

## **I. Introduction**

On the day that Hu Yaobang died, April 5, 1989, a friend brought me to the centre of Peking University, just beside the old bookstore and as we reviewed the *dazibao* ('the last honest man has died') my friend mused – 'there's a political storm coming, and it will end in blood.' This was months before the military assault on Tiananmen Square and numerous other locations in Beijing. Such prescience is not uncommon among China's intellectual and political elites whose sense for the changing currents of politics and power far outstrips the pale efforts of diligent academic scholars. While I have not heard directly on these matters recently, I suspect that friends and colleagues in China might well be revisiting their experiences during 1989 as they consider what will be the outcome of the phenomenon of Charter 08.

The document entitled "Charter 08" was inspired by the discourse around Charter 77 associated with Vaclav Havel and others calling for political reform in Czechoslovakia in 1977. Charter 08 was signed by over 300 prominent Chinese intellectuals, officials and community leaders on the 60th anniversary of the Universal Declaration of Human Rights (December 10, 2008), and offers a framework for political and legal reform in China. The document begins with a critical review of the past century of political and legal developments in China but levels particular criticism against political abuses under the People's Republic of China, including the Cultural Revolution and the 1989 Tiananmen Massacre. The document recognizes improvements in living conditions in China under the policy of reform and opening up since 1978, and acknowledges the Chinese Government's important steps in signing the ICESC and the ICCPR and its promise to promote a human rights action plan. However these efforts are dismissed as paper formalities issued by a regime that is committed first and foremost to maintaining its own power.

## II. Principles

Charter 08 articulates six fundamental principles including freedom, human rights, equality, republicanism, democracy, and constitutional rule. Many if not all are compatible with Chinese traditions of legal and political culture.

1. Freedom: Described as a universal human value, and includes freedom of speech, freedom of press, freedom of assembly, freedom of association, freedom in where to live, and the freedoms to strike, to demonstrate, and to protest. The first four of these principles are recognized in Article 35 of the PRC Constitution. The freedoms to strike, demonstrate, and protest are broadly commensurate with rights enshrined in the 1978 PRC Constitution – including rights to strike and the "four big freedoms" (to speak out freely, air views fully, hold great debates, and write big-character posters), although these were later removed in the 1982 Constitution. Of course the formality of recognition stands some distance away from the reality of operations, but nonetheless the principles themselves are not wholly alien to China's rulers.

2. Human Rights: Centers on the inherency of rights. Contrast with PRC Constitutional doctrine on socialist human rights as conditioned on needs of socialism and on compliance with state and social interest. Also issue of inherency vs. grant (and by implication issues of recognition, protection, enforcement). Nonetheless there are ground for discussion and possible accommodation with the Human Rights principle of Charter 08.

3. Equality: Already articulated in the Constitution – e.g. equality before the law; equality of nationalities. Despite issues of formalism in conceiving equality (based on legal forms) and enforcing equality (formal equality dilemma), there is still the possibility of accommodation within existing system.

4. "Republicanism": Suggests alternatives to the unitary state model of the PRC. Also potentially in conflict with core Party doctrine on the primacy of Party rule.

Nonetheless the principle of “Republicanism” describes an environment of competing interest groups, civil society groups and individuals that is at least marginally comparable to the interest group politics process that currently is seen to characterize the NPC and much of the government rule making process.

5. Democracy: Articulates ideals that have already been accepted in name at least by the PRC régime. Issue of course is what form of democracy (query issues of “Western” democracy; socialist democracy; democratic centralism etc.). Charter 08 suggests that democracy means the holders of major official posts in government at all levels should be determined through periodic competitive elections. Obviously not in place at the moment. However, the tentative beginnings of local elections over the past 15 years suggests that there may be room for accommodation in this element as well.

6. Other principles of Popular Sovereignty; People’s Exercise of Political Power; Dignity, Freedom, and Human Rights for Minorities are already affirmed nominally in the PRC Constitution Articles 2, 4, and 33 and in other laws and policies. The final principle of Constitutional Rule and the Centrality of the Legal System and Legal Regulation to protect the freedom and rights of citizens, limit and define the scope of government power and provide appropriate administrative systems is also affirmed nominally in the PRC Constitution Art. 5.

Thus, Charter 08 sets forth a set of governing principles that are broadly commensurate with existing formal statements of PRC governance. This offers important opportunities for government to strengthen its commitment to ideals of human rights in practice. Of course, the basic challenge that Charter 08 poses for the PRC regime is not so much a matter of complementarity of ideals but the meaning attributed to those ideals and the possibilities of predictable and consistent practice of enforcement and compliance. In each of the principles listed, the conflict with the current PRC régime centres on normative interpretation. The rights recognized and conferred by the PRC Party/state are all dependent on maintaining the Party’s monopoly on political power, whereas the rights

embodied in the principles of Charter 08 are not so constrained. In an important sense, Charter 08 challenges the Party/state to make good on its claims to recognize a variety of constitutional and human rights by using the regime's formalistic language but offering interpretations that are not limited by the political imperatives of the regime. The challenge to governance then becomes not so much an issue of the principles themselves but rather the régime's willingness to withdraw its conditions for fulsome recognition and enforcement.

This is a wonderful example of *Selective Adaptation* in local (as opposed to international) context. Charter 08 selectively adapts principles already articulated by the ruling Party/state, but interprets them differently based on different normative framework. Factors of perception (perception of what the ideals mean to the Party/state and what they can mean in other normative contexts); complementarity (potential for harmonizing Party/state ideals with Charter 08 principles); and legitimacy (competing claims for legitimacy) are all evident.

### **III. Proposals**

Tension between Party/state ideals and Charter 08 ideals, and the role of *Selective Adaptation*, are revealed in the steps advocated by the Charter 08 signatories to put the articulated principles into practice.

1. New Constitution: This would serve as the basis for human rights and political authority, and which would require compliance by all groups (including the Communist Party of China). This proposal offers a departure from current arrangements that effectively exempt the Party from legal and constitutional scrutiny.
2. Separation of Powers. Charter 08's articulation of the need for a separation of powers of government runs counter to current arrangements of the unitary state. Unitary state as reaction to problems of vertical integration (silos); factionalism; *benwei zhuyi* etc. Preoccupation with strong state in reaction to

historical legacy of state weakness. Query how effective has the unitary state been as a remedy for these ills (note literature of functional federalism; fragmented authoritarianism, etc.). However, in the ongoing process of administrative and bureaucratic reform, separation of powers has already become an operational norm – jurisdictional issues (courts vs. NPC standing committee on legal interpretation; administrative bodies vs. NPC on issues of policy implementation). However, meaningful division of power would of course be problematic for the Chinese Communist Party.

3. Legislative Democracy: Already compatible with existing Party/state doctrine, but query issue of legislative initiative with Party (*zheng fa* system).
4. Independence of a judiciary: Already expressed in Constitution. However, challenge is in operations – query role of adjudication committees; Party Secretaries in Courts; etc.
5. Public control over civil servants and the bureaucracy: Already expressed in Constitution. Potential legal avenues for enforcement through Administrative Litigation Law system (also State Compensation Law). However, institutional capacity issues arise in enforcement.
6. Guarantees of human rights; establishment of a human rights committee: Potential for accommodation, but query effect on Party rule. Potential for courts to establish human rights chambers and Party Discipline Inspection System to include human rights review.
7. Abolition of “reeducation through labour”: Already found acceptance in government and Party leadership – issue is not so much politicization (see Seymour), but underfunding and maltreatment of detainees.

8. Elections of public officials: Conflicts with the Chinese Communist Party's assertion to a legitimate monopoly on power. But potential accommodation in local elections process. Main issue of accountability, which might be achieved through other types of administrative reforms.
9. Equality among rural and urban residents: Seems largely unproblematic for the ruling Party, which has already made significant reforms in the *hukou* system that discriminated against rural residents. However, the mechanisms for bringing equal treatment of rural and urban populations remain still to be made fully effective.
10. Freedoms on forming groups, assembly, expression and religion: Challenge the limits on these rights articulated in the PRC Constitution and particularly the Party/state's purported monopoly on the authority to limit recognition of such rights, frequently qualified in terms of national dignity and national security. Issue ultimately is about legal process.
11. Policy reforms in areas of private property, financial and tax reform, social security, and environmental protection are each nominally compatible with existing state law and policy. Once again the issue is implementation and institutional capacity. Proposals for legal institutions and processes to ensure fairness, justice, and equal access to opportunity represent challenges to improve China's administrative law systems (including provisions for judicial review and the 'letters and visits' system) that bespeak the current inadequacy of these systems. Nonetheless, potential for accommodation exists.
12. Federated republic that would extend equality and fairness to Hong Kong and Macau along with existing freedoms; would find a peaceful unification solution for Taiwan, and providing a workable framework for China's nationality minority areas in which all ethnic and religious groups can flourish. These goals seem broadly commensurate with existing PRC policy,

although Beijing has retained for itself options to assert the primacy of its political authority in each of the regions discussed.

13. “Truth in Reconciliation” process to restore reputations of political targets and political prisoners, release of political prisoners and prisoners of conscience, and the payment of reparations as well as an investigation commission to determine facts of past injustices and atrocities. While this may well be the most dramatic proposal in Charter 08, it also raising important opportunities for building political unity in China. Facing a significant legitimacy deficit, the Chinese Communist Party has consistently refused to open up historical records or engage in serious reflection on the range of political campaigns and disasters that have beset China since the PRC was founded. Under circumstances where many in leadership positions seem keen to strengthen the governance capacity of the Party/state, Charter 08’s proposal on truth and reconciliation offers an opportunity to rise above the limitations of ideological rigidity and political orthodoxy to confront the errors of the past and build a new consensus on the future.

Here again, we see the contours of *Selective Adaptation* in the policy proposals of Charter 08, as it reinterprets the political, legal, and administrative arrangements necessary to achieve the principles articulated earlier. Perception, Complementarity, and Legitimacy of competing ideals, underlying norms, and institutional mechanisms are evident. As well, Institutional Capacity questions are also present, as the policy proposals centre on institutional reforms and their potential to support reform.

#### **IV. Implications**

The fundamental challenge posed by Charter 08 rests on the conclusion that China’s development cannot be fully and equitably realized without far-reaching political and legal reforms. Over the past several decades and particularly since the disaster of Tiananmen in 1989, the Party/state has offered the people of China a trade-off of economic wellbeing in exchange for political loyalty. Similar to the “zone of

indifference” spoken of by Tang Tsou to describe the government’s grant of increased socio-economic autonomy, the trade-off of economic wellbeing for political subservience – what might be termed a ‘development bargain’ - was often characterized by reference to the discourse of stability.

Coupled with the importance of stability has been the insistence on political orthodoxy. As expressed in the Preamble to the 1982 Constitution,

“The basic task of the nation in the years to come is to concentrate its effort on socialist modernization. . . . The Chinese people must fight against those forces and elements, both at home and abroad, that are hostile to China's socialist system and try to undermine it.”

During the early 1990s, when economic growth rates continued to rise and universal prosperity seemed possible, the ‘development bargain’ seemed to hold. More recently, however, problems of income inequality, official corruption, abuse of power by public officials as well as private market actors, failures to provide environmental protection, increased costs and inaccessibility of health and educational services have all challenged the viability of the development bargain. Yet rather than simply urging that greater attention be paid to increasing economic wellbeing, the signatories of Charter 08 have urged broad political and legal reforms as a necessary precondition for realizing China’s development goals. This, coupled with the skillful appropriation of rights discourses already acknowledged by the Party/state, has posed a fundamental challenge to regime legitimacy. In effect Charter 08 stands for a position that says, the promises of the development bargain will remain unmet unless the Party/state gives operational meaning to the ideals expressed in official rhetoric on rights and development. While the challenges posed by Charter 08 are unavoidable, the opportunities are also significant. For many of the principles and proposals of Charter 08 find resonance in ideals of PRC governance and may indeed further realization of those ideals.

## **V. Comparisons with June 4**

We are tempted to conflate various expressions of dissent in China into a single trend with a more or less consistent narrative emphasizing demands for more political



and civil freedoms and more government accountability for misrule. From such a perspective, Charter 08 seems a logical development from 1989. And indeed, the focus of critique seems eerily similar, as issues of corruption, official abuse of power, lack of accountability of governance institutions resonate from 1989 to the present. So too does the impact of economic crisis and attendant policy debate and discord. Compare the current international economic crisis and its large-scale private sector contraction with the 1988 economic crisis in China that saw massive lay-offs of migrant workers as state investment in construction was severely curtailed. Beneath the apparent façade of political unity, policy debates over China's current political and economic challenges might well generate uncertainties about political leadership of the sort that emboldened the student movement and hampered the regime's response. Such similarities with 1989 should give pause to those who are tempted to dismiss Charter 08 as a minor disruption by a small collection of powerless dissidents.

However, the significance of Charter 08 would seem to derive as well from significant distinctions from 1989 on matters of organization and participation that reflect changing conclusions about the processes of legal and political reform. Unlike the increasingly well organized student movement in 1989 (the formation of the 'democracy university,' the highly formalized pass system used to provide access to the Monument to People's Heroes and the central student leadership; the processes and rules developed for collective decision-making among the students, all speak to the increasingly formal organizational practices that emerged); the Charter 08 signatories are connected mainly by their commitment to the ideals expressed. They work in different institutions whose goals are seldom uniform; they have no formal membership organization amongst them; their public statements and decisions have shown little evidence of collective decision-making. In a sense, Charter 08 reveals the extent to which the lessons of Tiananmen were learned.

For the political crisis of 1989 did indeed end bloodily as my friend has suggested it would, and stands as a timeless reminder of the regime's willingness to use military might against China's own citizens to retain power. And such was the message expressly

conveyed by the regime to its subjects. Subsequent campaigns against independent labor organizers, *Falungong* practitioners, and lawyers reveal the consistency of the message: organizational alternatives to Party leadership are unacceptable and will be suppressed. And so we find very little evidence of publicly organized resistance activities around Charter 08. Instead we find a pattern of carefully practiced engagement with establishment institutions. Formal letters to public security units inquiring after signatories like Liu Xiaobo who have been detained; published articles articulating Charter 08 ideals (prior at least to the suppression campaign against Charter 08); formal remonstrance with political and judicial organs, all speak to a level of engagement with establishment institutions that far surpasses the actions and expectations of the 1989 students.

Other distinctions are evident as well. The status of the principals has changed – no longer students (to whom Li Peng retorted that his daughter was older than the student leader Wuerkaixi), the signatories of Charter 08 include respected intellectuals at major PRC institutions. This difference in status reflects more than simply the passage of time, as the Charter 08 Signatories vary widely in age – too much so to be counted as direct participants in the 1989 student movement. More importantly this change of status reflects the extent to which members of establishment institutions are no longer content to use students as proxies for their political activism. This in turn reveals both the extent of concern over problems of PRC governance - the Charter 08 document juxtaposes continued deprivation of human rights with continued reliance on ineffective and corrupt institutions of the rule of law and concludes that what has emerged is a system in such decline that “change is no longer optional” – and the increased breadth of society willing to express such concern.

While the Charter 08 document reveals a critique of the PRC regime that has much in common with the student complaints of 1989, Charter 08’s critique and policy proposals run much deeper than those proposed in 1989. Once again the distinction involves more than the passage of time and the expanding parameters for acceptable dissent. While a shared concern in 1989 and 2009 is corruption, the proposed remedy of systemic reforms

that require publicly elected and accountable officials and meaningful rule of law administration goes far beyond what was demanded in 1989. While the 1989 movement can fairly be described as an effort at reforming the Party (most of the 1989 students wanted to join the Party), Charter 08 expressly calls for multi-party democracy. One implication from this is the possibility that the call for more far-reaching reforms from critics whose links with the Party and the political establishment are far closer than that enjoyed by the 1989 students was in fact a product of that closer experience.

## **VI. Conclusion**

The phenomenon of Charter 08 remains in its early days. Unfortunately, the government's response to Charter 08 has been largely unsympathetic. Prominent intellectuals signatory to Charter 08, such as Liu Xiaobo, Zhang Zuhua, Jing Quisheng, and Pu Zhiqiang have been harassed and in some cases detained. Efforts by the family of Liu Xiaobo to receive details of his detention in accordance with Chinese law have been rebuffed. Peking University Law School has required its students to boycott Charter 08 and other schools are sure to follow suit. With increased public dissatisfaction over governance, coupled with the régime's increasingly draconian repression of dissent, popular support for Charter 08 has grown. Beginning with 303 signatures in December 08, the document had gained 8,100 by the end of January. Despite threats of arrest and detention, Chinese people from differing walks of life including intellectuals and ordinary workers, seem to be increasing their participation in general human rights discourses through their engagement with Charter 08. And while it seems unlikely that the regime will formally accept the proposals of Charter 08, it seems equally likely that components of Charter 08 will begin to affect the discourse of legal and political reform.

To a significant degree this would seem likely because of the differences between Charter 08 and the 1989 student movement. The lack of apparent organizational cohesion makes the Charter 08 phenomenon more difficult to suppress – both organizationally and politically. With no headquarters to bombard and a membership with both status and connections, supporters of Charter 08 may well elude certain elements of regime repression based on the thinnest of rationales. As well, the willingness to rely on

establishment institutions draws on the professional expertise of many of the Charter 08 signatories, who may well be more adept at eliciting institutional protection than the government security apparatus may be in opposing it. Indeed the Charter 08 phenomenon may well invite the sort of politicization of establishment institutions that demonstrates a fundamental thesis of the document. While the final outcome of the process of challenge and response associated with Charter 08 remains obscure, and may never escalate to the degree faced by a similarly uneasy and insecure regime in 1989, the commonalities of message and the differences of organization and participation make Charter 08 a matter worth continued observation and study.