rights and interests. One of the most representative of the Chinese rights discourse is Wei Jingsheng, a radical activists of the Democracy Movement and editor of the magazine “Explorations”. Wei believes that the rights people have are “inherent rather bestowed on them by the state”; from the moment one is born, one has the right to live and the right to fight for a better life. At the same time human rights exist only in relation to their environment; thus, human rights are limited and relative rather than unlimited and absolute”.²² Wei Jingsheng therefore strongly believes that rights, being related to our social environment, are closely tied to the principle of equality. In addition, he states that “rights are opportunities to be recognised by the external world and conditions necessary to lead a normal life”.²³

In short, he views human rights as assurances that must be given to the people equally as they, united to freedom and democracy, encourage voluntary cooperation and achieve unity of relatively unanimous interests”.²⁴ Rights are, in Wei’s view, “protections of the fundamental capacities or interests which all humans have and need in order to pursue their aims, though these capacities and aims can change over time, and rights will change with them”.²⁵ Unfortunately, Wei Jingsheng has been captured and kept in jail throughout the 1989 Tiananmen Movement, from which he wrote a letter published in 1991 in the USA. In this letter, he sums up his theories and ideas: “human rights

²¹ Peerenboom, Randall, “Confucian harmony and freedom of thought: The right to think versus right thinking.” Confucianism and human rights (1998),.p 23-38.

²² Jingsheng, Wei. "The fifth modernization." The Fifth Modernization: China’s Human Rights Movement 1979 (1978). p . 142

²³ Jingsheng, Wei. "The fifth modernization." p . 143

²⁴ Jingsheng, Wei. "The fifth modernization." p . 145

²⁵ Angle, Stephen C. Human Rights in Chinese Thought. Cambridge University Press, 2002. p. 215

are natural and instinctive rights which emerge from social relations intrinsic in the man's basic nature and as such they cannot be modified by legislation or by the will of the government".²⁶

A less radical author publishing in China about rights and interest is Li Buyun, the associate director of the Chinese Academy of Social Sciences's Human Rights Research Center. In his article of 1992, Liu states that "The foundation of rights are interests. In essence, the relationship of rights and duties between people is a kind of interest-relationship."²⁷ Li's idea is that interests must always be understood as connected to social relations and to variation of the latter. The presence of social relationships implies, in the author's view, the necessity of humans rights:

"Social relations between people are the source of people's due rights (*yingyou quanli*) and the grounds for the production and development of human rights; the existence of social relations is a premise on which the existence of human rights rests. If an individual existed in complete isolation, he would not need anything in the form of rights and duties to mediate (*tiaozheng*) the various forms of contradiction and conflicts of interests that arise between people" (Li 1992, p.11)²⁸. And at the same time rights's function is to mediate between different interests. This means that some interests are more valuable and important for their connection to rights.

This is exactly what happens to "due rights " as their aim must be the defence of some interests which imply the pursuance of health social relations. But what is the origin of these due rights ?

Li affirm that "people's due rights come about in part through the concrete reflection of the principles of laws and other social regulations, and in part through the manifestation in actual social relationship of the people's moral, social and political concepts, as well as their traditions, habits and customs (Li,1992, p. 9). That is to say that due rights derive from social practices rather than from some natural or ethical source. The same connection between rights and interest can be reinforced by the Professor Zhang Wenxian's definition: "rights are a means by which the state, through passing legal regulations, allows people to choose and acquire interests that are within the scope of a state's interests".²⁹ Thus, rights are in the author's view a mean to apply to a certain kinds of interest and not to others.

²⁶ Jingsheng, Wei and Kristina M. Torgeson. *The Courage to Stand Alone: Letters from Prison and Other Writings*. Penguin Group USA, 1998.

²⁷ Li Buyun, 1992. *On the Three Existential Types of Human Rights*. Chinese Academy of Social Sciences Press, p .11

²⁸ Li Buyun, 1992. *On the Three Existential Types of Human Rights*. Chinese Academy of Social Sciences Press, p .11

²⁹ Zhang Wenxian. 1992. *On the Subjects of Human Rights and the Human Rights Subjects*. Chinese Academy of Social Sciences Press. p .38

After this huge consideration upon rights and human rights in the Chinese history and tradition, what is our final point? What should we make out of this analysis?

Essentially, the promise that there are no references to human rights or human right declaration in Chinese history appears to be valid. From Confucianism to the XX century, several and diverse discussions around the topic of rights have aroused and each time this notion had changed according to the system of values of that time period. The different views of the Chinese thinkers suggest then that the rights discourse has been always dynamic rather than static. In general, the term that has been used more frequently to indicate what we conceive as rights has been *quanli*, but this is clearly not enough to consider it as a human rights tradition. The real discussion upon this theme has begun only in the last century when finally the Western ideology had been more or less welcomed in the country.

Throughout the long Chinese history, many authors have tried to identify and describe what can be Chinese rights. However, some many different visions have only created more uncertainty and doubts around the issue. In conclusion, being human rights a Western constructed notion, how can we ought to demand that they must share something that is external to their values and traditions? However, evidence shows that a genuine engagement between the two different conceptions of human rights can be established: “Chinese rights discourse is distinctive but not incommensurable, ever changing but continuous, diverse but containing dominant themes that make it possible to discuss Chinese conceptions of rights and to compare them to American, French or Indian conceptions of rights”. For the maintenance of a peaceful West-East relationship it is necessary to find a compromise which can make agree all the parts. Although the Chinese rights discourse has been evolving towards the Western conceptualisation, the absence of human rights has been surely a great disadvantage for the Chinese population throughout its history. It is time to make a change.

CHAPTER TWO

Tiananmen: A turning point for the human rights discourse in China ?

2.1 The Chinese legal system and the events that led to the Tiananmen massacre

Given this plurality of values and traditions that emerge from the Chinese history and Chinese philosophy, we are now going to assess if the Chinese human rights discourse has some form of implementation in the civil reality. Since the beginning of the 1978 Chinese reform and opening-up led by Deng Xiaoping, the People's Republic of China (PRC) has undertaken a steady and substantial reform to the legal system. This progress has been followed by an amelioration of the rule of the law, of the governance and of the recognition of civic rights. It seems then that China, embracing the East Asian Model in the last twenty years, is promoting inside its territory a structural change of all its legal-political system, touching many aspects as Party–state relations, state–society relations, and major governing institutions. Considering these progresses, we can accept Randall Peerenboom's theory that the Chinese system is not trapped in transition: "Although China's rapid progress in improving the legal system and good governance appear to be slowing, it is incorrect that China's legal system as a whole deteriorated between 1998 and 2004".³⁰

The history of China speaks for itself. Although China is becoming one of the most important economic power of the entire world, it is possible to declare that fundamental human rights, recognised in most democratic countries, are not protected or guaranteed in everyday life and practice. Before any kind of discussion, it is necessary to state that there is a huge lack of information not only about the economic operations and working conditions, but especially about the valorisation and repression of the exercise of human rights. Albeit the trial regulation of February 2016 which reduces the rate of pretrial detention is to be considered as an important step ahead, China's judicial system still falls way short of international standards. Failing includes lack of access to lawyers, extracting confessions through torture and political interference in the judiciary. Those detained for their political views, human rights activities or religious and spiritual beliefs are at high risk of torture in custody, particularly if they refuse to recant or renounce their beliefs. Thus, despite the tentative reform efforts, China is still an authoritarian state today.

30 Peerenboom, Randall. "Are China's Legal Reforms Stalled?." The Foundation for Law, Justice and Society in collaboration with The Centre for Socio-Legal Studies, University of Oxford. 2008

Since 1978 then, the Chinese judicial system has anyway moved forward in terms of transparency. However, unlike what has been announced, the Code of Criminal Procedure has not been amended yet and the death penalty continues to be widespread in China. The government has completed some achievements towards the realisation of a reform on the capital punishment by founding inside the Supreme court of the People a section entrusted of the revision of all convictions. This new provision should allow to decrease the 10.000 executions that occur every year in China³¹. Nevertheless, being national statistics on the number of the executions a secret of state, it results very problematic to effect an analysis and a control of progresses.

One of the most outstanding events related to Chinese human rights is without doubt the Tiananmen massacre. Started in April 22 1989, the Tiananmen uprising is seen as the most critical event occurred in the last decades in China. Severe were the critiques at the international level for the military repression that the Communist party decided to implement. The importance of the Tiananmen revolt rests on its values. The Chinese population decided to stand against all those human rights violations that the People's Republic of China was promoting. Several are the reasons that led to the harsh protests. Among these, the death of Hu Yaobang, one of the most liberal and revolutionary figure of the Communist Party, that was received by the public with great dreadiness. To recall and remember Hu Yaobang, a huge mass of people started to throng Tiananmen Square. The protesters wanted the Party to assume an official position regard this authentic figure of Hu, who, already in 1986, has sustained the students's turmoils causing his consequential political marginalisation.

Generally speaking, many authors agree that the crisis emerged from the contrast between the success of the economic reform and the lack of political reform. Since 1978, the open up reform of Deng Xiaoping generated excessive growth, instability and inflation. Moreover, the austerity and the centralisation programs of 1988 led to stagnation rather than stabilisation bringing, in the workers's mind, the ides that all those benefits received from the economic reform could be under threat. Given this situation, the students's uprising found support in the workers's organisation and united they stood against corruption and the assiduous accumulation of wealth by government officials.

The shared indignation and the shortcomings of the economic reform created the basis for the rise of the social unrest that would culminate in the Tiananmen crisis. Between the 18th and 21st of

³¹ According to the report of Amnesty International of 2005, the dealt penalty has been performed at least towards 1770 people and others 3900 have been condemned to death the same year.

April, the amount of the population crowded in the square started to increase steadily. While the crowd started to fill out the roads in Beijing, other demonstrations appeared in other cities of the Country. There were not only students, but also workers and affiliates to the Party. In their slogans they asked for liberty, democracy, freedom of the press and of the judicial system, the defence of human rights and the end of the communist dictatorship. There is also who simply asked for higher salaries, less inflation, higher employment. The turning point was reached on April 22, day of the funeral of Hu Yaobang. About ten thousand students gathered in Tiananmen Square, despite the authorities had warned the demonstrators of the risk of severe punishments. The students asked for a meeting with the Prime Minister Li Peng but the answer was a refusal and the total censorship of the media. On the other hand, the students's response was a general strike of the Beijing University. In those days, there were contrasting ideas inside the Party on how to resolve the outbreak.

Surely, these rivalries among the various factions of the CCP and the generational struggle among the leaders played an important role in the events in Tiananmen. While the General Secretary of the Party, Zhao Ziyang, was open to some dialogue with the students to avoid the risk of violence, Li Peng, was instead convinced of the foreign imprint of the revolt and as such the government's reaction could had been only harsh and repressive. In addition, Li Peng managed to bring to his side Deng Xiaoping who has always been the most influential political figure of the decade. The consequence of this collaboration was the publication in Deng Xiaoping's editorial of an article which proclaimed the necessity of a government's clear position regard the protests.

The student's response was a new protest across the streets of Beijing and the proclamation of a new general manifestation for May 4. Their request was that Deng must withdraw his statement. The date is symbolic, as it coincides with the anniversary of the May 4 1919 Movement, through which seventy years before the Chinese students had launched their anti-imperialist claim. This is the greatest manifestation of protests China had ever assist since the establishment of the Communist regime in 1949. Thousands marched across the streets of the Chinese capital, while Zhao Ziyang declared that the protest would dissolve in a few days. In the meanwhile, for May 15 was expected the visit of the Soviet president Michail Gorbachev which was the first meeting among the two communist powers within 30 years. Gorbachev is for the Chinese students a symbol of opening and renewal, exactly what is asked to the Chinese leadership. Two days before the arrival of the Soviet president, on May 13, thousand of students crowded in Tiananmen Square proclaiming a hunger strike.

Since April 22, the situation became more critical day by day. During the night of May 19, in front of the stalemate and the impossibility to dissolve the protest, the hard wing of the communist Party, steered non officially from Deng, decided to promulgate the martial law. Zhao Ziyang, who has always favoured a dialogue and a peaceful resolution, made a last desperate attempt in the morning of May 20 in Tiananmen Square, where he delivered a speech to the students:

Students, we came too late. We are sorry. You talk about us, criticise us, it is all necessary. The reason that I came here is not to ask for your forgiveness. What I want to say is that you are all getting weak, it has been seven days since you went on a hunger strike, you can't continue like this. As time goes on, your body will be damaged beyond repair, it could be very life-threatening.

Now the most important thing is to end this strike. This will be one of his last political actions. The military troops started to move toward the centre of Beijing and many civilians tried to stop its advance, placing barricades everywhere. On June 2, the communist Party decided to dissolve with the use of force the counterrevolutionary insurrection. On the following day, the soldiers advanced with decision toward Tiananmen Square and started to open fire against civilians. The result was a massacre never seen until then in communist China. The government viewed the intervention of the army as a great victory while the population and the rest of the world were under shock. The data regarding the civil deaths is not reliable as it has never been disclosed by the Chinese government.

In brief, the expression of a generalised feeling of discontent concluded in a bloody repression. The insurrection of Tiananmen Square is extremely important for our human rights discussion as it is one of the most clear violation occurred since the economic reform of 1978. During these events, the right to expression, to protest against the government and the use of force are all terrible violations that China will always bring along its history. At the same time, the government of Li Peng decided to act in an unconstitutional way. In fact, according to article 35 of the 1982 Chinese Constitution, "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration". None of these rights and freedom has been recognised or granted in those days. Not even a constitutional constrain has been enough to avoid a so terrible and bloody mass murder.

Moreover, Article 41 states that "Citizens of the People's Republic of China have the right to criticise and make suggestions regarding any state organ or functionary". Albeit this constitutional boundary, the People Republic of China has repressed through the army the strong criticisms and accusations streamed out from the social demonstration. It seems then that none of these articles has been respected during the insurrections and serious human rights violations occurred.

Following the Tiananmen massacre, an international campaign against China aroused. The Chinese violations of human rights had made the international environment change their attitudes towards the communist country. For one a year, China has been politically ostracised and constrained by modest economic sanctions. However, China's dictatorship remains powerful and persists on violating most internationally respected human rights. On the international level instead, most of the political or strategic sacrifices that were made to press human rights concern were abandoned in later years and the sanctions disappeared. The relevance of human rights and the impact of the criticisms led by the infringements are reported in Jack Donnelly work *Human rights: a new standard of civilisation*:

Human rights are not an alternative to power politics or the international law of sovereign equality. They do, however, impose supplementary constraints on the freedom of action of states. The reality of these constraints, and the importance of asserting the relevance of standards of international justice, are no less important than their limits.³²

To conclude, remember Tiananmen Square is inevitable for those who care about the respect for human rights and the promotion of democracy.

2.2 Torture and maltreatments as violations of human rights: the re-education through labor camps

Torture and maltreatments towards prisoners keep on being practiced with extraordinary frequency. The methods more used are electroshocks and the deprivation of food and sleep. An example of the diffuse use of torture is the 2005 Amnesty International Report which had as protagonist Gao Rongrong, member of the Chinese spiritual group Falung Gong.³³ Gao Rongrong died in 2005 in a police camp of "re-education through labor" in Shenyang, in the province of Liaoning. According to the news, after they had found material about the group Falung Gong in the detention centre, Gao has ben tortured and beaten to death. In general, although a policy has been designed to improve the behaviour of the police and to eliminate the practice of torture, few efforts have been done until now to introduce the necessary legal and institutional reforms to prevent this kind of practices. As if it was not enough, people accused of penal or political crimes are denied the right to a trial and the possibility to meet lawyers and relatives keeps on being strongly limited and the trials, when

³² Donnelly, Jack. "Human rights: a new standard of civilisation?." *International Affairs* 74.1 (1998): 1-23.

³³ Amnesty International, *Amnesty International Report 2005 - China*, 25 May 2005,

granted, almost never respect the fixed international standards. Moreover, the individuals accused of crimes against the state or terrorism subsequently see their own legal rights even more limited.

In march 2007, the National Assembly of the People declared that they took in consideration the system reform of “re-education through labor”, a form of administrative detention known as *Loajiao* instituted in 1957 by Mao Tse Tung. It was used to detent without charges nor trials thousands of people which committed small crimes. In reality, these detention centre are some means through which the Chinese regime repressed dissidents and opponents, first the anti-maoist and then the religious groups. According to Amnesty International, there are currently 310 Chinese detention camps for re-education in the territory and over four hundred thousand parolees³⁴. In 2005, the official data of the Chinese government reported that people held in the fields of re-education amounted to 116000, while for the humanitarian organisations the real number was more than the double.

The newspaper Daily China has talked with great emphasis of the upcoming abolition of the fields, affirming that it would constitute "a concrete footstep towards the protection of human rights, as expected from the Constitution". However, it must be stressed that already in 2005 the regime had announced the possibility to abolish this inhuman system but this proposal finished to be devoid of consequences to the strong opposition of the communist leaders. Only twelve years later, in 2013, the system of re-education through labor was fully abolished. “This decision, if it truly put an end to Re-Education Through Labor, would be an indisputable step towards establishing rule of law in China,” said Sophie Richardson, Human Rights Watch China director. “Courageous activists and ordinary citizens have long fought to end this system of arbitrary detention.”³⁵

We must consider that China has assisted in the last years to a real explosion of social unrest and public protests, fed by the increasing economic disparities, from the abuses perpetrated by the local government officials and by the citizens’s difficulty to access to justice. In fact, for admission of the same Chinese government, only in 2005 and in 2010 occurred around 87000 collective accidents. More recently, the Minister of Public Security has reported that in the first months of 2006, 39000 cases of interruptions of the public order took place in China, around the quadruple in comparison to the preceding decade. Considering that China has a one-party system through which no political

³⁴ Amnesty International, Amnesty International Report 2005 - China , 25 May 2005

³⁵ China: Fully Abolish Re-Education Through Labor. 2013. Human Rights Watch. <https://www.hrw.org/news/2013/01/08/china-fully-abolish-re-education-through-labor>.

freedom is granted, the persistence of several episodes of protest are not a surprise. Today, in fact, China owes in fact to face a myriad of problems, so much that the same Chinese Communist Party has recognised the necessity to grant an outburst to the popular dissatisfaction. Thus, the People Republic of China's government is much more tolerant in the past towards social and political public demonstrations.

2.3 Chinese freedom of expression ?

Despite the several invitations by the international community to ratify the Treaty, China is still outside the International Pact on Civil and Political rights. The aim of this pact is to protect the right not to suffer interferences for opinions, the right to information and in general the right to liberty of expression. Today, in China, the means of communication and Internet enjoy a higher degree of liberty in comparison to the past, and to the journalists it is granted greater space of investigation on some delicate themes as the abuses perpetrated of the police and the sore of public corruption. Nevertheless, the local governmental departments of propaganda maintain a narrow control on newspapers, radio and television, while the police continually observes the contents of the communications through the Internet.

In June 2006, the Chinese government has implemented a new law which implies strong monetary sanctions to mass media that broadcast information concerned with emergency as epidemics, natural or environmental disasters without the prior permission of the regime's censorship. At the same time, the State limits the access to international media by blocking the web sites of the most relevant Western newspapers and by constraining the foreign press agencies to carry out their services through the Xinhua (national State agency) censorship. The apex was reached in 2006 when a further recession of the information's services was justified by the prime Minister Wen Jiabao by sustaining that the censorship was necessary for safeguarding the collective, social and national interests.

The Communist government did even worse. As a matter of fact, the right to freedom of expression has been denied by the government through operations of censorship. This form of restraint concerns especially the internet but also radio and television broadcast. Internet is now the fastest and simplest mean of information and as such it can reveal the atrocities committed by the Chinese policy powers. Moreover, trough internet people could also use figureheads not to reveal their real identities and therefore be difficult to trace and punish. As a consequence, the government decided

to create in 2003 the “Great Firewall”, a term ironically coined in an article of the “Wired” magazine and used by international media, including the Chinese, to refer to the “Golden Shield”, a project of censorship and surveillance handled by the Chinese Ministry of Public Security that blocks information or entire foreign websites. This is a real cyber weapon, which isolates China alienated from the rest of the world, in a dome, where no information comes in and goes out because of the fright of altering the status quo. No real communication, no privacy, all of these aspects are demolished by cybersecurity laws. A practical case of this “cyber war” occurred in June 2016 when the Cyberspace Administration issued new rules requiring app providers to keep user logs for 60 days to reduce the spread of illegal information. It also ordered news website to “clean up” comment sections to purge views prohibited by the government.

2.4 The proliferation and recognition of human rights as a threat to the PRC leadership: the civil condition of lawyers and journalists

Continuing our discussion, the government has continued to draft and enact a series of national securities laws that presented serious threats to the protection of human rights. The most worrying aspect deals with the capacity of political leaders, included the current president Xi Jinping, to induce people to believe that the actions of activists are promoted and supported by foreign infiltrations. That tendency to repression and label activists as infiltrators reveals the fear that fundamental human rights could be used as a mean to destabilise the authoritarian leadership of the government. But even if Western governments had really tried to promote political and civil rights in Asia, how could that possibly compromise the status of the rights of Asians? ³⁶ Built on shared humanity, human rights have not developed according to the citizenship of a country, but are taken as entitlements of every human being. For example, the right not to be tortured is independent from the individual’s citizenship and as such the “conception of human rights transcends local legislation and the citizenship of the person affected”. Indeed, in so far as human rights are seen as rights that any person has as a human being and not as a citizen of any particular country, the reach of the corresponding duties can also include any human being, irrespective of citizenship. ³⁷

³⁶ Sen, Amartya. “Human rights and Asian values”.
New York: Carnegie Council on Ethics and International Affairs, 1997.

³⁷ Sen, Amartya. “Human rights and Asian values”.
New York: Carnegie Council on Ethics and International Affairs, 1997.

Thus, the only way the Party has to avoid that collapse of its authority is to repress with violence, with arrests and detentions of activists and nongovernmental organisations (NGOs). Certainly, human rights defenders, whose claims are for a more free and open nation and the recognition of fundamental human rights, have been denied these requests and they endured atrocious retaliations. In fact, activists and human rights defenders continued to be systematically subjected to monitoring, harassment intimidation, arrests and detentions. Apart from the dismantling of several non-associative organisations, the PRC impounded in 2014 Guo Yushan and He Zheng Jun, respectively the director and the administrator of the Transition Institute. They have been accused of illegal economic transactions and operations, and released only one year later, in 2015.

This event did not remain an isolated case. In fact, we have several situations in which the government has repressed the defence of human rights. The wrath of the government did not invest only human rights defenders but also the lawyers who tried to safeguard the recognition of these rights. In this respect, in 2015 a huge number of lawyers were physically assaulted, arrested, put under trial and imprisoned. Many of these detained activists are still not released because accused of public order disturbance. A common aspect to every authoritarian State, whose main policy leads to the annihilating of basic human rights, is to redraft against journalists and in general mass media which, spreading news and information about the real facts, can awake the social and political conscience of the population.

Moreover, Amnesty International reports that 245 lawyers and activists have been targeted in 2015 and one of this, Li Heping, is still missing. Amnesty argues the necessity to have more awareness of cases such as that of Cao Shunli, a human rights activist who died in police detention in 2014. Her family claimed that she had been denied medical attention and that they had been refused access to her body. The government has denied any mistreatment, declaring that the activist's "lawful rights and interests have been protected in accordance with law"³⁸. In June 2016, journalists Lu Yuyu and Li Tingyu, who had been documenting China's protests since 2012, were formally detained for "creating disturbances." In addition, Labor rights advocates Meng Han and Zeng Feiyang were convicted without credible evidence on vague charges including "gathering crowds to disturb public and social order". Meng was sentenced to 21 months in jail while Zeng was given a four-year suspended sentence. According to the state media, they had used funding from abroad to incite workers to go on strike.³⁹

³⁸ Human Rights Watch: World Report 2017: China and Tibet. p 3.

³⁹ Human Rights Watch: World Report 2017: China and Tibet. p 3.

To conclude, hundreds of websites are blocked, censored or banned in China, search results are filtered, including those using words like freedom, human rights and Amnesty International. With around 30 journalists and 50 internet users known to be behind bars, China has been described as “the world’s leading jailer of journalists.” Young people are, as well, under a strict Party control as their minds, according to the government's opinion, are more inclined to be conditioned by Western propaganda of freedom of expression. Universities represent the place where people not only can be informed of the reality that surround them but it is also the meeting point between different opinions and cultures. For these reasons, in January 2015 the Minister of Education Yuan Guiren imposed to abolish any didactical material which promoted Western values and principles but also to dismiss professors who transmitted to scholars these liberal and reformist values. In addition to those deprivations, in February 2016 Xi visited three major state media outlets and called on them to pledge absolute loyalty to the Party. That month, authorities also shut down the microblogs of prominent blogger Ren Zhiqiang, who has 35 millions followers, after Ren criticised Xi’s media visits.⁴⁰

⁴⁰ Human Rights Watch: World Report 2017: China and Tibet. p 4. <https://www.hrw.org/world-report/2017/country-chapters/china-and-tibet>, Human Rights Watch.

CHAPTER THREE

Human rights in Chinese Civil Society

3.1 Women in Chinese society

We cannot avoid dealing with the delicate topic of Women's rights. Nowadays, as in the previous decades, there is no equality between women and men in China. This inequality has dramatically influenced the social relationships of the country and has made China be considered as a backward state regard the social environment. Women have to suffer discriminations in workplaces as well as cases of sexual harassment. More recently, a group of feminist activists were detained as they prepared to hand out leaflets and stickers about domestic violence. Five of them were detained for more than a month.

Furthermore, another aspect that impresses the world's public opinion is the one-child policy, introduced in China in 1979. The result of this policy is, according to the Campaigners's claims, a stream of forced abortions, female infanticide and a gender imbalance in the country. In 2016 though, authorities announced a formal easing of the policy. But while couples are now free to decide the numbers of their progeny, women's reproductive rights are still under a heavy control by the state. Moreover, female political activists have revived the same treatment as lawyers and political dissidents. They in fact suffered innumerable forms of extortion and violence for attempting to raise public awareness through forms of leaflet on relevant issues such as sexual harassment. Many of these activists have been released today, but some are still imprisoned, triggering the indignation of the international public opinion.

According to Human Rights Watch, the most reliable source of information regarding human rights, has reported that the Supreme People's Court and other governmental agencies have issued in March new instructions "requiring judges to consider domestic violence as a mitigating circumstance in criminal cases against victims of such violence". Finally, in August, the legal authorities decided to review a draft concerning the Law against Domestic Violence. "While a step in the right direction, the draft falls short of international standards, particularly in its definition of

domestic violence. Cases of domestic violence in which local authorities fail to respond appropriately continue to occur with worrying regularity”⁴¹

3.2 The place of religion in Chinese human rights

With regard to religion, it is carefully controlled and limited in China. Independent groups such as Protestant “house churches” are considered unlawful and can be raided, closed and their members detained. Muslims in Xinjiang have also faced restrictions on their religious activities, including during Ramadan. In addition, the Falun Gong spiritual movement, which has been analysed previously, has been banned since 1999 and its members, as Amnesty International reports, have been confined in labour camps and prisons. In general, freedom of religion, recognised as a constitutional right in many Western Constitutions, is nowadays a mean of inclusion and equality. However, in China there are only five recognised official religions: Buddhism, Taoism, Islam, Protestantism, and Catholicism. As can be expected, religious pluralism is not permitted and to avoid the spread of illegal religion beliefs the government has often resorted to a massive use of force. The campaign to demolish churches and remove Christian crosses from buildings in Zhejiang province, launched in 2013, has been intensified in 2016. According to international media, more than 1,700 crosses had been removed by the end of 2016, prompting a series of protests.

The Chinese justification for all these acts of violent repression against religious groups is carried out by defining them as illegal structures which have the intent of annihilating the government’s leadership. Again, the reason for such violence is connected to the threat that this expansion of dangerous religions, especially the Christian one, can bring in China Western values of liberty and a corresponding rise of a social consciousness. Therefore, to prevent this potential situation, authorities have forcibly deprived the places of worship of these believers, who have not remained helpless and passive to these wickedness, taking firstly peaceful forms of protest and then increasingly violent ones. The promoters of these riots have been labeled as “public order subverters” and punished with arrests and detentions.

⁴¹ Human Rights Watch. “World Report 2016: China.” 2016
<https://www.hrw.org/world-report/2016/country-chapters/china>, Human Rights Watch. p. 5

Overall, the real intent of the Chinese authority is not only to define these religions as "evil cults" but also to achieve religious syncretism through a campaign of sensitisation that has as its primary goal the rise of a widespread social belief that these Western religions were exploited by hostile forces to destabilise the order and unity of the nation. Conversely, it's this hostility to religious pluralism that creates internal divisions and an irremediable fracture of the social relations of the country.

3.3 The recognition of homosexuality and the treatment of people with disabilities

Turning to an other set of rights, China has been often criticised for its treatment of people with disabilities. In fact, Human Rights Watch has defined protections as inadequate and argues that people face serious discrimination in employment and education. Even though the Education's Ministry announced in 2014 that China would allow Braille or electronic university entrance exams, there are still huge problems with these practicalities. The Mental Health Law states that hospitalisation should be voluntary except in cases where individuals pose a danger to themselves or others. An example of this discrimination and of the negligence of this law, is Gu Xianghong, who, according to Amnesty International, has been detained in a Beijing psychiatric hospital for five weeks only for her strong critiques and petitions against the authorities. Despite China has ratified the Convention on the rights of Persons with Disabilities (CRPD) in 2008, evidence shows that people with disabilities continue to endure forms of discrimination.

For this reason, the minister promulgated in April 2016 new regulations requiring exam administrators to provide one or more forms of reasonable accommodation, such as extending the time allowed for completing exams and providing sign language services to student with disabilities taking the gaokao. Although education institutions are not legally bounded to provide such students a reasonable accommodation as defined in the CPRD, the April decision is anyway a significant step forward.

Finally from 2017, China no longer recognises, at least formally, homosexuality as a form of crime and it is no longer considered as a symptom of mental infirmity. However, there is no form of legal constrain in the country's legislation that can effectively protect the homosexuals and the right to gender identity. As a matter of fact, homosexual couples do not have any legal recognition of their

marriages. Thus, despite there has been some progressive social openness to the diversity of sexual orientation and, at least, common recognition of a right to gender identity, the mass media, perhaps under government pressure, reserve little space and avoid debates on these arguments, still considered taboo. For this reason, the struggle for a legal recognition of homosexuality does not tend to diminish. Several are the protests and court cases for discriminatory orientation that occurred in the last decade in China and the presence in the universities of approved teaching manuals which define homosexuality as a form of mental illness show how much the subject must still be questioned in China. To conclude, in June 2016 China voted against a UN resolution creating an expert post dedicated to addressing violence and discrimination based on sexual orientation and gender identity.

3.4 Human rights application in Tibet, Xinjiang and Hong Kong regions

Once more, NGO's and Human Rights groups report serious human rights violations in China. This time, these infringements are related to Tibetans, Uighurs and Mongolians who continue to face discrimination and restriction of their freedom. Especially in the autonomous region of Xinjiang, the ethnic Uighurs live in a persistent condition of social unrest due to these violations. Hundreds have died in attacks over the past three years and consequently China have started to dissolve this unrest by launching in 2015 a "year-long campaign against terrorism" and an increased control of the region. As it is known, Tibet has also faced years of unrest. Human Rights Watch reports that only in 2014 seven people set themselves on fire protesting against the repressive policies conducted by the authorities. The total number of immolations since 2008 is 140. Although Tibet declared its independence in 1912 and functioned autonomously until the Chinese government forced it military to cede its sovereignty to Beijing, the Chinese government proclaimed that Tibet has continuously been part of the Chinese nation since 1300 a.c. In 2015, the Communist authority declared greater space of self-rule in Tibet, reconfirming that its sovereignty belong to the Party.

In reality, every aspect of Tibetan life is under siege and they continue to enjoy fewer civil and political rights than before. The Chinese government enforces its control on Tibet through the threat and use of arbitrary detentions and punishments, sometimes including violence. Tibetans are always surveilled in their daily lives through security cameras, police checkpoints and any kind of instrument that deprives the population of their privacy and rights. Usually, peaceful protests are

suppressed with severe violence and protesters imprisoned and tortured. In late 2008, for example, four Tibetan children, all aged 15, they were detained only on suspicion of writing pro-Tibetan independence slogans. Amnesty International received reports that electric prods were used to torture the children. Other Tibetans, including monks and nuns, have been killed even for less. Tibetans are impounded on unclear and unspecified charges for simply expressing their desire for freedom or for peaceful acts of protest. They are denied access to proper legal support and face trials that do not respect international standards of Justice. Therefore, according to these reports, China has violated many times global recognised conventions and rights through the extensive use of torture and violence against Tibetan political prisoners.

Moreover, there is also a systematic religious discrimination as Tibetan Buddhism is seen as a threat to the occupying Chinese authority. The possession of Dalai Lama images or the education of the values of freedom lead to imprisonment and torture. In general, the religious activities are constantly monitored. Thus, every aspect related to traditions and customs that define Tibet as a free and autonomous region have been suppressed, and despite all this brave attempts of protest, Tibet is still governed directly by Chinese Communist Party in Beijing. China has also encouraged Chinese migrations into Tibet, making Tibetans a minority in many parts of their own country. In addition, any form of dissimilarity is banned: Chinese is the language of schooling and business and Tibetans have no automatic right to Chinese passport and who has been caught to escaping faces brutality from the authorities. This senseless exploitation of Tibet and all these restrictions, especially the lack of recognition of Tibet as an independent nation, led Tibetans to fight for their rights, until now without success.

In the Chinese immense territory, not only Tibet faces this situation. The Xinjiang, an autonomous region in which the majority of the population is Muslim Uighurs, is still facing forms of discrimination and restriction of human rights. Although the will of freedom and independence is expressed by peaceful protests, violent accidents has accrued. The Chinese government has recently approved several laws that criminalise dissidents and restrict religious practices to avoid illegal insurrections. The number of victims is increasing year by year as a result of the counterterrorism campaign launched by China. Defined as terrorists, the Xinjiang population claims only freedom and the recognition of their region. In fact, Xinjiang authorities promulgated comprehensive yet

vaguely worded new religious affairs regulations in January. Those prohibit “extremist” attire and ban “activists who damage the physical and mental health of citizens”.⁴²

In order to avoid critics and possible interventions from international organisations, the government has always declared to conduct operations of anti-terrorism in Xinjiang. However, despite details about protests, violence and terrorism are scant and there are few independent sources of information, the Xinjiang populations is battling in a peaceful way whereas the Chinese government is still now, in 2017, bombing with no mercy the region. The control over the population is still very strict because, as we have seen for Tibetans, it is quite impossible for Uighurs to travel or to leave the Xinjiang region and passports must supply a DNA sample, fingerprints, a voice recording, and a “three-dimensional image” according to media reports.⁴³ Maybe the greatest violation of human rights in Xinjiang has been done against those who practice Islam: “authorities banned civil servants, students and teachers from fasting and forced restaurants to stay open even during the Muslim holiday of Ramadan”.⁴⁴

Compared to the other cases analysed, the grip on Hong Kong, a special administrative region in China, is less accentuated. It is well confirmed that Hong Kong is guaranteed autonomy in all matters other than foreign affairs and defence, and they are recognised an independent Judiciary and other civil liberties. Even though the situation is more sensitive than in other autonomous regions of China, there is no doubt that the Chinese government, especially from 2016 onwards, is trying to increase its control on the region altering the recognition of liberties such as political participation, expression and assembly. On the other hand, the Hong Kong’s legislature did not approve all the possible reforms and laws that would allow an excessive subjection of itself to the Chinese government.

An electoral reform package for the region’s chief executive was opposed by many Hong Kong residents in 2014, and has sparked a protest, now well known as the *Umbrella Movement*. The clash ensued, and about 1,000 people in connection with the *Umbrella Movement* were arrested. Concerns

⁴² Human Rights Watch. “World Report 2016: China.” 2016 Human Rights Watch. p. 9

⁴³ Human Rights Watch. “World Report 2017: China and Tibet.” 2017 Human Rights Watch. p.7

⁴⁴ Human Rights Watch. “World Report 2017: China and Tibet.” 2017 Human Rights Watch. p.7

about freedom of expression in Hong Kong persist, since there are many cases of disappearance of writers and political activists: many have been captured, imprisoned and in the end released, but many others who tried through different forms of communication to emphasise the difficulties perceived in Hong Kong, did not return yet. For example, between October and December 2015, five staff members of the Causeway Bay Bookstore, which publishes and sells books in Hong Kong about mainland politics, went missing. The apex of the Chinese interference in the Hong Kong's affairs was reached in November 2016, when "China's top legislature issued an interpretation of provision of the Basic Law (Hong Kong's functional Constitution) on oath-taking that seemed designed to compel the Hong Kong High Court to disqualify two recent two recently elected pro-independence legislators from taking office. It marked the first time Chinese authorities had issued a ruling on the Basic Law while legal proceedings were ongoing in Hong Kong".⁴⁵

3.5 The Western response to Chinese human rights policy

Few issues in the relations between China and the West invoke as much passion as human rights. At stake, however, is much more than moral concerns and nation feelings. To Washington, the undemocratic nature of the Chinese government makes it ultimately suspect on all issues. To Beijing, the human rights pressure exerted by the West on China seems designed to compromise its legitimacy. As China's economic power grows and its influence on the politics of developing countries continues, an understanding of Chinese human rights is crucial to the implementation of an effective international human rights agenda. In other words, Chinese influence could lead other countries to conceive less rights and to endorse a human rights conceptualisation antithetical to the Western liberal values. In *Human Rights in Chinese Foreign Relations*, Ming Wan examines China's relations with the United States, Western Europe, Japan, and the United Nations's human rights institutions.

Wan shows that, "After a decade of persistent external pressure to reform its practices, China still plays human rights diplomacy as traditional power politics and deflects pressure by mobilising its propaganda machine to neutralise Western criticism, by making compromises that do not threaten

⁴⁵ Human Rights Watch. "World Report 2017: China and Tibet." 2017
<https://www.hrw.org/world-report/2017/country-chapters/china-and-tibet>, Human Rights Watch. p.6

core interests, and by offering commercial incentives to important nations to help prevent a unified Western front. Furthermore, at the UN, China has largely succeeded in rallying developing nation members to defeat Western efforts at censure”.⁴⁶

While the human rights issue is surely relevant in the Western world, the head of States of the democratic governments have always focused more on economic and national security concerns than rights one. Therefore, the criticisms brought against the Chinese violations have been quite always an end to itself. This is exactly what Ming Wan has exposed in the conclusion of his book:

Western governments have not committed as many policy resources to pressuring Beijing on human rights as other issues, and the differing degrees of commitment to human rights-related foreign policy explain why Japan, Western Europe, and the United States, in that order, have gradually retreated from confronting China on human rights issues.⁴⁷

Nevertheless, in February, the UN high commissioner for human rights expressed concern regarding China’s continued arbitrary detention and interrogation of lawyers, harassment and intimidation of government critics and NGO workers, and the negative impact on basic rights of the new Foreign NGO Management law. ⁴⁸ Always in February 2016, the European Parliament condemned human rights violations in China through the issuing a new provision, while a coalition of several governments led by the United States signed at the UN Human Rights Council a statement condemning China’s “deteriorating human rights record”. However, this statement, which concerns the poor condition of the Chinese civil society, the disappearances of the Hong Kong booksellers and the Foreign NGO Management law, did not led to any kind of sanction against the PRC. Once again, no one has taken position in a concrete and aggressive way.

⁴⁶ Wan, Ming. “Human rights in Chinese foreign relations: defining and defending national interests”. University of Pennsylvania Press, 2001.

⁴⁷ Wan, Ming. “Human rights in Chinese foreign relations: defining and defending national interests”. University of Pennsylvania Press, 2001.

⁴⁸ Human Rights Watch. “World Report 2017: China and Tibet.” 2017, Human Rights Watch.p.11

CONCLUSION AND FINAL REMARKS

This paper has revolved around two main statements, respectively if China has its own conceptualisation of rights and a proper human rights discourse and if the foreign criticisms towards the Chinese practises are justified in term of Western rights concepts. Certainly, we can agree with Stephen Angle that: “ China has a rich and distinctive rights discourse” which is based on a “certain stock of inflexible concepts ” that we assume cannot be universalised and shared by everyone. Given this diversity, Angle suggests that: “ we should seek an accommodation of differences with one another in a spirit of toleration, and on that basis engage one another on as many levels as possible ”.⁴⁹ In other words, the diverse communities should accept and deal with the different and contrasting values of each part for the achievement of a genuine engagement. Considering that concepts vary according to the community they belong to and therefore pluralism is a determinant factor in cultural differences, a common point between the two diverse systems of values must be found and on this basis move towards a final resolution.

The previous analysis of the Chinese history and philosophy give us the possibility to state that Neo-Confucianism played a significant role in the development of the Chinese rights discourse, while Western ideas and beliefs started to influence the rights thinkers only at the beginning of the century. The positive references to Confucianism are found in the linkage of rights and people’s interests that contemporary rights thinkers and scholars still propose. As evidence shows, the adoption of what Cohen defines as a “China-centred” approach is crucial to analyse the dynamic and contingent historical traditions from the inside. This theoretical approach is significant to prove the existence of a Chinese human rights discourse which have always been “in continuous contact with other traditions, drawing from a wide variety of sources, as they interpreted and deemed relevant in China”.⁵⁰

Given this plurality of sources and concepts of rights and the potential for a real engagement between the two factions, the question that arises is how should those endorsed to their own values and ethics interact with each other. The claimed necessity of a dialogue between the two parts has been sometime criticised by NGO’s. In fact, the non-governmental organisation Human Rights in

⁴⁹ Angle, Stephen C. “Human Rights in Chinese Thought: A Cross-Cultural Inquiry”. Cambridge, UK: Cambridge University Press, 2002. p. 250

⁵⁰ Angle, Stephen C. “Human Rights in Chinese Thought. Cambridge University Press, 2002. p. 254

China (HRIC) has pointed out as the People Republic of China has always welcomed dialogue while rejecting confrontation because it is only through the latter that some improvements of the human rights conditions can be achieved. As the HRIC concludes “dialogue without pressure is nothing but appeasement and will merely serve to degrade the authority of international human rights standards.” An other precondition which is essential in a potential engagement is that even the government which brings out the critiques must be ready to discuss their own human rights records first. This is exactly what is not occurring in the United States of America and as such the Chinese has always not considered its criticisms as a threat.

At the end, several points can be traced out from this dissertation about the Chinese human rights discourse. A diversification of the final remarks of this paper can be effectuated according to the economic and political level. The evidence presented in this assignment has shown that there are diverse and contrasting criticisms that can be made to each side of the discourse, respectively the Western and the Eastern tradition.

During the history of the PRC, human rights’s conceptions and relevance varied dramatically across decades. While they were substantially labelled as bourgeois values till the end of the 70’s, international and national developments, especially those related to the events of the 1989 Tiananmen massacre, have constrained the Party to reconsider them in their domestic political framework. Today, Chinese intellectuals and dissidents strongly debate over the recognition and promotion of these rights and freedoms. The idea that we have about the PRC position has been always fully contradictory. On the one hand, the PRC shows an increasing acceptance, or appropriation, of the language of human rights, while, on the other, human rights violations nevertheless continue unabated.⁵¹ While China has continued to adhere to the most relevant human rights regimes as the International Covenant on Economic, Social and Cultural Rights (ICESCR) or the International Covenant on Civil and Political Rights (ICCPR), there is no sign of an amelioration of the individual’s rights condition.

In fact, coming close to the 21st century, the human rights protection has steadily deteriorated. In the *Fifty years of Progress in China’s Human Rights* paper of 2000, the Chinese government pictured its human rights situation in an unrealistic and untruthful way. It, in fact, centred its discussion on the legal and constitutional constraints concerned to human rights, avoiding to report the assiduous violations occurred and justifying its actions by defining itself as a developing

51 Svensson, Marina. “Debating Human Rights in China: A Conceptual and Political History”. Lanham and Oxford: Rowman and Littlefield, 2002.

country with a backward economy. As evidence shows, the rights described in the white paper do not correspond to the rights conceived in the Chinese reality. What is therefore beyond doubts, is that the “PRC will continue to face challenges over its human rights vision and political rule”.⁵²

Moreover, the lack of information due to the PRC’s restrictions has to be considered as one of the most important aspects of this discourse. The so-called information gap present in china has always heavily influenced any kind of analysis and discussion. How can we verify the validity of the violations occurred if there is no report or news which are not government-controlled? This lack of information has been one on the major reasons that led those concerned with human rights to avoid publications. Especially until the end of the 70’s, access to China was very difficult for tourists as well for diplomats and academics. In fact, in 1982 several US academics were expelled after trying to conduct research into social conditions.⁵³

Therefore, it was quite impossible for NGOs to gather reliable information and they could publish their report only considering data released form the government. Amnesty International Report of 1978 *Political Imprisonment in the People's Republic of China* reveals exactly what was the situation in those days: The lack of detailed information on political imprisonment in the People’s Republic of China is due to ... the size and diversity of the country, the complexity of the issues involved in the handling of political offenders, the restriction of movement and the lack of free access to information.⁵⁴

Starting from the first perceptive, the economic one, there is general agreement that Asian values and development claims cannot justify the embracement of authoritarianism and the aversion of democracy and human rights in China. Focusing only on the substantial economic development of the country, no government is able to respond appropriately to the current diversified social and cultural changes. To defuse this lack of responsiveness, constitutionalism has stood out as the framework for cultural values and developmental needs. However, especially in “cross-cultural and developmental contexts”, it has been strongly denied by the institutional powers. The People Republic of China is a clear example of this trend.

⁵² Svensson, Marina. “Debating Human Rights in China Lanham and Oxford, 2002.

⁵³ Amnesty International Report 1983, London: Amnesty International Publications, 1983

⁵⁴ Political Imprisonment in the People's Republic of China, London: Amnesty International Publications, 1978

According to Michael C. Davis, “ In the absence of the development of regional human rights institutions, in East Asia it has been the linkage of these points that has connected the constitutional regime of a given state or similar territorial community to the international processes of human rights and has established the importance of domestic human rights practices.⁵⁵

Although now the political and legal structure present some degree of protection towards the freedom of expression, there is no real legal safeguard of the subject. In addition, the Party control of judicial decisions remains widespread and the clauses of the Constitution which provided for free speech were restricted in 1980. Academics and intellectuals remain in a disadvantaged condition as their ideas and publications must always be in accordance to the Party’s ideology. The apex of this intellectual restriction was reached in 1983 when intellectuals “fell victim to the spiritual pollution campaign because they did not sufficiently applaud the overriding role of the Party in art and literature.”⁵⁶ Nevertheless, the political reform’s progress will continue only along the proliferation of the Chinese economics reforms. At the same time, according to Roberta Cohen, “there is no guarantee that greater economic liberalisation will generate greater political freedoms. Economic and political development do not necessarily proceed on parallel tracks”.⁵⁷ There are, in fact, many diverse prospects over the potential for human rights development in China, but none of these are actually positive. Among these, Jonathan Mirksy, argues that “ the reforms have only changed China from a terror-based totalitarian dictatorship to a mature administered dictatorship of the post-Stalin or Eastern European type.”⁵⁸

On the other side of the coin, this paper reports how some East Asian criticisms of traditional Western approaches to human rights can be somehow shared. Essentially, three are the points that can be highlighted against the Western liberal tradition. The first one concerns the necessity to consider the cultural and local condition of the country in which the alleged violation occurs. That is, to verify if human rights are part of their tradition and system of values. Secondly, East Asian cultural traditions can be the means through which the commitment to human rights values can be

⁵⁵ Davis, Michael C. "The political economy and culture of human rights in East Asia." *Jindal Journal of International Affairs* 48-72. 2011

⁵⁶ Cohen, Roberta. "People's Republic of China: the human rights exception." *Human Rights Quarterly* 9.4 (1987) p. 96

⁵⁷ Cohen, Roberta. "People's Republic of China: the human rights exception." *Human Rights Quarterly* 9.4 (1987) p. 97

⁵⁸ Jonathan Mirksy, "Cracks in the Wall," *Amnesty International: 25 Years Against Injustice*, British Section, no. 21, June-July 1986

sustained at the local level. While in the West this dispersion of values is commonly achieved through human rights regimes, this local level commitment is essential for advocates of human rights reforms in East Asia. Finally, East Asian values “may justify some political practices that differ to some extent from human rights regimes typically endorsed in Western countries.” If torture, slavery, and genocide are unacceptable violations of fundamental human rights, in other areas— such as criminal law and social and economic rights--different cultural values may justify different kinds of political practices.⁵⁹ What must be understood is that China and the East Asian region are the sum of a cumulative and sometimes contrasting historical experiences, cultural traditions, and political viewpoints. Only China represents the ideals and beliefs of more than a billion individuals. And while values usually change over time according to the developments and successes of a country, some traditional values and practices that conflict with the Western framework can be more abiding and influential. If this is the case, then it is necessary to tolerate these cultural differences and find a reliable engagement. As even Amartya Sen states:

the recognition of diversity within different cultures is extremely important in the contemporary world, since we are constantly bombarded by oversimple generalisations about Western civilisation, Asian values and so on.⁶⁰

The rhetoric to which Sen is alerting us too often risks degenerating into abstract and simplistic talk of “clash of civilisations”, portraying different cultures as self-enclosed, unchangeable units. As my discussion of Chinese human rights discourse instead demonstrates, China has a distinct, peculiar tradition dealing with this issue, which cannot be assimilated into the hegemonic discourse of the West. This is why any progress in terms of human rights at the global level can only come in the forms of cross-cultural and dialogic encounter, and not as a one-sided imposition from the West.

⁵⁹ Bell, Daniel. "The East Asian challenge to human rights: Reflections on an East West dialogue." *Human Rights Quarterly* 18.3 (1996): 641-667.

⁶⁰ Sen, Amartya. “Human rights and Asian values”.
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Riassunto Tesi Human Rights in China

Introduzione: I Diritti Umani, Contesto e Rilevanza del Tema

L'intento di questa tesi è quello di indagare l'esistenza di un concetto di diritto umano proprio della cultura cinese, allo scopo di considerare se il criticismo rivolto alle sue pratiche tradizionali possa essere condiviso in base ad uno standard globale del diritto umano, assumendo cioè un punto di vista universalistico, o se al contrario siano queste stesse pratiche a poter essere giustificate, da un punto di vista particolaristico, alla luce delle caratteristiche precipue del sistema cinese. Quest'ultimo può essere individuato come un modello alternativo a quello Occidentale? Potrebbe godere di pari dignità, scenario nel quale sarebbero ammissibili le pratiche in questione? Se i diritti umani sono il prodotto di un'evoluzione storica, e quindi peculiari di uno specifico contesto sociale, politico ed economico, sarà innanzitutto necessario tracciare la fisionomia dell'orizzonte culturale cui questi si ricollegano. Stabilendo che non vi siano dichiarazioni sui diritti dell'uomo comparabili con quelle occidentali, né traduzioni precise in lingua cinese del concetto di diritto umano, in che modo questo viene percepito all'interno della società e tutelato dalla legislazione? Se deriva dai valori etici e tradizionali della cultura cinese, gli asian values, perché, invece, la Cina dovrebbe condividere un costrutto proprio della tradizione Occidentale?

Le finalità dell'analisi qui condotta sono di esemplificare la natura relativistica dei nostri assunti etici ed ancora di più giuridici concernenti i diritti umani. Vogliamo qui mostrare come a volte il pensiero occidentale tenda a tacciare di arbitrarietà tutte le altre manifestazioni del diritto che provengano da culture da lei più o meno dissimili. Infatti questo lavoro si inserisce nel più ampio contesto delle ricerche storico-sociali sulla genesi del diritto umano ed in quello del faticoso reperimento di un sistema etico-giuridico universalmente condiviso. L'influenza principale che questa disamina sui diritti umani in Cina esercita sull'Occidente è sicuramente quella connessa alle relazioni commerciali e finanziarie tra i due soggetti in questione. Un'altra ragione per cui abbiamo ritenuto importante trattare questo argomento è stata il percepire la necessità di diradare la cappa di nebulosità attraverso cui vengono filtrate le notizie che ci giungono dalla Cina.

Inoltre, ad aggravare questa mancanza di informazioni riguardante la realtà cinese vi è indubbiamente la tendenza isolazionistica del Partito socialista, dovuta al timore di una colonizzazione ideologica da parte del mondo occidentale e di conseguenza il sospetto nei confronti di qualsiasi input che provenga dal sistema liberal-democratico tipicamente occidentale.

Le ricerche da cui prende le mosse la nostra analisi coprono gli ambiti più diversi. Ci ricollegiamo infatti agli studi ed agli approfondimenti sia di provenienza occidentale che di provenienza cinese, tentando di non operare nessun discrimine fra di essi e di non privilegiarne nessuno. Infatti, sebbene, come abbiamo detto, questa tematica non goda di enorme condivisione e diffusione, molteplici sono gli studi sul argomento. Nonostante la distanza cui sopra abbiamo accennato, lo scenario cinese sembra poter essere analizzato con la lente dei nostri valori proprio per farne rilevare gli elementi esclusivi ed irriproducibili di questa cultura.

Diversi concetti essenziali della riflessione occidentale riguardante i diritti umani appaiono pressoché intraducibili non solo nel linguaggio popolare cinese ma anche nel lessico specialistico della speculazione politico-filosofica di questo paese. Dall'altra parte è stato per noi complesso assimilare in maniera precisa le idee che animavano e strutturavano i testi di provenienza cinese nonché familiarizzarsi con i fondamenti della riflessione Confuciana e di quella Taoista.

Le asimmetrie tra lingue indoeuropee e la lingua cinese sono prodotte da un bagaglio concettuale completamente diverso, tale da precludere la possibilità di una reale condivisione dei contenuti. Nella lingua cinese gli ideogrammi veicolano un messaggio ricco ed articolato che si presta a diverse interpretazioni, e difficilmente può essere restituito in altre lingue, se non introducendo un elevato numero di precisazioni. Inoltre, contenendo in sé un significato variabile in base al contesto, tradurre un ideogramma produce difficoltà comunicative nel dialogo interculturale. Come si può trovare quindi un dialogo tra due diverse culture? L'unica soluzione rimane quella di comunicare e tradurre i concetti attraverso un'intelligibilità condivisa, ossia di rendere intellegibili i valori di una diversa cultura all'interno di un'altra lingua.

Per questo ci potremmo porre l'interrogativo: perché dovrebbe l'autorità Cinese accogliere i nostri principi assoluti ed inviolabili? E successivamente: quando è che questo sistema diverso dal nostro è passibile di una condanna da parte nostra, tale da inficiarne il valore e da rilegarlo in un quadro di parzialità e arbitrarietà? Abbiamo pertanto attinto da saggi sociologici e politici sul macrocosmo cinese tenendo altresì conto di report, resoconti ed articoli giornalistici che approfondiscono alcuni aspetti particolari e talvolta addirittura zone d'ombra proprie dello scenario civile e politico cinese.

Le correnti di rielaborazioni storiche attive in Cina nei corsi dei secoli hanno contribuito ad interpretare gli eventi principali di questa stessa storia con un focus ben diverso da quello che è tipico della nostra storiografia. Di fatti il pensiero storico cinese è quasi completamente alieno dai nostri modelli interpretativi e dalle ipostasi cui noi riconosciamo notevoli dignità. Dobbiamo tuttavia porci il quesito: per quale motivo i nostri fondamenti del diritto non dovrebbero essere applicabili a tutte le altre nazioni compresa la Repubblica Popolare Cinese? Per quale ragione questa dovrebbe essere esente da quella continua critica e problematicità nelle quali noi riconosciamo il segnale dell'imporsi della mentalità moderna, ovvero di quella liberal-democratica?

Ci è stato per questo di enorme aiuto il testo Stephan Angle *Human Rights in Chinese Thought: A Cross-Cultural Inquiry*, il quale si pone come materia di indagine l'osservazione retrospettiva dello sviluppo dei concetti di libertà civili e democratiche e una corrispettiva analisi dei concetti e tradizioni propri del mondo orientale. Infatti, le varie tradizioni metafisiche di cui abbiamo parlato non tendono ad una visione collettivistica allontanandosi e non poco dalla nostra tradizionale versione del problema.

I diritti Umani in Cina: Tiananmen e la condizione della popolazione civile

Una breve digressione sul discorso occidentale del diritto umano ci permette di approfondire, nel primo capitolo della tesi, il quadro storiografico in cui il nostro tema si va a sviluppare. Ripercorrere l'evoluzione storica e filosofica della civilizzazione cinese è indispensabile al fine di comprendere quando e in che modo si è sviluppata la loro peculiare concezione di diritto umano. A partire dalle dottrine etico-religiose del Confucianesimo e del Neo-Confucianesimo, che costituiscono il fondamento del pensiero cinese, fino a giungere al secolo breve, nei suoi due periodi pre e post-maoista, questo approfondimento ci permette di oggettivare le differenze concettuali sul diritto umano, processo necessario al fine di uno svolgimento imparziale della tesi.

Con la premessa dell'imparzialità, nel secondo capitolo riportiamo in maniera quanto più oggettiva possibile alcune pratiche consuetudinarie della società cinese, particolarmente rilevanti all'interno della discussione sui diritti umani e oggetto di controversie per l'opinione pubblica internazionale.

Dalla riforma del 1978, che ha dato il via ad una crescita economica senza precedenti nella storia dell'uomo, vi sono stati notevoli progressi nel sistema legale della Repubblica Popolare Cinese ed in particolare nel riconoscimento di alcuni diritti. Tuttavia, nonostante l'apertura del sistema

giuridico in termini di trasparenza, i diritti fondamentali non sono ancora sufficientemente tutelati e garantiti rispetto agli standard internazionali.

L'evento chiave che ha posto la Cina sotto la lente critica del mondo occidentale è la strage di piazza Tianmen, l'episodio più rappresentativo in tema di diritti umani e libertà di espressione. La rivolta studentesca nata pacificamente nell'aprile 1989, al fine di ottenere una liberalizzazione dei mezzi di comunicazione, del diritto di associazione e di esprimere la propria opinione politica, nel giro di pochi mesi sfociò in un violento massacro di cui tutt'ora non si conosce l'effettivo numero di vittime. L'importanza di questa rivolta risiede nei suoi valori, in quanto per la prima volta la società civile cinese ha manifestato il proprio dissenso contro l'autorità comunista. Mentre la repressione violenta veniva considerata una vittoria dal Governo cinese, la strage metteva in luce a livello mondiale molteplici altri scenari, tra cui la pratica della tortura fisica e mentale ai danni di prigionieri politici, i quali una volta incarcerati, perdevano altresì il diritto ad un giusto processo e alla tutela legale.

Fino al 2013, secondo Amnesty International, nel territorio cinese erano presenti oltre trecento campi di rieducazione attraverso il lavoro, i quali detenevano oltre 116.000 persone accusate di crimini minori. In realtà, i campi di rieducazione sono stati utilizzati dal Governo cinese per mettere a tacere i dissidenti, gli oppositori politici e i gruppi religiosi. A questo proposito, Amnesty International, nel report del 2005, riporta l'esempio di Gas Rongrong, membro del gruppo spirituale Falun Gong, torturato fino alla morte nel campo di detenzione di Shenyang.

Nonostante le sollecitazioni da parte della comunità internazionale, la Cina non ha ancora ratificato il Trattato sui diritti civili e politici, che prevede la tutela del diritto all'informazione e più in generale del diritto alla libertà di espressione. Il Governo pratica uno stretto controllo su giornali, radio, televisione ed internet, implementando sanzioni monetarie per i mass media che trasmettono informazioni previa censura. Censura che concerne in particolare modo internet, attualmente il mezzo più semplice e veloce per il proliferare di informazioni, e prevede il blocco di siti web e risultati di ricerca, incluse le parole come libertà, diritti umani, Amnesty International. Nel 2003, l'istituzione del programma di sorveglianza sui mezzi di comunicazione gestito dal Ministero della pubblica sicurezza, ha relegato la Cina in una posizione ancor più alienata rispetto al resto del mondo.

Amnesty International riporta almeno trenta casi, negli ultimi anni, di giornalisti accusati di “creare disturbo allo Stato”, detenuti nella maggior parte dei casi con la formula del “segreto di Stato” in giustificazione dell’arresto. Anche in ambito universitario il Governo, considerando i giovani più inclini ad essere condizionati dalla propaganda occidentale, a partire dal 2015 ha imposto il suo controllo abolendo tutti quei materiali didattici che promuovessero i valori occidentali e licenziando tutti quei docenti promotori del liberalismo e del riformismo. Da un punto di vista sociale, la Cina è considerata un paese arretrato data la forte disuguaglianza di genere, e se è vero che le donne subiscono ancora discriminazioni a livello lavorativo, molestie sessuali e violenze domestiche, l’aspetto che più impressiona l’opinione pubblica è quello della politica sul controllo delle nascite, introdotta in nel 1979 per contrastare il forte incremento demografico. I risultati di questa politica sono stati squilibri di genere all’interno del Paese, aborti forzati e innumerevoli infanticidi. Nonostante l’abolizione nel 2013, il diritto alla riproduzione delle donne rimane sotto lo stretto controllo dello Stato, come i movimenti femministi che vengono messi a tacere attraverso la detenzione.

La Cina è accusata di seri abusi a pratiche incivili anche nei confronti dei tibetani e dei Uighurs del regione dello Xinjiang, concernenti la restrizione delle loro libertà, in quanto ogni aspetto relativo alle tradizioni e ai costumi del Tibet e dello Xinjiang sono stati soppressi. Tenendo in considerazione che il Tibet è stato proclamato Stato indipendente nel 1912, da un punto di vista prettamente occidentale del diritto umano, il governo cinese non rispetterebbe uno dei primi diritti fondamentali, ossia il diritto all’autodeterminazione dei popoli. Applica il suo controllo attraverso videocamere di sorveglianza ed ogni altro strumento che possa privare la popolazione della propria privacy. L’uso della violenza come mezzo punitivo è piuttosto frequente, soprattutto per quanto riguarda la soppressione di proteste pacifiche, e i manifestanti vengono spesso imprigionati e torturati. Amnesty International riporta la vicenda di quattro ragazzi tibetani che nel 2008, all’età di quindici anni, sono stati arrestati e torturati per slogan a favore dell’indipendenza del Tibet, e a partire dallo stesso anno, sono 140 le persone che si sono date fuoco per protestare contro le violazioni dei propri diritti.

Vi è una discriminazione anche dal punto di vista religioso, riguardante il Buddismo Tibetano, infatti possedere immagini del Dalai Lama o educare ai valori liberali è motivo di arresto e torture, e in generale le attività religiose sono costantemente monitorate. Oltretutto, al fine di rendere i tibetani una minoranza etnica, il Governo impone loro l’educazione scolastica cinese, li priva del diritto di avere un passaporto e quindi della possibilità di viaggiare fuori dai propri confini, e promuove allo stesso tempo una migrazione cinese verso il Tibet.

Se dai suddetti temi traspare in primo luogo l'oppressione del Governo cinese sui diritti dei propri cittadini, per essere imparziali è indispensabile tener presente le diversità culturali precedentemente delineate nella nostra tesi. Allo stesso tempo, dal nostro discorso emerge una questione: se certamente la pretesa del mondo occidentale di esportare il proprio diritto risulta essere tracotante, dovrebbe però condonare un governo che uccide, tortura, e altresì opprime i suoi cittadini? Nel complesso, entrambe le parti sembrano essere valide e la questione è di difficile risoluzione. La nostra conclusione presuppone il concetto di tolleranza.

Conclusione

Questo lavoro si è sviluppato per rispondere a due quesiti principali: la Cina possiede un proprio concetto di diritti umani? Il criticismo rivolto alle sue pratiche, può essere giustificato in termini di diritti umani universali? Nella precedente analisi storica e filosofica della cultura cinese, abbiamo individuato come il Confucianesimo ed il Neo-Confucianesimo abbiano giocato un ruolo cruciale nella creazione e nello sviluppo di un peculiare concetto di diritto umano, mentre l'influenza dell'Occidente è giunta in Cina solamente all'inizio del secolo breve. Infatti, merita di essere rimarcato il ruolo giocato dal confucianesimo nel rapporto fra diritto e interessi individuali e settoriali il quale rivesta ancora una posizione centrale nell'ideologia contemporanea.

In accordo con Stephen Angle, la nostra conclusione riconosce un ricco e dinamico discorso sui diritti umani nella tradizione cinese, il quale non può certamente essere universalizzato. Allo stesso modo, la pretesa Occidentale di universalizzare il proprio diritto fino ad ora non ha prodotto significativi sviluppi nella cultura cinese, per lo meno non quelli auspicati. Secondo alcuni autori dai noi citati nel corso delle nostre ricerche, inconcludente sembra essere l'argomento secondo il quale un paese vastissimo ma ancora estremamente arretrato sotto alcuni aspetti, necessita di una forma di autoritarismo nel processo decisionale proprio degli organi governativi. Questa idea viene avversata con veemenza da numerosi studi da noi citati nonostante se ne riconosca l'origine in seno alla tradizione cinese.

La nazione cinese ha per lunghi periodi avuto un'ideologia di Stato che prevaleva decisamente sulle altre, manifestandosi come il modello ufficiale cui si appoggiavano tutte le istituzioni più rilevanti del paese. Pertanto, un paese rimasto sostanzialmente isolato per secoli ha visto aggravarsi il suo isolamento a causa dell'adozione del sistema socio-produttivo comunista, essendo stato messo

chiaramente al bando dal società internazionale, in quanto pericoloso. E' inoltre necessario considerare l'esistenza di una pluralità di concetti e assumere quindi un punto di vista particolaristico dei diritti umani, per cui il criticismo rivolto alle pratiche della tradizione cinese può essere allo stesso modo rivolto alle pratiche Occidentali, da un punto di vista politico, economico e sociale.

Se gli Asian Values possono in qualche modo legittimare alcune pratiche che differiscono in maniera significativa dalle tradizioni Occidentali, al fine di un dialogo e di una collaborazione costruttiva tra le parti, queste dovrebbero essere pronte a mettere in discussione la propria tradizione ed applicazione del diritto. Se la tortura, il genocidio, la schiavitù, vengono considerate violazioni dei diritti fondamentali dell'uomo in una determinata area, differenti valori culturali potrebbero giustificare differenti pratiche. Ciò che è necessario comprendere è la tolleranza degli aspetti culturali al fine di realizzare una collaborazione produttiva, e in accordo con Amartya Sen, riconoscere le diversità culturali è di fondamentale importanza in mondo contemporaneo costantemente bombardato da generalizzazioni sulla civiltà occidentale e su quella orientale.

L'unico orizzonte positivo sembra quindi poter essere riconosciuto nella reciproca tolleranza avente come fine quello di giungere ad una sintesi fra questi sistemi così distanti, eppure non completamente antitetici. Sulla scorta dei testi presi in esame vogliamo giungere ad un punto d'incontro fecondo per entrambi i sistemi tale da mettere in moto un processo di miglioramento attraverso il confronto con modelli diversi dal proprio.

