

# EUROPEAN UNION-CHINA: TWO ASYMMETRICAL WELTANSCHAUUNGS ABOUT HUMAN RIGHTS. REMARKS ON THE UNITED STATES CONCEPT OF HUMAN RIGHTS

Unión Europea-China: dos visiones sobre derechos humanos. Consideraciones sobre el concepto americano de derechos humanos

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This article compares the respective conceptions about human rights in the European Union and in China, and makes several remarks on the view of human rights in the United States, analyzing the similarities and differences with the two above mentioned systems. But we also delve into the causes for the conceptual gap between both sides. Cultural background determines the conception of human rights. Hence, human rights are asymmetrical between different countries or civilizations. We analyze the causes and effects of the said phenomenon. As there is no such thing as a European Constitution, we compare Germany's Basic Law (as the Constitution of one of the EU member states) with China's Constitution; we analyze the importance each system attaches to the different groups of human rights. We deepen into the Chinese schedule for the attainment of the respective levels of social welfare. The Chinese link between human rights and livelihood is other of the aspects we study. Whereas in the EU and in the US political rights are paramount, China attaches greatest importance to reaching certain socio-economic standards. We conclude our article evaluating the possible trends in the development of international law.

## Palabras clave

Asymmetries, cultural background, European Union-China, human rights, Weltanschauungs, *xiaokang* (小康)

Este artículo compara las respectivas concepciones sobre los derechos humanos en la Unión Europea y en China, y realiza ciertas consideraciones sobre la visión estadounidense de los derechos humanos, analizando las similitudes y diferencias respecto de los antedichos sistemas. Pero también profundizamos en las causas de la brecha conceptual entre ambas partes. El trasfondo cultural determina la concepción de los derechos humanos. Por lo tanto, los derechos humanos son asimétricos entre diferentes países o civilizaciones. Analizamos las causas y efectos de dicho fenómeno. Como no existe una Constitución europea, comparamos la ley fundamental de Alemania (ya que es la Constitución de uno de los Estados miembros de la UE) con la Constitución de China y analizamos la importancia que cada sistema otorga a los diferentes grupos de derechos humanos. Profundizamos en la agenda china para el logro de los respectivos niveles de bienestar social. El vínculo chino entre los derechos humanos y los medios de vida es otro de los aspectos que estudiamos. Mientras que en la UE y en Estados Unidos los derechos políticos son primordiales, China otorga la mayor importancia a alcanzar ciertos estándares socioeconómicos. Concluimos nuestro artículo evaluando las posibles tendencias en el desarrollo del derecho internacional.

## Keywords

Asimetrías, contexto cultural, Unión Europea-China, derechos humanos, concepción del mundo, *xiaokang* (小康)

## Introduction

The EU and China have different cultural views, which are reflected in their views about rights. They represent two different world visions (*Weltanschauungs*), as they are not only an international institution and a millenary country respectively, but they also represent two civilizations. The said differences affect rights in general, specifically human rights. The United States, as a *tertium genus*, have their specific view on human rights, with similarities and differences with the two above mentioned cases.

### Asymmetrical understanding of rights in the EU and China

The reason for the divergent views on rights in the European Union and China is their respective cultural background including, among others, their respective History.

Elizabeth Perry states the following (Perry, 2008): “[...] many scholars (and some journalists as well) have detected in the surge of popular protest in post Mao China an emergent ‘rights consciousness’—indicating a supposed bottom-up claim to citizenship [...]”.

Rights, hence, determine trends in modern China. But we can already ascertain the EU-China views about rights. Regarding this point, Elizabeth Perry also considers that in the last two thousand years, China has attached importance to the socioeconomic stability. Logically, China has developed its own conception of rights (Perry, 2008).

This paradigmatic asymmetry about the concept of human rights is not monolithic. In this respect we find some enlightenment in the analysis made by Paloma Garcia Picazo about the Universal Declaration of Human Rights (UDHR): human rights are differentiated between the civil-political rights on one side, and the socio-economic and cultural ones on the other side (Garcia Picazo, 2012).

The National People’s Congress of the People’s Republic of China, in the Report on the Work of the Government (Delivered at the First Session of the Eleventh National People’s Congress on March 5, 2008) states what follows:

People’s living standards improved significantly. Fifty-one million urban jobs were created over the past five years. Urban per capita annual disposable income rose from 7,703 yuan in 2002 to 13,786 yuan in 2007, and rural per capita annual net income rose from 2,476 yuan to 4,140 yuan during the same period. The basic framework for a social safety net for both urban and rural areas was put in place. The number of people living in poverty was reduced every year.

The above mentioned paragraph shows the importance China attaches to economy. It is also an evidence of the Chinese pursue of socio-economic rights. Furthermore, it coincides with the view of Kishor Mahbubani, expressed in an interview in a BBC radio program (Davos: Spreading the Wealth? “In the Balance” – BBC World Service, Sun 28 Jan 2018 04:06 Local time), regarding the improvement of the living standards of many millions people in China:

Certainly the facts are there that inequality in the advanced society [...] is getting worse, inequality in China is getting worse. But to balance off there I think it is very important to empathize that the last thirty years have been the best thirty years for the bottom half of the world’s population. We’ve never seen such a dramatic reduction of absolute poverty [...]. China alone [...] figures vary from 500 to 800 million people have been rescued from absolute poverty.

The above mentioned paragraphs refer to the economic situation of the population. But, according to the Asian point of view, it is an essential part of the notion of human rights. Elizabeth Perry (2008) gives another example of China’s understanding of human rights, i.e. the White Paper—Fifty Years of Progress in China’s Human Rights:

The 2000 White Paper makes crystal clear, as have numerous other publications by the Chinese government before and since, that – when it comes to human rights – socioeconomic considerations rank first among its priorities. The recent amendment of the Chinese Constitution to include a provision respecting and protecting human rights does not change this basic conception of human rights. The 2004 Chinese White Paper on human rights progress, issued two weeks after the amendment of the Constitution, states the following: “The Chinese government continues to put the safeguarding and promotion of the people’s rights to subsistence and development on the top of its agenda”.

The divergent conceptual gap about rights between China and the EU is conspicuous. But, could it be said that there is an Asian concept of human rights? Axel Berkofsky (2005) has studied this aspect:

Whereas the concept of Asia is ambiguous and lacks a clear empirical reference, Asian identity (or what comes closest to the concept of “identity”) results mainly from the (non-legally binding) interaction of real and imagined factors. Advocates of Asian integration (without outside “interference”) and an Asian identity in the recent past include Mr Mahathir and Singapore’s elderly statesman Lee Kuan Yew. They used a concept of “Asian identity” to advocate Asian-style human rights and democra-

cy as well as Asian family and community values and capitalism (or crony capitalism, as critical Western policymakers and scholars termed it back then).

Hence, there is a general Asian conception on human rights. Whereas, it is often mentioned the Western conception of human rights. The EU and the US have a common point, i.e. both systems attach great importance to political and civil rights, but there is also a conceptual gap between them: the death penalty, which is in force in a considerable part of the United States, but in none of the EU member states. However, it should be considered, at least as a trend, that there are several EU Member which lately are closer to the said US stance on the death penalty.

Wang Hongying (2010) is also in line with the above mentioned conception, maintaining that the cultural gap "between China and the international community may be found in the difference in values". The two above mentioned Asian leaders created the concept of *Asian values*, according to which Asians aren't so keen on individual freedom, a typically European and American value. This point has been debated within the International Relations (IR) scientific community.

Regarding the Chinese view about socio-economic rights, the EU, in its Annual Report on Human Rights and Democracy in the World in 2016, recognizes the improvements made by China regarding poverty: "Overall, in 2016 China continued to improve the social and economic situation, pulling millions of citizens out of poverty".

However, the EU also criticizes other aspects of Chinese socio-economic rights (*EU Annual Report on Human Rights and Democracy in the World in 2016*):

From an economic standpoint, 2016 saw a continued increase in the minimum wage and other wage levels, contributing to reducing poverty and expanding economic prosperity; however, labour [sic] disputes caused by unpaid or partially paid salaries remain a problematic issue.

Veron Mei-Ying Hung (2004) states that the following has been included in the Constitution of China: "the State respects and safeguards human rights". However the meaning has China's peculiarities:

One must not assume, however, that "human rights" used in this context has the same meaning as that under international law. Although China signed – but has not ratified – the international covenant on civil and political rights, the lack of explicit or implicit references to this agreement or other human-rights treaties in the Chinese Constitution makes it

arguable that the term human rights as proposed carries a different meaning.

Hence, it could be said that the meaning of human rights in a state greatly depends on whether the State (in this case China) has signed (and ratified) the international covenant on civil and political rights or the one on socio-economic and cultural rights.

In the above mentioned 2000 White Paper there is a sentence which reflects the basic content of its vision of human rights: "The Chinese government continues to put the safeguarding and promotion of the people's rights to subsistence and development on the top of its agenda".

However, according to Elizabeth Perry (2008), the above mentioned aspect is also an issue in Western Europe, specifically reflected in the figure of the *social citizenship*, and developed by T. H. Marshall. The abovementioned *social citizenship* would represent "the collective right to economic welfare and social security". The said author considers that the above mentioned paragraph is about two concepts, core of the Chinese notion of human rights: subsistence and development. The first one (in Chinese *生存 sheng-cun*) is an old concept in Chinese culture, as it is based on Confucius sage's, and was developed by Mencius. The second one, development (*发展 fazhan*) was mainly coined by Mao Zedong.

### Social citizenship

In China, according to Elizabeth Perry (2008), *social citizenship* has been such a paramount ideal, that for decades it has nearly replaced political citizenship as a conceptual standard.

Therefore, the issue is not just about *rights* but also about a conception of a whole *citizenship*, which has a much ampler scope. Therefore, there is a predisposition of the Chinese civilization in favor of *social citizenship*. However, it is not only a mere philosophical, official and academic stance, but also a common *Weltanschauung* among Chinese people (Perry, 2008): "[...] subsistence and development, are not simply abstract mantras uttered by Chinese philosophers and statesmen; they are also central to the ways in which ordinary people in China think and act politically".

Furthermore, the State Council Information Office of the P. R. of China, in its White Paper named *Fifty Years of Progress in China's Human Rights*, maintains what follows: "The establishment of the socialist system has provided the basic guarantee for the people throughout the country to constantly improve their human rights situation on the basis of equal participation in economic development and sharing the fruits of labor".

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In the above mentioned paragraph it is evident China’s perception of human rights as economic rights.

Notwithstanding the two opposed Weltanschauungs about human rights, Sun Pinghua (2016) considers that in the Universal Declaration of Human Rights (UDHR) there is an unperceived influence of Confucianism, which made several contributions to it:

The Universal Declaration of human rights (UDHR) has turned out to be a truly remarkable instrument, serving as a landmark in the history of mankind. P. C. Chang, the chinese [sic] representative, participated in the leadership and the drafting work, and made an outstanding contribution in the drafting process: He defined the nature of the declaration accurately, successfully integrated confucianism [sic] into the declaration, solved many disputes relevant to human rights origins, made the declaration a rigorous structure, creatively broke the deadlocks and resolved conflicts, dominated the drafting process of the right to speak in the proposed mutual tolerance and harmonious social philosophy, and expounded china’s views on human rights to the world. These contributions were marked down in history, and his contributions were also the contributions of chinese [sic] civilization, national intelligence, and traditional culture.

Chinese contribution to the UDHR, according to the paragraph above, is relevant. Nonetheless, plenty of work is still to be done in order to bring harmony and mutual understanding to the field of human rights.

Ones of the most progressive and advanced societies regarding these among other aspects, are the EU ones. Regarding this aspect, Elizabeth Perry (2008), quoting T. H. Marshall, maintains what follows:

Concerns about socioeconomic justice are not peculiarly Chinese, of course. T. H. Marshall, in his

classic work on the rise of citizenship in Western Europe, pointed to “social citizenship” –or the collective right to economic welfare and social security– as the highest expression of citizenship. In Marshall’s evolutionary account, a minimalist civil citizenship –or the guarantee of individual rights to property, personal liberty, and legal justice– appeared in eighteenth-century Europe, while the nineteenth century saw the emergence of a more developed sense of political citizenship –or the right to participate in the exercise of government power. Only in the twentieth century, however, did a claim to full social citizenship (as embodied in the modern welfare state) become widespread across Europe.

There are two remarkable aspects in the above mentioned paragraph: the first one is that T. H. Marshall, quoted by Elizabeth Perry, considers that ‘social citizenship’ is the highest expression of citizenship. Moreover, it is the kind of citizenship extended in China. But, although it is not explicitly mentioned, it could be supposed that T. H. Marshall takes for granted that before reaching such social citizenship, a civil and political citizenship should already be attained. The second remark is that the asymmetry between the EU and China is such that the order in which they reach the different kinds of citizenship is just reverse: in Europe: civil and political citizenship come first; in China: social citizenship.

### **Comparative analysis of the German Basic Law and China’s Constitution**

The above mentioned remarks lead to a further question: how is the said asymmetry expressed in the respective legislations? Can it be seen in the respective Constitutions and related legislations? We compare the Chinese Constitution and, as there is not an EU’s Constitution, we take as an example the Constitution of the most powerful EU member states, i. e. Germany. In its Constitution (named Basic Law) the basic rights are ordered following the above mentioned order: first, the civil and political rights; then, the socio-economic ones.

In the German Constitution the priorities of rights are completely different from the Chinese one. There are some conspicuous aspects: The first remarkable point we find is that there is no division between the different kinds of rights. The second one is the priority given to the following aspects: there are several rights, but there are more freedoms. Finally, there is one article dedicated to the equality before the law. It mentions the right to assembly and the right of association.

If we compare the Chinese Constitution with the mentioned German Constitution, we find out a for-

mally protective text, with several rights also formulated in Constitutions from EU member states (equality before the law, in art 33.2; respect of human rights, art in 33.3) and some that aren't common in the EU (it pays special attention to socio-economic rights; there is the right to rest, in art 43).

Apart from China's Constitution itself, there is further Chinese constitutional legislation, as the National Human Rights Action Plan (NHRAP), which starts with its "Contents". There are some noteworthy remarks: the order of appearance of the different genera of human rights follows the Chinese peculiar Weltanschauung: the first is "Economic, Social and Cultural Rights". Among the first kind of human rights in China is the "Right to basic living standards". Although it is not specified, we consider this point no longer refers to the *secure employment* (lit. iron rice bowl) (铁饭碗 *tie fanwan*) (See Pleco Chinese Dictionary) but it has been upgraded to the *comparatively well off* (小康 *xiaokang*) (See Pleco Chinese Dictionary), or at least as a trend. Therefore, this last concept, the *xiaokang* is a key element for human rights in China, which we will analyze in the following part. Also among the first kind of human rights is the right to property or the environmental rights, peculiar to Western states.

Among the second genus of human rights, in this document are placed other rights of avant-garde in China, as "the right of expression and supervision".

The third genus is dedicated to what are considered as special groups, not minorities, i. e. women, children and elderly people.

*Tie fan wan* (铁饭碗), *Xiaokang* (小康), *datong* (大同): China's scheduled human right standards.

Is there a concept which could allow us to concretize the meaning of human rights in Chinese terms? Yes, there is: *xiaokang*. Elizabeth Perry (2008) states what follows:

The term *xiaokang* [小康] has an ancient lineage. It appears repeatedly in the Confucian of Rites (*Liji* [礼记]) and the Book of Songs (*Shijing* [诗经]), the term *xiaokang* [小康] refers to a type of society which, although not as perfect as the utopian Great Harmony (*datong* [大同])—the ideal society that both Confucius and Mao were prone to invoke— is nevertheless the next best thing because it provides everyone with economic comfort. In the Book of Songs the "economically comfortable family" (*xiaokang zhi jia* [小康之家]) is described as a household whose labors afford it a decent level of subsistence.

But we need to know the exact meaning of the term *xiaokang*. According to the dictionary, it was "[...] a Confucian near-ideal state of society, second only to *Datong* (大同)" (see Pleco Chinese Dictionary) as above mentioned. *Datong* was the ideal so-

ciety, and according to the dictionary, *xiaokang* was a Confucian near-ideal state of society. But we need more concretion of the meaning of *xiaokang*. According to the official China's News Agency, which refers to the speech "Secure a Decisive Victory in Building a Moderately Prosperous Society in all Respects and Strive for the Success of Socialism with Chinese Characteristics for a New Era", delivered at the 19<sup>th</sup> National Congress of the Communist Party of China, October 18, 2017, Xi Jinping considers that *xiaokang society* (小康社会 *xiaokang shehui*) means "moderately prosperous society".

Since Deng Xiaoping (邓小平) Chinese leaders strive to determine the said notion. Nowadays, in the occasion of the 19<sup>th</sup> National Congress of the Communist Party of China, *xiaokang* is again in full revival as a policy's goal: "The 19<sup>th</sup> National General Congress of the Communist Party of China is on the decision phase of the overall establishment of the moderately prosperous society [...]".

Hence, the moderately prosperous society or *xiaokang* is also up in China's agenda.

Michael Peters (2017), regarding the notion of *xiaokang*, states what follows:

Xi's thought [...] sets the tone and direction not just for the next five years but importantly for the fifteen-year period following the establishment of "Xiaokang" [小康]—originally a Confucian term, meaning "moderately prosperous society", used first by Hu Jintao (General Secretary, 2002-2012), to refer to economic policies designed to create a more equal distribution of wealth within China. The planning exercise itself is a great vision that looks forward to the mid-century and to China's unequalled position as the largest world economy [...].

Hence, *xiaokang* is not just a mere lofty ideal, but a real goal, and its achievement has a deadline, as well as the next phase (Peters, 2017):

Xi Thought has provided a long-term two-stage development plan: the first stage from 2020 to 2035 devoted to the realization of socialist modernization, including the achievement of the Belt and Road Initiative; and the second stage from 2035 to 2050 "to develop China into a great modern socialist country that is prosperous, strong, democratic, culturally advanced, harmonious and beautiful".

Therefore, once the *xiaokang* is considered to have already been attained, new goals are already set. And for the year 2035 there is a change in the denomination of goals, as it will be "the realization of socialist modernization". Perhaps the next goal, in the year 2050, is the equivalent to the above mentioned *datong*, the Confucian ideal society. It could be understood that it also refers to the Chinese Dream (中国梦) (Peters, 2017):

Wang explains not only that the “Chinese Dream” [中国梦] is here to stay but also that it is based, as Xi indicates in a variety of sources, on the rejuvenation (*fuxing* [复兴]) of the modern Chinese nation, a rhetorical theme utilized by many Chinese leaders in the past. Xi’s use of the narrative, building on rapid modernization and economic success, is designed to hark back to and move on a century of hardship and humiliation, utilizing the master narrative of Chinese nationalism [...].

Once again, we see the importance of the *century of hardship and humiliation* in China (1839-1949). It is a recurrent term in China. It shows the essential role the Chinese attach to History. And this issue is mentioned in connection with the *rejuvenation* and the *modernization*. This could be considered strange, but it isn’t; it only shows the importance of the said century even nowadays, seven decades after the said century finished.

Apart from the said 2050 deadline for the *datong*, there is another date: 2049, only one year earlier. Wang Yi, China’s Foreign Minister, quoted by Zsuzsa Anna Ferenczy (2017), states what follows:

China’s diplomacy will [...] serve to build a moderately prosperous society and to build China into a modern socialist country that is prosperous, strong, democratic, culturally advanced and harmonious by 2049. Achieving this, Wang Yi explained, means defending China’s legitimate national interests and fulfilling due international responsibilities. More importantly, China would never export its development model because “every country has the right to choose a development path suited to its own conditions”.

The above mentioned quotation by Peters, citing Xi’s thought, reflects the same ideals: “to develop China into a great modern socialist country that is prosperous, strong, democratic, culturally advanced, harmonious and beautiful”. Furthermore, the time difference is one year 2049 instead of 2050. Hence, it can be considered both statement regard the same goals.

In the early times of the revolution, its foundation was the so-called iron rice bowl (*tie fan wan* 铁饭碗), meaning “secure job, life-time employment” (see Pleco Chinese Dictionary). According to Neil Hughes (1998):

Rice has been China’s staple food for thousands of years, and the most important symbol of the party’s economic policies has been an unbreakable iron rice bowl, which stood for the cradle-to-grave security offered all citizens. When Deng Xiaoping began in 1978 to transform China from a centrally planned economy to a more free-market economy,

his supporters insisted that the iron rice bowl had to be smashed if China was to modernize.

It could be said that the *iron rice bowl* is been substituted by *xiaokang* (Hughes, 1998):

The end of the iron rice bowl appeared implicit in the 1978 rural revolution that saw collective farming replaced by the *household responsibility system*. Farmers made money from their crops, informal markets were introduced, and prices were allowed to rise above government-set floors. However, similar bold initiatives were not implemented to reform urban state enterprises; there the government’s approach was much debated and more cautious. The Chinese constitution was amended in 1992, with Deng garnering the political backing and Party Secretary General Jiang Zemin providing the initiative. The revised constitution scrapped the planned economy under public ownership in favor of a “socialist market economy” with “Chinese characteristics”.

The substitution of the *iron rice bowl* by the *xiaokang* is due to the policies implemented by Deng Xiaoping (*gaige kaifang* 改革开放) around 1980. As a result, people, mostly peasants, didn’t have so much security but had more possibilities to progress economically. An essential difference between the *iron rice bowl* and *xiaokang* was that the former was granted to everybody, whereas after the latter, people were supposed to be more enterprising, hence decided to *xiahai* (下海) originally meaning “go or put out to sea” (see Pleco Chinese Dictionary), but here applies the second sense of the expression, “change one’s occupation to enter the market economy” (see Pleco Chinese Dictionary).

Someone could say that there is a contradiction between the White Paper called “Fifty Years of Progress in China’s Human Rights” (it mentions the *lofty ideals*) and the current concretion of deadlines regarding the establishment of the *xiaokang*. But there is not such contradiction. First, because there are still 15 years left till 2035, hence it can still be an ideal. Second, because since the said White Paper was drafted and the current long-term two-stage development plan did so, nearly two decades have elapsed, enough time for a change in attitude.

Trying to be even more specific, we have no alternative but to resort to statistics. According to Xinhua, China’s official news agency (“China brings nearly 13 mln people out of poverty in 2017”) “China lifted 12.89 million rural people out of poverty in 2017 as it progresses towards its target of eradicating poverty, official data showed Thursday [sic]”.

However, there is a part of the population below the levels of poverty, and there are plans and dead-

lines to take them out of poverty, according to the State Council of the People's Republic of China:

There were still 30.46 million rural people living below the national poverty line at the end of 2017, according to the National Bureau of Statistics (NBS). The poverty rate declined to 3.1 percent at the end of last year from 4.5 percent a year earlier, the NBS said. Per capita disposal income of rural residents in poor areas increased 9.1 percent last year after adjusting for inflation, up from 8.4 percent in 2016, and faster than the average growth rate of all rural areas. China is aiming to eliminate poverty by 2020 in a bid to create a "moderately prosperous society".

Obviously, the *moderately prosperous society* is the ubiquitous *xiaokang*. According to the said statistics, provided that the said pace is maintained, it will be nearly attained by 2020.

Xinhua news ("China brings nearly 13 mln people out of poverty in 2017") maintains what follows: "Policy makers have listed poverty alleviation as one of the country's 'three tough battles' for the next three years, along with risk prevention and pollution control".

Elizabeth Perry (2008) rightly states that in China there is a direct connection between *livelihood* and *rights*:

The Chinese state itself actively encourages a conceptual linkage between "livelihood" and "rights". At a government-sponsored art exhibition held in Beijing in February, 2003, to celebrate the first anniversary of the founding of the officially-authorized Chinese journal, Human Rights, the editor-in-chief (speaking beneath portraits of Mao, Deng, and Jiang) praised the exhibits for portraying "stories in which the Chinese government and the Chinese people fight for human rights (*renquan* [人权]). Graphically, they reflect the spirit of the Chinese people in striving for a *xiaokang* [小康], or economically comfortable standard of living, and a vigorous development of the human rights undertaking in China".

Regarding the EU, a question arises: is there an EU's plan on human rights? The answer is yes, there is. But even the said idea is divergent between the EU and China. In China, it is a national plan or schedule about improving living standards of the Chinese people. Meanwhile, the EU's Action Plan on Human Rights and Democracy is focused on the External Action: "So I welcome the initiative of the Council to publish the Action Plan in this format. This is a valuable contribution towards making the EU's external policy on Human Rights more coherent and more widely known among our international partners and EU citizens".

## New developments in the law-making proceedings within the international environment

Now that we have ascertained the considerable gap regarding gaps in rights, we'll analyze the main factor regarding this point and the future developments.

One of the essential fields in which we find an evident asymmetry between the EU and China regards the holder of human rights: whereas in the EU it is an individual right, in China the holder of human rights is the people. This aspect is essential to the dichotomy between the EU and China, and will not be easily solved (Perry, 2008):

[...] Liu Shipei credited Mencius (via Wang Yang-ming) with an ethical understanding of human nature that underpinned his own views of rights as inextricably tied to mutual and collective responsibilities on the part of rulers and ruled alike. The co-founder of the Chinese Communist Party, Chen Duxiu, concluded that it was necessary for the sake of the nation to "sacrifice a part of the rights of individuals, in order to protect the rights of the whole citizenry".

The above mentioned paragraph shows the importance of the community in China (and in much of Asian cultures). It could be said that the significance of the community is due to the enormous magnitudes of population and population density in China. This point explains the above mentioned conceptual gap between the EU and China: the contrast between individualistic and communal societies. However, according to Cheng et al. (2012):

The 1982 Constitution made a breakthrough with the potentiality for the inclusion of human rights in principle into the 2004 Amendment. The introduction of the concepts such as *ren* [人] ("person") and *renge* [人格] ("personality") renders the whole scenario different and promising. The subjects of the legislative provisions on the fundamental rights become tangible and explicit. Chinese people's voices in the negotiation of fundamental rights are heard and playing a more and more important role. The active participation of Chinese people into the semiotic interpretation process makes the stipulations on fundamental rights meaningful and valid.

The move which is referred to in the above mentioned paragraph is essential in China, as it is a shift from the community to the individual, from the people to the person. However, the whole evolution of the shift will not happen in the short term.

Authors as Wang Hongying (2010) state that, compared to the shift in ideologies, "the gap in their values system [between China and the West] may prove to be a more tenacious obstacle for China's cultural integration with the international community".

Other authors, as Leire Moure Peñin (2013), consider that China, as a millenary culture, will develop its own theoretical system in international law and international relations. Manuel Montobbio (2017) maintains that sooner or later China will have powerful influence on the international law-making proceedings. As China rises in its role as a global power, it will also develop its capabilities regarding international law. China, according to Wang Hongying (2010), has developed its own idea of an international community: 和谐世界 *hexieshijie*, meaning harmonious world.

## Death penalty

The EU opposes the death penalty, as it is expressed in the EU Guidelines on Death Penalty (Common Guidelines, Council of the European Union, Political and Security Committee).

This is a radical example of the asymmetries between the EU and China. Hence, we will compare China with another country where the death penalty is legal: the US.

Mistaken criminal convictions happen all over the world, but in those countries with the death penalty in force, such mistakes have far-reaching consequences. It happens in the US and also in China. China has undertaken measures in order to avoid such mistakes. According to Kandis Scott (2010):

[...] Chinese cases echo mistaken criminal convictions that have come to light in the United States, yet the two nations have responded differently to similar failures of their criminal justice systems. There has been no national legislative response to these injustices in the US, but China has been making changes to prevent erroneous death sentences. China reduced the number of prior year death sentences in 2007 by as much as thirty percent after revising its procedure for reviewing capital cases. Given that China is believed to execute many, this diminution reflects a significant number of lives.

Hence, we can draw four conclusions:

- In China there is a relative high rate of death penalty executions.
- There are mistaken criminal convictions.
- There is a 30 % reduction of death penalties.
- Legal reforms have been undertaken in order to reduce the rate of mistaken criminal convictions.

China's reform of the death penalty has been cautiously undertaken. Shaopin Li and Bin Yuan (Xinhua, China's News Agency, 2015, Article in Xinhua, China's News Agency, exploring the reform of the death penalty-Brief report on the newly-published book *The itinerary of the Death Penalty Reform*, by Professor Zhao Yuan Zhi) report what follows:

[Several] claims give enough consideration to the requirements of the relevant international human rights covenants and the basic experiences of the abolition of the death penalty in the international community, and it also complies with the actual requirements and the social real context of China's reform of the death penalty, and for the reform of China's death penalty legislation I have provided valuable theoretical consultation.

In the paragraph above there is a key element of the issue of the death penalty, and especially in China: the possibility of the abolition of the death penalty and its consequences. Such news would be welcome by the EU. Kandis Scott (2010) states what follows:

Even Zhang Yumao, a member of the powerful NPC Standing Committee, believes that the recent changes portend a very slow movement towards abolishing executions: "China is on the direction of abolishing the death sentence. But it will take time". Limiting the death penalty, as the SPC is now doing, serves the goal of abolishing executions. This measured development recognizes implicitly that social acceptance will take a long time.

Hence, we can conclude that the death penalty will eventually be abolished, but it will take a long time. And, actually, this is also the opinion of Roger Hood (2009):

It is fair to say that the starting point from the Chinese side was that the death penalty would be abolished sometime in the future "when the time is right". But this was certainly likely to be in the far distant future. Indeed, some Chinese commentators referred to the very long time-span between when the possibility of abolition was first raised in European nations and its final abolition, implying that such a long process, maybe as long as 100 years, was somehow inevitable.

Comparing China's death penalty system and the American one, how will be the respective process towards a possible abolition? In this regard, Kandis Scott (2010) states what follows:

The United States Supreme Court has also limited the scope of capital punishment. It has banned execution of minors and the mentally retarded, and prohibited death sentences for rape of a minor. But most executions arise out of state punishment systems untouched by any national policy decisions. In contrast, China's revisions are politically approved and take the form of national rulemaking, rather than court decisions, making it possible that China will abolish the death penalty before the United States. Neither nation will do so soon.

Actually, there is international legal support for the abolition of the death penalty. The General As-



sembly of the UN, International Covenant on Civil and Political Rights, states what follows:

*PART III. Article 6*

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

Regarding the opinion of China's population on the death penalty, Dietrich Oberwittler and Shenghui Qi (2014) state what follows:

As to the exemption of certain categories of person from facing the threat of the death penalty, the general population showed that there was a great distance between the views of Chinese citizens and the international norms on the imposition of the death penalty.

However, according to Roger Hood (2009):

The possibility of further reforms leading to the abolition of the death penalty in China is discussed in the light of new data which has emerged from important recent research on public opinion and capital punishment. It concludes that it is not so much the general public that needs to be influenced; rather it is the legal practitioners and political leaders who need to embrace the human rights objections to capital punishment.

However, the very author adds the following:

[the death penalty] debate has moved from a defensive posture to one which is willing to embrace to a degree the human rights objections to capital punishment that have been created by a "new dynamic" rooted in international human rights instruments and conventions, and promoted by abolitionist countries in Europe.

Once again, we can see how Europe considers its own notion of human right, in an expansive way. Since the late 1990s the EU is dealing in negotiations with China, with a view that China abolishes the death penalty (Hood, 2009):

Since the late 1990s the European Union (EU) has been engaged with China in dialogues, seminars and projects aimed to create and then develop a debate that would be conducive to the abolition of the death penalty in China.

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**It is fair to say that the starting point from the Chinese side was that the death penalty would be abolished sometime in the future "when the time is right". But this was certainly likely to be in the far distant future**

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Actually, the EU (*EU Annual Report on Human Rights and Democracy in the World in 2016*) carries on with the same dynamic regarding the death penalty in China:

The EU also continued its efforts as part of its global campaign against the death penalty, as a high number of death penalty executions are carried out in China. However, some reforms have been launched to bring down the number of executions.

Regarding the degree of determination of Chinese authorities regarding narrowing the scope of the death penalty, Roger Hood (2009) states what follows:

Furthermore, a firm commitment was made in the UN Human Rights Council in March 2007 by China's representative, Mr La Yifan, that "The death penalty's scope of application was to be reviewed shortly, and it was expected that this scope would be reduced, with the final aim of abolishment".

The abovementioned author (Hood, 2009) maintains what follows:

[...] how important has been the impact on China of the "new dynamic" based on an acceptance that the death penalty is a violation of human rights – the right to life and the right to be free of tortuous, cruel and inhuman punishments and treatments? It is true that in the debate at the UN General Assembly in December 2007 on the resolution for a world-wide moratorium on death sentences and executions, China voted against the motion. The reason given by the Chinese spokesperson was reported as follows: "[...] in today's world, the issue was a matter of judicial process to decide on the use of or a moratorium on the death penalty, and not a matter of human rights. It was each country's right, on the basis of cultural background and other factors, when to use that punishment. Each

state should be able to exercise that right without interference. The issue should be solved through dialogue". However, as Nicola Macbean, an expert on China, has stressed: "In staking its claim to legitimacy, to both an international and domestic audience, the Chinese government can no longer ignore the dominant discourse of human rights".

Regarding the above quoted statement by Nicola Macbean, there are three aspects to be considered:

The first one is that what the Chinese spokesperson makes is not a claim to legitimacy, but it is strictly an implicit claim to sovereignty. There are at least two grounds supporting such statement (Hood, 2009):

The very reason given by the Chinese spokesperson:

[...] it was each country's right, on the basis of cultural background and other factors, when to use that punishment. Each state should be able to exercise that right without interference.

When it is about what rights a state might be able to exert, generally speaking, for China it is a question of sovereignty, but even more if the expression "without interference" is mentioned. This is the Westphalian system, also supported by the UN.

According to the UN ("General Assembly Adopts Landmark Text Calling For Moratorium On Death Penalty", United Nations – Meeting Coverage and Press Releases, GA/10678, 18/12/2007):

The representative of China said her delegation regretted that the Assembly must discuss the issue of a moratorium on the death penalty at plenary level. That moratorium was an end result "achieved through pressure". The fact that the Third Committee had resorted to a vote reflected the level of disagreement on the issue. China was dissatisfied at the imposition of the views of some States over others, and regretted that some countries had blocked amendments.

Obviously, China considers that the death penalty issue is an internal affair, and hence is to be solved in full use of its sovereignty.

China steadily maintains an unbreakable defense of its sovereignty, derived from the century of humiliation. As we analyze along our work, this is one of the key elements of Chinese foreign policy, and also an essential point in the asymmetry between the EU and China.

Concurrence or symmetry in this aspect might not be awaited for. However, according to what Nicola Macbean claims, the Chinese government doesn't ignore the dominant discourse of human rights. But results will take their time.

Actually, the very Zhao Bingzhi, in this occasion in an article signed with Wan Yunfeng (Zhao and Wan, 2009), states what follows:

There is still a long way to go before full abolition of the death penalty and it cannot be achieved in cases of economic crime overnight. It is necessary to fully consider the degree of social civilization, the developing conditions of the rule of law, and human rights, as well as the comprehensive national conditions of China in abolishing the death penalty for economic crime and other crimes in a phased and gradual manner. Consideration must be given to China's historic tradition, social psychology, and public opinion on this subject.

There is a Chinese cultural tradition about death penalty. Precisely regarding historic tradition, social psychology and public opinion Kandis Scott (2010) considers the following:

There have been signs that this cultural tradition is weakening. A fissure in traditional support for capital punishment appeared in 2000, when academics began to speak and write criticizing capital punishment or favoring its extensive restriction. Currently [this article is dated 1/1/2010], there is not a dramatic demand for abolition of death sentences: In 2005 Qiu Xinglong claimed to be the only scholar in China who proposed outright abolition. Nonetheless, some Chinese now recommend limiting capital punishment, through changes like restoring SPC review, as a first step towards abolition. "[L]eniency and more judicious use of capital punishment [has become] the trend of the time", as seen in 2006, before the new law took effect, when executions numbered the fewest in ten years.

According to the paragraph above, there is a reduction in the public support for the death penalty, but it is not enough as to abolish it. On the other hand, there is more support for "leniency and more judicious use of capital punishment". Hence, the result is that there is public support for death penalty, but for a restricted use of it.

And to round things off, Zhao Bingzhi, and Wan Yunfeng (2009) conclude as follows:

At the present stage, the abolition of the death penalty for economic crimes should first be placed on the agenda. In particular, the death penalty should be abolished legislatively in a timely manner for economic crimes that do not directly undermine basic human rights and national political stability, and this should then be followed by the gradual abolition of the death penalty for other noneconomic crimes. Considering that the death penalty has not yet been legislatively abolished for economic crimes, it is necessary to strictly res-

trict the application of the death penalty through judicial control measures.

Therefore, we can conclude the following:

- In fact, the way to the total abolition in China will be a long voyage.
- The abolition of the death penalty will not be directly implemented, but “in a phased and gradual manner”.

The first phase of the abolition should be about economic crimes.

Two kind of factors will have to be taken into consideration:

1. The socio-legal aspects: “the degree of social civilization, the developing conditions of the rule of law, and human rights, as well as the comprehensive national conditions of China”.

2. The national idiosyncrasy: “China’s historic tradition, social psychology, and public opinion”.

Let’s try and determine the ultimate reason why Chinese people are for the death penalty or at least they are not against it. Kandis Scott (2010) submits what follows:

Today, [sic] surveys show little public objection to the tradition of capital punishment. Xingliang Chen, Professor of Law at Beijing University, attributed this to the influence of the Chinese cultural tradition of retribution and lowly-regarded individual rights.

Once again, we encounter the paramount importance of the cultural background, even regarding the capital punishment.

## Conclusions

There is a conceptual gap about human rights between the EU and the US, on one side, and China, on the other side. Human rights in both sides are determined by their respective cultural background. In the EU and the US, civil and political human rights are paramount, but in China are the socio-economic ones. But they also diverge so much from each other that whereas in China the government establishes a schedule for the attainment of certain levels of economic standards (National Human Rights Action Plan, NHRAP), the EU there has an action plan, but it is focused on its external action. The US also focuses its conception of human rights abroad. There is a huge difference between the EU and the US about the death penalty as it is in force in many of the United States, whereas it is not approved in the whole EU. Another aspect of asymmetry between both sides is the holder of the rights: in the EU and the US it is an individual right, while in China the holder of the right is the people. This is just an example

of the antithesis individualistic-communal societies. However, this aspect seems to be changing in China. Regarding the abolition of the death penalty in China, there are chances that it will happen, but not in the short term, and will have to be gradually, as there is a strong support for the death penalty among the Chinese people. The international environment of the law-making proceedings will go through a changing phase, due to the incorporation of new world players as China.

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