

POLICY BRIEF

China, United States, COVID-19 and the long-standing question of human rights

Problems of a dichotomist approach

The paper aims to argue that a dichotomist approach on human rights is a major problem in relations between the United States and China. The argument has been built through a case-study on US-China public discourses on COVID-19 and human rights, which posits that a dichotomist approach has prevented an objective reading of the pandemic processes underway and thus influenced the health crisis' management on both sides. Furthermore, the paper affirms the need for an historical perspective on the origins of the international human rights regime, in order to weaken the hegemony of the dichotomist approach in the literature, in public discourses and in national policies.

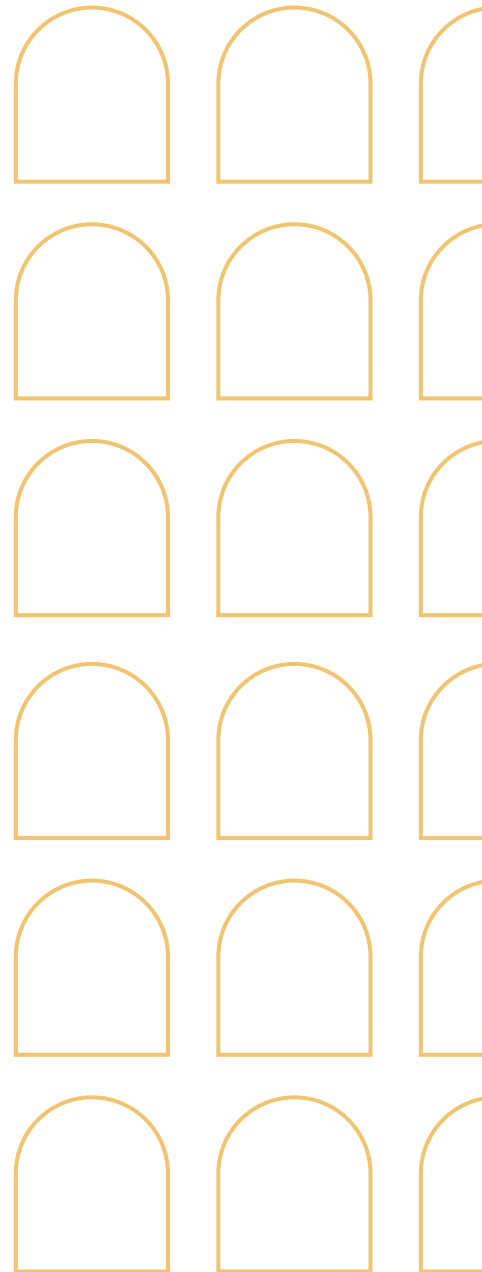
1. Introduction

The issue of human rights (HR) has always featured strongly in US-China relations. It is a question that involves both cultural, economic and geopolitical relations. And it is, at the same time, a litmus test for the quality of the relationship itself.

The aim of this work is to highlight one of the main problems concerning the issue of human rights in the US-China relationship. The topic has taken on a dichotomous dimension since the time of the Cold War, one that is identifiable in literature, public discourses and in the policies implemented, in particular, by the United States towards China. Thus, notwithstanding the fact that the Universal Declaration of Human Rights (UDHR) in 1948 has, at

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least formally, sanctioned the indivisibility of these rights two diverse perspectives on human rights dominates acts and communications between these two countries. This difference in vision has also emerged in two distinct declarations: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights promulgated in 1966, which came into force in 1976. These proclamations present political and civil rights protection which is formally guaranteed in liberal democracies in particular, and, conversely, social and economic rights which, due to their collective character, are associated with socialist governments¹.

The first part of the article is dedicated to a brief overview of the dichotomous perspective on human rights in the literature and in US-China public discourses on human rights. The paper analyses a pandemic case-study through political speeches, reports and mass media representations. The study demonstrates how the dichotomy takes the form of an opposition between liberal democracy and Chinese authoritarianism and produces a stereotypical image of 'The Other' party, which prevented an objective assessment of the pandemic processes underway. In the second part the article highlights the historical origins of the dichotomous perspective on human rights and its political use.

2. A dichotomist approach on human rights: the literature's major arguments

The literature on China, United States and human rights is quite vast. Here the scope is to present a brief overview of the main arguments.

For decades, the debate on human rights and China has been animated by liberals and realists. The debate was focused on the study of the entrance of the People's Republic of China into the international system of human rights and differences between the two perspectives concerning whether China would totally conform to the rules and values of the system.² Risse and Sikkink called this de-

velopment 'socialisation', in which the final stage should have been the internalisation of the human rights norms into domestic practice, with a radical political transformation of the behaviour and of the internal structure of a state.³ This transformation would entail a process of liberal democratisation and thus, as a matter of fact, these two perspectives were mainly focused on political and civil human rights, rather than on the economic and social ones. Liberals supported the success of the socialisation process in China. They believed that international cooperation would bring about a final acceptance of the norms and, consequently, a behavioural change and a 'genuine commitment' to the human rights cause.⁴ Realists, on the other hand, believed that the concern for state interests was stronger among the Chinese elite than was cooperation, and that China would never incorporate international norms on human rights into internal values and, as a consequence, would never change its political framework⁵. Recently, and in particular, since the beginning of Xi Jinping's government in 2012, the focus of the debate has changed and mainly targets the nature of China's own agenda of international human rights policy. There is a concentration on the prime reasons for the Chinese Communist Party's (CCP) resilience and a study of the obstacles to the country's liberal democratisation. Furthermore, great attention is placed on the revisionist international influence of the Chinese illiberal model of national development as a new universal framework for the international human rights system⁶.

At the same time, this debate is viewed from a left-wing perspective in the literature, which takes up the argument of the Chinese New Left of the 90s⁷, as an expression of US imperialism. This hegemonic view on human rights is cast as a universal one which privileges civil and political rights and downsizes the importance of the collective economic and social rights to which China has chosen to give priority. This perspective dangerously contends that the Chinese political, social and economic system, for numerous reasons including China's territorial and demographic extension and

1 Universal Declaration of Human Rights, United Nations General Assembly (Resolution 217 A), Paris, 10 December 1948 (<https://www.un.org/en/about-us/universal-declaration-of-human-rights>).

2 Andrew Nathan, 'Human Rights in Chinese Foreign Policy', *The China Quarterly*, No. 139, September 1994, pp. 622-643; 'China and the International Human Rights Regime', in Elisabeth Economy & Michael Oksenberg, *China Joins the World: progress and prospects*, New York: Council on Foreign Relations Press, 1999, pp. 136-160.

3 Thomas Risse & Kathryn Sikkink, 'The socialization of international human rights' norms into domestic practices: introduction' in Risse Thomas, Ropp Stephen C. & Sikkink Kathryn (eds.), *The Power of Human Rights*, Cambridge: Cambridge University Press, 1999, pp. 1-38.

4 G. John Ikenberry, 'The future of liberal world order: internationalism after America', *Foreign Affairs*, vol. 90. No. 3, May/June 2011, pp. 56-68.

5 R. J. Vincent, *Human Rights and International Relations*, Cambridge: Cambridge University Press 1986; Rosemary Foot, *Rights beyond borders: the global community and the struggle over human rights in China*, 2001

6 Chen Titus C & Hsu Chiahao, 'China's human rights foreign policy in the Xi Jinping era: normative revisionism shrouded in discursive moderation', *The British Journal of Politics and International Relations*, Vol. 23, No. 1, May 2021, pp. 228-247.

7 Cfr. Wang Chaohua, *One China, Many Paths*, London: Verso, 2003.

Confucian tradition too, are not compatible with the protection of civil and political rights, especially if the People's Republic of China (PRC) plans to continue granting economic and social entitlements. The government often makes exceptions to human rights' international standards in the name of 'national conditions or interests', which usually involve social stability and territorial unity.⁸ Currently this view is particularly evident in the contributions of the *Qiao Collective*, formed in January 2020 by intellectuals and activists of the Chinese diaspora, with the main aim of defending China, and what is considered to be 'Chinese socialism', against imperialist aggression.⁹ This view does not take into consideration the fact that, at present, advocating civil rights in China also means supporting the social organisations and the assistance of poor and vulnerable people. The crackdowns on civil and political rights are detrimental for grassroots mobilisation in the name of equal social and economic rights.

The past and the current human rights literature are thus characterised by a dichotomist perspective, pitting liberal democracy against Chinese authoritarianism. The same dichotomy is evident in recent public discourses on COVID-19, as it is shown in the next paragraph.

3. The dichotomist approach in public discourses: the COVID-19 case

The COVID-19 pandemic has been a test for democratic and non-democratic governments. As a pandemic with serious potential consequences for the health, economic conditions and the civil freedoms of citizens, COVID-19 represents a particularly interesting case-study to analyse the presence of the dichotomist approach on human rights in public discourses. Here, attention has been directed to political speeches and reports and on mass media representations.

The current Western public discourse on human rights and COVID-19 is characterised by a dichotomist culturalist clash between Western liberal democracy and Chinese authoritarianism. Western liberal democracy sanctions human rights protection

(in their civil and political rights version), economic development and geopolitical influence, and argues for an efficient management of pandemics. Liberal democracy still entails a sense of superiority. This sense of superiority implies the impossibility of making parallels between Western liberal democracy's style of governance and Chinese authoritarianism, as the case of COVID-19 narrative may explain.¹⁰

Close to two years after the emergence of the pandemic, several studies are proving that the People's Republic of China, along with other East Asian countries, both authoritarian and democratic ones (Taiwan; Singapore; South Korea), has been more able and more efficient in containing the illness and thus in granting the protection of the economic and social rights to health, life and work to citizens than has any other US or European country. At the expense of only two-months of severe lockdown (which, contrary to what happened in Europe or the US, was only concentrated in outbreak's areas), China was able to contain the virus, whereas European countries and the United States were still, at the end of 2020, exercising quarantines intermittently and frequently using the status of emergency to justify the suspension of basic rights, such as freedom of movement, thereby provoking a disastrous economic recession. China's COVID-19 emergency management model was based on a sophisticated regulatory and organisational framework, inherited from the 2003 SARS experience, and grounded in a highly-centralised, technological system.¹¹

Initially, US and the European Union (EU) governments, watching what was happening in China, did not have the capacity to measure the danger concerning COVID-19 and rejected, *a priori*, the Chinese model of governing the illness. One of the major sources of this limited capacity to assess the pandemic processes in China has been the dichotomist view, which draws a thick line between liberal democracy and Chinese authoritarianism and implies the existence of a US (or Western) self-representation as radically different from China, in terms of political culture. This diversion in perspec-

8 Kang Xiaoguang, 'China: political development and political stability in the reform era', *Modern China Studies*, Vol. 9, No. 3, 2002.

9 For an overview of their major arguments please see 'China and the Left', *Monthly Review* on line, 1 October 2021.

10 See 'US-Chinese rivalry is a battle over values. Great-power competition can't be won on interests alone', *Foreign Affairs*, 16 March 2021.

11 Cfr. Francesca Congiu, 'China 2020: The successful struggle against the COVID-19 pandemic and the Xinjiang question', in *Asia Maior*, vol. XXXI/2020, Viella, Bologna, 2021, pp. 19-43. See also 'China beat the coronavirus with science and competent public health measures, not just with authoritarianism', *The Conversation*, 24 November 2020; 'Poteri, durata e limiti: cos'è e cosa comporta lo stato di emergenza', *Agenzia Italiana (AGI)*, 1 October 2020; Ottavio Marzocchi, 'The Impact of Covid-19 Measures on Democracy, the Rule of Law and Fundamental Rights in the EU', *Briefing Requested by the LIBE* (civil liberties, justice and home affairs) committee, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, April 2020 (<https://www.europarl.europa.eu/cmsdata/207125/Final%20version%20of%20the%20Briefing%20note.pdf>); 'China returns to pre-pandemic growth in Q4 2020', *Statista*, 18 January 2020.

tive has made the Chinese and the US models of the health crisis' governance totally incomparable and thus prevented a critical and realistic reading of the facts that could have been helpful for a more efficient political management of the illness.

In the case of COVID-19, the PRC argues that liberal democracy, based on the protection of civil and political rights, is incapable of preserving economic and social rights when confronting a pandemic. The top of the agenda, is the protection of lives and jobs, states China. Civil and political rights, such as the freedom of press, information and speech needs must come second, in order to prevent the spread of an epidemic and to fight against it. During the pandemic, and especially at the beginning, Chinese central and local governments put heavy restrictions on civil and political liberties, causing a significant delay in the transmission of information, which is fundamental to contain the spread of the illness. For at least one month, the virus was conceived of as 'non-transmittable from human-to-human' and later considered 'preventable and controllable'. When the first cases emerged, Wuhan doctors started to send samples of the pathogen to private local laboratories and, in December 2019, they began to discuss the results across Chinese social networks. This behaviour was soon condemned by political authorities: both local and central governments controlled unauthorised release of information. In an emergency notice of December 30 2019 the Wuhan Health Municipal Commission cautioned individuals and organisations about releasing information without authorisation and the Chinese Center for Disease Control and Prevention issued an order prohibiting medical personnel from speaking with reporters. In addition, internal notices from local hospitals informed staff who had gone to Wuhan stated: 'Keep yourself politically disciplined' and 'Do not talk to outsiders in private'.¹²

3.1 The US/Western approach

Though the human rights issue was not at the forefront of either the Barack Obama (2009-2017) or the Donald Trump (2017-2021) administrations, although always an aspect of their political agendas,¹³ the emergence of the COVID-19 pandemic between 2019-2020 gave new strength to this perspective. The US media and political discourses immediately engaged in a denunciation of the Chinese political system. In Western public discourses, the global spread of the epidemic and later, China's successful battle against it, were both due to Chinese authoritarian characteristics. In the first case, the lack of freedom of expression, information, and the overly rigid bureaucratic structure, were held accountable for the emergence of the pandemic,¹⁴ publicly labelled by Trump as 'the Chinese virus'. Trump accused the Chinese government of allowing people to leave China in the early stages of the outbreak and demanded that the United Nations 'hold accountable the nation which unleashed this plague onto the world'.¹⁵ In May, US Secretary of State, Michael Pompeo again attributed the virus' spread to Chinese authoritarianism: 'This is an enormous crisis created by the fact that the Chinese Communist Party reverted to form, reverted to the kinds of disinformation, the kinds of concealment, that authoritarian regimes do'.¹⁶ The reference here was in particular to the punishment of medical staff by Wuhan authorities for spreading rumors about the COVID-19 outbreak, among which the case of Doctor Li Wenliang featured prominently. A Wuhan ophthalmologist, his story gained attention in the international media. The doctor, who had been very active in warning colleagues about the spread of the virus, was obliged by the local Public Security Bureau to sign a letter in which he was accused of 'making false comments' that had 'severely disturbed social order'.¹⁷ His coronavirus' death has often been associated with his imprisonment and presented as the symbol of

12 '武汉疾控证实：当地现不明原因肺炎病人，发病数在统计' ('Wuhan disease control confirmed: there are pneumonia patients of unknown cause in the local area, and the number of cases is in statistics'), 新北报, 31 December 2019. 疫情與輿情十七年：被矚目的SARS與被孤立的武漢, ('Seventeen years since the spreading of the epidemic and public opinion: the underreported SARS and the isolated Wuhan'), The Initiative, 25 January 2020.

13 'Pressing Asia Agenda, Obama Treads Lightly on Human Rights', *New York Times*, 7 September 2016; 'Obama kowtows to China on human rights, critics say', *Politico*, 23 September 2015; 'Barack Obama's Shaky Legacy on Human Rights', *Human Rights Watch*, 9 January 2017; 'Trump says he avoided punishing China over Uighur Camps', *New York Times*, 9 July 2020.

14 'China is the real sick man of Asia', *Wall Street Journal*, 3 February 2020.

15 'Senator Tom Cotton repeats fringe theory of coronavirus origins', *New York Times*, 17 February 2020; 'US-China tensions take center stage at UN as Trump accuses Beijing of unleashing 'plague'', *Reuters*, 22 September 2020.

16 For references, please see Bernadette Nadya Jaworsky, Runya Qiaoan, 'The Politics of Blaming: The Narrative Battle between China and the US over COVID-19', *Journal of Chinese Political Science*, No. 26, September 2021, pp. 295-315 (p. 310).

17 Minitrue: Delete "Disciplined Doctor Now in Isolation Ward", *China Digital Times*, 30 January 2020; Li Wenliang: 'Coronavirus kills Chinese whistleblower doctor', *BBC News*, 7 February 2020; P. Hessler, 'Letter from Chengdu. Life on lockdown in China. Forty-five days of avoiding the coronavirus', in *The New Yorker*, 30 March 2020.

China's failure, wherein the virus was condemned as the 'Chinese Chernobyl'.¹⁸

Later, when the Chinese government reacted with an iron lockdown to contain the spread of the virus, there was a total rejection of those methods as Maoist, illiberal, anachronistic, medieval and exaggerated, on the part of the mainstream international press. The lockdown was described as a totalitarian measure and a reflex of the authoritarian nature of the Chinese political system. At that time, it seemed impossible that Western democracies would ever adopt those same methods, judged as radically opposite to Western political values.¹⁹ However, when, in April 2020, the infections in China were decreasing and Europe and US were considering which system, democratic or authoritarian, was better able to deal with the pandemic, China was accused of having built a narrative useful to its search for hegemony; this narrative constituted a threat to democracy because it cleared authoritarian methods for containing the epidemic.²⁰ In May 2020, a Florida representative affirmed on the *Fox News Channel* that China, similar to the Soviet Union during the Cold War, posed the 'most existential threat to the United States, to liberty around the world, to a free world order that we've ever faced'²¹.

In the most recent US presidential electoral campaign, China's human rights question was one of the most commonly used arguments to challenge the president in charge on critical foreign policy issues. During the election campaign, the Council on Foreign Relations invited presidential candidates to answer twelve questions on critical foreign policy issues. Joe Biden's answer on that occasion already contained the seeds of the sharp contraposition between values (democracy vs authoritarianism) that became clear during his presidency: 'The United States should push back on

China's deepening authoritarianism, even as we seek to cooperate on issues where our interests are aligned.' Biden asked the so called 'free world' 'to come together and to compete with China's efforts to proliferate its models of high-tech authoritarianism'. Since Biden became president, US political discourse on human rights in China has remained fixed to this sharp contraposition between political values, especially in discussions concerning the Xinjiang and Hong Kong situations²². In his public discourses, President Biden frequently underlined the cultural cleavage between Western democracies and autocracies. On the occasion of his first call as president of United States of in a meeting with Xi Jinping, the President of the People's Republic of China, Biden expressed his concern for the Hong Kong crackdown and human rights abuses in Xinjiang²³. Some days later, at a televised CNN event in Wisconsin, he declared that 'the United States will reassert its global role in speaking up for human rights'²⁴. (Reuters 16 February). In April, in his remarks in an address to a Joint Session of Congress regarding Xi Jinping, he stated that: 'he (Xi Jinping) and others — autocrats — think that democracy can't compete in the 21st century with autocracies because it takes too long to get consensus'²⁵. In September, in his State of the Union Address, referring to the assault of Capitol Hill on the 6 January 2021, Biden asserted that the US was living the worst attack on democracy since the Civil War and reiterated his intention to revitalise US democracy against the will of 'the autocrats of the world'.

3.2 The Chinese approach

The current Chinese vision of human rights takes, in line with the previous one, a dichotomist approach; on one side stand the Western liberal democracies with their emphasis on the protection and exercise

18 'Li Wenliang's death exposes the costs of China's authoritarianism', *The Economist*, 13 February 2020; '«Hero who told the truth»: Chinese rage over coronavirus death of whistleblower doctor', *The Guardian*, 7 February 2020; 'L'épidémie de coronavirus peut-être le Tchernobyl de Xi Jinping', *France Culture*, 10 February 2020.

19 'To Tame Coronavirus, Mao-Style Social Control Blankets China', *The New York Times*, 20 February 2020.

20 'China, the coronavirus and the liberal international order', *OpenGlobalRights*, 24 April 2020; 'Coronavirus, the rise of "acceptable authoritarianism" and the battle for democracy', *Prospect Magazine*, 5 June 2020; Eugénie Mérieau, 'Covid-19, authoritarianism vs democracy: what the epidemic reveals about the orientalism of our categories of thought'; 'Democracies are better at fighting outbreaks', *The Atlantic*, 24 February 2020; 'China's Covid success story is also a human rights tragedy', *Human Rights Watch Organization*, 26 January 2021; 'The Myth that democracies bungled the pandemic', *The Atlantic*, 4 October 2021.

21 For references please see Bernadette Nadya Jaworsky, Runya Qiaoan, 'The Politics of Blaming: the Narrative Battle between China and the US over COVID-19', *Journal of Chinese Political Science*, No. 26, September 2021, pp. 295-315 (p. 309). See also Luke Cooper, Guy Aitchison, *The dangers ahead. Covid-19, Authoritarianism and Democracy*, *LSE Conflict and Civil Society Research Unit*, June 2020.

22 Here the reference is to the two major human rights questions concerning current US-China relations: the persecution and detention of civilians Uighurs in Xinjiang where accusations of terrorism mask Chinese countermeasures against separatism; the crackdown of Hong Kong movement for democracy.

23 'Readout of President Joseph R. Biden Jr. Call with President Xi Jinping of China', *The White House*, 10 February 2021.

24 'Biden says China to face repercussions on human rights', *Reuters*, 16 February 2021.

25 'Remarks by President Biden in Address to a Joint Session of Congress', *White House – briefing room – speeches-remarks*, 28 April 2021.

of political and civil rights, and on the other side stands Chinese authoritarianism and its emphasis on the protection of economic and social rights. The Chinese approach is based on the belief that emphasis on social and economic rights is the best way to manage a pandemic and to build a more developed and equitable society. The capacity to raise a population's standard of living is more important than granting civil and political liberties, and is achievable only through the governance of the single-party system led by the CCP. This kind of message, often in reaction to US narrative, is traceable in many articles in Chinese official newspapers. Following here are a few examples of it. The *People's Daily* on November 9 2021 argued: 'if China had dealt with the pandemic as the United States did, its death cases would have been well over three million. [...] Human lives are invaluable. The sufferings, miseries and pains of the patients and their families cannot be measured by "economic cost"'.²⁶ The *People's Daily* in August discussed Chinese government measures to punish officials or make them to step down because of their mishandling of the pandemic. This practice was described as being indicative of a prioritisation of the people's interests and lives, and respect for science and responsibility. The US authorities, on the contrary, it was underlined by the article, did not punish a single official. This was considered a sign of a 'loose political environment' and partly due to the two-party electoral system, which entails a continuous quarrel over who should be held accountable for the containment failure. Although, according to the article, drawing a parallel between China and US is vain, the major difference between China and US is thought to be 'the governing ideas of the ruling party'. In the US, the ruling party works 'on behalf of its own interest groups'. In the People's Republic of China, the CCP 'has no special interests of its own and always represent the interests of all Chinese people' as its anti-pandemic work, the article adds, has demonstrated: 'Since the onset of the pandemic, China, insisting that the rights to subsistence and development are fundamental human rights, has been putting the lives and health of its people front and centre. Compared to the US, which values capital more than its people, China has placed people's lives even above economic

growth. When the virus struck, China took strict and comprehensive control measures, even at the cost of a short-term economic downturn. Nothing is more precious than people's lives'.²⁷ In another issue of August 2021, the *People's Daily*, in referring to US, stated: 'Behind the chaos of the nation's COVID-19 response is the indifference of its politicians to basic human rights'.²⁸ In May 2021, referring to 1) Donald Trump's decision to cut World Health Organization funding because the organisation was found to be on the China's side of the COVID-19 matter and 2) to US mismanagement of the epidemic, the *People's Daily* argued that the pandemic has revealed the hypocrisy of American democracy, which did not put life and health at the centre as basic human rights: 'Obviously, the American democracy is inhumane'.²⁹

4. A false and instrumental dichotomy: an historical perspective on human rights and China

The US and China narratives on COVID-19 and human rights paradoxically reveal the inutility of the dichotomist approach of liberal democracy versus Chinese authoritarianism in understanding the processes behind the pandemic: '[...] crises are moments of extreme fluidity, conducive to anomy. That is how, with the COVID-19 epidemic, the entire identity-based narrative framework of democracy versus authoritarianism, or the West vs. the Rest, has been profoundly shattered'.³⁰ The COVID-19 pandemic is a global health crisis that has exacerbated the ongoing global economic recession as well as conditions for a polarisation of social conflict. It has posed, at once and across all the world, the crucial and historical question of the indivisibility of all human rights. Both the violation of civil and political rights or of economic and social rights, as is evident, have made it more difficult to prevent the pandemic and to struggle against it. As a matter of fact, the perspective of how to handle the pandemic is making liberal democracy and Chinese authoritarianism more comparable, revealing the differences as well as the similarities between these frameworks.

It is, thus, worth wondering when this dichotomist approach emerged and why. Historiography on the

26 'Stop questioning China's zero-COVID approach', *People's Daily online*, 9 November 2021.

27 'One world, two systems: how China and US deal with derelict officials during COVID-19', *People's Daily online*, 19 August 2021.

28 'Commentary: US fails miserably in COVID-19 response', *People's Daily online*, 10 August 2021.

29 'COVID-19 pandemic reveals hypocrisy of so-called American democracy', *People's Daily online*, 28 May 2021.

30 Eugénie Mérieau, 'COVID-19, authoritarianism vs. democracy: what the epidemic reveals about the orientalism of our categories of thought', *SciencePo, Center for International Studies*, 28 August 2020.

human rights debate in China and on the study of the emergence of the international human rights regime and China's role inside it, provides important instruments to stimulate a discussion and to unveil the origins of the dichotomy and its epistemological groundlessness in the current debate on human rights.

Recent findings pushed human rights historians to move beyond what research outcomes had argued. For a long time, the thought was that the international human rights regime, born in the aftermath of the Second World War with the promulgation of the United Nations Declaration of Human Rights (UDHR) in 1948, was mainly a byproduct of the Western capitalist bloc. The declaration suggests that, on the contrary, the regime is the byproduct of a concerted effort. 'The deliberations of the UDHR do not reveal a simple West-East or North-South dichotomy'.³¹ Historical results show, instead, a convergence of the democratic liberal vision and the socialist one. The first, expressed in the civil and political rights, implied a limitation of the extension of the state-power described from article 5 to article 21. The latter, expressed in the social and economic rights, concerning the entitlement to social security, to work and to equal pay and work, the right to form trade unions, the right to rest and leisure, the right to adequate standard of living (food, clothing, housing, health) and the right to education. They all implied state programmatic and interventionist characters and are detailed from art. 22 to 27.³²

It is quite interesting to underline the role held by China in the drafting processes of the charter held between 1945 and 1948.³³ The Republic of China participated, with the other great powers, at the preparatory conference at Dumbarton Oaks in Washington in 1944.³⁴ In 1946 the human rights com-

mission in charge of drafting the charter was set up, headed by Eleanor Roosevelt (wife of the then US President Franklin Roosevelt) and by two vice-chairs (one of them was the Chinese representative, Zhang Pengjun). The commission was composed of representatives from the US, the UK, the USSR, Lebanon, France, China, Chile, Australia. During the discussions, Chinese representatives did not concentrate on economic and social rights but stressed provisions regarding equality, freedom of speech and expression. The draft declaration submitted by China to the commission on human rights contained ten articles, among which only one dealt with economic and social rights. However, at the final stages of the drafting process, China delegates supported the introduction of the right to food and clothing (art. 25). When the charter was finally put to a vote, while many communist countries abstained, China voted that human rights were applicable to all cultures. It should be underlined that, notwithstanding this liberal position adopted at the international level, the Chinese nationalist government, leading the Republic of China at that time, was profoundly illiberal and authoritarian in the domestic contest.³⁵

However, the dichotomy between liberal democracy and Chinese authoritarianism emerged only later, with the birth of the People's Republic of China (1949) and with the emergence of the Cold War, as a marker of East and West identities and of the ideological and political differences of the two blocs. On the Chinese side, the CCP dismissed liberal democratic human rights as a bourgeois slogan but Chinese society (students, workers, intellectuals, women), although controlled, persecuted and repressed, never stopped asking to enjoy civil liberties in a planned economic system and later, in a state-led capitalist economy: from 1957

31 Marina Svensson, *Debating Human Rights in China. A Conceptual and Political History*, Oxford: Rowman & Littlefield Publishers, INC., 2002.

32 Universal Declaration of Human Rights, United Nations General Assembly (Resolution 217 A), Paris, 10 December 1948 (<https://www.un.org/en/about-us/universal-declaration-of-human-rights>).

33 At that time, the Republic of China (not yet People's Republic of China) was still ruled by the nationalist party (GMD – Guomindang). As Marina Svensson and Stephen Angle demonstrate there has been a long discourse on human rights in China even before the second post-war. China has had indeed a rich and contested debate on human rights since the late Qing dynasty. In particular, the twenties, beginning with the 1919 May Fourth Movement, have been a very prolific period. In 1920 a *Manifesto for the struggle for freedom* was published demanding freedom of speech, publication, assembly, association. Together with civil and political liberties, Chinese intellectuals, such as Chen Duxiu, Li Dazhao, Lu Xun, began to debate about economic rights, including the right to subsistence. In 1922 another manifesto was published called *Our political proposal*, requesting the welfare for all the people. Marina Svensson, *Debating Human Rights in China.*; Stephen C. Angle & Marina Svensson (eds.), *The Chinese Human Rights. Reader. Documents and Commentary 1900-2000*, London and New York: Routledge, 2001.

34 At the time of the drafting processes of the UDHR, the People's Republic of China had not been founded yet. It was born indeed on October 1 1949. As a matter of fact, who took part to the drafting processes between 1945 and 1948 was the Republic of China, born in 1912, and its Nanjing government started in 1927.

35 Paul Gordon Laurent, *The Evolution of the International Human Rights: Visions Seen*, Philadelphia, PA: University of Pennsylvania Press, 1998; Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, Philadelphia, PA: University of Pennsylvania Press, 1999. Pierre-Etienne Will, 'The Chinese Contribution to the Universal Declaration of Human Rights, 1947-1948', in Mireille Delmas-Marty & Pierre-Etienne Will (eds.), *China, Democracy and Law. A Historical and Contemporary Approach*, Leiden: Brill 2012, pp. 299-374; Marina Svensson, *Debating Human Rights in China*.

with the Hundred Flowers Bloom Movement, in 1967-69 with the Cultural Revolution, in 1976-78 with the Democracy Wall Movement, in 1989 with the Tian'anmen Movement, in 2008 with the movement of the Charter 08. In the West, civil and political rights were presented as the marker of the 'free world', and touted as the only way to achieve market development and economic well-being. At the same time, market development was presented as the best incentive to democratisation. In this contest, as the next paragraph will argue, human rights were both embodying the old Western civilisation mission and being used in anti-Soviet terms.

4.1. The political use of the dichotomy: from the Jackson-Vanik amendment to the Magnitsky Act

During the last phase of the Cold War, human rights were effectively used by the US as a political anti-Soviet tool. The key legislative measure which made this possible in practice was the Jackson-Vanik Amendment to the US Trade Act of 1974, which became effective one year in advance of the two separate International Covenants on Human Rights (1976). The amendment transformed human rights, in their political and civil terms. It acted as an instrument of exclusion/inclusion of all communist regimes from international aid and lending schemes. A relaxation of the rules of exclusion was proposed for those regimes that, although still communist, were in open contrast with the Soviet Union and could represent, at the same time, an attractive opportunity of investment and trade.³⁶ This has been the case for the People's Republic of China.³⁷

Since the 70s, human rights issues featured in US engagement strategies. These meant to include China in the international capitalist system, to make her abide by the rules, and to justify her inclusion in front of the international public by promising the

potential of feasible democratisation.³⁸ However, whenever there was government repression of public demonstrations demanding civil liberties or alternative forms of political and social representations paralleled by liberalist economic reforms, United States chose to prize the latter and to fly over the former. In the year 1980, soon after Deng Xiaoping launched the liberalist economic reforms and, at the same time, repressed the Democracy Wall Movement, the People's Republic of China gained the MFN (Most Favorite Nation) status, which guaranteed equal rights in international trade, aids, loans and other credits, together with the entry into the World Bank. This status was subjected to an annual control of progressive steps toward a higher level of protection of human rights. In 2000, after the 1989 Tiananmen military repression, but also after the extensive privatisation campaign of the Nineties, the annual control procedure of the human rights situation was abolished. China was invited to enter in the World Trade Organization and received permanent MFN status³⁹ the following year.

Today, twenty years after the WTO entry and more than thirty from the end of the Cold War, the US, the European Union, and later, the UK and Canada, took the decision to hold Chinese individuals and companies accountable for specific human rights violations. Their legislative instrument was the Magnitsky Act, a bipartisan law passed in December 2012 during the Barack Obama administration to repeal the application of the Jackson-Vanik Amendment to Russia and to open the way for US trade relations to Russia and Moldova. From July 2020, the Magnitsky Act began to be applied to Chinese companies and persons identified as human rights offenders, and in December of that year, the European Union too adopted a similar

36 The amendment was proposed to deny permanent normal trading relations to non-market economies, starting with the Soviet Union, that restricted emigration rights and that committed other human rights violations. See F. Joseph Dresen & William E. Pomeranz (eds.), *The Legacy and Consequences of Jackson-Vanik: Reassessing Human Rights in 21st Century Russia*, Conference Proceedings, Occasional Paper n. 305, Kennan Institute, Woodrow Wilson International Center for Scholars, Washington, 2011.

37 Please see: Roberta Cohen, *People's Republic of China: The Human Rights Exception*, Occasional Papers, Reprint Series in Contemporary Asian Studies, n. 3, University of Maryland, 1988.

38 After joining the WTO, the People's Republic of China continued to implement new economic reforms, liberalizing trade and proceeding with its integration in the global economy. The financial sector was liberalized, tariffs were lowered and non-discriminatory trading rights were introduced. The average trade tariff rate was reduced from 43% in 1992 to less than 10% in 2004. In ten years, after China's accession to WTO, the volume of China-US trade increased from US\$80.5 billion to \$385.3 billion according to Chinese data or from \$121.5 to \$485.8 billion according to US data. American exports to China increased by 80% in three years after China joined the WTO (34% was the growth of the three preceding years); American imports from China rose by 92% (46% was the growth of the three preceding years). Wal-Mart, in 2004 American's largest corporation, had 80% of its 6.000 suppliers in China (its revenues made up 2% of US Gross Domestic Product). In 2011 Starwood Hotels & Resorts built in China one hotel every two weeks and China represented 30% of its worldwide growth. Wang Dong, *The United States and China. A history from the eighteenth century to the present*, Rowman and Littlefield Publisher, Plymouth, 2013, pp. 312-3.

39 Vladimir N. Pregelj, 'The Jackson-Vanik Amendment: A Survey', Congress Research Service, August 2005; William H. Cooper, *The Jackson-Vanik Amendment and Candidate Countries for WTO Accession: Issues for Congress*, Congressional Research Service, 26 July 2012

legislative measure.⁴⁰ This consisted of sanctions such as travel bans, asset freezes, and a prohibition on funds and economic resources for high-level officials and businessmen of undemocratic regimes, those guilty of gross human rights violations. This new system, which has been called the Global Human Rights Sanctions Regime, defines as 'gross human rights abuse': genocide, crimes against humanity, torture, slavery, arbitrary arrests or detention, extrajudicial killings, forced disappearance, sexual and gender-based violence, denial of the freedom of peaceful assembly and association, of opinion and expression, of religion. Thus, human rights, in this new sanctions' regime, are specifically and mainly defined as civil rights, in a replication and reinforcement of the historical dichotomy.⁴¹

40 'Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Accountability Act', US Department of the Treasury, Press Releases, 9 July– 31 July 2020; 'Treasury Sanctions Individual for Undermining Hong Kong's Autonomy', US Department of the Treasury, Press Releases, 7 August 2020.

41 'The Global Magnitsky Human Rights Accountability Act', Congressional Research Service, 28 October 2020; United States Code, Chapter 22 (Foreign Relations and Intercourse), § 2304 – Human Rights and security assistance, in Legal Information Institute, Cornell Law School, accessed 16 September 2021; Council Regulations (EU) 2020/1998 of 7 December 2020, Concerning Restrictive Measures against Human Rights Violations and Abuses, Official Journal of the European Union, vol 63, 7 December 2020.

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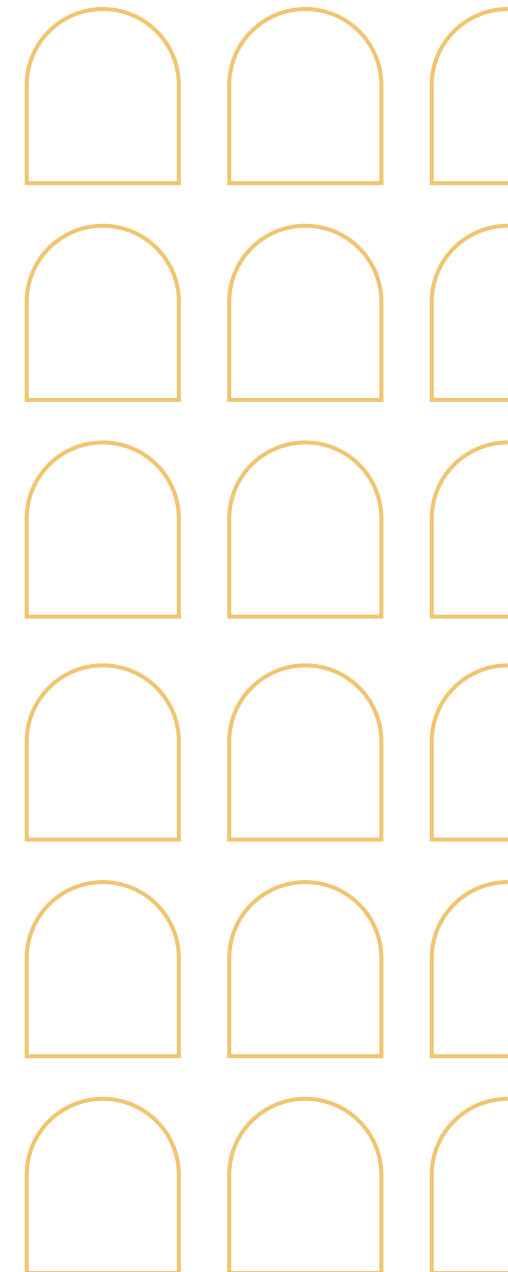
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