



Associated Press

Bound prisoners, their names and crimes on placards, were on display in Wuhan Province last year.

THOSE WHO have argued in the press that Peking's "human rights" record should not be made an obstacle to normalizing diplomatic relations between the United States and China are quite right. But they are right for the wrong reasons.

Their argument is one of extreme cultural and political relativism. The Chinese, we are told, are completely different from all other people, except from those on their periphery — in Korea, Vietnam and Japan — whom they profoundly influenced through the reach of Confucian civilization. Traditional China, it is said, emphasized not law but morality, not rights but duties, not the individual but the group. Moreover, the argument continues, given the impoverished circumstances of the world's largest population, contemporary China's rulers have had to choose between assuring survival through economic development and recognizing individual human rights, and not surprisingly they have opted for survival.

Happily, it is said, this choice has won the natural acceptance of a collectivist-minded people who have never experienced Roman law, Magna Carta, and the English, American or French revolutions with their emphasis on the rights of man; they do not miss what they never had. Thus, the conclusion emerges, it would be dangerously self-righteous demagoguery — indeed, cultural imperialism — to suggest that Chinese, like other peoples, might wish their government to observe minimum standards of fundamental decency in dealing with them.

But this argument, often advanced by those who never hesitated to condemn the repression of Chiang Kai-shek's Kuomintang both before and after its retreat to Taiwan, rests on half-truths. It offers a caricature of imperial China, whose legal system, in some eras the world's most sophisticated, reflected rules, institutions and procedures designed to curb arbitrary official action. That traditional morality enjoyed even greater prominence than law did not mean that it tolerated official oppression of individuals. Confucian ethics required government, and even the emperor, to behave benevolently toward the common people. According to the prevailing political theory, emperors who betrayed the imperial clan rules by oppressing their subjects could expect to lose the Mandate of Heaven through a righteous revolt. And dissatisfaction with the administration of justice was a classic portent of dynastic decline, as contemporary China's historically minded rulers and people are well aware.

#### The Tale of an Upright Judge

SIGNIFICANTLY, the Peking government is now popularizing the more positive aspects of imperial Chinese law rather than its repressive features. All over China, on both stage and screen, the traditional Chinese opera "Fifteen Strings of Cash" — banned by Mao's wife for a decade — is again delighting audiences. It tells the dramatic story of how an upright judicial official reversed the unjust conviction of innocent persons from whom false confessions had been extracted through torture.

In January I attended a performance of this opera in Changsha, before a large audience more excited than any

plain about such treatment. The fact that his ancestors lived under Confucianism does not mean that a Chinese feels pain less than the rest of us — or even accepts it more readily.

This is also the meaning of Peking's counterattack on Moscow — disseminated at home as well as abroad — for imposing "a police tyranny" and "inquisitorial persecution," frequently confining political dissenters in mental hospitals and depriving them of all rights including a public trial, and sending over a million other prisoners to more than a thousand labor camps (after allowing them legal protections far greater than those yet available to their counterparts in China, it should be noted).

China's new leadership is engaged in a comprehensive campaign to restore the morale, enthusiasm and productivity of the articulate segments of the nation, whose active efforts are essential to Peking's fulfillment of the ambition to become a modern, powerful socialist state. Not only intellectuals but also bureaucrats and workers who have lived through the successive campaigns against counterrevolutionaries, the anti-rightist movement, the Cultural Revolution, and the purge of Lin Biao's followers want reassurance about their personal security. So long as fear of arbitrary action persists, and Peking media concede that fear has been rampant for years, one cannot expect officials to take bold initiatives, scientists to innovate, teachers to present new ideas and workers to criticize bureaucracy.

#### The New Constitution

THE CURRENT LEADERS have made it clear that the relationship between economic development and individual rights is not an either/or proposition and that certain minimum guarantees of individual rights are essential to promote development. Yeh Chien-ying, chairman of the standing committee of the National People's Congress, stated recently that China must fully develop "social legality" in order to liberate "the socialist activism of all the people." Stalin's heirs acted on a similar premise, and this Soviet reaction to Stalin long ago led some observers of China to anticipate a similar trend there after Mao's passing. Despite its distinctiveness, China, it turns out, is not totally different from the rest of the world in either human or economic terms.

Thus the Peking government has again begun to use the term "human rights" in the same sense of protecting individuals against fundamental unfairness as we do, as it did during the law reform era of 1956-57 and as the Chinese Communists did prior to 1949 when they sought to enlist popular support against Chiang Kai-shek's regime.

A new constitution has just been enacted, resurrecting the rights of an accused to make a defense and to have a public trial, as had been provided in the 1954 constitution that fell into disuse. The procuracy, which is supposed to function as a watchdog of legality as well as a prosecutor, has been reestablished, and the constitution has reinstated the requirement that police obtain the approval of the procuracy in order to make a formal arrest. New laws and regulations to implement these rights have been promised, and

# Human Rights in China: U.S. Should Press Issue, But Not As Barrier to Ties

## New Laws, Constitution, Revived Opera All Signal Peking Leadership's Sensitivity to Pressures

By Jerome Alan Cohen

Its entry into the United Nations has involved it in the slow but inexorable multilateral efforts to formulate international standards to regulate each government's treatment of its own citizens. Each time a human rights proposal comes before a U.N. agency China, like the United States, has to make a decision in the glare of publicity. Significantly, it has several times voted for General Assembly resolutions outlawing torture, thereby conceding that the world community has the right to set minimum due process standards for all governments to observe.

But will China sit in the U.N. Commission on Human Rights? What should it do about the Universal Declaration of Human Rights, the treaties enforcing the declaration's principles and the flow of General Assembly resolutions seeking to go beyond the proscription of torture to other abuses? Should it vote for proposals to condemn Chile and other states for human rights violations? How diplomatically isolated can Peking afford to be in its lack of enthusiasm for such international efforts? Yet how hypocritical can it afford to appear by voting abroad for rights that it does not grant at home, such as an independent judiciary, equal justice, access to counsel and a privilege against self-incrimination?

Its current leaders are extremely sensitive about sustaining China's reputation as a civilized government in the face not only of propaganda attacks from the Soviet Union, their rivals on Taiwan and other partisan quarters but also of more objective criticisms by governments and by respected private international organizations and commentators. An early sign of this was their refusal to extend the visa of Canadian correspondent Ross Munro shortly after his series of articles on human rights in China was published last fall.

If the experiences of the Soviet Union and of Taiwan are any guide, China's increasing exposure to international contacts and ideas, as well as its further economic, educational and social progress, can be expected to gradually strengthen domestic demands for justice and governmental sensitivity to those demands. This why the normalization of diplomatic relations between Washington and Peking, so long as it is achieved without exposing Taiwan to a forcible takeover, can be expected to be a plus for human rights

rather than a minus. It will substantially expand political, economic, cultural and other contacts between our governments and peoples and facilitate an exchange of ideas concerning due process values as well as "human rights" in the economic and social sense — freedom from poverty, disease, illiteracy, hunger and other scourges — that China has done so much to promote.

Let us remember that Washington is only contemplating formal diplomatic relations with Peking, not a mutual defense treaty or military or economic aid. A country's human rights record ought to be extremely odious before the United States concludes that, on balance, it is better not to maintain the minimal formalities of diplomatic intercourse. Human rights considerations weigh more heavily, however, when we become allies and sponsors of repressive governments, as we have been in Taiwan, South Korea and the Philippines, to cite a few Asian examples. There is no prospect of Washington and Peking forming so close a relationship, in part because our two countries have such differing views of individual rights.

Thus our commendable desire to improve relations with Peking — perhaps the most favorable diplomatic development of the decade — need not undercut our commendable desire to see our government again pursue policies that foster human rights as well as other values. Rather than exclude one quarter of humanity from our human rights policy and thereby lay ourselves open to charges of hypocrisy and expediency, President Carter should point to the mounting evidence from China of man's desire to curb arbitrary rule and to the Chinese government's encouraging, if still limited, response, just as he has done concerning similar situations in other countries. He should also make clear that our continuing commitment to a human rights policy is no bar to normalization.

Although Secretary of State Cyrus Vance reportedly expressed American concern about human rights in China to China's leaders last summer, the president has remained conspicuously silent on the subject. Yet, in order to have diplomatic relations with the Chinese, we need not deny that they share some basic human needs with the rest of humanity.

## Who needs it?

The sunset is lovely, but it means the time has come to pull in at a motel, and the children are getting edgy. The last place you passed looked nice, but that was two hours ago. There's another one just ahead, but there are no vacancies. Six more miles, another motel and finally you're able to check in.

But it has no pool for that refreshing swim before dinner. No, they won't put a cot in your room; you have to take two rooms. No restaurant; just a coffee shop where the choice is limited to ham, cheese, or ham and cheese. You yearn for home when you should be enjoying your vacation trip. Who needs it?...

Another day. Just 47 miles to go, and you look forward to dinner in that quaint steak house with a view of the bay; the one Aunt Mary liked so well last summer. But, stuck behind a truck, you worry you won't get there in time. Isn't there a four-lane highway you could use? You barely make it by eight. Didn't you hear? The place closed last winter. But there's a French restaurant on the other side of the bay. Why not. No time to ask questions. The menu lists a gourmet's dream, and prices to match. No problem, that's what credit cards are for. Except Chez Posh doesn't honor credit cards. Who needs it?...

Vacation's over, but there's still some fun ahead telling your friends what you've seen. Yes, they've been there too. And they ask you if you saw

the trolley car museum, and the house where President Van Buren stayed during the snowstorm. You didn't but you sure wish you had, because you're a trolley buff and also dote on historic sites. How could you have missed them? You'll probably never get back there, and you're annoyed. Especially since you could have scheduled them, had you only known in advance that the caves and waterfalls are a whole day's excursion. It seems the whole trip was one disappointment after another. Who needs it?...

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Who needs it? You do.

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other I have seen in four visits to China. Later, on different occasions, I asked several Chinese whether the recent revival of this superb entertainment had any contemporary significance. Their answers were similar. As one put it: "Isn't it obvious? It means that the Chinese people will no longer tolerate arbitrary official acts, that torture is wrong, that confessions may not be coerced, that officials must go down among the people to get the facts and must weigh evidence carefully."

Of course, this theme ties in with the current massive campaign to discredit the "gang of four" — Mao's widow and her three Shanghai associates — who were overthrown shortly after the chairman's death in September 1976. They have been charged with terrorizing the populace by arbitrarily arresting large numbers of political opponents, confining them incommunicado for years at a time, subjecting them to endless "struggle meetings," midnight interrogations and other intimidation that sometimes led to suicide and murder. They have also been accused of unfairly firing tens of thousands of party members, bureaucrats, scientists, teachers and others on the basis of hearsay, speculation and inadequate evidence without giving them an opportunity for a hearing or review.

Undoubtedly there is an element of scapegoating to this effort to make the "gang of four" exclusively responsible for the government's widespread abuses during the past generation. What we are witnessing is a de-Maoification process that is less disruptive than de-Stalinization was for the Soviet Union. Whatever the fairness of the claims that only the "gang" violated the rights of the Chinese people, these accusations plainly acknowledge that governments should not behave in this way and that people have a right to com-

the 1957 Security Administration Punishment Act has just been reissued to regulate the conduct of police in punishing minor offenses. It is possible that even "people's lawyers," moribund since the late '50s, may be revived.

To be sure, we cannot expect Peking to establish the "rule of law" in a western sense. The 1978 constitution did not reintroduce the principle of judicial independence of political authority espoused by the 1954 constitution, nor did it bring back that document's promise of equality before the law. Unlike the Soviet Union, which declared an end to "class struggle" in 1961, China has reaffirmed the need for the "dictatorship of the proletariat" over those who still bear the constitutionally enshrined labels of "reactionary capitalist," "landlord" and "rich peasant" almost 30 years after those labels were originally imposed, as well as over "counterrevolutionaries" and "bad elements." Indeed, Peking has just added yet another vague category to be struggled against — "newborn bourgeois elements," persons of good class status who, because of their opposition to the party line, remove themselves from "the people" and become the enemy.

Moreover, only events will demonstrate whether the newly revived constitutional guarantees will remain mere paper reforms, keeping the promise to the ear but breaking it to the hope. The Chinese people do not need Moscow radio to remind them that the attack on the "gang of four" and the present campaign to weed out its supporters are committing some of the very abuses with which the "gang" is charged. Failure to implement the new reforms will seriously handicap the regime's program for reenergizing the loyalty of its most talented groups and replacing fear with personal security, cynicism and apathy with enthusiasm and pride.

#### Extreme Sensitivity

THE PRESSURES felt by China's leaders to preach and practice certain minimal due process values are primarily domestic. Nevertheless, they are gradually being reinforced as a result of China's participation in the world com-

Cohen is associate dean and director of East Asian studies at the Harvard Law School. Among the books he has written or co-authored are "China Today," "People's China and International Law," and "The Criminal Process in the People's Republic of China, 1949-63."