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Abstract

A review of China, the United Nations, and Human Rights: The Limits of Compliance, by Ann Kent. Philadelphia: University of Pennsylvania Press, 1999. 328pp.

When most Western students of human rights and/or international relations think of China, unfortunately they are most likely to think not of the greatness and longevity of Chinese civilization, the goodness of Chinese cuisine, or the grandesse of the Chinese landscape. Rather, they are most likely to think of the Tian'anmen Square incident of 1989 and China's human rights problems. Considering both the interest and the emotion generated in the West over the issue of human rights in China, it is surprising that so little scholarly work has actually been done on the subject. There have been many journal articles published on it, and most books published on Sino-American relations or Chinese foreign policy have a chapter on the "human rights issue." Besides the reports of Amnesty International, Human Rights Watch, and Human Rights in China, few in-depth studies have been done on China and human rights. Ann Kent's China, the United Nations, and Human Rights: The Limits of Compliance is remarkable in that it provides both an in-depth analysis of China's human rights policy and its interaction with the various United Nations organs concerned with human rights, and an assessment of the UN human rights regime's success in dealing with China in terms of policy-change and both de jure and de facto compliance.

Keywords

Cultural relativism, Asian values, China, United Nations, Treaty law

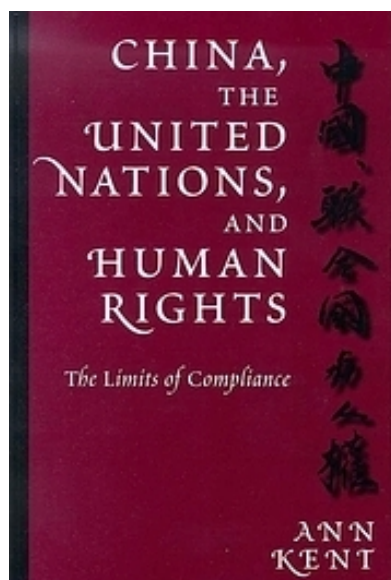
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By Greg Moore

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When most Western students of human rights and/or international relations think of China, unfortunately they are most likely to think *not* of the greatness and longevity of Chinese civilization, the goodness of Chinese cuisine, or the grandesse of the Chinese landscape. Rather, they are most likely to think of the Tian'anmen Square incident of 1989 and China's human rights problems. Considering both the interest and the emotion generated in the West over the issue of human rights in China, it is surprising that so little scholarly work has actually been done on the subject. There have been many journal articles published on it, and most books published on Sino-American relations or Chinese foreign policy have a chapter on the "human rights issue." Besides the reports of Amnesty International, Human Rights Watch, and Human Rights in China, few in-depth studies have been done on China and human rights. Ann Kent's China, the United Nations, and Human Rights: The Limits of Compliance is remarkable in that it provides both an in-depth analysis of China's human rights policy and its interaction with the various United Nations organs concerned with human rights, *and* an assessment of the UN human rights regime's success in dealing with China in terms of policy-change and both *de jure* and *de facto* compliance. The study notes both progress and continued problems in China's relationship with the UN human rights regime, and must be considered essential reading for anyone interested in and/or dealing with China in the area of human rights. For all of these reasons, and because it is so well written and researched, Ann Kent's new book is a much-welcomed, much-needed addition to the study of human rights and China.

A Brief History of China's Interaction with the UN Human Rights Regime

Under the banner of the Republic of China, China was a signatory to both the UN Charter and the UN Universal Declaration of Human Rights. However, with the Chinese civil war, the communist victory on the mainland and the Nationalist flight to Taiwan (from where it represented China at the UN until it was unseated by the People's Republic of China in 1971), mainland China was un-represented at the UN and therefore subscribed to none of the UN's human rights regimes.

In 1971, the leaders of the People's Republic of China reaffirmed their acceptance of the UN Charter and Universal Declaration of Human Rights by rejoining the UN. But as China was in the midst of the throes of the Cultural Revolution (1966-76), it did not participate actively in the UN until the late 1970s. Subsequently, China has signed the Convention on the Elimination of All Forms of Racial Discrimination; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of Discrimination Against Women; the Convention on the Rights of the Child; the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights. China has yet to ratify the latter two, signed in 1997 and 1998 respectively.

Allow me to begin with a discussion of China's stand on human rights and a small point of contention with Kent. While the Chinese were involved in the drafting of both the UN Charter and the Universal Declaration of Human Rights, she rightly notes they have not always been supporters of the Declaration's universalism. Kent's argument here is that China's official policy has been to pay lip-service to universalism but to argue for cultural relativism, the notion that human rights are related to cultural norms and thus are not universal.¹ She speaks of the human rights debate as coming down basically to two choices: cultural relativism or universalism (p. 20-25). While rightly rejecting the polarization of this debate, she does not acknowledge the existence of a third stand on human rights today, developmentalism.²

The developmental view of human rights has been described by Michael Sullivan as an acceptance of universality (a de facto rejection of cultural relativism), with the stipulation that countries will only be able to attain the universal standard of human rights with a higher level of development.³ While the Chinese have at times certainly made cultural relativist arguments, Sullivan argues that China's overall human rights policy has been developmentalist, that the Chinese argue that countries still in lower stages of development cannot "afford" the "luxury" of fully-implemented universal human rights until later. Peter Van Ness agrees:

China's declaratory position on international human rights, importantly, is neither Marxist nor cultural-relativist. Rather, Beijing takes 'developmentalist' exception to the immediate implementation of UN standards for less industrialized countries, and emphasizes the economic agenda over civil and political rights and group rights, especially self-determination, over individual rights.⁴

Sullivan and Van Ness are correct. While Kent explicitly brands China's 1993 Vienna statement and the 1991 White Paper as "cultural relativism," the line she quotes from the White Paper to prove her point shows that China's stance is in fact developmentalist: "...different historical stages had different human rights requirements." (p. 182) "Historical stages" are more likely economic than cultural here. The assumption that historical stages means economic stages is more in line with China's sometimes still somewhat Marxian inclinations as well. Developmentalism explains one thing Kent's new book cannot - why China signs off on universalistic documents and then immediately argues against being held accountable for the implementation of universal standards of human rights. This is a small but important point.

China, the UN Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities

The UN Commission on Human Rights, made up of a number of rotating UN member states, is the main UN body dealing with human rights and was established by the UN's Economic and Social Council in 1946. Made up not of UN member states but of independent human rights experts, the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities was created by the Commission to investigate human rights problems and report back to the Commission. Kent observes that after sending observers for three years, in 1981 China was elected a Commission member and from 1982 to the present has played an active role as a member, and would likely even have become chair of the 1990 commission had it not been for the violent crackdowns on demonstrators in 1989 (p. 56).

In her analysis of China's relations with the Commission and the Sub-Commission, Kent notes that these fora "offer, on the one hand, the clearest potential for public scrutiny of China's human rights, and, on the other, the greatest susceptibility to lobbying, coalition building, and manipulation by powerful states." (p. 79) It was after the events of 1989 that a truly confrontational environment arose between China and the Commission and Sub-Commission. In 1989 the Sub-Commission passed a resolution against China expressing concern about the events of June, 1989. In 1991 the Sub-Commission passed its own resolution expressing concern over China's treatment of the Tibetan people and its long-term policies in Tibet (Kent, p. 58 and 63). Yet these have been the only two instances of resolutions against China for human rights problems in the histories of the Commission and Sub-Commission.

According to Kent's study, the reason for this is that China has been very effective in its lobbying effort in the two fora (p. 80-1). Kent has documented how Chinese representatives have routinely bilateralized these multilateral fora, threatening economic/trade retaliations against the home-countries of voting members (p. 76-81). They even threatened the Danish ambassador in the 1997 meeting of the Commission, saying he "would regret" his decision to sponsor a resolution against China, and drawing up a list of Danish companies that would be excluded from consideration for future deals with/in China in the future if he did so (p. 97). Kent argues that China's growing power and the increasing sophistication of its human rights diplomacy in recent years have brought it success in avoiding resolutions against it as it has sought to deal with members of the Commission and Sub-Commission on a bilateral basis, offering them both carrot and stick to vote China's way.

Kent's conclusion to her study of China's relations with the Commission and Sub-Commission on Human Rights is that, "[t]his case study demonstrates the difficulties of monitoring a large power, particularly in a noncrisis situation." (p. 81) Because of China's growing power and influence in the international community, and the long-term nature of its human rights problems, she believes countries wishing to hold China to greater levels of international accountability in the area of human rights can be more successful only by working together, seeking out multilateral consensus in these UN fora rather than choosing to deal with China bilaterally.

China and the UN Convention Against Torture (CAT)

The CAT's mandate is to set and uphold standards so that citizens of UN member nations are protected from torture and other forms of cruel, inhuman or degrading treatment or punishment. China acceded to the CAT in 1988, and from Kent's perspective, its relations with the CAT's Committee are a story of both progress and stumbling blocks. China's first report to the UN Committee that oversees the implementation of the convention, filed in December 1989, was not a great success. It was deemed too general by the NGOs and the Committee, and Chinese delegates were informed that they did not follow CAT procedures nor did they respond to each specific issue in the CAT guidelines. They were requested to file a supplementary report in time for the following year's CAT meeting. The subsequent Chinese report was much more satisfactory to the Committee and specific progress was noted, particularly that legislation had been enacted to strengthen Chinese law to protect its citizens from torture. China refused the requests of the Committee, however, regarding the appointment of a Special Rapporteur to investigate certain allegations on site. Kent's analysis of China's continued interaction with the CAT reveals that in more recent meetings, China has continued this pattern: offering *de jure* acknowledgment of CAT provisions, coupled with *de facto* refusal to acknowledge China's accountability to the CAT as it concerns issues it deems within the purview of national sovereignty.

As Kent notes, one of the problems between China and the CAT Committee has been a difference in how torture is defined. The CAT defines torture as

any act by which severe pain or suffering whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. (p. 86)

China's Criminal Law contains two general conceptions of torture as Kent points out, "the first being to 'coerce a statement' (Art. 136), the second being to subject imprisoned people to corporal punishment and abuse for this purpose (Art. 189)." (p. 92) It does not include mental torture and/or intimidation, which are included in the CAT definition. So while Chinese law declares torture strictly illegal, the fact that the definition does not include mental torture and intimidation is one reason the NGOs still file so many complaints against China in this issue-area.

Other reasons for the continued presence of torture in China according to Amnesty International are, "inadequate legislation, the practice of incommunicado detention as 'the norm for most detainees,' inadequate investigations, and a 'climate of impunity.'" (Kent, p. 101) Moreover, the recent government pressure on local law enforcement agencies to curb the burgeoning crime rate and the traditional importance in China placed upon getting confessions out of suspects, together with the above factors, give law enforcement officials too many incentives to use torture even where it is illegal. Unfortunately, torture appears to be a problem which will not likely be resolved until China expands its definition of torture to include mental torture and intimidation, and successfully establishes a solid rule of law that can provide effective judicial remedies. The CAT, its Special Rapporteur, the NGOs and Chinese authorities all agree that while there has been progress since China's accession to the CAT, there is still a gap between China's commitments under the CAT and

the reality on the ground in China (p. 114). The recent 2000 meeting of the CAT seems to show little has changed in this regard since the publication of Kent's book.⁵

China and the International Labor Organization

As Kent points out, China's relations with the ILO are "more important and sensitive for [China] than its relations with any UN human rights body..." given the fact that China's Communist Party is said to have been organized explicitly to advance the rights of China's workers and peasants (p. 118 & 117). The ILO holds UN member-states accountable in the area of economic, social, cultural and civil rights as they pertain to occupational groups, focusing particularly on freedom of association, the right of collective bargaining, and social welfare programs (p. 117, 118).

China resumed membership in the ILO in 1971 when it rejoined the UN, but it did not participate fully early on, claiming (and winning) exemption because of its status as a poor, developing country emerging from the chaos of the cultural revolution. With the crackdowns in June, 1989, however, the ILO began to hold China to the same level of accountability as other nations, and together with the International Confederation of Free Trade Unions (ICFTU) pressed the Chinese government to account for its actions of June 3 and 4 which led to the death or imprisonment of large numbers of workers. Though the ILO was not very strong in its condemnation of the government's actions at Tian'anmen, the ICFTU was, cutting off all contacts with China's state-led All-China Federation of Trade Unions (ACFTU), which led to the latter's effective removal from the ILO's governing body in the 1990 ILO session.

Throughout the 1990s, China continued to deny that universal standards of labor applied to China, emphasizing the uniqueness of its historical, social, cultural and economic conditions and the need to maintain Party/State authority over labor matters. During the 1990s, with massive layoffs stemming from the government's reform of the state-run sector of the economy, large numbers of workers protested, some forming unauthorized labor unions which the government shut down and whose leaders it vigorously pursued and arrested. Trade or labor unions existing outside of the rubric of the official ACFTU are still considered strictly illegal in China today.

Although Kent believes learning took place by Chinese participation in the ILO, given its acceptance of some ILO standards and the enactment of a new Labor Law in 1994, she believes overall that learning was more shallow and instrumental than deep and with conviction (p. 144). Noting a learning curve wherein China moved "from overt resistance to procedural compliance," (p. 144) she again found a gap between procedural compliance and complete acceptance of ILO standards.

It was clear that, despite the role of ILO standards in providing models for Chinese labor legislation, the actual challenge to the leaders' authority implicit in the existence of genuinely free trade unions in China, independent of both Party and state, would not be tolerated by them. (p. 143)

Despite huge national economic gains, as it concerns the average worker Kent shows us that workers and peasants in China still have a long row to hoe.

Conclusion: Compliance, Socialization, and Effectiveness

Taking the liberal institutionalist view of regimes as her basis, Kent is interested in providing not only a documentation of China's human rights problems and a history of its interaction with the UN human rights regime, but an assessment of the ability of international regimes to affect state behavior as well. As she notes, China is an important case in this regard because of its size and influence, its non-Western values and traditions, and its permanent position on the UN Security Council (p. 2). She has determined that measures of *compliance* (of member-states to treaty/regime obligations), *socialization* or *learning* (or internalization of treaty/regime norms), and *effectiveness* (of UN organs to monitor the implementation of treaty/regime obligations) are three issues most important regarding the ability of the UN human rights regime to affect member-state behavior (p. 1). Her conclusions are that while China has become *procedurally* compliant, and in some cases new laws have been enacted to reflect its treaty commitments (e.g., CAT and ILO), *overall* compliance "on the ground" has been poor at best. While China has learned as a result of being a part of the UN human rights regime, *learning* has been more shallow and instrumental than deeply cognitive. Finally, while some progress has been made in holding China to higher standards of accountability, in terms of *effectiveness* the UN human rights regime has not been very successful, and "China's [human rights] policies have been more sensitive to domestic than to external pressures..." (p.249).

Kent's quote of Convention Against Torture Committee Special Rapporteur Peter Kooijmans in his discussion of China's relation to the Committee seems apropos with regard to its interaction with the UN human rights regime as a whole: "All the rules are there but they remain formulas instead of living in the minds of men." (p. 116) This must be held in light of the fact that human rights and the rule of law are not easily imposed from above in the course of a decade or two, even when the ruling regime has the will to do so. Compliance can only come from true respect for human rights and the rule of law, and these must "liv[e] in the minds of men [and women]," meaning not only government officials, but judges, law enforcement officials, and citizens as well. They must be internalized. This takes time, and while external actors can affect the process, ultimately,

*The cause of human rights violations are largely national...The solutions must also be largely national...Stable regimes that over the long run protect internationally recognized human rights almost always have arisen, and must arise, from sustained national political struggle and vigilance.*⁶

Ann Kent's excellent new book documents both the successful effects of the UN human rights regime on China's human rights behavior, and the failures inherent in a regime that remains a part of a UN system based on the sovereignty of nation-states. Kent's work is a very useful and welcome addition to this literature. It would be extremely helpful if this book were updated by the author in the form of a new edition every three years or so to keep the reader abreast of new developments in the ongoing drama involving China, its people, and the United Nations human rights regime.

Notes

1. I reached this conclusion by comparing her statements of China's positions on pages 159-161, 169, 181-183 and a few other places (see index listings for universality).

2. A purely Marxist view of human rights might be another option, but not one that is talked seriously about much in Beijing these days. Moreover, this view too would ultimately have to take a stand on whether or not human rights were universal, culturally relative, or developmental (the developmental view remains closest to a Marxist frame of thinking, which I believe would have it that human rights are a function of class and mode of production or stage of history, that what we call human rights are universal but not realizable until after communism's rise).

3. Michael Sullivan, "Developmentalism and China's Human Rights Policy: Should June 4th be Forgotten?" Paper presented at the 47th Annual Meeting of the Association of Asian Studies (Washington, DC, April 6-9, 1995).

4. Peter Van Ness, "Addressing the Human Rights Issue in Sino-American Relations," *Journal of International Affairs*, 49/2 (Winter, 1996): 309-32.

5. "China Cites Progress on Its Rights Record," *New York Times* online edition, May 5, 2000.

6. Jack Donnelly, "Human Rights, Humanitarian Crisis, and Humanitarian Intervention," *International Journal* (Autumn 1993), p. 639-640.

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