

CHINESE AND U.S. HUMAN RIGHTS LAW; HOW CULTURE AND
PHILOSOPHICAL THEORY INFLUENCE IMPLEMENTATION OF POLICIES
AND THE NATIONAL AGENDA

by

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A THESIS

Presented to the Department of International Studies & Chinese
and the Robert D. Clark Honors College
in partial fulfillment of the requirements for the degree of
Bachelor of Arts

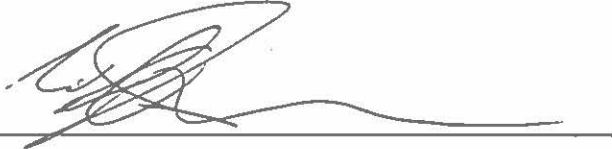
June, 2016

An Abstract of the Thesis of

Erin M. Parsons for the degree of Bachelor of Arts
In the Department of Chinese & International Studies to be taken June of 2016

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Approved: _____



William Johnson, J.D./M.A.

This thesis begins with a brief history of U.S.-China relations, government structure, and differing human rights philosophies and theories. Treaties signed by both parties are discussed. Chapter 2 defines human rights law and international human rights law. A literature review is presented. Chapter 3 analyzes the Tibet Question legally and culturally, and the PRC's implementation of the Right of Self Determination. Chapter 4 will seek to analyze the second of three case studies: PRC alleged human rights violations of international labour laws. Chapter 5 will analyze the third case study, which is censorship by the PRC government and its violations against the Universal Declaration of Human Rights. Chapter 6 serves as a general analysis of the three case studies and what they illustrate about the relationship between culture and implementation of human rights. Chapter 7 concludes that human rights are theoretically universal but implemented with cultural influences from differing philosophies.

This thesis argues that the People's Republic of China and the United States of America agree on a universal goal for international human rights, but have differing priorities in implementation due to different worldviews and national goals. The two have differing agendas, histories and are at different stages of development with differing perceptions of where the country should head into the future.

Acknowledgements

I would first like to thank Professor William Johnson J.D. of the International Studies department, Professor Zhuo Jing-Schmidt of the Chinese department, and Professor Prazniak for their unending help and guidance in writing this thesis. Professor Johnson's immense knowledge of law and continued patience have made writing this thesis possible, and enjoyable! Professor Zhuo Jing-Schmidt and Professor Prazniak's great understanding of Chinese cultural values and differences from Western philosophy have been extremely helpful.

I would also like to thank my professors in the Chinese department and International Studies department for their help in learning how to view cultures with understanding and critical analysis.

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Abbreviations Used

ACFTU – All-China Federation of Trade Unions
CCP – Chinese Communist Party
CEDAW – Convention on Eliminating all Forms of Discrimination against Women
CERD – Committee on Eliminating Racial Discrimination
CPCPD – Communist Party’s Central Propaganda Department
FAA – Foreign Assistance Act
ICCPR – International Covenant on Civil and Political Rights
ICESR – International Covenant on Economic, Social and Cultural Rights
ILO – International Labour Organization
NPC – National People’s Congress
NPCSC – National People’s Congress Standing Committee
OHCHR – Office of the High Commissioner for Human Rights
OT - Overtime
PNTR – Permanent Normal Trade Relations
PRC – People’s Republic of China
SEZ – Special Economic Zones
SPC – Supreme People’s Court
TPA – Tibetan Policy Act of 2002
UDHR – Universal Declaration of Human Rights
USA – United States of America
WTO – World Trade Organization

“If human rights are based on human nature, on the simple fact that one is a human being, and if human nature is universal, then how can human rights be relative in any fundamental way?”¹

¹ Donnelly, “Cultural Relativism and Universal Human Rights,” 403.

Introduction

The debate regarding human rights law remains nuanced by culture and sovereignty controversies. How does one begin to explain which human rights are “important” and which human rights are fundamentally necessary in a world with such a diaspora of different national ideologies, political structures, cultural mores and language systems? When one begins with something as universal as the Universal Declaration of Human Rights, and then views the conflicting practices between different nations, the issues can become blurred and relative. While cultural values and norms are present in all facets of daily life for citizens around the world – from secularism to food choices – they are expected to be dropped in regards to international law. When a people diverge on world-view, they diverge on *what* should be considered universal or not.

The United States and China diverge in world view, shared history, government structure, religion, environment, and language, among many other aspects, and yet have participated together in multilateral organizations that determine human rights law for the entire world. Considered one of the most powerful relationships of the contemporary era, China and the United States continue to practice human rights in different ways, with much political commentary from both sides. What the correct way to practice human rights is may be the wrong question, and may produce an impossible, if not objectionable, answer. Using three well-known and well-documented alleged violations of human rights by the PRC, one may begin to see the nuances of cultural values that insert themselves into disagreements on international human rights law implementation, and the ways that China views alleged violations on the part of the

United States and vice versa. Many human rights perceptions have transcended cultural values, and many nations have agreed to these rights and laws, but domestic implementation remains influenced by culture. A nation's priorities may change how human rights are practiced in law, and cause international conflict due to differences in implementation policy. Ultimately, not all human rights are deemed as important to one country as another. National priorities differ, as can be seen with the United States and China. The PRC is influenced by six main factors which have changed their policies for human rights law: Confucianism, GDP goals, resistance to hegemony, collectivism, harmony goals, and socialism. The United States is influenced by alternative factors such as: western liberal democracy, international role in multilateral organizations, historical views towards freedom, and individualism. These are not all of the factors that have influenced domestic human rights law, but are major influencers which justify differences in the implementation of international human rights law at the national and local level. These factors illustrate how human rights law is different in theory than in practice, and how human rights may be agreed upon as important, but disagreed upon regarding which laws should and need to be practiced.

The PRC and the United States have made multiple international agreements which solidify their goals for international human rights in theory. However, the PRC and the United States have also diverged on many international human rights treaties in favor of others, ratifying some that the other nation has not and vice versa. Ratification of certain international human rights treaties, and their choices in implementation, demonstrate a differing perception on which human rights should have priorities over others. These priorities are influenced by cultural philosophies and national goals. To

say that either the PRC or the United States is lacking respect for human rights is incorrect, and possibly a dangerous argument to pursue. Neither culture possesses any less of a value for human rights, but the PRC and the United States demarcate on *what* human rights laws are most important and most necessary to implement domestically and achieve human rights for their citizens.

Government Structure & Human Rights Law

The United States and the People's Republic of China (PRC) began informal relations during the Nixon administration in 1971. Coined Ping Pong Diplomacy, U.S.-China relations began informally with the invitation of China's Ping Pong team to the United States, and formalized thirty years later with normalized trade relations following China's accession into the World Trade Organization in 2001. With a growing globalized system of trade and commerce, the relationship between the United States and China is becoming more and more important in the international economy, and increasingly challenging due to cultural and political differences. As China seeks to become a major player in multilateral organizations, issues such as violations of international human rights treaties must be addressed. For a stable and peaceful future, a positive relationship between the two largest economies in the world is extremely valuable. Due to basic political disagreements, different worldviews and different desires, media has commonly portrayed the U.S.-China relationship as a negative one. While the relationship works on an economic and systematic level, fundamental disagreements regarding human rights policy and implementation prevail. Why does the United States have such a different perspective on human rights in practice, and how

does this lead to such a negative view towards Chinese policies? Are human rights violations issues of policy, culture, implementation or priority?

This thesis analyzes the history, cultural beliefs, philosophy and domestic legal policies in each respective country in an effort to understand why China and the U.S. continue to misalign and disagree on the implementation of international human rights treaties, despite the enormous importance of agreement in multilateral relationships. The two nations have made previous agreements on human rights, but have different goals for human rights law. The relationship between China and the United States are critiqued through three case studies on alleged human rights abuses in China. These three case studies on human rights violations within China are analyzed through a legal and cultural lens: through treaties signed, perceptions of said treaties and philosophy, and implementation of said policies with regards to political, cultural and economic priorities. Ultimately, it is argued here that U.S.-China disagreements on human rights have little to no cultural differences in value, but large differences in implementation because of cultural values, national goals and cultural priorities. International human rights agreements are important in such a globalized and international world because human rights policy changes may frequently lead to changes in international funding, foreign aid and cultural respect between citizens of different nations. Forging a positive perception of other nations in regards to human rights requires cultural understanding, and a dovish interpretation of both sides due to contemporary events, philosophies, and legal contexts.

Terminology Used

The use of “China” and “PRC” are not used interchangeably. “China” refers to the entire geographic area that is commonly thought of as, “China,” which includes municipalities and autonomous regions that may not consider themselves “China.” The “PRC” refers to the governing system, The People’s Republic of China, which some autonomous regions do not desire to operate under. For example, Hong Kong is under the rule of the “PRC” but operates with its own legal body and political system. Taiwan additionally operates with its own legal system separate from the “PRC.” Therefore, it is contested whether the “PRC” is, and whether the PRC should be, in control of all of “China.”

Cultural Differences between China and the United States

Cultural differences create alternative worldviews, and therefore influence a culture’s perception of human rights. Worldview is defined as “a particular philosophy of life or conception of the world,”² and is greatly influenced by one’s cultural background and society. To understand each culture’s perspective, one must first understand their philosophies. Human rights law jurisprudence stems from the philosophy of morality and the relationship between citizen and state. Therefore one’s role and expectation in the world often affects one’s perception of how human rights law should operate. The United States and China relate back to two often contrasting philosophies: liberalism and Confucianism respectively. For the United States and China, differences on how human rights law should be implemented are influenced by

² Merriam-Webster, “Worldview Definition.”

these alternate philosophies, and these disagreements revolve more around implementation of said ideas than differences on respect for the idea of a human right.

Confucianism in Warring States China

In this thesis the term Confucianism will refer to the ideologies of Confucius, the writings of his disciples (found in the 论语, or *The Analects*), and the cultural norms associated with Confucianism in later generations following the Warring States Period. It refers to the social structure and political structure used during the Warring States Period. In modern contexts, Confucianism refers to the cultural notions that have arisen from Confucianism in Chinese society today: namely hierarchy, socialism, social harmony and collectivism.

The most pervasive philosophical notion of government and society in Chinese history is the hierarchical ideas of Confucianism, which suggest that power and authority determine behavioral action in a strict manner. While Confucianism's conception is ancient, and is not legally required for citizens to practice, it is arguable that it still affects and influences cultural values of Chinese society today. The hierarchical philosophy of relationships is widely referenced and integral to Chinese thought processes³ and political decisions. Traditional Confucian thought, the guiding principle of Chinese warfare, relationships, government and society in ancient China – beginning around 500 BCE - emphasized the importance of hierarchical social order, rather than free choice, individualism, and reason: for Chinese Confucianists, "...the realisation of beneficial policies depends on institutions rather than good intention."⁴

³ Chan, *Chinese Perspectives on International Relations*.

⁴ Chan, *Chinese Perspectives on International Relations*, 29.

This means that one's behavior is determined by their role within an institution, as opposed to their role as an individual.

Confucianism is considered both a religion and a political doctrine, despite its differences from traditional religions of the west. Confucius (551 – 479 BCE), a man but not a god, notably felt that contemplating the afterlife impeded moral reason while still alive, and he did not express belief in any kind of "God." Therefore, much of Confucianism focuses more heavily upon obtaining morality during one's lifetime through participation in the state and governance, than making decisions for the afterlife.

Confucianism highlights the importance of hierarchy through social institutions, and relationships between people and their superiors. According to Confucius, a person's relationship must always be in line with their position on the hierarchical chain. For example, a person earns respect with time in order to move to a higher position in the hierarchy, through actions such as participating in scholarly work. Therefore, according to Confucianism, a person is not born with inalienable rights, but earns them through participation in society and positive influence on the community. This is both hierarchical and collectivist: "To a Confucian, the Western idolatry of the individual and the glorification of autonomy is an exaggeration of style that leads to extremes of conduct and disrupts settled patterns of culture and human relationships."⁵ Group harmony, and set patterns of behavioral conduct determined through rank are the guiding principle of Confucianism: "...Confucian society is... modeled on a strict family hierarchy, where certain roles are to be accorded certain services and actions that

⁵ Sim, "A Confucian Approach to Human Rights," 337.

are not due to others.”⁶ Different people have distinct roles and expectations, meaning that what may be considered a “right” for one person, may not be a “right” for another person of different status.

For example, Confucius frequently discussed the concepts *zhong* 忠 and *shu* 恕, which translate loosely to “loyalty” and “reciprocity.” The idea of *shu* governs the way that people should interact, which is: ‘what you do not desire, do not do to others.’ For example, in the relationship between father and son, *shu* should guide the son’s actions along with filial piety (or *xiao*, 孝):

A question for a son to consider is not how his father treats him, but how he would like his own son to treat him. *Shu* is a relation not between two individuated people, but between two social roles. How does one treat one’s father? In the same way that one would want to be treated by one’s son *if one were a father oneself*.⁷

As the son, or the one of lower hierarchical status, he must always think of what the father needs, not what the son may need himself: this focus transcends individual rights. While Western thought considers the importance of honoring and caring for one’s parents, it does not go to the extreme that the Chinese concept of *xiao* 孝 (filial piety) does. Children should do anything for their parents or people of higher status, and people should always focus on social relationships by pleasing the person above them in a hierarchical scheme. This concept is also used in conjunction with *guanxi*, or personal relationships.

These concepts of *xiao*, *shu* and *zhong*, is also used on a national scale. The importance of national security, national success, and the good of the majority always

⁶ *Ibid*, 341-342.

⁷ Goldin, *Confucianism*, 16.

trumps the importance of individual rights. Social harmony, economic growth, and political stability are a major focus of the Chinese nation.

These concepts may also be seen in the language of the era, which stressed personal pronouns that were either “humilific” or “honorific” depending on who is being spoken to and who is speaking. The Chinese language during the era of Confucianism stressed hierarchical relations. There were specific personal pronouns used based upon hierarchy. For a person to have “rights” within the society, they first had to prove their honor to those above them, be it parents or government officials, and then they may be considered of value, or morally superior. The philosophical notion of morality was:

(i) Human beings are born with the capacity to develop morally; (ii) moral development begins with moral self-cultivation, that is, reflection on one’s own behavior and concerted improvement where it is found lacking; (iii) by perfecting oneself in this manner, one also contributes to the project of perfecting the world; (iv) there were people in the past who perfected themselves...⁸

In essence, a person needed to achieve morality, rather than possessing it simply on the premise of being human. Once one had perfected their morality, the way the ancient ancestors had, one would be considered a “sage,” or wise person.

Confucianism’s ideas regarding morality and hierarchical collectivism differ conceptually from Western democratic liberal philosophy.

Today, Confucianism – as well as communism – work together to influence the cultural values that have kept Chinese culture what it is today. Such values instilled within Chinese society include collectivism, hierarchical respect and stability in society

⁸ Goldin, *Confucianism*, 5.

over individualism. Though not formally practiced by all, the cultural values remain and affect worldview, relationships and implementation of certain policies by the PRC.

Western Liberal Democracy

Western liberal philosophy focuses on the importance of social contract theory, the absolute importance of individual autonomy, and the need for reason in the relationship between citizen and government. Supporting democracy, “not only promotes such fundamental United States’ values as religious freedom and worker rights... [it also] helps create a more secure, stable, and prosperous global arena in which the United States can advance its national interests.”⁹ Democracy is respected by the United States as a system that protects human health, promotes human rights, and prevents international terrorism and crime.¹⁰ Individualism is thought to increase human rights by protecting the individual before the group. Emphasis on the individual, and the individual’s important role in determining their own representation in a democratic system extends from philosophies that are not present in ancient Chinese thought: individualism, Christianity, dichotomy, and social contract theory, among others. This is why the United States views individual civil and political rights as more fundamental and important than certain “collective rights” valued by the PRC.

This focus on the individual sits in opposition to Confucianism. One of the leading philosophers of western liberalism is Thomas Hobbes, whose work is considered the basis of modern liberal thought. Thomas Hobbes focused on: the importance of sovereignty, the equality of all men, the right of the individual, as well as

⁹ “Democracy,” United States Department of State.

¹⁰ *Ibid.*

a person's representative relationship with their government. Hobbes' *Leviathan* established social contract theory, which asserts that people's moral and political obligations are created based on agreements between people and the surrounding social structure that they live in.¹¹ These contracts serve as both the foundation of and justification for government. Therefore, in order to establish a working society, people must form agreements which allow civil society to exist without constant conflict. Such agreements include social conduct and specific individual rights laws. Hobbes' ideas regarding political theory have largely influenced Western liberal theory of human rights law priorities through their focus on having rights as an individual while maintaining social order and government sovereignty. To the United States, human rights law is an extension of social contract theory, as well as democratic notion of individual autonomy.

Hobbes' philosophy disagreed slightly with the philosophies of Thomas Aquinas – who was far more Aristotelian – and who argued for the cause of natural law.¹² Aquinas' fundamentally Christian ideology asserted that the world was governed by the laws of the Divine Providence, in which God creates laws for Earth, "...because most beings in the universe (or at least in the natural world) do not possess the rational ability to act consciously in a way that is contrary to the eternal law implanted in them."¹³ Hobbes did not agree with Aristotle or Aquinas on the concept of "natural law," but felt that individual societies created their own governing systems by which to rule. Natural Law fundamentally states that one set of laws governs all people on Earth. Today this

¹¹ Friend, "Social Contract Theory."

¹² Natural Law definition: a body of unchanging moral principles regarded as a basis for all human conduct.

¹³ Koritansky, "Thomas Aquinas: Political Philosophy."

may be equivocated in some ways to strong Universalism and religious doctrine. Today natural law remains important in western concepts of human rights jurisprudence as rights belonging to humans, simply because *they are human*. Aquinas' focus on the individual and his emphasis on rationalism and reason is important to western liberal philosophy. For example, if a son and father had a disagreement on a son's decision, the son should always choose what is best for himself, *as the individual*.

Traditional rational secularism, which has greatly influenced western conceptions of human rights, stresses the importance of reason and morality. Thomas Aquinas, who combined Christianity with Aristotelian eudaimonism,¹⁴ argued that all humans were inherently good, but could be corrupted. Human goodness depends on human action that is good, which could be determined as something that is rational. Human action that is good, is rational, and thus controlled by the individual herself. Furthermore, this should all be directed towards a final goal, a final goodness.

Disagreements in philosophy on human rights theory continue to incite disagreement between China and the United States – specifically in regards to the implementation of human rights law. Through a culturally relativist line of analysis, one's worldview affects one's perception of what rights are most important or fundamentally necessary. While ancient concepts of philosophy do not overtly influence the ratification of international treaties by modern nation-states, and these philosophies predate much modern international documents and agreements, it is argued

¹⁴ Aristotelian eudaimonism: happiness is reached through virtue, which was defined by Aristotle as, "living well and doing well," as well as activity that is in accordance with reason and rationality. "Eudaimonism." *New World Encyclopedia*.

here that these concepts continue to inform worldview beliefs on national priorities and domestic goals for citizens.

International Relationships & Soft Power

Soft Power

Following China's drastic governmental shifts under Deng Xiaoping, Chinese power has attempted to increase their strategic relationships and institutions through, *soft power*. While previously China operated under Mao Zedong's insistence on self-sufficiency as a nation, China has more recently operated on the basis of *soft power*¹⁵ through the control of institutions and their ideologies in foreign nations. The Confucius Institute, for example, preaches Chinese values and encourages cultural engagement with China throughout the United States and other countries by offering educational opportunities for U.S. students. *Soft power* may be seen in the Confucius institute's encouragement of the study and support of Chinese cultural values and goals, and the Confucius institute has been cited as a way to improve relationships between the United States and China by encouraging scholars and students to embrace Chinese values.¹⁶ It's also apparent in China's Asian Infrastructure Investment Bank and its ties to African nations through the China-Africa forums.

Soft power is primarily seen in certain strategic relationships with African nations before China had formalized relationships with western nations and multilateral organizations, though Xi Jinping is attempting to increase soft power. Various polls have shown that people in Latin America and Africa have more positive feelings

¹⁵ *Ibid.*

¹⁶ *Ibid.*

towards China than the United States, which may be attributed to the use of soft power.¹⁷ China's programs in South Africa have positively influenced the relationship by helping African nations in the spirit of anti-imperialism. The United States continues to rank as a top nation for the use of soft power, while also demonstrating hard power through their military industrial complex. China's soft power has greatly influenced its ability to quickly become a major power while retaining fairly positive perceptions by most nations, and is becoming more of a priority with time.

While soft power is a term that originated in the United States, and a concept that is practiced by the United States through global enterprises, branding and more, it is important to note that the PRC is attempting to use soft power to its advantage as well.¹⁸ When looking at international relationships, one may find that soft power has helped the PRC improve and create relationships with many nations, thus moving forward with its goal of becoming an international power. Unfortunately, many United States' citizens view the PRC's use of soft power as threatening to the United States hegemony in international relationships.

Hard Power is practiced by the PRC in certain international relationships and domestically on its citizens. Hard power may be seen in domestic aggressions against citizens who protest or subvert the government, as well as in the PRC's actions in the South China Sea. However, the PRC continues to use soft power to further ideological and historical cultural values, such as Confucianism. This can be seen in the Confucius

¹⁷ Kurlantzick, *Charm Offensive: How China's Soft Power is Transforming the World*, 9.

¹⁸ "Soft power" is a term coined by Joseph Nye, who stated: "The dictionary tells us that power means an ability to do things and control others... Traditionally the test of a great power was its strength in war. Today, however, the definition of power is losing its influence on military force and conquest that marked earlier eras. The factors of technology, education, and economic growth are becoming more significant in international power..." Nye, "Soft Power," 154.

Institutes around the world, which promote Chinese values and encourage international learning of Chinese language, collectivism and philosophy.

Capitalist and Socialist Influences

Capitalism and economic security are influential to the understanding of human rights violations of international treaties, especially the differences in opinion about capitalism between the United States and the PRC. While the United States generally views capitalism as economically, politically and socially beneficial, the PRC uses capitalism for economic gain but does not support most of its social and political effects. Although China recently added capitalist elements to its economy, capitalism is not the foundation of China's economy as it is in the United States, and capitalism was not included in the economy because the PRC respects capitalism. The PRC has expressed fear of Capitalistic influence to its domestic economy: "...[the PRC] believe that capitalism is trying to absorb socialism into its sphere of influence, thereby consolidating the global structure of exploitation, and therefore only socialism can save and develop China."¹⁹ The PRC does not define itself as a free-market capitalistic economy, and remains primarily a socialist market economy:²⁰ "It [The State] conducts education among the people in patriotism and collectivism, in internationalism and communism and in dialectical and historical materialism, to combat capitalist, feudal and other decadent ideas."²¹ The Constitution of the People's Republic of China

¹⁹ Chan, *Chinese Perspectives on International Relations*, 42.

²⁰ Socialism is defined as a social organization political and economic theory that argues for the means of production, distribution and exchanged being owned by the people or community. In Marxist terms, Socialism is defined as the period between Capitalism and Communism. Merriam-Webster, s. v. "Socialism."

²¹ The Constitution of the People's Republic of China. Article 24.

consistently emphasizes the importance of socialism to the nation's goals and policies. While capitalistic influences exist through foreign investment and trade, the PRC does not consider itself "capitalist," but socialist.

China has liberalized its economy, resulting in the economy having more capitalistic qualities and this is primarily to encourage foreign investment and further international trade relations, rather than to promote cultural values of capitalism. Because capitalism is required to participate in international trade, the PRC has attempted to give China a capitalistic economic framework, while simultaneously promoting socialism domestically. Otherwise, the PRC may find itself without the United States as a trading partner, which would result in failure of its national goals.

China's socialist foundation significantly shapes its perception of what human rights are most important and its perception of individualism. Socialist contexts make the PRC value livelihood rights more than civil and political rights. For the United States, capitalism provides an economic basis that pairs well with individual human rights through a free market economy, and free criticism of private businesses and companies. Through socialism, and collectivism, The State is prioritized over the individual in China.

Academia and Government: U.S. versus China

Problem Solving

Chinese citizens tend to value collectivism over the United States focus on individualism:

Individuals from Western cultures tend to value uniqueness and freedom and view the self as independent from others, whereas individuals from many East Asian cultures tend to value social harmony and adherence to group norms and view the self as interconnected and interdependent with others.²²

Chinese citizens tend to view situations in a Daoist or Confucianist manner, with two sides to every conflict existing in harmony, while those from the United States tend to view situations using Aristotelian logic: one correct way and one incorrect way in a dichotomy.²³ Furthermore, when handling a problem, conforming to create a harmonious outcome is extremely important: “Conflict is therefore essentially indicative of the weakness of an individual or a community of individuals in their failure to appreciate the intricacies of change and consequently to control or discipline themselves for making conformity...possible.”²⁴

Differences in viewing problems and handling situations may be seen in psychological studies, which have shown that the brain function changes in response to different cultural values. This means that different people from different cultures have brain wiring which is different from people of other cultures.²⁵ This is important because in China conforming to solve a problem remains more important than creating conflict for the good of the individual and their differing opinion on something.

²² Ambady, Nalini, and Jamshed Bharucha, "Culture and the Brain," 342-345.

²³ Peng, Kaiping, and Richard E. Nisbett, "Culture, Dialectics, and Reasoning about Contradiction," 741-754.

²⁴ Cheng, "Towards Constructing a Dialectics of Harmonization: Harmony and Conflict in Chinese Philosophy."

²⁵ Ambady, N. & Bharucha, J. (2009), Page 343.

Academic Scholarship

United States' citizens generally prescribe to a western liberal democracy worldview, which encourages intellectual academic scholarship – possibly in opposition to the government's approach – while the PRC does not believe in a divide between academic scholarship and politically accepted truths. Rather, truth is accepted to be at the determination of the Chinese Communist Party (CCP): In China "... [academia] commonly adopts a historical approach, explains government policies, and keeps in line with the direction of the central authorities."²⁶ Because there is no divide between academic scholarship and government supported notions of "truth," the government has control over what is considered correct and what is considered "subversive." Therefore, the PRC controls China's primary news source: *Xinhua News* and oversees academic scholarship.

Exceptionalism

More culturally and politically flexible literature examines the similarities between "American Exceptionalism" and "Chinese Exceptionalism" in political and social practices by the government and the people. Both nations express exceptionalism, but this exceptionalism is expressed differently through different cultural values, laws and domestic expectations. For example, one theory posits that China's comparable lack of arable land and need for food have contributed to a more collective, authoritarian government structure with a large population of workers participating in

²⁶ Chan, Gerald, "A Discussion of the Study of International Politics with Chinese Characteristics," 2e 3.

intensive agricultural work.²⁷ China considers this exceptional to the history of most nations. Furthermore, China's lengthy dynastic history and a history of communism and socialism, make the country an exception to most other nations. This differs from the United States' historically small population on large swaths of arable land, which in turn resulted in expensive labor contributing to a culture of independence and individuality. The United States considers people's relative freedom from government oversight an exception, as citizens have a freedom unlike that of any other nation. These differences in exceptionalism as it relates to government structure shape perception by the United States citizens and Chinese citizens: Americans view government as something that holds back the economy and view citizens as exceptional, while the Chinese citizen perceives the government as a body taking care of the people and exceptional.

These different perceptions on one's relation to the government relate back to cultural understandings, "exceptional" histories, and different ideological arguments about the role of the state. The two oppositional philosophies are Confucianism and western liberalism. Confucianism's strict hierarchical and collectivist ideals contrast Hobbes' focus on individuality and reason and their resulting exceptional tendencies on the part of the governmental body and the free citizens.

²⁷ Chan, Steve. "Rights in China and the United States: Competing Visions and Discrepant Performances."

Chapter 1: Background on China-U.S. Relations

This examination of China begins with Deng Xiaoping's Opening-Up Reforms in 1976 that followed Mao Zedong's death, then extends through the start of the U.S.-China relationship in 1971 (under the Nixon Administration), and concludes with three more contemporary well-documented examples of allegedly violated international human rights treaties. Though China possesses five thousand years of history, and held important and influential international relationships before its "dormant" period under Mao Zedong, this period will not be examined because the relationship between China and the United States is the focus for this thesis. While additional historical concepts of power and hierarchy will be reviewed, the surrounding historical time period is not explored in depth. This is partly because during Mao Zedong's dictatorship there was no attempt to honor international human rights treaties and the governing system is different than the PRC. Though the cultural values and concepts remain important, the focus is on their implementation in relation to today's modern human rights theory.

Before Deng Xiaoping incited the 改革开放, or the Opening-Up Reforms, China did not honor human rights law treaties in practice or implementation. International human rights law, which started primarily with the beginning of the United Nations and the Universal Declaration of Human Rights in 1948, did not become a focus for the U.S.-China relationship until China's accession to the WTO and rise as a global power. The previous dictatorship of Mao Zedong is not comparable to the new government structure that operates as the PRC today. However, China did participate in the creation of the UDHR in 1948, and today attempts to honor the UDHR in domestic policy. What remains nebulous is not China's respect for human rights, or the modern

agreement on their definition, but human rights law's implementation in relationship to the PRC's national priorities. Many of these priorities are born out of cultural values, in juxtaposition with economic and political goals.

Deng Xiaoping & Opening-Up Reforms (改革开放 *gaigekaifang*)

Deng Xiaoping came into unofficial power following Mao Zedong's death in 1976, notably reforming and opening up the Chinese economy to outside influence through foreign investment and trade. By implementing Chinese characteristics into a socialist market production model – thus combining socialist and capitalist elements - Deng Xiaoping began the process of separating the CCP from the PRC, and forming new foreign relationships, notably with western nations that were not previously under imperial rule. The Opening-Up of China, which is called 改革开放 in Chinese, began the economic process that China has allowed China to become the second largest economy in the world today.

Deng Xiaoping, Li Xiannian, Yang Shangkun, Jiang Zemin, Hu Jintao and Xi Jinping have all been in power since 1976. In the United States the Nixon, Ford, Carter, Reagan, H.W. Bush, Clinton, Bush, and the Obama Administrations are within the timeline of the formalized U.S.-China relationship.

U.S.-China Relations Act of 2000

Relations between the United States and China began informally during the Nixon Administration, and are frequently referred to as Ping Pong Diplomacy,²⁸ with the invitation of the Chinese ping-pong team to the United States. The U.S.-China

²⁸ DeVoss, "Ping-Pong Diplomacy."

relationship formalized nearly 30 years later with the U.S.-China Relations Act of 2000.²⁹ This established, most importantly, economic ties as China's acceded into the WTO and the beginning of foreign investment in Chinese SEZ's. Following formalized trading relations or Permanent Normalized Trading Relations (PNTR), the PRC established various changes to their tariff system and faced much pressure domestically from the industrial sector to not participate in international trade.

Many citizens in the industrial sector felt that Chinese industries were not strong enough to compete with the international market, yet Deng Xiaoping felt PNTR was necessary for quick GDP increases. Following the Great Leap Forward, most Chinese citizens were in rural areas participating in farm labor, were illiterate, and were lacking basic healthcare.³⁰

The Clinton Administration used PNTR with China as a policy tool to improve approval ratings of the administration by demonstrating the administration's development of international relationships, and improvement of the economy. China's primary goal was attempting to rapidly increase its GDP and quality of life.³¹

The U.S.-China Relationship Act of 2000 also included passages regarding human rights in China. Title III states that the WTO may, "(1) monitor the acts of China which reflect compliance with or violation of certain human rights, in particular,

²⁹ "Title I: Normal Trade Relations - Authorizes the President to extend nondiscriminatory treatment (normal trade relations treatment) to the products of the People's Republic of China, provided, prior to such determination, the President certifies to Congress that the terms and conditions for China's accession to the World Trade Organization (WTO) are at least equivalent to those agreed between the United States and China on November 15, 1999." U.S.-China Relations Act of 2000.

³⁰ In 1958, Mao Zedong's Great Leap Forward resulted in the famine and death of millions of citizens. In order to improve his reputation, Mao began the 1966 Cultural Revolution, which resulted in death, property seizure, violence, torture and public humiliation. History. "Cultural Revolution."

³¹ Currently China ranks 90 on the Human Development Index. The United States ranks 8. United Nations Development Programme. "International Human Development Indicators."

those contained in the International Covenant on Civil and Political Rights and in the Universal Declaration of Human Rights.”³² Title V states that a task force was created which prohibits the importation of products of forced or prison labor from the People's Republic of China.³³ These passages highlight the pressure China has been under to change domestic human rights law implementation since the beginning of its formalization of international trade relations.

International Law & Sovereignty

International law, and the relationship between foreign policy, domestic law and sovereignty is becoming more relevant with globalization. With increasing news coverage of foreign nations’ violations of international treaties, international standards are more frequently influencing nations. This is only increasing with more interdependence through economic trade relations and less emphasis on sovereignty:

Interdependence among States and other actors of the international arena requires the creation of a world system. Globalization in economic terms implies a high degree of interdependence among all nations, developed and developing – among and between themselves – which is not affected by the differences in history, culture and political and legal systems of such nations.³⁴

However, despite an increase in economic globalization, countries continue to exhibit strong cultural bias in implementing international covenants into domestic law and in the priorities taken in light of national considerations. The differences between the structure of the government and the way that law is carried out between China and

³² U.S.-China Relations Act of 2000.

³³ *Ibid.*

³⁴ Wang, *Radiating Impact of WTO on Its Members' Legal System: The Chinese Perspective*, 40.

the United States are extreme. In the United States human rights are inherent at birth – meaning that one is endowed with human rights that trump the goals of the governing state. In China human rights are also inherent at birth, but contains more political restrictions by the State in order to remain socialist and stable.³⁵ In the United States, human rights contain social and cultural restrictions (those in the ICESCR) in order to remain free of large government influence. Due to the lack of a constitutional judicial review system for legislation or administrative acts, repercussions remain small for human rights abuses in China. Rather, the National People’s Congress (NPC) of the PRC formulate regulations and decisions based upon whether areas may or may not be politically important for the PRC to consider. However, the United States relationship with China has had important and major influences on the PRC’s human rights law, yet practice remains different. Despite implementation problems, in the recent decades the National People’s Congress and the National People’s Congress Sitting Committee have produced over 450 laws and have signed and/or ratified eight of the United Nations High Commissioner for Human Rights highlighted human rights treaties.³⁶ There are nine core protocols.³⁷ This continues to shape and change China’s national identity.³⁸

³⁵ Davis, Michael C., Gangjian Du, Eliza Lee, Claude LeFort, and Christine Loh. "Human Rights and Chinese Values: Legal, Philosophical, and Political Perspectives."

³⁶ Wan, "Human Rights Lawmaking in China: Domestic Politics, International Law, and International Politics," 727.

³⁷ The thirteen core international human rights treaties highlighted by the Office of the United Nations high Commissioner for Human Rights are: The Universal Declaration of Human Rights (UDHR), the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Cultural and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child, the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of Persons with Disabilities, and the International Convention for the Protection of All Persons from

Background on PRC's Government Structure

The Republic of China was initially founded after the fall of the Qing Dynasty, and the Revolution of 1911 led by Dr. Sun Yat-sen. However, the People's Republic of China only came into existence in 1949 under the ruling power of Mao Zedong. The Chinese Communist Party (CCP) was founded in 1921. In 1949 China's government was entirely unified under Mao Zedong. Today, all citizens are required to join China's Socialist Party as children and to abide under the Constitution of the People's Republic of China.

The Constitution of the People's Republic of China outlines its basic government structure. China operates under a Socialist Party mechanism, with a socialist economy, socialist government structure, and publically owned means of production. The PRC's government structure is based off of Marxism-Leninism ideologies, Mao Zedong Thought,³⁹ the Three Represents,⁴⁰ Deng Xiaoping Theory,⁴¹

Enforced Disappearance. United Nations Human Rights Office of the High Commissioner. "Core International Human Rights Treaties."

³⁸ Wan, "Human Rights Lawmaking in China: Domestic Politics, International Law, and International Politics," 728.

³⁹ Mao Zedong Thought: Also called Maoism, this thought combines Marxism-Leninism with Mao Zedong's combative nationalism and revolutionary goals. Rather than Marxism-Leninist thought, which believed that peasants were powerless to form revolution, Maoism used the power of the millions of citizen peasants to form revolution. Maoism continued to attempt to fight bourgeois elements of society through the Cultural Revolution, which ultimately failed at creating domestic industrialization. *Encyclopædia Britannica Online*.

⁴⁰ The Three Represents: The "Three Represents" are what the Chinese Communist Party stands for, which is, "the development trends of advanced productive forces," "the orientations of an advanced culture," and "the fundamental interests of the overwhelming majority of the people of China." Jiang Zemin created the Three Represents in 2000. China Through a Lens. "What Is "Three Represents" CPC Theory?."

and the Four Cardinal Principles,⁴² which combined form a socialist country that is, according to the PRC's Constitution, "prosperous, powerful, democratic and culturally advanced." The PRC's decentralized government structure is relevant to its inability to implement and practice human rights law while maintaining GDP increases with foreign investment, because there is little incentive to honor laws and sacrifice economic gain when there is little repercussions for breaking the law. This is especially true in the labor industry.

While the PRC's government is primarily socialist,⁴³ there exist additional capitalist Marxism-Leninist elements in its market economy. Consistently emphasized within the Constitution is the ownership and power of the citizens of the People of the Republic of China in state-owned sectors. The people of the PRC own the means of production through public ownership. The economy is State-owned, and land in the

⁴¹ Deng Xiaoping theory: Also called Dengism, this theory constitutes a revival of Maoist Theory without the Utopian components. Dengism emphasized modernization as one of the most important goals of the CCP, as well as economic democracy that decentralized the government and suggest participation by the citizens. However, once implemented, decentralization sought more for industrialization of the nation than for citizen participation. Dengism also sought levels of inequality in order to promote market-oriented reforms for the economy and establish SEZ's. Rather than encouraging specific policies of Maoist thought and Marxist ideology, Dengism asserted that the nation much use overarching methodology while modernizing.

⁴² Xi Jinping stated in his January 1st, 2016 speech, "中国共产党纪律处分条例": "四项基本原则是党的理想信念和精神家园的根基, 四项基本原则动摇, 理想信念与精神家园就会有崩塌和丧失的危险。因此, 可以说, 反对资产阶级自由化、坚持四项基本原则, 与坚持党的改革开放决策一起, 都是同党中央在思想上政治上行动上保持一致的最根本性的标准, 也是我们党的最根本的政治纪律和最大的政治规矩," which translates to: "...the Four Cardinal Principles are the ideals of the CCP and the spiritual home of the foundation, [so] if the Four Cardinal Principles are shaken or destabilized, the ideals, beliefs, and spiritual home of the CCP will be in danger of collapse. Therefore, we can say, combat bourgeois liberalization and uphold the Four Cardinal Principles, as well as the CCP's reform and Opening Up reform together, so they are consistent with the Central Committee's fundamental standards on ideological and political action, our Party's most fundamental political discipline and biggest governmental rules." 田改伟. "坚持四项基本原则、反对资产阶级自由化是党的一项最根本的政治纪律."

⁴³ Socialism: Socialism is defined as a social organization political and economic theory that argues for the means of production, distribution and exchanged being owned by the people or community. In Marxist terms, Socialism is defined as the period between Capitalism and Communism. Merriam-Webster, s. v. "Socialism."

cities is also State-owned. State power within China is exercised through the National Peoples' Congress (NPC), which applies the principles of democratic centralism.⁴⁴

The National People's Congress has one permanent body: the Standing Committee of the National People's Congress, which acts to exercise the legislative power of the state. The National People's Congress members are elected by the Standing Committee, and are elected for a term of five years. This body has the relevant power to amend the Constitution, supervise enforcement of the constitution, enact and amend basic laws governing criminal offenses, civil affairs or State organs. They may elect the Vice President, decide amongst nominations on the choice of Vice-Premiers, State Councilors, Ministers and more, as well as elect the President of the Supreme People's Court, among other abilities. Most notably, the National People's Congress has the power to elect the President and Vice President of the People's Republic of China – as well as other major offices – and also is the legislative body of the PRC, which oversees government operations. With around three-thousand people it is the largest parliament in the world. The Standing Committee of the NPC consists of: the chairman, the Vice-chairman, the Secretary-General, and members. The Standing Committee possess a variety of functions and powers: most notably to interpret the Constitution, supervise its enforcement, and interpret laws. It essentially serves as the government body that appoints or removes (from nominations and recommendations by the President) people

⁴⁴ Principles of democratic centralism: Democratic centralism combined the ideas of democracy and centralization of the government in order to allow for new ideas while also maintaining control of the government party. Developed by Lenin, this theory allows people to insert ideas into debate, but following a vote, the issue must be acted upon by the vote without further discussion. *Encyclopædia Britannica Online*.

to the Supreme People's Court (SPC), the SPC's Judicial Committee and the President of the Military Court.⁴⁵ Certainly, the NPC possesses much power in the PRC.

The executive body with the highest order is the State Council, which is composed of: the Premier, the Vice-Premiers, State councilors, the Ministers in charge of ministries, Ministers in charge of commissions, the Auditor-General and the Secretary-General. Together this executive body takes responsibility for the work of the State-Council, which seeks to oversee the governments of different provinces and maintain relationships with the CCP.

The PRC emphasizes that the State, “continuously raises labor productivity, improves economic results and develops the productive forces,” (Article 14) and that the State, “practices [a] socialist market economy.” Article 22 states that the PRC encourages speech through art, literature, radio etc. which, “serves the people and socialism,” placing caveats on freedom of speech and artistic expression, or civil and political rights. Article 28 states: “The State maintains public order and suppresses treasonable and other criminal activities that endanger State security; it penalizes criminal activities that endanger public security and disrupt the socialist economy as well as other criminal activities...”

Article 51 states that, “Citizens of the People's Republic of China, in exercising their freedoms and rights, *may not infringe upon the interests of the State, of society or of the collective*, or upon the lawful freedoms and rights of other citizens [emphasis added].” It's important to note that harmony and structure is most important for the PRC and CCP regime, as well as economic increases in GDP. This is fundamentally

⁴⁵ See Appendix Figure 1.

different than the United States Bill of Rights which states in Amendment 1⁴⁶ that there are no limits to freedom of speech by the Congress, and that the state is to remain outside the lives of citizens. As Amendment 1, freedom of speech is considered one of the most important, if not the most important, right of U.S. citizens. The constitution of the PRC illustrates that priorities regarding national improvement and increased quality of life as a whole are different from the United States' goals for improvement. This is particularly true in regards to freedom of speech and critique of the government.

Autonomous Regions

The PRC is divided into provinces, autonomous regions, and municipalities. The autonomous regions include Guangxi, Inner Mongolia, Ningxia, Tibet and Xinjiang, which are areas where primarily minorities reside. Autonomous regions are regions where the minority groups have their own government and legislative rights to cater to minority groups. This concept is commonly referred to in Chinese as 一国两制 (*yiguo3liang3zhi4*), a term which Deng Xiaoping coined that means, "One country, two systems." The PRC has power over thirty-four provinces and fifty-five different ethnic groups under varying autonomous regions and areas. Autonomous regions are important to understanding the PRC's relationship with certain regions of China, and its nebulous control over law in these areas. Additionally, autonomous regions exemplify the number of people and small governing systems that are currently resisting control by the PRC and seeking complete sovereignty. At the risk of losing approximately one

⁴⁶ Amendment 1: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." United States Constitution Bill of Rights (1791).

tenth of the population, the PRC seeks to retain control over these geography areas in particular.⁴⁷ This helps to justify the PRC's infringement on civil and political rights, as well as its continued focus on the collective society's well-being over one person's.

United States Government Structure

While both the United States and the PRC contain legislative, executive and judicial bodies formed underneath a President and Vice President, the United States government structure is less top-down than the PRC and emphasizes its representative nature. The United States Constitution continuously emphasizes the voting mechanism guaranteed to the people of the United States of America. The United States includes a Congress which consists of a Senate and House of Representatives. Members of the House of Representatives are chosen every two years by people of several states deemed Electors, which helps to rotate out Members of the House. The goal of the Legislative body is to make laws. The separate executive branch consists of the President, Vice-President and cabinet members which make executive decisions and carries out the laws. The judicial branch, which consists of the Supreme Court and other federal courts works to evaluate laws. These branches work together in a system of checks and balances that guarantee that no branch has complete control over another. This is different from the structure of the PRC, in which members of one committee may select members for other committees, while also electing official bodies. The United States government works to ensure new voices and bodies are entering and leaving continuously to provide the government with new ideas and keep one person or

⁴⁷ Autonomous regions in China account for 64 percent of the total area of China. China Internet Information Center. "III. Regional Autonomy for Ethnic Minorities."

committee from gaining too much power. Because tight control over the CCP, and Chinese citizens, is a priority for the PRC, members must be chosen based upon their ideologies and then allowed to choose officials with similar ideologies. This limits conflict and ensures power over the citizens with a unified appearance.

Chapter 2: Human Rights Law: Definitions & Literature Review

A distinct definition of human rights law will clarify the analysis on the following three case studies regarding alleged human rights violations. Today, Universalist and Cultural Relativists disagree on a concrete definition of human rights. While Universalists may define human rights as: “a single universal concept,” regarding anyone “by virtue of his or her being human,” Cultural Relativists claim, “because values are culturally specific, human rights should also be culturally oriented.”⁴⁸ When discussing human rights, Cultural Relativist and Universalist views offer two opposing ideological perspectives on human rights theory and law. Cultural Relativism asserts that human rights law should be decided principally on the basis of cultural values and morals. This opposes Universalism which argues, in its most extreme form, that culture is irrelevant to deciding what morals and laws are valid or correct. While a Cultural Relativist may find that cultural values have a legitimate influence on human rights law, a Universalist may contend that cultural values should not be used in defining human rights law.⁴⁹ These two concepts offer alternative definitions of how human rights theory and practice should function. They also operate on a spectrum.

Human rights law is accepted as defined by the Universal Declaration of Human Rights, created by the United Nations and ratified by over 130 nations. Both the United States and the PRC have ratified the UDHR. The Universal Declaration of Human Rights, as instituted on December 10, 1948, and considered of the status of customary international law, states that: “All human beings are born free and equal in dignity and

⁴⁸ Basnet, Gyan, and Albaloooshi Mansoor Hassan. "Human Rights Debate: Universalism Versus Relativism – OpEd."

⁴⁹ Donnelly, Universal Human Rights in Theory & Practice.

rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood,” (Article 1). Article 2 states that, “without distinction of any kind,” people have the right to the following 29 articles which set forth a variety of rights. These rights range from, “No one shall be subjected to arbitrary arrest, detention or exile” (Article 9) to, “the free and full development of his personality,” (Article 29).⁵⁰ Considered the foundation of international human rights law as it is known today,⁵¹ the Universal Declaration of Human Rights was born largely out of World War II. Many nations participated in the drafting the UDHR, including the United States and China. Despite the United States’ current role in international human rights movements during the drafting period of the UDHR, the United States possessed many initial reservations: “...for many from the West, the idea that this most fundamental of human rights might be legally enforceable was completely unacceptable, even alien to their Western sensibilities,” during the original drafting of the Universal Declaration of Human Rights.⁵² Western nations, “...were not ready to accept the idea that the sovereignty of the state could be tempered by moral imperatives from the outside,” while Asian nations were accepting of outside influence for the furthering of human rights implementation. Eleanor Roosevelt recalls in her memoirs the process:

“Dr. Chang [of China] was a pluralist and held forth in charming fashion on the proposition that there is more than one kind of ultimate

⁵⁰ The United Nations 1948.

⁵¹ *Ibid.*

⁵² de Varennes, Fernand. "The Fallacies in the "Universalism Versus Cultural Relativism" Debate in Human Rights Law," 68.

reality. The Declaration, he said, should reflect more than simply Western ideas ...”⁵³

To find that Western nations initially resisted international human rights law on the basis of perceived threats to sovereignty is interesting, considering the dynamic the United States plays today in regards to international human rights law. Today, the PRC possesses the same kinds of fears regarding threats to sovereignty. The Universal Declaration of Human Rights (UDHR) is solidified today through two additional treaties: the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Combined, these documents form the International Bill of Rights.

Rather than viewing the modern human rights declarations in terms of Enlightenment thinking (rational secularism),⁵⁴ some have claimed that “the key documents [on human rights] were not intellectual inventions of great men but collective products having deep cultural roots, some in anti-clerical, secular and atheistic sources, and some in various older Christian and religious traditions.”⁵⁵ This argument explores the changes in “affirmative value genesis” through “cultural trauma,” which may include culturally specific events such as World War II, slavery and more. Christian traditions, notions of what comprises “the soul,” and collective social experiences, all have combined into the modern standards in the UDHR.⁵⁶ However, due to the fact that modern nation states worked together to create and ratify

⁵³ Tiryakian, Edward A. Review of Hans Joas, *The Sacredness of the Person: A New Genealogy on Human Rights*.

⁵⁴ Rational Secularism: laws made outside the authority of a religious church or organization.

⁵⁵ *Ibid*, 187-190.

⁵⁶ *Ibid*.

the UDHR, it is argued here that international human rights law is not distinctly western. It is universal in theory. Both the PRC and the United States have accepted human rights as important and valuable, but differ on what rights are fundamental priorities, and how they should be implemented.

The definition of human rights remains controversial among scholars, particularly between Cultural Relativists and Universalists. However, here “human rights law” is defined explicitly by the Universal Declaration of Human Rights and are documented in the international covenants signed by both China and the United States. Human rights refers to a respect for citizens and their quality of life, while human rights law includes the documents and treaties that have been signed and ratified.

The fact that the United States has refused to ratify the ICESCR, for example, and that the PRC has refused to ratify the ICCPR, are important in terms of practice and implementation. The United States and China have agreed upon a definition of human rights – those listed in the UDHR and the International Bill of Rights. “The literal definition – a list of rights that people have simply because they’re human,”⁵⁷ is used here.⁵⁸ This Universalist argument does not support the notion that some cultures lack human rights notions of freedom and justice, but instead asserts that all cultures possess some form of human rights theory. The same definition is used here, along with the language of human rights in the UDHR.

Different cultures have different views towards what defines human rights *law*: “the liberal doctrine of human rights does not speak to the peoples’ world view. The ontological foundations of their cultures and society, often reinforced by the political

⁵⁷ Donnelly, *Universal Human Rights in Theory & Practice*, 7.

⁵⁸ Donnelly, *International Human Rights in Theory and Practice*.

regime... differ in significant ways.”⁵⁹ The problem with this perception of human rights documents is that most modern nations have signed and ratified the covenants and treaties that compose the international Bill of Rights, even participating in the drafting of these documents. Most nations had participatory representatives in the creation of the Universal Declaration of Human Rights and therefore have agreed to the terms of the documents. The motivations for this participation and agreement may be contested, but the laws have been ratified, and therefore exist.

Additionally, human rights theory cannot be said to exist in some cultures and not in others. This is a risky argument because it may lead to the perception that one culture is better, or more civilized than another. It questions the humanity of some cultural values, which can lead to dangerous assumptions and critiques of foreign nations. Today, human rights are accepted as important by both nations. The implementation, and the priorities of human rights law is what differs on the basis on cultural values, government structure, and national goals.

Modernization

While historically it was believed that modernization would lead to more countries having a greater acceptance of western human rights theory, other theorists have speculated that this is not the case.⁶⁰ Many nations have historically advanced economically by means of the “trade-off theory,” which justifies human rights violations on the grounds of economic development. Therefore, many nations have modernized by means of human rights violations. This includes the United States.

⁵⁹ Pollis, Adamantia. "Cultural Relativism Revisited: Through a State Prism," 316.

⁶⁰ Pollis, Adamantia. "Cultural Relativism Revisited: Through a State Prism."

Some nations have failed to modernize up until this point, and are still expected to participate in a western liberal views of human rights. Modernization theory posits that nations will lose cultural values upon industrialization, and become more legal.

Modernization Theory⁶¹ is defined as the process a nation undergoes to move from undeveloped to developed or “modern.” Modernization theory refers to the various different processes involved to achieve a “modern” nation-state, including GDP growth, industrialization, familial changes, increased education and movements towards more liberal policies. Modernization theory posits that new nations will reach the point of modernism in the same way that previous nations have, which may lead to a higher quality of living, less emphasis on traditional cultural values and religions, and more focus on the individual instead of the collective.⁶² Critics of the modernization theory have cited modernization theory’s negative perception of other cultural values.⁶³ For example, while the United States supports the nuclear family, this is in contrast to other cultures, which see family as large systems that act as economic and social security.

However, there are problems with allowing modern states to use cultural values or lack of modernization in justification of an absence of human rights: “the cultural diversity argument often plays into the hands of the state and is used to rationalize the arbitrary exercise of power that cannot be justified by claims of philosophical or cultural distinctiveness.”⁶⁴ States that have high levels of human rights law violations frequently cite themselves, “as the articulators and the defenders of their cultural and

⁶¹ Armer, J. Michael, and John Katsillis. "Modernization Theory."

⁶² Przeworski, Adam, and Fernando Limongi. "Modernization: Theories and Facts."

⁶³ Przeworski, Adam, and Fernando Limongi. "Modernization: Theories and Facts."

⁶⁴ Pollis, Adamantia. "Cultural Relativism Revisited: Through a State Prism," 320.

ideological heritage,”⁶⁵ which then repudiates universal human rights treaties and covenants. Addressing cultural values in relation to human rights violations is not without controversy, as it is argued that culture and worldview justify differences in human rights perception: Many proponents... who regard themselves as universalists have labeled many cultural pluralists “cultural relativists,” “... a form of name-calling that has generally had the effect of stigmatizing those who resist the Eurocentric formulation of human rights.”⁶⁶ Without a conceptual framework by which to know if claims of cultural heritage are consistent with its actions, the United Nations and other multinational organizations are powerless to sovereignty laws.

The role of the modern nation state is important because modern nation states have signed and ratified international human rights treaties. Nation states are fairly recent, before which there were kingdoms, feudal rule or dynasties. To some scholars, the embrace by each nation state to human rights treaties represents a movement toward modernity – which would imply that nation states would then embrace the western liberal philosophy that modern human rights are grounded in.⁶⁷ Contrary to that idea, certain modern nation states still promote different philosophies of human rights.⁶⁸

Considering China’s GDP increases and improvements in its domestic and technological sectors, it is unreasonable to argue that China has not yet modernized. It is also incorrect to state that the PRC promotes a view that does not support a form of human rights theory. International covenants and treaties have solidified China’s

⁶⁵ *Ibid*, 322.

⁶⁶ Mutua, *Human Rights: A Political and Cultural Critique*, 43.

⁶⁷ Pollis, Adamantia. "Cultural Relativism Revisited: Through a State Prism," 320.

⁶⁸ For example, Saudi Arabia is considered a modern nation state, and yet their philosophies regarding human rights are based heavily upon the Qur’an.

definition of human rights in theory, and have demonstrated their belief in alternative priorities for human rights.

Chinese Human Rights Law Literature 中国的人权法律文学

Chinese human rights literature focuses heavily upon issues that western human rights literature does not consider as important to its fundamental idea of what should define human rights. For example, Chinese literature focuses on imperialism's effect on human rights practice in China: "In Old China, vast numbers of people severely suffered from imperialism, feudalism, and bureaucratic capitalism, so it may be said that there were no human rights."⁶⁹ Chinese legal text cites imperialism as a major violation of human rights (on the part of the United States among other nations), as well as representative of negative hegemonic influence on China's sovereignty, which China considers necessary for human rights promotion: "Sovereignty remains the precursor and protector of the existence and expansion of human rights."⁷⁰ According to Chinese legal scholars, sovereignty must be respected as the PRC has made enormous gains in human rights implementation following Mao Zedong and the Cultural Revolution: "Since its foundation, the CCP has always strived for people's human rights. Since the foundation of the PRC, with the leadership of the CCP, great achievements and changes have been made in human rights."⁷¹

⁶⁹ Original text: "在旧中国, 广大人民群众深受帝国主义, 封建主义, 官僚资本主义的压迫, 没有人权可言." Translated from 袁金辉, "中国共产党与中国人权进步."

⁷⁰ Original text: "主权依然是人权存在与发展的前提与保障." Translated from 白鹏飞, "人权与主权的关系及中国人权战略."

⁷¹ Original text: "中国共产党诞生以后, 一直把争得人权作为自己的奋斗目标, 并为此进行了长期的艰苦卓绝的斗争。新中国成立后, 在中国共产党的领导下, 中国的人权状况得到了根本的改变..." Translated from 袁金辉, "中国共产党与中国人权进步."

Chinese legal literature makes the argument that since 1976, human rights laws have increased drastically under the PRC. Further Chinese literature corroborates the recent changes that have been made in China since the Opening-Up Reforms or *gaigekaiifang*, such as ratifying the ICESCR and signing the ICCPR, which are viewed as large steps from a dictatorship only twenty-one years before: “Acting as a permanent member of the United Nations Security Council, China is a country of simultaneous continuous improvement and development of domestic human rights causes, actively participating in international human rights affairs.”⁷²

This literature is supported by claims that Deng Xiaoping helped institute human rights after Mao Zedong’s died through Deng Xiaoping thought, which formed an ideological groundwork for human rights improvement, while also warning against hegemony and international power politics.⁷³

International Treaties and Covenants

Today, the United States seeks to position itself as the paramount leader of the world’s human rights campaigns. The United States has signed a number of human rights treaties, but has failed to sign and/or ratify many treaties that other nations have signed and ratified.⁷⁴ Ratification is different from signing a document. Ratification

⁷² “作为联合国安理会常任理事国之一的中国在不断完善和发展国内人权事业的同时, 积极参加国际人权事务。” 劉敬東, “国际人权法与中国人权政策的法律思考.”

⁷³ Original text: “在中国人权事业的发展中, 邓小平的人权思想起到了重要的指导作用与推动作用。它为中国人权事业的发展奠定了理论基础, 为维护世界和平与发展提供了崭新的思路, 它是我们反对霸权主义, 强权政治的有力的思想武器。” 孙华玉, “邓小平人权思想在中国人权事业发展中的作用.”

⁷⁴ List of international human rights treaties that the United States has not ratified: Convention on the Rights of the Child (2002), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Forced Disappearance, Mine Ban Treaty, Convention on Cluster Munitions, Convention on the Rights of Persons with Disabilities, Optional Protocol to the Convention

validates the proposed law, officially recognizes it, and thus results in formal domestic changes to make sure the law is put into place. Signing a document results in an agreement between different nations on what the terms are that will create the treaty or document. Failure to ratify some certain international human rights treaties,

...reflects an attitude toward international human rights law of fear and arrogance--fear that international standards might constrain the unfettered latitude of the global superpower, and arrogance in the conviction that the United States, with its long and proud history of domestic rights protections, has nothing to learn on this subject from the rest of the world.⁷⁵

China has ratified some important treaties which the United States has refused to ratify, including: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Convention on the Rights of Persons with Disabilities (CRPD).⁷⁶ While the United States has refused to ratify the ICESCR, the PRC has refused to ratify the ICCPR, both of which constitute large parts of the International Bill of Rights.

The difference is that for the ICCPR, actions must be taken immediately to institute the laws into domestic practice, as stated in Article 2 Section 1: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals

against Torture. The United States has yet to ratify any of these treaties in full, though it has ratified optional protocols.

⁷⁵ Roth, Kenneth. "The Charade of US Ratification Of International Human Rights Treaties."

⁷⁶ Human Rights Watch. "United States Ratification of International Human Rights Treaties."

within its territory and subject to its jurisdiction the rights recognized in the present Covenant..." This is different from the ICESCR, which contends that nations must at least attempt to institute the new laws into domestic policy to the best of their ability: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means..."

However, the United States has still failed to ratify the ICESCR, despite the knowledge that policies would not have to be institute immediately or to the fullest degree.

Human Rights Yearly Reports

Both the United States and the PRC have been accused of human rights abuses in the recent years, and both nations comment on each other's violations in their yearly reports. In 2014, the State Council of the PRC published an article on human rights in the United States, citing the United States' State Department's record for human rights for the year 2014. In the article, the PRC claims, "Although the US is the most developed country in the world, it is hard for the economic and social rights of its citizens to be soundly ensured," basing claims of alleged human rights abuses on problems with gun violence, torture of prisoners, low voter-turnout rates with supposed increased spending on elections, and racial discrimination against ethnic minorities, among other abuses. When discussing U.S. political rights, the article states, "... the U.S. political system has decayed over time, and in an environment of sharp political polarization, this decentralized system gives excessive representation to the views of

interest groups and activist organizations.”⁷⁷ While the article goes into details about each different sector of human rights, it concludes with:

In the field of international human rights, the US has long refused to approve some core human rights conventions of the United Nations and voted against some important UN human rights resolutions. More than that, the US continued to go even further to violate human rights in other countries...⁷⁸

The political commentary by the PRC government on United States human rights is negative, and makes reference to the United States’ refusal to ratify the ICESCR in its yearly report. On these grounds, the PRC contends that the United States has enough human rights violations of their own that they should not comment on the violations committed by the PRC.

The United States perspective of abuses in the PRC is also negative in a similarly worded and stylized article on Chinese human rights for the year 2014. The United States likewise claims various human rights violations on the part of the PRC, beginning with an introduction stressing the PRC’s authoritarian government system and one-party rule. The United States report of 2014 mentions such human rights abuses as: “repression and coercion,” arbitrary arrest, lack of freedom of speech and press, lack of academic freedom, and lack of citizens ability to change their government. This references the PRC’s refusal to ratify the ICCPR. Together, these yearly reports demonstrate how strongly each nation sees the other’s human rights abuses, especially when they are considered of paramount importance to the other.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

The United States' congress prepares Human Rights reports for all nations and governing bodies that receive U.S. foreign aid or foreign assistance⁷⁹ because, "In the 1970s the United States formalized its role as an advocate for the promotion and protection of human rights."⁸⁰ Frequently, the United States threatens nations receiving aid with sanctions if the country does not improve their domestic human rights law policies.⁸¹ However, the United States does not have the monetary power it used to have over the PRC today, and thus its ability to pressure the PRC into compliance with United States human rights law priorities is waning.

Both reports conclude that each nation has allegedly violated certain human rights in recent years, and in some ways the reports exhibit varying views of what the most important human rights are. For example, ownership of guns and gun violence may not strike all Americans as a violation of human rights, because violence against others is a sacrifice for the *freedom* to bear arms. U.S. citizens may also see gun ownership as a form of protection against a government that could become too controlling and large, of which U.S. citizens consider severely threatening. Citizens of the PRC may instead view gun ownership as a threat to the society as a whole, and thus not worth the individual freedom. Another example is that of free speech. Citizens of the PRC may not view complete freedom of speech as a priority for national stability, despite the government's obligation to provide freedom of speech and transparency to

⁷⁹ Kerry, John F. "Country Reports on Human Rights Practices for 2015."

⁸⁰ Kerry, John F. "Country Reports on Human Rights Practices for 2015."

⁸¹ For example, U.S. Aid to South Africa is tied to democratic governance, which means that South African must continually be moving towards a more democratic form of government. Through USAID's Democracy Initiative, USAID may provide funds to foreign countries on the grounds that a democratic government under Title IV of the Foreign Assistance Act (FAA) of 1961. USAID Policy. "Democracy and Governance." Accessed April 24, 2016.

its citizens under international law. Free speech is a sacrifice that must be made for government stability and continued socialism.

While the two nations agree on human rights, implementation and practice of human rights is contentious. Each society's human rights implementation policies are dependent upon economics, government structure, role in multilateral bodies, and cultural values. For the PRC, human rights are executed as long as they further a socialist society with Chinese values, honor Confucian ideals, and promote stability. For the United States, certain human rights – specifically free speech – trump government stability and power over citizens.

Criticism has been expressed of Chinese human rights law through the lens of International Human Rights Standards of 2000.⁸² After the United Nations Commission on Human Rights discussed whether there was merit to a United States' sponsored resolution to assist in 'fixing' the PRC's human rights implementation, a vote was performed and with 22-18 (with twelve abstentions), the U.S. decided to respect and favor the PRC's "no-action motion" as a procedural mechanism.⁸³ The United States chose not to interfere. Despite public condemnation of the PRC's human rights violations, or other actions, the United States does not have adequate reason to place economic sanctions on the Chinese, despite some threats to take away Most Favored Nation status.⁸⁴ The PRC sees the United States' attempts at imposing on their domestic policy as, "violating their human right to self-determination."⁸⁵ The United

⁸² Murphy, Sean D. "Contemporary Practice of United States Relating to International Law."

⁸³ *Ibid.*

⁸⁴ Weil, "Of Human Rights and Wrongs: China and the United States," 104.

⁸⁵ *Ibid.*, 104.

States continues public outcry over human rights violations, while refusing to commit economic or political sanctions on China.⁸⁶

This implies that the United States is aware of the cultural values, economic goals and political goals that may affect the PRC's choices at the moment. Furthermore, the United States is aware of its own human rights abuses and justifications for them. Lack of economic or political sanctions exhibits the United States' respect for sovereignty, as well as an understanding that the PRC's policies may not align in practice with the United States. The United States understands that if economic or political sanctions were to be made on China, not only would the economy suffer, but the PRC would then have leverage to commit sanctions on the United States for other human rights abuses. Neither nation is willing to commit to conflict over violated human rights laws.

Positive and Negative Rights

These contrasting philosophies of Confucianism and western, liberal democracy have contributed to differing views on what constitutes a "negative" or a "positive" right. It is argued that a "negative" human right is a right that is fulfilled as long as it is not taken away from someone by action on the part of the government (i.e. right to not be tortured). A "positive" right is a right which requires action on the part of the government to fulfill or provide it (i.e. right to primary school education). The United States contends that certain rights, such as those guaranteed in the ICESCR, are "positive" because the government would have to make substantial changes in order to guarantee these rights. A "negative" right, supposedly, is one that does not require

⁸⁶ *Ibid*, 104.

forward changes but refrainment on the part of the government. It is not that certain nations do not desire for their citizens to have education, food or water for example, but that nations disagree on how to implement these policies, or whether it is a priority.

One critique of the “positive” versus “negative” human rights idea is that all forms of human rights require some adjustment, restraint, and policy changes on the part of the governing system.⁸⁷ Furthermore, human rights violations, whether “positive” or “negative” do not require drastically different policies on the part of the government. Both require domestic changes and policies to protect rights, whether they be “positive” or “negative.” Therefore, the claim that “positive” and “negative” rights justify the implementation of “negative” before “positive” on the grounds that it’s ‘easier’ for the government is false.⁸⁸

While the United States makes claims that the rights guaranteed in the ICESCR are “positive” rights that require more work on the part of the government than the more “negative” rights demonstrated in the ICCPR, failure to ratify still represents the unwillingness on the part of the United States to commit to providing these domestic laws. Generally, “positive” and “negative” rights are used in justification for why certain rights are not fulfilled while others are, which arguably the case is with United States public statements regarding the ICESCR and its failure to ratify.

ICCPR & ICESCR

One paramount example of the way that viewing human rights as “negative” or “positive” has affected implementation of human rights is with the International

⁸⁷ Shue, Henry. “Rights in the Light of Duties.”

⁸⁸ *Ibid.*

Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). China has not ratified the ICCPR, and continues to violate ICCPR articles. The PRC has violated Article 7, Article 9 and Article 14 in the arrest and detention of journalists or protestors. Well known among them includes Liu Xiaobo and Guo Feixiong, both of whom were arrested on the grounds of, “inciting subversion of state power,” which is a recognized crime in the Chinese declaration. While China is currently attempting to have a spot on the United Nations Human Rights Council, they must ratify the ICCPR first, which would require an increase in freedom of speech and the right to peaceful assembly.⁸⁹ While the United States has signed and ratified the ICCPR, it lists five reservations,⁹⁰ which some scholars claim makes the treaty relatively ineffective in domestic law.⁹¹ For example,

⁸⁹ Human Rights Watch. "China: Ratify Key International Human Rights Treaty: Credibility of Rights Council Campaign at Issue."

⁹⁰ The United States' Five Reservations to the ICCPR: “(1) That Article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States. (2) That the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age. (3) That the United States considers itself bound by Article 7 to the extent that "cruel, inhuman or degrading treatment or punishment" means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States. (4) That because U.S. law generally applies to an offender the penalty in force at the time the offense was committed, the United States does not adhere to the third clause of paragraph 1 of Article 15. (5) That the policy and practice of the United States are generally in compliance with and supportive of the Covenant's provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2(b) and 3 of Article 10 and paragraph 4 of Article 14. The United States further reserves to these provisions with respect to individuals who volunteer for military service prior to age 18.” University of Minnesota Human Rights Library. "U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights."

⁹¹ Roth, Kenneth. "The Charade of US Ratification Of International Human Rights Treaties."

the United States government retains the right to capital punishment, and substitutes laws from the United States constitution into the treaty.⁹²

The United States has signed but not ratified the ICESCR, which pushes for economic and social rights that are inconsistent with conservative views in the United States, such as universal health care. While the ICESCR has been ratified by the PRC, stating in the PRC's constitution that people have a right to economic security and access to things such as health care, the United States considers these as goals that would be ideal for the United States, often citing these as "positive" rights in justification. The United States will not ratify the ICESCR in part because it is currently violating certain acts within the covenant. Currently, more than 130 nations have signed and ratified the ICESCR.⁹³ Today, the United States is one of six nations that have not ratified the ICESCR.⁹⁴

The cases of ICCPR and ICESCR are paradigms to represent the differences in theory versus implementation related to the priorities of a nation. It would be unfair and inaccurate to state that either the United States or China did not want human rights for their citizens. One could not claim with much evidence that the United States government does not want education, food, housing, and healthcare for its citizens, despite their lack of ratification of the ICESCR. Similarly, it would be unfair to attempt to corroborate an argument that Chinese cultural values desire to block the freedom of speech of its own citizens. However, both nations have refused to ratify certain treaties

⁹² University of Minnesota Human Rights Library. "U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights."

⁹³ United Nations Treaty Collection.

⁹⁴ The five other nations that have not ratified the ICESCR are: Comoros, Cuba, Myanmar, Palau, and Sao Tome and Principe. United Nations Treaty Collection.

on the grounds that domestic law would have to change dramatically in order to implement the laws into domestic policy. China openly admits that there are dramatic changes that must be made in domestic law were it to ratify the ICCPR - changes which may threaten the culture and government the PRC prides itself on. The United States admits to domestic policy changes being a major reason for not ratifying the ICESCR. This does not necessarily mean that either nation considers the covenants without importance or merit. Both nations have signed these covenants, and therefore have agreed on what policies are laid forth. Rather, both China and the United States have different implementation methods and priorities for their nation. China's priorities are not in line with the United States' currently, and it is unfair to suggest that all nations should arrange their priorities in a certain order.

Furthermore, for the ICESCR to be put into place within the United States, such substantial governmental policies would have to change that this may jeopardize the cultural values (independence, small government, individuality, freedom) that make the United States the country that it prides itself on being. The ICESCR, which would require changes to the United States' healthcare system (Article 12),⁹⁵ food system

⁹⁵ Article 12: "1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."

(Article 11),⁹⁶ education system (Article 13),⁹⁷ and more, threatens the policies of individualism and freedom that United States' citizens support: free market economies, privatized healthcare, and low taxation policies, among other things. Taxes would most likely increase, which violates some of the basic principles of the United States, and challenges history. Therefore, can it be argued that the United States government does not respect such rights as education, health or a living wage? While this may be made as an argument, it holds little sway in light of the United States' achievements in other

⁹⁶ Article 11: "1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."

⁹⁷ Article 13: "1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. 3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

human rights sectors and its global leading role in encouraging human rights. The same may be said regarding the PRC's refusal to ratify the ICCPR. It is not a national goal nor priority. It is also threatening to the social fabric by which the society was founded upon (Confucianism, stability, growth, etc.).

Western Hegemony

As a government largely influenced by foreign investments, the PRC has historically viewed the United States' actions towards the PRC regarding human rights issues as western hegemony and an invasion of the PRC's sovereignty. While the PRC exhibits usages of Marxist ideology, the PRC additionally uses Confucianist and Republican ideologies, such as that of individual rights as a means to state ends (seen as socio-economic rights as opposed to political rights). The PRC's opinion on the relationship between human rights theory and government has been influenced by Confucian thinking, "inheriting a 'Confucianised' theory of rights." This Confucianism has influenced human rights law views and has morphed into what is now combined with Marxist influence and external influence to create a "distinctly Chinese" view of human rights implementation.⁹⁸ It is argued that the internal influences that have created a Marxist form of government *should* be respected by the United States.⁹⁹ The PRC currently claims that the United States exhibits hegemony over China via human rights law.

This alternative and "distinctly Chinese" view of human rights law has been accepted within the PRC as the "China Model of Democracy" and has been justified

⁹⁸ Weatherley, Robert. *The Discourse of Human Rights in China: Historical and Ideological Perspectives*.

⁹⁹ *Ibid.*

through what the PRC deems “Asian Values.”¹⁰⁰ The “China Model of Democracy” emphasizes the importance of economic growth over human rights implementation, that is, the good of the overall economy of the country as more important than the individual human rights demanded by some citizens. This is collectivist and contrasts with western liberal views of the individual’s rights as the foremost important right over economic growth.¹⁰¹ Yet it should still be respected in order to avoid hegemony on the part of the United States. Additionally, individual human rights have been violated in the past by the United States government in attempt to increase GDP and the economy during the industrial revolution. During this time the United States had similarly ambitious national goals, which required sacrifice on the part of the individual.

Reforms in China

The PRC has demonstrated support for capitalism through certain changes: acceding to the WTO, liberalizing its economy and recognizing the right to private property and private entrepreneurship. Yet the PRC still has disagreements with the United Nations regarding human rights priorities, and like most nations, will seek to bend implementation policies to suit its needs: “...the indications are that China will work with the system and within the system, and will see the benefit in it, but will try to mould it to suit its political and economic needs.”¹⁰² While the PRC may disagree with the United Nations on human rights priorities in practice, China remains in, “a

¹⁰⁰ Weatherley, Robert. *The Discourse of Human Rights in China: Historical and Ideological Perspectives*.

¹⁰¹ The United States has not always expressed the importance of individual values over economic growth. During the Industrial Revolution in the United States, many human rights were violated for economic improvement. However, today the United States expresses the opinion that human rights are more important than economic growth.

¹⁰² Weatherley, Robert. *The Discourse of Human Rights in China: Historical and Ideological Perspectives*.

defensive position” which has little negative effect on UN human rights declarations and agreements. Seeking to thread human rights laws into its political and economic system is normal among most nations, but it is important to note China’s inability to influence the United Nations, unlike the United States. The PRC has alternative priorities to the United Nations and will continue to bend human rights policies until they have achieved their other priorities first. Thus, the United States currently should not be threatened by China’s violation of certain laws.¹⁰³

Furthermore, the PRC has made various claims regarding their improvements in their human rights sector, including the enactment of almost 250 laws regarding human rights and signing the 1966 International Covenant on Civil and Political Rights.¹⁰⁴ The PRC seeks to justify its delays in increasing human rights with a history of subjugation, lack of power, and its own national views on which human rights are most important. This works as a plea by the PRC to have the international community remain patient on human rights reform in China.¹⁰⁵

Some of the PRC’s reforms include having members of the Communist Party move towards a more elective form of representation, rather than having upper echelon members choose those below them without election. Additionally there has been mild judicial reform regarding the handling of criminal cases and capital punishment. Other reforms include the economic changes the PRC has made in order to achieve normalized trade relations (PNTR) and accede to the WTO prior to 2001, such as trade tariff reductions and increasing the number of SEZ’s to accommodate international

¹⁰³ Subedi, Surya P. "China's Approach to Human Rights and the UN Human Rights Agenda."

¹⁰⁴ The 1966 International Covenant on Civil and Political Rights contains 53 articles that seek to guarantee people the right to civil and political freedom.

¹⁰⁵ Subedi, Surya P. "China's Approach to Human Rights and the UN Human Rights Agenda."

trade. There has been slow and steady reform under Xi Jinping with a series of Five-Year Plans, which seek to continue reform while, “protecting the Communist Party’s monopoly on power.”¹⁰⁶ These reforms are choices that the PRC has made - choices which do not have to adhere to systems supported and used by the United States of America, but have generally aligned to the universally accepted laws of human rights.¹⁰⁷ While the PRC’s choices have been relatively mild in the recent decades, it may take time for the CCP to change its ideologies while maintaining power: “If communism is entrenched as the CCP’s long-term mission... CCP leaders must construct ideologies to make their economic, cultural, and political policies compatible with this mission and consistent with the reality of Chinese society.”¹⁰⁸

Generally, the literature regarding human rights in the PRC vacillates between conflicting extremes: some scholars focus on the importance of eastern cultural values,¹⁰⁹ while others emphasize the lack of willingness by the PRC government to institute new human rights laws on the grounds of fear of the regime losing power.¹¹⁰ Many of the PRC’s refusals to implement certain human rights domestic laws may simply be attempts at resisting western hegemony as opposed to resisting human rights. Whether or not to justify the PRC’s human rights abuses with cultural Chinese philosophy, or on the basis of pragmatic foreign policy and domestic goals remains controversial.

¹⁰⁶ Subedi, Surya P. "China's Approach to Human Rights and the UN Human Rights Agenda."

¹⁰⁷ *Ibid.*

¹⁰⁸ Su, Xiaobo. "Revolution and Reform: the role of ideology and hegemony in Chinese politics," 324.

¹⁰⁹ Subedi, Surya P. "China's Approach to Human Rights and the UN Human Rights Agenda."

¹¹⁰ *Ibid.*

Generally different cultures agree in the universality of human rights. This may be seen in the creation of the UDHR and different country's inputs and willingness to sign and/or ratify major international documents. Therefore, human rights remain universal in its conception and agreement. However, cultural values and cultural world views change how a nation may determine what is needed to achieve the ultimate goal of domestic human rights laws. Conception of theory versus human rights policies may differ. Furthermore, human rights laws may have implementation problems based upon economic and political tensions that are due to external influences. Though the United States does not have the ability to enter China on the basis of human rights violations, the United States attempts to influence China through multilateral and bilateral relationships, as well as business and trade laws. The human rights concept is agreed upon. However, which human rights are most important and how they should be implemented in practice changes what kinds of policies are used. Furthermore, those policies are not always implemented in a straight forward manner, due to a large number of influences on a nation in today's globalized world.

Human Rights Goals

The United States and the PRC both have cultural values that respect human rights, and have ratified documents of international human rights law. Both have signed and ratified modern international human rights treaties, which demonstrates each one's goal of achieving human rights policies domestically. The ratification (and participation in drafting) of the Universal Declaration of Human Rights, as well as the signing and ratifying of ICESCR (for the PRC), the ICCPR (for the United States) and participation in the other six core international human rights treaties under the United

Nations demonstrate a willingness to work towards improvement of domestic rights. However, how these rights are implemented, and what human rights are considered priorities in relation to politics, foreign relations and domestic goals, is influenced by national values and national histories. These treaties and international covenants solidify that the PRC and the United States both have human rights goals. Otherwise, each nation's representative should not have participated.

Furthermore, claiming that one culture does not value human rights while another does is dangerous and participates in what's called the Human Rights Metaphor: "...human rights contains a subtext which depicts an epochal contest pitting savages, on the one hand, against victims and saviors on the other."¹¹¹ Once the argument is made that one culture does not possess a respect for human rights that another culture does, human rights can become a comparison between the "savage" and the "civilized," which neither respects modern nation-state movements towards human rights nor respects cultural values equally.

Case Studies

Three case studies are used to contend that the PRC does respect human rights and Chinese citizens do desire them within their nation. However, the PRC is caught between the desire to achieve other important changes – economic growth, roles in multilateral organizations, and greener energy - and a desire to further centralize and liberalize the government without losing the "Chinese characteristics" that it prides itself on. Furthermore, the PRC fears that full implementation of the human rights listed in the International Bill of Rights, may bring down the power of the Chinese

¹¹¹ Mutua, *Human Rights: A Political and Cultural Critique*, 10.

Communist Party regime by allowing power to a larger population of citizens that may reject PRC and CCP policies. The PRC is attempting to slowly bring rights into play while still retaining power over Chinese citizens and keeping the Party intact. With 1.36 billion people as of 2013, fear of revolt remains prevalent within the PRC and the CCP.

Revolt appears threatening to the PRC if it chooses to institute new policies and human rights laws that protect civil and political freedoms, such as freedom of speech, freedom of the press, or the Right to Self Determination. Implementation of these rights may allow groups to revolt freely against the PRC in large numbers and topple the CCP. Individual freedoms and a liberal perspective on human rights in practice may easily lead to democratic governing systems, as they frequently do and often are intended to do, which is threatening to the CCP. A focus on order and harmony benefits the PRC in stably controlling billions of Chinese citizens.

Furthermore, China's five autonomous regions constitute over 100 million people which either do not want to be citizens of the PRC, or are not Han majority.¹¹² These minority groups (民族) may be considered a threat for the CCP due to historically tense relations. During the late dynasties, minority groups that were not Han were considered inferior: "Confucianism called for a policy of propagating Chinese culture and Confucian moral teachings to win over the barbarians [minorities]."¹¹³ Han Chinese essentially served as imperialists over the minority groups in China, and the CCP initially attempted to resolve the relationship problems by offering minorities

¹¹² China Internet Information Center. "III. Regional Autonomy for Ethnic Minorities."

¹¹³ Wu, Xiaohui. "From Assimilation to Autonomy: Realizing Ethnic Minority Rights in China's National Autonomous Regions."

groups rights and freedoms. However, when Mao Zedong came into power the CCP policies changed in attempt to, “make China one big co-operative family,” which may be seen in the language of the Constitution of the PRC:¹¹⁴ “The State advocates the civic virtues of love of the motherland, of the people...and of socialism.”¹¹⁵ Therefore, today the CCP and the PRC possess paranoia about the future of the autonomous regions of China, and is arguably still pushing Chinese Han teachings and values onto minority groups.

¹¹⁴ *Ibid.*

¹¹⁵ The Constitution of the People’s Republic of China.

Chapter 3: Case Study – Tibet

Background

The PRC currently serves as the governmental body that controls Tibet. The Tibet case gained international media attention during the Beijing Massacre of 1989, in which China's 27th Army disbanded democratic demonstrations through violent force, and later again, when the PRC participated in shooting and executing protestors within Tibet that same year. The United States Congress has continuously and openly expressed condemnation towards the PRC for its actions against the Tibetans who demanded democracy and autonomy over the Tibetan autonomous region, which is a segment of land that is greater than 474 thousand square meters. When Tibet's problems under the PRC reached a climax, the United States Congress began debating the "Tibet Question" and continued to denounce open criticism of the PRC's civil and political human rights violations. The United States furthered its disagreements regarding human rights by supporting and inviting the Dalai Lama to come and speak with the United States Congress. Today the Dalai Lama continues to speak throughout the United States on religion, peace and Buddhism, having been exiled from China.

Ultimately, United States foreign policy and members of Congress disagreed on what the best way was to move forward with the Tibet problem and the human rights abuses associated with Tibetans. This case study examines the existing literature on Tibet's protests and demands, the PRC's response to said demands, and the legalities behind the PRC's decisions. Tibet serves as one of the more widely known examples of alleged violations of human rights by the PRC and the issue continues to ignite

disagreements. However, Tibet has remained fairly low-priority in discussions between China and the United States, or within congress, in the recent years, and many nations have remained silent towards the PRC for its actions in Tibet. Today the Dalai Lama is still exiled from China, and Tibetans remain under armed control. Currently, the Obama Administration publically claims that Tibet is considered an autonomous region that is part of China.

The Tibet Question may be comparable to United States' human rights abuses regarding a history of slavery and racial disparities in the prison system, which Human Rights Watch considers a human rights violation. Tensions remain in the fact that African American men are incarcerated at six times the rate of white men, which is representative of racial tensions and unfair sentencing.¹¹⁶ The PRC is not the only nation which possesses tensions between different groups of people, and while this may be seen in the treatment of Tibetans, it may also be seen in the United States with its treatment of African Americans.

Literature Review

The debate and conflict regarding Tibet stems from two major problems: (1) Tibet and “mainland China” experienced a split in religious beliefs, and (2) the PRC claims that Tibet was “always” a part of China, while Tibet claims it is a sovereign nation held hostage by the PRC government following years of “independence.”

The United States began relations and recognized formal relations with the PRC long after Tibet had been fully militarized under the government, and the United States was aware of Tibet's claims. There was little mention of freeing Tibet in United States

¹¹⁶ Human Rights Watch. “World Report 2015: The United States.”

policy until the protests of 1989. However, the “reassertment” of power over Tibet by the PRC government began in 1950.¹¹⁷ Following this 1950 military initiative to gain more power over Tibet, the then young Dalai Lama signed the Seventeen Point Agreement in 1951 to avoid fighting a war which Tibet would definitely lose. The Seventeen Point Agreement was designed to protect the Tibetan people. This agreement allowed the PRC to have full control over Tibet. However, violence began occurring again in 1954 with protests against the government, and the Dalai Lama took refuge in India in 1959 to escape the violence. Here, the Dalai Lama established a “government-in-exile,” denying the legitimacy of the Seventeen Point Agreement – despite the Dalai Lama having signed the agreement years before. Upon the realization that violence was inevitable, and that signing the Seventeen Point Agreement was the wrong choice, the Dalai Lama changed his mind, which resulted in exile by the PRC. Since 1959, the Dalai Lama has been unable to return to Tibet, with only six investigative missions allowed by family and close friends of the Dalai Lama. Today, Tibet remains an important piece of land valued by the PRC for multiple reasons.

Tibet is valued for natural resources and economic gain. It is also valued for its role as a barrier between China and India, and as a land that should be under sovereign rule by the PRC but was “lost” through the years. Mineral resources, water, and development within Tibet also profit the PRC. Control over Tibet helps to prevent conflict with surrounding nations and protects China from outside military influence on its Western side. Like Hong Kong, Macao and Taiwan, Tibet serves as a vital piece of

¹¹⁷ Sperling, Elliot. "The Tibet-China Conflict: History and Polemics."

land that the PRC demands to have sovereignty over again, citing the need to reunite it to “the motherland” in their constitution.

After hearing the Dalai Lama speak after being exiled, the United States Congress opined that the PRC needed to do a better job of protecting religious freedoms and minority freedoms, particularly for Tibetans. Expressing serious criticism of the PRC’s human rights abuses (the civil and political ones), Congress sided with the Dalai Lama in speech, and the PRC publically expressed disagreement towards Congress for their decision to allow the Dalai Lama to come to the United States and visit the Congress.

When the Dalai Lama arrived in the United States on September 21, 1987 he presented the Five Point Plan to the United States House of Representatives, which was designed to make Tibet a peaceful and free zone. The Five Point Peace Plan called for: a transformation of Tibet into a demilitarized zone called Ahimsa, losing China’s population transfer policy,¹¹⁸ more respect for Tibetan’s human rights and democratic freedoms, restoration of Tibet’s environment which is now being used for nuclear energy production and nuclear waste, and beginning negotiation on the future of China-Tibet relations.¹¹⁹ The Five Point Peace Plan was then drafted into a public, political statement by the Dalai Lama. This statement, and the visit by the Dalai Lama to the United States, was recorded legally as one by a “religious leader.” It was not recorded as a political visit, by then Deputy Assistant Secretary of State Stapleton Roy, due to the

¹¹⁸ China’s Population Transfer Policy: Implemented during Deng Xiaoping’s rule, this policy encourages migrants of Han or Chinese descent into Tibet in order to make Tibetans the minority population. Additionally, the PRC is attempting to implement schooling systems and Chinese policies into Tibet.

¹¹⁹ International Campaign for Tibet. "The Five Point Peace Plan."

United States' participation in the PRC's One-China Principle.¹²⁰ As the United States had not recognized Tibet as a political sovereign area, the Dalai Lama was given a visa based upon religious changes he demanded, rather than political ones.¹²¹ This is important because had the Congress supported the Dalai Lama on political grounds, but not on religious grounds then this would have formalized the human rights issue at hand and made the Dalai Lama's visits "asylum," as opposed to "visits."

Today, the United States takes a firm stance against the shutdown of democratic protests in Tibet, and openly criticizes the PRC for its violent and oppressive action against the Tibetan people. This is important because the United States considers itself a paramount leader in human rights implementation. It is also important that no other nation has taken to supporting Tibet as an independent nation. The United States does not recognize the sovereignty of Tibet from a political or legal perspective. According to the Tibetan Policy Act of 2002 (TPA), which clarifies the United States foreign policy relations with Tibet, "The Obama Administration says that it considers Tibet to be a part of China, and that this has always been the U.S. government's position."¹²² Legally, the United States, and all other countries that participate in trade with China, do not recognize Tibet as a sovereign nation, yet make statements that condemn the PRC's actions towards Tibetans. The TPA seeks to improve the relationship between

¹²⁰ One-China Principle and the Taiwan Issue: The One-China Principle is an agreement between the United States and the PRC that Taiwan remains a part of China and is not independent. Taiwan is an inalienable part of China and therefore is under the rule of the PRC is what the agreement states. 中国网. "The One-China Principle and the Taiwan Issue."

¹²¹ Sautman, "Tibet's Putative Statehood and International Law."

¹²² Lawrence, Susan V. "The Tibetan Policy Act of 2002: Background and Implementation."

the PRC and the Dalai Lama by inciting conversation between the two on the future of Tibet.¹²³

While Tibet does possess the right to Self Determination, the Right to Self Determination generally holds little sway in practice without the support of other nations that agree and are willing to support the region in question in their search for independence. This is because the Right to Self Determination, while in theory able to work with regions that are entirely independent, in practice requires support from other nations for primarily economic reasons. Otherwise, hundreds of splits would occur yearly within countries that have bodies claiming independence or seeking autonomy. Currently, no government in the world recognizes Tibet as a sovereign nation. When Great Britain ‘suggested’ that Tibet was an autonomous nation in the Simla Accord of 1914,¹²⁴ the Chinese government refused to sign the document, and continues to make such threats for any other trade agreements.¹²⁵

Further documents that have reiterated the United States’ stance that Tibet is part of China include The Foreign Relations Authorization Act (Fiscal Years 1990 and 1991), The Consolidate Appropriations Act (2002), The Fourteenth Dalai Lama Congressional Gold Medal Act, and others. These documents all use language that asserts that Tibet is an autonomous region under the control of the PRC.¹²⁶

¹²³ *Ibid.*

¹²⁴ The Simla Accord of 1914 followed the Bangladesh Liberation War and committed to an end to violence and war between India and Pakistan.

¹²⁵ Sautman, Barry. "Tibet's Putative Statehood and International Law."

¹²⁶ Lawrence, Susan V. "The Tibetan Policy Act of 2002: Background and Implementation."

Legalities of the “Tibet Question”

The PRC’s new Constitution states the importance of keeping Tibet united with the “motherland,” suggesting that the PRC has possessed Tibet for its entirety as a both dynasties and a modern nation state. Tibet itself claims that it is sovereign land that was once independent during the Qing Dynasty.¹²⁷ Prior to 1951, Tibetans claim they were not under the rule of the PRC and had no understanding that they were not an independent nation.¹²⁸ From 1913 to 1951, Tibetans claimed to be a “de facto State” under no foreign government rule. However, under International Law, a de facto State does not exist and cannot exist, because a State must claim itself as a State to be recognized immediately, and Tibet did not make any such legal claims during its “de facto” period. Neither the League of Nations (the predecessor to the United Nations) nor any other body recognized Tibet as a sovereign State during this time. While Tibet had claimed itself as “independent” following the collapse of the Qing Dynasty in 1911, it has not been recognized formally by any nation, including the United States.

During the period of turmoil and government discord towards the end of the Qing Dynasty, many provinces and regions claimed independence from a united Chinese government. During the early 20th century, China’s dynasty had just collapsed and no formal government had united China, which encouraged many places to declare independence. If the PRC were to respect all claims of independence made following the Qing Dynasty collapse, the nation would disband into multiple countries. China was not united again until Sun Yat-sen’s unity into the Republic of China, and even then, governmental revolutions continued for many years. As such, during this time

¹²⁷ Sautman, "Tibet’s Putative Statehood and International Law."

¹²⁸ *Ibid.*

many small independent states began fastening their own stamps, flags, passports, and other cultural products, while declaring themselves independent.¹²⁹

Historically, the Qing dynasty did incorporate Tibet into one of its provinces in 1724. The Lhasa Regime was protected during the Yuan dynasty (1269-1378) and Qing dynasty (1644-1912). Though the Right to Self Determination does not require certain relationship status to declare sovereignty over another province,¹³⁰ China has enough legal ties to claim Tibet at its own.¹³¹ However, Tibetans have cultural values which are at odds with Han Chinese, and therefore they feel this justifies independence from the PRC. Additionally, while the Yuan Dynasty was a Mongolian government system that had close relations with Tibet, and Buddhism, the PRC does not maintain that cultural agreement with Tibet.

Declaring Statehood – The Right to Self-Determination

Nations hoping to declare statehood for themselves are protected under the Right to Self Determination, which stems from the Declaration of Independence used by the United States. This states that governments claim their "...just powers from the consent of the governed."¹³² The Right to Self-Determination guarantees in Article 1 of the ICCPR that, "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."¹³³ The Right to Self Determination was used later used to justify socialism during the period of the Bolshevik revolution as international law, and

¹²⁹ Sautman, Barry. "Tibet's Putative Statehood and International Law."

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² Thurer, Daniel, and Thomas Burri. "Self-Determination."

¹³³ The International Covenant on Civil and Political Rights.

then later became part of the Fourteen Points of [President] Wilson (1918). The League of Nations also used the Right to Self-determination to protect minority groups,¹³⁴ and today this right is solidified in the Atlantic Charter (1941), the Moscow Declaration of 1943, and the United Nations Charter¹³⁵ in various articles.¹³⁶ However, due to the fact that the wording presented in the United Nations Charter is vague and flexible for international law, the United Nations has attempted further to illuminate the concept of the Right to Self Determination through documents such as the Declaration on the Granting of Independence of Colonial Countries and Peoples, the ICESCR, the ICCPR, and the Declaration on Principles of International Law concerning Friendly Relations and cooperation among States in accordance with the Charter of the United Nations (1970).¹³⁷

Many of the charters and declarations that pertain to the Right to Self-Determination refer to decolonization periods and therefore the wording is appropriate to handling a previously colonized peoples. The language generally focuses upon who “the people” are for decolonization purposes.

When a nation hopes to declare statehood, international law requires that states fulfill certain obligations and markers before qualifying for autonomous statehood, despite the Right to Self Determination. For example, the United States declared independence through the Declaration of Independence, which occurred after a government system had been created, trade was instituted with surrounding nations, and

¹³⁴ The United Nations has used the Right to Self-Determination to protect minority groups through the Minority Protection System established between World War I and World War II.

¹³⁵ Thurer, Daniel, and Thomas Burri. "Self-Determination."

¹³⁶ The Right to Self Determination is mentioned in Article 1 (Part 2), Art 55, Chapter IX UN Charter, and Article 73.

¹³⁷ Thurer, Daniel, and Thomas Burri. "Self-Determination."

economic ties could be split from Great Britain's. The Montevideo Convention on the Rights and Duties of States, which was signed at the International Conference of American States in Montevideo, Uruguay on December 26th, 1934, defined statehood clearly. This treaty contains 16 articles, and states that: "The state as a person of international law should possess the following qualifications: a.) a permanent population; b.) a defined territory; c.) government; and d.) capacity to enter into relations with the other states" (Article 1).¹³⁸ While "The political existence of the state is independent of recognition by the other states," (Article 3) and, "No state has the right to intervene in the internal or external affairs of another," (Article 8), both of which the PRC today violates according to Tibet, Tibet never was recognized as an independent territory by surrounding states, and now lacks the ability, "to enter into relations with the other states." This is because the United States and other nations refuse to recognize Tibet as independent, as well as Tibet's inability to meet the standards required for independence. The Right to Self Determination is also clearly defined in the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples Article 2: "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Due to the economic size of China controlled by the PRC, and the lack of economic resources available in Tibet, sacrificing PNTR with the PRC is not worth it to most nations, including the United States. Without recognition from outside nations

¹³⁸ The Montevideo Conference of December 26, 1934 took place in Uruguay and discussed the definition and rights of statehood. The Montevideo Conference was the Seventh International Conference of American States and therefore only included representatives from nations in South and North America. Council on Foreign Relations. "Montevideo Convention on the Rights and Duties of States."

formally, in practice de facto states lack the support and resources to enter statehood or gain notable autonomy,¹³⁹ because they do not possess, "... [The] capacity to enter into relations with other states." In theory the Right to Self-Determination should not require the support of surrounding nations, because article 3 states that, "The political existence of the state is independent of recognition by the other states." However, the PRC's One-China Policy, as well as international refusal to accept Tibet as a legal nation, have not allowed Tibet the ability to enter into trade with other nations.¹⁴⁰ This leaves Tibet in a position where they are reliant upon the PRC for resources. Despite the fact that Tibet has created personal flags, mascots, passports and more, this does not make it an independent state. Tibet does not possess the other requirements for statehood.

While Tibet has claims regarding its autonomy, without recognition by the international community and surrounding nations they will never be able to have the resources to succeed independent of other nations. Trade is required. This is similar to other cases of separatist movements, such as that of Quebec in Canada and a multitude of other minority groups and citizens claiming autonomy for themselves. Tibet falls into the same category of other states claiming autonomy, one that has gained much attention by the United States government without what was needed - true political recognition. However, Tibet is not willing and unable to participate in a civil war with the PRC for independence.

It may be helpful to compare the Tibet Question with the United States' own history of declaring independence and becoming a free and independent nation of a

¹³⁹ Sautman, Barry. "Tibet's Putative Statehood and International Law."

¹⁴⁰ The Montevideo Convention on the Rights and Duties of States.

larger economy. The United States views independence, and the decisions of those governed, as paramount laws to protect humans. This may help to illustrate how the Tibet Question appears so oppositional to a western view of human rights: it does not allow a nation to declare itself independent. Therefore the Tibet Question is an important case study in examining the cultural values and shared histories that influences the perception of the problem, and whether it is a truly problematic violation of human rights.

Analysis

Legal Justifications

Tibet does not have adequate legal reason to claim itself as an independent nation, due to decisions made in the past by the Dalai Lama. Tibet signed the Seventeen Point Agreement which sacrificed their independence, and the support of other nations. The Dalai Lama's willingness to sign the Seventeen Point Agreement following the period when the Tibetan de facto state did not declare itself independent, along with China's historical ties dating back to the Yuan dynasty, means that Tibet has little legal justification for independence now.

While Tibet has cultural reasons for declaring statehood, they lack the legal support to gain statehood, despite their Right to Self Determination. Because the Nixon administration, and later administrations, chose not to act in response to the PRC's human rights abuses in autonomous regions before China's accession to the WTO, the issue is now essentially closed. That is unless the United States seeks to reject international treaties that have already been ratified. Economically, the United States

cannot afford to threaten PNTR with China over the Tibet Question, and therefore will not do so.

Furthermore, the PRC has legal justifications for denying Tibet statehood. Tibet's Right to Self-Determination in theory is workable, but in practice requires the support of surrounding nations for trade, economic stability and political organization. Tibet willingly signed the Seventeen Point Agreement for the Peaceful Liberation of Tibet in 1951, which stated: "1. The Tibetan people shall be united and drive out the imperialist aggressive forces from Tibet; that the Tibetan people shall return to the big family of the motherland--the People's Republic of China."¹⁴¹

Additionally, the legalities of the Tibet Question are not the only important part of this argument. What is also important is how the PRC views these civil and political violations as serious or sacrificial. The PRC fears Tibet's independence, and it is important to note that if the PRC loses control of Tibet, they may no longer have control over one side of their nation and its connections with other surrounding nations. Other autonomous regions that would like independence would demand it as well, including Hong Kong, Xinjiang, and Taiwan. Not only would this break down the geographic structure of China, but would result in warfare and conflict for independence. For China to retain "harmony," which is seen as an important part of their human rights standard, Tibet must remain within control of the PRC, but should have its own cultural and political systems. Much like Hong Kong's "One country, two systems" approach (一国两制), Tibet's own system of government could operate independently for its people, therefore respecting human rights under the caveats of political complacency.

¹⁴¹ Council on Foreign Relations. "Seventeen-Point Plan for the Peaceful Liberation of Tibet."

Cultural Justifications

Tibet does have cultural and social reasons for claiming itself a de facto nation. These cultural reasons have no legal backing, yet revolve around important ethnic, religious, economic and social differences they have from the PRC. Tibetans have a unique worldview. Tibet lived in near isolation calling themselves a de facto nation for many decades, uninvolved with the government and furthering their own bottlenecked culture which is vastly different than that of the culture of Eastern China. Religiously, Tibetans practice Buddhism, which while practiced in mainland China by some, is culturally different because it has greater ties to Indian Buddhism. Tibetans have possessed their own de facto government form of rule, and have embraced cultural values that have furthered in their isolation from the rest of China. Furthermore, Tibetans have a closer relationship culturally and ethnically with other surrounding nations such as India and Nepal. However, the Yuan Dynasty also possessed a close relationship with Tibet culturally and religiously. Tibetans do not consider themselves communist and do not participate in the CCP. While none of these reasons hold international legal ground, they are important on a cultural, religious and ethnic level.

However, Tibet's cultural reasons for desiring to be independent are not as strong as the PRC's cultural *and* legal justifications for retaining control over the region. The PRC fears revolt, citing harmony as one of the nation's major goals. The PRC also seeks to reunite the nation with the "motherland" and improved GDP. Therefore, rejecting Tibet's Right to Self Determination is seen as the best method of achieving the most human rights for the entire nation as a whole, as opposed to one autonomous region.

The Tibet Question is a relevant case study to explore differing priorities in human rights implementation between the PRC and the United States because it touches upon sensitive topics regarding the Right to Self-Determination and the One-China Principle. The United States, with its historically important Declaration of Independence, finds itself resisting the autonomous regions and one-country-two-systems policy inherently violating the individual civil and political rights of the Tibetans. The United States has ratified the ICCPR, which is relevant in the case of Tibet's relationship with China as one that violates free speech and freedom to protest. However, the United States has always honored the One-China Policy based upon the United States' individualistic view towards sovereignty and its international trade goals. This illustrates the United States' willingness to support international human rights treaty violations within Tibet for a continued relationship with China as a whole.

For the PRC, the Right to Self-Determination is threatening to the socialist, harmonious goals of the CCP. Socialism, meaning the good of the entire collectivist population and the authority of the CCP and PRC, are threatened by conflict and warfare in attempt to reach independence. In order to maintain harmony, and the cultural values of China as a nation, the Right to Self-Determination may be threatening to those goals by inciting splits and conflict. Conflict may arise out of honoring the Right to Self Determination, which may be important for individualistic goals, but not for country-wide priorities that benefit the majority of the nation. These goals include unity, protection on the western side, GDP increases and socialism. Furthermore, the Tibet question along with the other case studies, illustrates the differing viewpoints on these violations.

Chapter 4: Case Study – International Labor Organization’s

International Labor Standards

The PRC has been criticized for alleged violations of the International Labor Organization’s International Labor Standards, most notably China’s factory working standards, unionization policies, and responses to workers’ complaints. Critiqued as a nation that has some of the worst labor conditions, China is still a nation whose economy is based almost entirely off of foreign investments. The PRC’s labor conditions are one of the most interesting human rights violations within China, because they continue to occur in part through foreign investments. This may be seen in the United States’ willingness to be complicit with human rights abuses for capital gain and trade relations. Other nations participate knowingly in human rights abuses as well through foreign investment practices. These foreign companies continue to encourage violations of certain International Labor Organization laws in order to produce cheap products. The United States continues to do business with the PRC despite labor violations, and China is now one of the United States biggest trading partners.¹⁴²

International Labor Laws Defined

The primary institution that defines and reports on international labor laws and standards is the International Labor Organisation, which was instituted following World War I (1914-1918). It issues the *International Labour Review* and functions to fulfill four objectives: (1) Promote and realize standards and fundamental principles and rights

¹⁴² As of 2015, the United States exported \$116,186.3 million to China and imported \$481,880.8 mil from China. This is out of United States total exports at \$1,504,913.9 million exported and \$2,240,932.5 million imported, making trade with China approximately 7.7% of U.S. exports, and 21.5% of total imports. United States Census Bureau. "U.S. Trade in Goods by Country."

at work, (2) Create greater opportunities for women and men to decent employment and income, (3) Enhance the coverage and effectiveness of social protection for all, and (4) Strengthen tripartism and social dialogue.¹⁴³ The legalities associated with international labor laws created by the International Labor Organisation (ILO), and the PRC's implementation of theories will be explored. The PRC has specific national goals and cultural values which have resulted in different implementations, and sometimes violations, of ILO labor standards.

The ILO has produced international labor laws used by all participatory nations in the United Nations. The PRC has been accused of violating certain ILO labor laws by the United States, such as: the CO47- Forty-hour Week Convention, 1935 (No. 47), the Protection of Wages Convention, 1949 (No. 95), the Minimum Wage Fixing Convention, 1970 (No. 131), the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), and the Termination of Employment Convention, 1982 (No. 158).¹⁴⁴ While the ILO has produced many other laws regarding labor, these laws are allegedly violated frequently by the PRC according to Human Rights Watch and other multilateral organizations, such as the United Nations. ILO labor standard violations are considered human rights violations through documents such as The Ten Principles of the UN Global Impact, Principles three through six.¹⁴⁵

The International Labor Organization's Labor Laws protect against forced overtime in the Forty-Hour Week Convention, Article 1. The ILO protects against lack

¹⁴³ International Labour Organization. "International Labour Standards on Employment Security."

¹⁴⁴ *Ibid.*

¹⁴⁵ United Nations Global Impact. "The Ten Principles of the UN Global Impact."

of minimum wage through the Minimum Wage Fixing Convention of 1970, Articles 1 and 2, which establish and punish people who violate minimum wage.

The International Labor Organization relates heavily to the International Covenant on Economic, Social and Cultural Rights (ICESCR) as both systems work to provide resources needed by people to survive, such as health care, food, and shelter. While the ILO seeks to provide necessary regulations to the labor force, the ICESCR seeks to contribute to people's right to a quality of life through certain obligations. While the United States has accused China of violating rights of the ILO, some ILO labor standards, if implemented, could threaten the national goals and cultural values that China possesses, such as improved GDP and quality of life.

Background and Literature Review

When Mao Zedong died in 1976, and China was released from his dictatorship,¹⁴⁶ the country began anew with a redesigned labor force, economy, governing system and trade relations, all while pulling millions of citizens out of extreme poverty and beginning the Opening-Up process to interact with foreign nations. Following Mao Zedong's destruction of the government and dictatorial leadership, the entire nation was in confusion. Under the pseudo-rule of Deng Xiaoping (the actual president was Hua Guofeng), China opened its economy to the outside world and began international trade. Due to China's socialist policies, high tariff rates and fear of competition from foreign imports, China had difficulties jumpstarting international trade relations until their acceptance in the World Trade Organization (WTO) in 2001,

¹⁴⁶ Not all people believe that Mao Zedong was a dictator. He has been cited with much improvement for China including releasing China from imperialism, improving women's rights and inciting industrialism. However, Mao Zedong here is considered a dictator.

at that time of which the PRC had established SEZs (special economic zones), lowered tariff rates drastically, and established normalized trade relations with the United States. In the ensuing period, there have been numerous reports of labor issues, forced overtime (OT), lack of minimum wage or safe conditions, and various other labor problems. China is struggling to implement human rights policies while retaining economic growth at the same speed and keeping the CCP strong.

In response to criticism over the labor conditions in China, in 2008 the PRC established two important new laws: The Labor Contract Law (2008) and the Mediation and Arbitration Law (2008): "... the revised Mediation and Arbitration Law (2008) has streamlined dispute resolution by simplifying arbitration procedures, shifting the proof burden to employers, canceling arbitration fees, extending filing periods and introducing partial awards..."¹⁴⁷ The Labor Contract Law (2008) provided new worker protections and encourages people to come forward with their grievances. The improved Mediation and Arbitration Law (2008) pushes workers to take advantage of the law when they have grievances in order to have a quicker, more convenient procedure.¹⁴⁸ These domestic labor laws were meant to make China's policies more in line with international human rights law standards. However, skepticism remains about whether labor conditions within China have changed since 2008, especially with the PRC's lack of transparency in regards the labor force.

One article of the new labor law in 2008 became controversial and has had wide spread consequences for the trading relationship between the United States and the

¹⁴⁷ Chung, Sunwook. "Explaining Compliance: A Multi-Actor Framework for Understanding Labour Law Compliance in China," 239.

¹⁴⁸ *Ibid.*

PRC. This article provides protection for workers that have worked at one place for 6-10 years, allowing them to work indefinitely following that period: employers do not have the ability to fire them. Following the entrance of this law into labor contract, hundreds of workers were fired from Wal-mart locations in China, many factories closed or had reduced production rates, and many others threatened to move into cheaper places of production, such as Myanmar.¹⁴⁹ Wal-mart had such a drastic response to China's improved labor laws, and the threat represents the economic sector's influence on human rights law issues in China. Here, a United States company did not support improved human rights law practice, while the PRC did. For a nation that relies heavily upon foreign influence for economic growth, international businesses frequently have a larger influence on human rights law issues than the PRC would like to admit.

Research done on the new labor contract law demonstrates that implementation remains weak in many parts of China, with workers still under minimum wage without contracts or signing unclear contracts - and there remain various ways that the laws have been sidestepped.¹⁵⁰ Foreign companies, including United States companies, have attempted to change the PRC's new labor and arbitration contracts:

We have also seen the degree to which many companies, foreign as well as domestic, have sought to subvert the employment guarantees in the labour law by coercing mass resignations and then rehiring employees on a contingent basis.¹⁵¹

¹⁴⁹ Chung, Sunwook. "Explaining Compliance: A Multi-Actor Framework for Understanding Labour Law Compliance in China."

¹⁵⁰ Wang, Haiyan, Richard P. Appelbaum, Francesca Degiuli, and Nelson Lichtenstein. "Part I: The Social Construction of Labour for the Global Economy China's New Labour Contract Law: Is China Moving Towards Increased Power for Workers?"

¹⁵¹ *Ibid*, 497.

While the new labor laws have not fixed the problem of labor issues within China, they have generated a new “sense of rights consciousness” that citizens of the PRC did not possess before:¹⁵² “...the recent changes to China’s labor law framework have noticeably increased possible punitive damages for illegal labor practices, and employers’ heightened concerns have created important incentives for increased compliance.”¹⁵³ This is important because it represents a change in the way people view their relationship to their company, and their rights as workers.

While China has possessed labor laws and labor standards since 1995, workers understood little of the structure and did not have the ability or freedom to fight for these unknown rights. The PRC’s decentralized form of government leaves labor rights under the control of local factory owners, business men or other local authorities that are also under pressure to increase trade with other nations and maximize profit. Additionally, companies from the United States and elsewhere used English documents for their workers, which did not allow them the language to understand the contracts they were participating in. Consequently, there was little incentive to improve labor conditions.¹⁵⁴ Implementation of human rights by businesses is complicated under a decentralized form of government like the PRC that does not have proper oversight over individual businesses. This is arguable because there is a lack of connection between the power of the federal government and the local operations occurring in China, which

¹⁵² *Ibid.*

¹⁵³ Chung, Sunwook. "Explaining Compliance: A Multi-Actor Framework for Understanding Labour Law Compliance in China," 239.

¹⁵⁴ Wang, Haiyan, Richard P. Appelbaum, Francesca Degiuli, and Nelson Lichtenstein. "Part I: The Social Construction of Labour for the Global Economy China's New Labour Contract Law: Is China Moving Towards Increased Power for Workers?"

results in implementation problems. Currently, the PRC is attempting to centralize its power more as it liberalizes the economy.

Along with the new labor contract of 2008, Premier Hu Jintao of the CCP began shifting government policies slightly away from economic growth for the future years, and added 'harmonious society' and 'scientific development' to the new Party Charter. Disguised beneath the desire for less protests and greater harmony within the society, Hu Jintao used these platforms to recentralize the government and allow greater ideological control over China, while continuing to separate the CCP from the PRC.¹⁵⁵ Jintao felt that improving labor standards would consequently improve and increase citizens' wages, thus increasing domestic consumption. This would then ween China off of international trade and foreign investment as their primary form of economic support.¹⁵⁶ However, this has not occurred fully because of the PRC's GDP goals and intentions to pull its citizens out of poverty following Mao Zedong.

There are a number of political and economic motivations at play within the PRC to encourage improvement of international human rights law. According to this political perspective, there are three main political reasons China might improve labor standards in the labor industry and in other sectors: (1) China desires to improve foreign relations as a permanent member of the United Nations, (2) China accepts the legitimacy of international law, but does not accept Western hegemony over its decision making processes, and (3) other nations besides the United States put large pressure on

¹⁵⁵ Wei, Shen, and Rohan Price. "Confucianism, the Rise of Worker Activism and Labour Law in China."

¹⁵⁶ *Ibid.*

China to improve its human rights situation.¹⁵⁷ According to this viewpoint, political party legitimization and political reform have largely influenced human rights laws, while western hegemony has encouraged human rights law abuses.¹⁵⁸ This means that the CCP and the PRC are attempting to implement human rights laws into their domestic nation, while resisting western hegemony and lack of respect to sovereignty.

The major political incentive for the PRC to implement international human rights law has to do with participating in the United Nations as a “major player,” rather than the desire to change the internal situation, according to some arguments.¹⁵⁹ However, sharply increasing import costs for the United States would destroy the PRC’s relationship with the United States and therefore the PRC will seek to sign human rights law conventions as a way to “meet halfway” regarding disagreements on practice of human rights law while also considering the economic impacts.¹⁶⁰

It is argued here that the PRC has violated ILO labor standards for the good of the entire nation through sharp GDP increases and social stability. Furthering the economic growth of the nation trumps the individual values of the workers, and therefore their rights as individual citizens are not the priority. Growth helps the PRC realize and institute the human rights that China values. As the GDP slows in its increases, and more citizens of the PRC are out of poverty, the PRC will begin implementing human rights labor standards at a more rapid pace. Currently, certain human rights abuses in the workplace are allowing the PRC to increase their GDP,

¹⁵⁷ Wan, Ming. "Human Rights Lawmaking in China: Domestic Politics, International Law, and International Politics."

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ Wan, Ming. "Human Rights Lawmaking in China: Domestic Politics, International Law, and International Politics."

decrease the lower class, improve technology and quality of life of citizens, and improve health care. This benefits citizens as a whole.

Others suggest that the PRC's new labor law encourages workers to talk personally with superiors as opposed to forming collective, and thus more effective, action against a company. The small degree of representation possessed by Chinese workforce is through the ACFTU (All-China Federation of Trade Unions)¹⁶¹ which has been referred to as a "quasi-state organization."¹⁶² There is a debate as to whether the ACFTU is a legitimate organization meant to support people's rights or a government run organization that does not actually implement meaningful or important changes to improve China's labor standards towards ILO standards. It represents a step forward in terms of employee unionization and change in the implementation process, after having been disbanded during the Cultural Revolution. Because the ACFTU is state-operated, and not an independent organization, it has been criticized for not truly representing the voice of the Chinese people. However, the ACFTU seeks to further conversation regarding worker's problems while also allowing the PRC and CCP to maintain control in a socialist manner by having the organization remain state-owned.

Further literature seeks to justify the legalities of the PRC's labor system through Confucianism, basing the argument on the premise that, "law is overtly culture

¹⁶¹ ACFTU: The ACFTU, founded in 1925, seeks to protect worker's rights, protect workers' economic interests, protect workers' political rights as "Masters of the Country," protect workers' spiritual and cultural rights, and attempt to help workers continue the socialist modernist drive. The ACFTU is the leading body of all the trade unions in China, of which there is a membership of over 130 million people. china.org.cn. "All-China Federation of Trade Unions and Its Work."

¹⁶² Wang, Haiyan, Richard P. Appelbaum, Francesa Degiuli, and Nelson Lichtenstein. "Part I: The Social Construction of Labour for the Global Economy China's New Labour Contract Law: Is China Moving Towards Increased Power for Workers?" 498.

bound,”¹⁶³ and thus China’s adherence to human rights law must be analyzed through a cultural perspective, as opposed to in contrast with Western rationalist and liberal modes of thought. Culturally charged articles stress the importance of Eastern versus Western thought processes, as explored in Chapter 1, when analyzing legal practices between two overtly different nations. Much literature regarding PRC’s legal system in relation to culture is based off of research done on prevalent cultural values in Han China such as the Confucianist ideas of *Xunzi*,¹⁶⁴ *Mengzi*¹⁶⁵ (Mencius) and *Zhuangzi*¹⁶⁶ regarding human morality, hierarchy and government’s role in people’s lives. Chinese philosophy is guided by principles that are in some ways antithetical to western liberal ideas regarding the self and its relationship to the government and to the hierarchy of people. This idea may help to understand the priorities that the PRC is choosing between when grappling with human rights law abuses in its labor industry.

¹⁶³ Wei, Shen, and Rohan Price. "Confucianism, the Rise of Worker Activism and Labour Law in China."

¹⁶⁴ Xunzi’s 荀子 (310-220 BCE) philosophy most notably posits that human nature is inherently bad because humans lack morality naturally. Therefore, society must possess rules and ritual in order to remain harmonious. Xunzi’s views are considered rational for the late Warring States Period, as Xunzi argues that the Way 道 (dao) is defined as the right way to live. Heaven neither rewards nor punishes those who act wrongly, not acting in accordance with the Way has negative results for all involved. Social norms are required because a state of disarray may occur if humans follow their own natural desires. Elstein, David. "Xunzi (Hsün Tzu, c. 310—c. 220 B.C.E.)."

¹⁶⁵ Mengzi’s 孟子 (372-289 BCE) philosophy is most known for his belief that human nature is inherently good and can either be cultivated with practice and education or ruined. Considered an interpreter of Confucius thought following Confucius’ death, Mengzi asserted that the Heavens relied upon humans in order to fulfill its will, and therefore the people’s contentedness was a large indicator of whether the ruler was making the correct decisions. However, moral value is always more important than pragmatic action by the one in power, and therefore action in accordance with humanity 仁 (*ren*) and propriety 礼 (*li*) are most important. Richey, Jeffrey. "Mencius (c. 372-289 B.C.E.)."

¹⁶⁶ Zhuangzi 莊子 (369-298 BCE) illustrated a Daoist philosophy that is much more abstract, citing the importance of leaving the society and learning from nature. Every being has its own nature 自然 (*ziran*) and therefore cannot judge the rightness of any other being of another nature. Furthermore, “we cannot be certain that what we think of as good for us may not ultimately be bad for us, or that what we now think of as something terrible to be feared (death, for example) might not be an extraordinarily blissful awakening and a release from the toils and miseries of worldly life. When we accept this, we refrain from dividing things into the acceptable and the unacceptable.” Coutinho, Steve. "Zhuangzi (Chuang-Tzu, 369—298 B.C.E.)."

Collectivist, hierarchical thinking is associated more with the good of the entire nation than the good of the individual, and sacrifice for the good of all. In this case, labor laws such as forced overtime may help China to achieve its Five Year Plan, which would in turn improve the lives of millions of citizens. Therefore, the PRC may find cultural values stressing that people's individual sacrifices are worth it for the gain of the entire nation. Furthermore,

“Contemporary Chinese law—in other words, its labour law—as well as the labour protection regime, appears rational in its substantive emphasis on workers’ rights to the fruits of their labour, even though it may not emphasise a formalist type of absolute rights with regard to individual property.”¹⁶⁷

While human rights theory are agreed upon as important between the United States and China, the PRC's specific policies emphasize a different kind of worker's rights, which are not formalist. Legal formalism contends that legal rules are separate from social and political institutions. Once they are put into practice, other policy interests or social interests should be ignored.¹⁶⁸ For the PRC, and many other nations, social and political interests are intertwined with human rights law in the labor sector, as national economic goals may be achieved through alternative implementation of labor law standards. However, the PRC is in a unique situation with such a large population, a large autonomous geography, and the number of citizens in poverty. Therefore the PRC's cultural values contend that the good of the entire nation is more important than that of the individual, and therefore GDP increases are most important. This is both socialist and collectivist, and apparently antithetical to individualism.

¹⁶⁷ Wei, Shen, and Rohan Price. "Confucianism, the Rise of Worker Activism and Labour Law in China."

¹⁶⁸ Cornell University Law School. "Legal Formalism."

The literature on labor standards under the PRC generally agree that human rights law abuses are occurring by not achieving the standards set out by the ILO, but different views disagree on whether the PRC is moving towards improved human rights law implementation or justifying continued international human rights law violations through quasi-state organizations such as the ACFTU. Whether or not the PRC's cultural values are justification for failure to fully implement labor laws is not generally supported in the literature. Scholars divide on how to address the PRC's low labor standards, whether by lessening trade or continuing trade with hope for improvement in the future.

Analysis – Labor Laws & Foreign Investment

Ultimately, most analyses of the PRC's international human rights law violations in the labor industry agree that violations are indeed occurring, but with legitimate reasons for implementation choices. While the PRC continues to commit human rights law violations in the labor industry, the nation remains under high pressure with the majority of its economy propped up on foreign investments by companies that are willing to move abroad to nations less willing to participate in international human rights standards. Currently the PRC is caught between the need to serve as a powerful player within multilateral agencies such as the United Nations, completing the economic GDP increases to achieve its Five Year Plans under Xi Jinping, and implementing acceptable human rights policies in the labor sector. Lacking human rights through labor standard violations in the labor sector is considered a sacrifice that is worth it to citizens for national GDP increases and improved quality of life for Chinese citizens. For the PRC, as with the United States, certain rights are

more important and vital than other rights, and certain rights are necessary for a high quality of life, while others are not. For the United States, for example, the right to healthcare is not a priority, and while not providing healthcare is considered a human rights violation to certain organizations and the ICESCR, the United States does not consider it vital to a high quality of life for United States' citizens. In this situation, employee rights and labor standards may trump the importance of economic gain by the company. Therefore, when President Obama chose to provide funds to bailout certain companies that had violated standards in the automobile industry, many U.S. citizens were outraged.

It may additionally be useful to compare the Chinese goals on development and economic growth with the United States during the Industrial Revolution. While the United States was not facing the kinds of international pressure that the PRC is facing today, various human rights abuses were committed in labor organizations and factories in order to achieve rapid industrialization. The PRC is dealing with the same goals of rapid economic growth that the United States was attempting in the 1800's, and with more collectivist and socialist cultural values.

In most recent years the PRC has struggled to balance their economy with criticism and expectations of other nations, and has experienced western hegemony, particularly on the part of the United States: public accusations, refusal to vote the PRC into major multilateral organization chairs, and involvement in the South China Sea. While human rights are accepted as important in China, certain violations are vital to the achievement of movements, such as industrialism for the good of the people as a whole. Given that the PRC has considered pulling its citizens out of poverty and into

technological sectors one of its primary goals, human rights have remained in second place to economic nationwide goals. The PRC sees human rights as important and legitimate, yet does not feel certain human rights are vital in its labor industry while simultaneously achieving its quick industrialization goals and FYP's. Xi Jinping's 2016 New Year speech exhibits the PRC's focus on completing China's Five Year Plan of economic development: "In 2015, the great efforts of the Chinese people have paid off. China's economic growth continues to lead in the world. Reform has been pushed forward comprehensively... the general public has enjoyed the increasing 'sense of gain.'"¹⁶⁹

Conclusion

Industrial goals and GDP increases that are highlighted in the FYP's continue to trump certain individual International Labor Laws on the basis of continued rapid economic growth. For the PRC, the good of the entire nation is improved with economic gain and higher quality of life. By serving individual rights of workers, the PRC threatens the reforms and goals it has executed to pull its citizens out of poverty as a whole. This is related to China's history of famine and poverty, as well as the collectivist values that favor the good of the whole over the protection of one, which have encouraged economic gain over individual rights. However, looking forward to the predictions of the next few FYP's, one may see that GDP increases are expected to lessen in the next 20 years as China's economy stabilizes. At this point, the PRC will most likely begin more improvements to human rights under the ILO.

¹⁶⁹ Chinese President Xi Jinping delivers 2016 New Year Message, 2016.

This contrasts, in some ways, the United States liberal democratic philosophy of the individual as the most important being. Threatening the life of one worker through abuses in the workplace could, and *should*, cost the entire company, according to many westerners. The individual's rights are seen as more important, and more representative, than the gains of the entire company, or the entire nation. Therefore, violations of ILO labor standards bring up emotional worldview differences between Chinese and United States citizens regarding the relationship between the citizen, the state, and economic growth. It is therefore an important case study for the examination of these worldview differences playing out in practice today through human rights in the workplace.

Chapter 5: Case Study – Censorship

Background and Literature Review

Censorship in China, including Taiwan, Tibet, Macao and other autonomous regions has increased with globalization and the increase in social media usage by young people. With increasing paranoia regarding the fate of the CCP, censorship has skyrocketed.¹⁷⁰ The issues regarding censorship have increased dramatically with political change occurring through social media sites such as Facebook and Twitter, inciting change and protest among people. For example, the Arab Spring relied heavily upon social media. While many United States businesses expected trade increases with Beijing to force the PRC into policy liberalization, rather Beijing has resisted and countries have continue trade with them anyways.¹⁷¹ Reporters without Borders have ranked China 176 out of 178 for press freedom, considering the problem “very serious,” while the United States ranks 49/178 in 2015.¹⁷² With the PRC’s censorship continuing to increase, the international community is unsure how to respond.

The PRC continually sends out censorship information to media outlets and the main censorship body, the Communist Party’s Central Propaganda Department (CPCPD). Censorship explicitly suppresses sensitive topics such as that of Tiananmen Square, the Falun Gong movement, information on the Taiwan or Tibetan protests, or

¹⁷⁰ According to Reporters without Borders 2016 World Freedom of Press Index, China ranks 176 out of 180, with a Global Score of -7.41, meaning that China’s freedom of speech and media has declined since 2015. On the whole, the 2016 report reported that every nation has declined in their Global Score. Reporters without Borders. “2016 World Press Freedom Index.”

¹⁷¹ Dowell, William T. "The Internet, Censorship and China," 112.

¹⁷² Reporters without Borders. "2015 World Press Freedom Index."

critical information about government leaders such as Xi Jinping.¹⁷³ Additionally, the PRC censors information that may cause social unrest or threaten the regime, such as certain kinds of literature, film, documents, news articles, artwork and more, making China have one of the most repressive free-speech ratings in the world. At this time, the United States Council on Foreign Relations has stated that the PRC is in a state of “schizophrenia” surrounding press freedoms, knowing that citizens should have access to information yet fearing for the security of the regime if citizens are given enough information.¹⁷⁴

Furthermore, given the PRC’s focus on sovereignty, the United States has done little to address the PRC’s lack of press freedoms and increased censorship. The United States does not give the PRC enough foreign aid to use foreign aid as a means of improving free speech, and the United States relies upon the PRC for trade. At this point, censorship has little effect on international trade between the two nations, despite increasing feelings that it should because of how the United States places itself in terms of human rights programs in the world.

With the arrival of the PRC’s internet agreement, the “Public Pledge of Self-Regulation and Professional Ethics for China Internet Industry,” which users are required to sign in order to access the web, citizens and companies alike find themselves operating under Chinese law. Rather than the internet improving censorship within China by using western companies, the internet has pulled United States companies into censorship operations themselves:

¹⁷³ Xu, Beina. "Media Censorship in China."

¹⁷⁴ *Ibid.*

Instead of opening up China to free thought, the enormous attraction of the Chinese market appeared to be corrupting Western companies and enrolling American technological prowess in efforts to further limit free speech. Before long, not only Yahoo!, but Microsoft, Cisco, and Google found themselves under intense scrutiny for allegedly aiding Beijing's efforts to track down and control dissent.¹⁷⁵

Rather than pushing for freedom of speech in China, United States' companies have allowed themselves to act within the grounds of the PRC's censorship, such as Google which created Google.cn, and blocks sites according the PRC government censorship laws. United States companies have been complicit in human rights law violations in the PRC of censorship. United States' agencies, while under scrutiny for participation in a nation without free speech, are capitalizing on such foreign markets. Furthermore, United States software companies care little for how their newly designed software is used, as long as it is paid for at a high price: "Human rights activists are increasingly concerned that the ease with which Beijing has secured compliance from U.S. companies and the growing sophistication of its capacity to control dissenting opinion is serving as an example to dictatorships."¹⁷⁶

With the Patriot Act in place following September 11th, 2001, the PRC has more reasons to claim that the United States has no grounds by which to criticize the PRC. Citing greater importance placed upon, "stability and predictability," as opposed to, "creative diversity," the PRC continues to monitor political discourse and when it becomes available to the citizens it is in the form of agreed upon consensus. Paranoia over retaining power within the CCP is continually increasing censorship. While PRC's free speech censorship has been characterized as a trait of non-democracies and

¹⁷⁵ Dowell, William T. "The Internet, Censorship and China," 112.

¹⁷⁶ *Ibid*, 114.

communism,¹⁷⁷ censorship of information has been occurring in China long before the Chinese Communist Party was founded in 1921.

While Google is continuing to operate within the PRC's rules for censorship, and demonstrating an example to other regimes that it is possible to have international relationships where a democratic nation's companies will bend to authoritarian laws, it is debatable whether or not Google is adding any particular damage to the Chinese censorship process. Google is continuing to respect sovereignty of China, which the United States strongly supports.

Realistically, Google would not change censorship in China by refusing to participate. Therefore, Google has remained pragmatic and taken steps to ameliorate the damage done through censorship, such as refusing to open personal accounts in China to protect people's private information from government access. Ultimately Google should continue to participate in Chinese networks, and work with the PRC, but make more active movements towards encourage freedom of the press and freedom of speech through economic deals.

Analysis

The PRC has been accused by the United States and Human Rights Watch¹⁷⁸ of violated the United Nations Universal Declaration of Human Rights Article 19: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart

¹⁷⁷ Taubman, Geoffry. "A not-so World Wide Web: The Internet, China and the Challenges to Nondemocratic Rule."

¹⁷⁸ Human Rights Watch. "World Report 2015: China."

information and ideas through any media and regardless of frontiers.”¹⁷⁹ The PRC has also been accused of violating: Article 9 of the UDHR: “No one shall be subjected to arbitrary arrest, detention or exile,” and Article 20 – part 1 – which states, “Everyone has the right to freedom of peaceful assembly and association.” They have also been accused of violating Article 20 - part 2 – which states that, “No one may be compelled to belong to an association.” These all have allegedly been violated by the PRC in their use of censorship to handle protest, free speech, and government skepticism in media.

Analysis of censorship is complex and difficult given the secretive nature of the PRC’s government security agencies. While the PRC is committed to government censorship of news media and other sectors of knowledge to protect the harmony of the public and the reputation of the regime, the United States also ranks fairly low on free speech statistics for a “developed” nation. The United States’ government has censored and protected information from citizens regarding the criminal justice system and its inhumane detainment of prisoners abroad, which the PRC is quick to note. United States companies are likely to invest in China’s technology industry and participate in censorship exercises in order to make profits. This demonstrates the negative effects that U.S. businesses, and other foreign companies, may have on the PRC’s censorship policies. While the United States may have less censorship policies in relation to protesting the government or social media, the PRC values freedom of speech less than the United States does. The two nations view freedom of speech differently, and for the PRC, censorship is a sacrifice to remain stable and in control of the citizens of the PRC. Censorship helps retain the CCP’s power.

¹⁷⁹ The United Nations. 1948. *Universal Declaration of Human Rights*.

Censorship within China is a violation of human rights through international treaties such as the ICCPR, the UDHR's right to free speech, and freedom of the press. The PRC has many justifications for its violations of human rights. The PRC has not ratified the ICCPR. The cultural value of a "harmonious society," and the fear of the CCP's future overseeing over one billion people has resulted in a threatened government that does not feel it is in control of its citizens. The PRC continues to resist hegemony by the United States, particularly when United States companies continue to support censorship. With the PRC's decision not to ratify the ICCPR and the PRC's priority of national harmony over individual freedom of speech, the PRC has little reason to improve censorship at the moment.

Censorship issues in China represent most importantly the PRC's desire for harmony over social conflict. The PRC sees the United States' focus on individualism, and the absolute priority of the individual, as pejorative to national social harmony and efficiency. While Chinese citizens recognize the importance of human rights such as free speech and lack of censorship, censorship is seen by the PRC as protecting their national goals as a whole and ensuring social harmony. These specific censorship laws that have been allegedly violated correspond directly to the Five Year Plan goals that China has in place currently.

The 12th Five Year Plan, which covers development in China from 2011 to 2015, has specific main goals: "Develop China's Western regions," "Improve the lives of Chinese citizens," and "Continue transitioning to an economy driven by domestic consumption instead of exports," among other goals. China additionally aimed for a

yearly 7% increase in GDP.¹⁸⁰ Improving the quality of the citizen's life in China is a main priority, but is implemented through the Five Year Plan as an economic issue, as opposed to a social one. Increasing internal consumption will additionally allow China more autonomy in the future from the demands of foreign business. This should provide less strain on Chinese factory working citizens and improve autonomy for the average citizen. This is in part because the PRC is discouraged from improving human rights law by foreign nations that have large investments and sway over domestic policies in China.

China's newly drafted 13th FYP (2016-2021) emphasizes anti-corruption, urbanization, greener economic growth, a GDP yearly increase of 6.5%, expanding of the one-child policy to two children, among other things. Providing people with higher quality of living through increased urbanization and "Inclusive Growth" is a means by which the PRC is attempting to improve quality of life, by providing more resources for citizens and increasing development.¹⁸¹

Many of the goals of the FYP's would be threatened if the PRC instituted freedom of speech laws. The FYP's GDP goals would be threatened by providing too many rights to workers. The FYP's ability to institute a greener economy and other goals may be threatened by conflict within autonomous regions and attempts at independence. The FYP's goal of reaching sixty percent of the population in urbanized areas by 2020 requires quick economic growth and continued foreign investments. Moreso, the entire cultural value of harmony, of the collective harmony, and the

¹⁸⁰ KPMG China. "China's 12th Five-Year Plan: Overview."

¹⁸¹ APCO Worldwide. "The 13th Five-Year Plan: Xi Jinping Reiterates his Vision for China."

preservation of power by the PRC over its massive population, would be threatened or destroyed.

Conclusion

Censorship in China is a paradigm of U.S.-China disagreements on what the most important, the most fundamental, human rights policies are in China and the United States. For the United States, which historically has expressed freedom of the individual and freedom of speech as one of its primary cultural values, or one of its most important amendments, as a nation which has a history of protest protected through the ICCPR as a valid means of change, censorship is an absolute violation of rights. For United States citizens, censorship is an emotional concept because it threatens one of the fundamentals of human life: to speak and express oneself for justice and equality, and have government decisions made by consent of the governed.

For the PRC, there is not a historical or cultural value towards free speech. In fact, most Chinese philosophy does not discuss free speech in depth, but rather the appropriate means of acting and speaking in regards to one's hierarchical position that most benefits the collective. Therefore, censorship does not threaten a fundamental freedom to human's lives, according to the PRC. Rather, censorship protects what the PRC considers more fundamental to human life: stability, harmony, the motherland, and peace from protest and conflict. To abandon censorship would work to threaten the values of the PRC, and the control of the CCP, which possesses fear of lack of influence over the population (particularly autonomous regions).

Chapter 6: Comprehensive Case Study Analysis

The three case studies presented of alleged human rights violations by the PRC: Tibetan citizens' Right to Self-Determination, ILO labor law standards, and PRC censorship laws as alleged violation of UDHR articles have all challenged the reputation and role of the People's Republic of China amongst the global community. While trade continues, the United States consistently expresses public opinions that are in stark contrast to the actions made by the PRC regarding human rights issues. Yet today, while the U.S. is considered one of the paramount nations involved in human rights,¹⁸² the PRC has a different opinion regarding what rights are fundamental for a higher quality of life for its citizens. While both China and the United States took a large role in the production of the United Nations Universal Declaration of Human Rights in 1948, and the United States ranks fairly high on Reporters without Border's ranking of free speech, the United States has been criticized for a multitude of human rights violations itself.¹⁸³

All three case studies demonstrate different values that relate to the ICCPR and the ICESCR. For the Tibet case study, the question of Tibet's Right to Self Determination and right to protest this right relate to the ICCPR's guarantees of civil

¹⁸² Kerry, John F. "Country Reports on Human Rights Practices for 2015."

¹⁸³ Such examples include the case of foreign U.S.-run prison systems: "...state officials perpetrated actions considered to be violations of human rights. Documented humiliation, abuse, and torture against detainees occurred in U.S.-run prisons abroad," or the domestic criminal justice system: "The criminal justice system—from policing and prosecution through to punishment—is plagued with injustices like racial disparities, excessively harsh sentencing, and drug and immigration policies that improperly emphasize criminalization." (Human Rights Watch). Human Rights Watch has found numerous United States' human rights issues such as detention and deportation policies for immigrants, detention without trial on Guantanamo Bay, unethical terrorism investigations, and large scale surveillance by the National Security Agency (NSA). Sutton, Barbara, and Kari M. Norgaard. "Cultures of Denial: Avoiding Knowledge of State Violations of Human Rights in Argentina and the United States," 496. Human Rights Watch, "Criminal Justice System."

rights and is another example of the PRC's cultural influences on human rights implementation. The other two case studies on censorship and labor standards explore worker's rights and people's freedom of speech as it relates to the PRC's priorities for domestic stability, CCP power, and the ICCPR. Together these three case studies exhibit the cultural values which affect domestic human rights policies in China, and how this opposes the United States' cultural values that have influenced their perception of what is a human rights abuse, and what is not.

Furthermore, the United States' human rights violations, while domestic rather than international in scope, frequently are performed on the basis of foreign policy or domestic priorities that impede implementation. Human Rights Watch has requested greater integration of human rights into foreign policy decision making processes: "Human Rights Watch advocates for a US foreign policy that is consistent with its international human rights obligations."¹⁸⁴

However, these alleged human rights abuses that occur in the United States, such as the prison system or health care system, express the fundamental differences in priorities between the PRC and the United States. These are influenced by two different philosophies: Confucianism and western liberal democracy. The United States and China both feel that citizens should have a right to a high quality life, but how that is implemented and practiced varies between each nation.

In regards to the three case studies, the United States legally has little power by which to change the PRC due to sovereignty. The most common method of influence

¹⁸⁴ *Ibid.*

on another country's human rights record by the United States is through foreign aid.¹⁸⁵ With foreign aid decreasing yearly as the Chinese economy grows, the United States continues to lose the ability to influence the PRC's political and social system without military force, which the United States is unwilling to do. Both nations are unwilling to commit to violating sovereignty in the name of human rights.

Furthermore, "[Democracy promotion]... combines liberal and realist elements in the sense that democratization around the world, all other things being equal, tends to reinforce the system led by the United States." Democracies are more likely to cooperate with Washington as the United States seeks to, "manage world politics and economics."¹⁸⁶ The United States sees relating democracy to human rights as a way to retain power and influence other nations' governing systems. Additionally, western liberal philosophy expresses a strong correlation between fundamental human rights and democracy improvement. For the PRC, democracy is not the ideal governing system.

As the United States continues to respect the sovereignty of China, lacks the influence of foreign aid, and refuses to invade militarily, the United States possesses little ability to change the PRC's human rights violations. While speeches and public announcements condemn the PRC's use of labor standards below that of international labor law demands, United States companies lack the political will to pull out of China in order to improve human rights. Rather United States companies were willing to pull out of China for economic reasons with the new changes to labor standards in 2008.

¹⁸⁵ Foreign aid to China in 2015 was \$12,850,521 out of a total \$26,596,519,197, or 0.483 percent of the United States' total foreign aid abroad.

¹⁸⁶ Choi, Seung-Wan, and Patrick James. "Why does the United States Intervene Abroad? Democracy, Human Rights Violations, and Terrorism."

Though the United States' publically defends Tibet, it does not legally recognize Tibet as a sovereign nation and never has. Despite various failures on the part of the PRC to live up to the demands of the Universal Declaration on Human Rights, one reason for its implementation problems is that until the PRC reaches a point of comfort in the international system economically – not relying almost fully on foreign investment – instituting human rights proves difficult while retaining the same degree of economic improvement. This has proven difficult when involving human rights laws in goals of the PRC and the threatened and paranoid nature of the CCP. The PRC would like to see itself as a major power, both economically and politically, while retaining the culture values and socialist characteristics it prides itself on.

This is part of the PRC's long game approach. The PRC seeks to secure, "their rightful place in the world,"¹⁸⁷ by regaining power previously possessed hundreds of years ago during its dynastic periods. In defense of the PRC, all nations seek to have power in the global economy, and all nations carry their histories and imperialist experiences into their modern views and foreign policies. For the PRC to want to serve as a major power in the world is not inherently threatening, surprising or unique.

Besides economic and political gains, the PRC has continued to implement human rights policies and participate in international covenants based in part upon philosophical opinions. According to Confucianism and collectivism, the right of one is less important than the right of all. This is distinctly socialist, because the good of the whole is valued over the good of an individual's needs. This may be seen in the PRC's implementation of labor laws, in its censorship of dissent, and its controlling nature

¹⁸⁷ Ravich, Samantha. "Playing the Long Game."

over autonomous regions. These all lead to sacrifices by few which positively increase the power and wealth of many. Furthermore, these implementation differences solidify the “harmonious society” of which the PRC strives for, relaxing the paranoia of the CCP.

The PRC helped draft the UDHR in 1948. They have signed or ratified most human rights treaties recognized in the world today, including some covenants which the United States refuses to ratify. These international covenants include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Convention on the Rights of Persons with Disabilities (CRPD).¹⁸⁸ While the PRC and the United States agree on human rights as an ideal, they differ on how to implement human rights and which way is most effective for the people according to the most fundamental of rights. While the United States does not see ratifying the ICESCR and the PRC does not consider overtime a problem, the two nations agree that human rights are important, they have a differing opinion on how government should play a role in human rights policies for its citizens and which human rights are most important. The end goal may never be the same. The belief in human rights is. Also, the PRC’s role under hegemonic western nations is one of limited power, and one that is greatly influenced by western policies. Looking towards the future, once China has

¹⁸⁸ Human Rights Watch. "United States Ratification of International Human Rights Treaties."

accomplished its Five Year Plan (FYP), human rights will most likely improve as the GDP increases slow and reliance on foreign investments minimizes, but may still stress certain rights over less important ones. At the moment, holding on to Chinese values, to socialism, while achieving the FYP's, is at the cost of certain human rights policies which the United States considers paramount. Maintaining absolute free speech and individualism is at the cost of other rights that the PRC considers paramount itself.

Chapter 7: Conclusion

While the United States of America and the People's Republic of China are regarded as very different, even opposing, the differences have more to do with the PRC's role in the international global community today, the PRC's historical philosophies, and the PRC's current economic intentions than with disagreements on the functions and importance of human rights law. However, it remains important that Chinese people do not view the laws in the same way that American citizens do, at least in terms of ranking of importance. Rather, the PRC is acting in ways that benefit the most citizens in a socialist way, while simultaneously attempting to "modernize" at high speeds. The United States of America, while contending to have better human rights standards than the PRC, has a history of different kinds of abuses. What remains different between the PRC and the United States is somewhat situational: economic developmental speed, role in the international community, and philosophy of individualism versus collectivism. Different domestic priorities have resulted in different strategies of implementation on how to achieve "human rights" in the moral sense. Additionally, each nation is unwilling to sacrifice what make their country unique, culturally distinct, or exceptional. Both nations truly believe they are exceptional in government and shared history.

Culture, History & International Law

According to international law, the PRC and every other nation on Earth violates human rights. Yet, the PRC has a negative reputation for their rights abuses in implementation. The PRC does not have the same values for certain human rights as

the United States, and also has goals for their economic growth, identity, and political relationships. Morality, history and culture are not considered important in relation to international law today, and it is arguable that they should be considered when comparing theory and implementation of a nation's human rights.

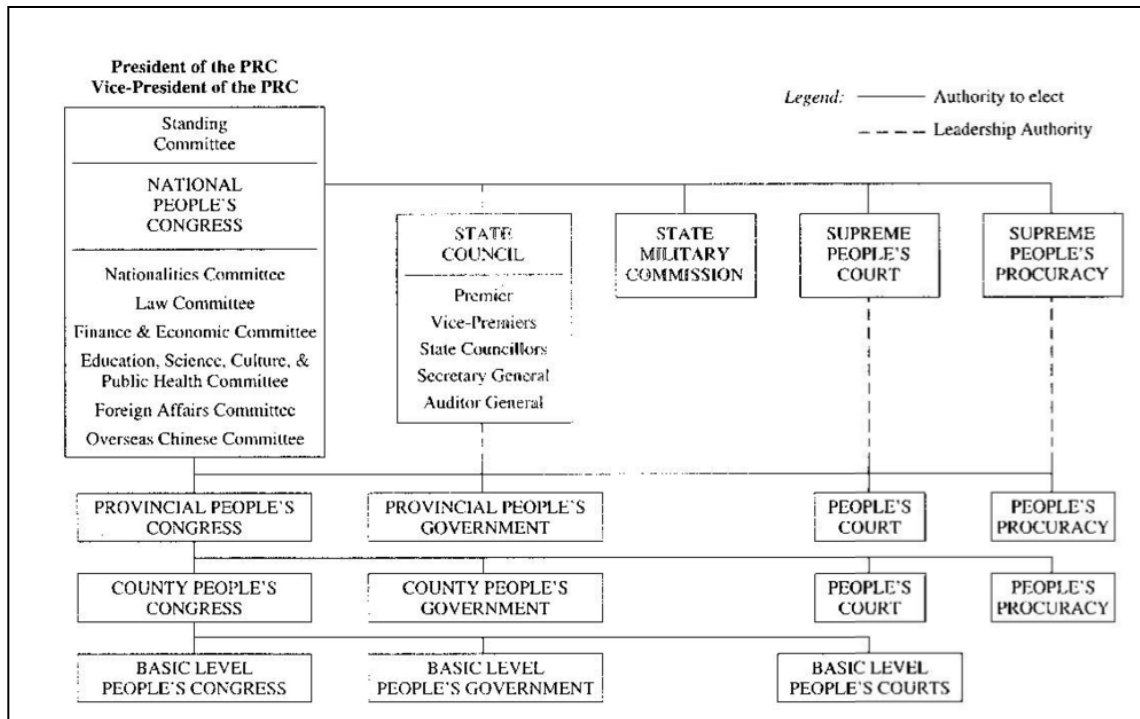
Ultimately, the United States and the PRC agree generally that human rights are important, despite differing histories on how said laws should play out in their nation. As the future arrives, the PRC should begin to improve its human rights record while also retaining that certain rights are more fundamental than others. They may continue to see certain rights as not fundamentally important to their nation. The United States additionally may improve human rights law in other sectors. However, at the current moment, much of the PRC's alleged abuses relate to how rights are prioritized and implemented, not an opposing view of human rights in theory.

Culture is extremely important when looking at issues of human rights abuses and international human rights law. One country's culture, history, values, worldview and government system strongly affect their perception of what human rights are fundamentally important and needed. If culture is not used when interpreting human rights law violations today, then every nations would be breaking human rights and there would be no dovish interpretation for why. While economics may serve as a reason for human rights law violations, economics does not take into account the importance of one culture's value for its people and self-respect. Culture must be included in discussions of human rights, because jurisprudence is philosophical in nature, and therefore effected by one's worldview.

Xi Jinping and President Obama

It would be unfair to state that President Obama and Xi Jinping were not aware of the influence cultural values have upon implementation of human rights in practice. Then why do political statements condemning each other continue to occur? It may be because of both PRC paranoia regarding the future of the CCP, and U.S. paranoia regarding the future of United States hegemony. Regardless, for a future where citizens of each respective country have respect for other cultures and multicultural understanding, it's important to educate citizens on the cultural values that affect implementation. Human rights are not simply valueless to certain cultures. In a world of pragmatic foreign policy, citizens must understand the difference between politics and morality in the discussion on human rights, particularly when U.S. hegemony and the PRC's role in multilateral organizations is at stake.

The United States needs to accept a future where they are not in control over other nations' foreign policy and government structure. In order to do this, President Obama should push for less hard power, while instituting more respectful speech when talking about China. Not only would U.S. citizens have more respect for China and Chinese culture, but there would be more ability to have meaningful conversations about why each nation will not ratify certain treaties. This may improve international law's effectiveness, improve cultural awareness, and make the United States into a more international nation.



Appendix

Figure 1: Organization of the Government of the People's Republic of China¹⁸⁹

¹⁸⁹ University of Oregon. "Organization of the Government of the People's Republic of China."

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