CHAPTER 4

Human Rights and Democracy with Chinese Characteristics?

China’s rise to superpower capability and status and its increasing influence in shaping the normative and substantive structure and content of international legal order has aroused significant concern that human rights development and liberal democracy will be placed in a precarious position, as other non-liberal States may look to emulate China’s development model and justify their violations of human rights and authoritarian, or even totalitarian, governance. Harry Harding describes China’s political system as a ‘consultative authoritarian regime’ marked by ‘significant departure from the totalitarianism of the past but not yet a fully democratic, or even a quasi-pluralistic, political system. … It is increasingly consultative in its recognition of the need to obtain information, advice, and support from key sectors of the population, but still authoritarian in its desire to suppress dissent and maintain ultimate political power in the hands of the party’.1 Robert Jackson strongly doubted Western countries’ capacity or willingness to force China to accept their demand for democratisation or improvement of its human rights record, partly because to do so ‘would go against the fundamental commercial interests of such countries. It would be an irresponsible and unrealistic foreign policy’.2 In contrast to Bruce Gilley’s contention that ‘there is simply no compelling argument that China will be a great exception to the nearly-worldwide movement of social emancipation from “sclerotic authoritarianism” that we now call democratization’,3 Andrew Nathan speaks of the ‘disturbing possibility’ that China’s experience may suggest that ‘authoritarianism is a viable regime from even under conditions of advanced modernization and integration with the global economy’.

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3 Bruce Gilley, China’s Democratic Future: How it will Happen and Where it will Lead (New York: Columbia University Press, 2004), 251.
However, is authoritarianism\(^5\) perforce incompatible with human rights and democracy? Do Western conceptions of human rights and democracy constitute the only viable and proper interpretations to which there are no alternatives? What are Chinese conceptions of human rights and democracy, and how might these conceptions enhance or undermine the human rights project? With its increasingly adept socialisation with international organisations as discussed in Chapters 3 and 6, how has China’s approach to international human rights law evolved since its realisation of the roles it may play in shaping international law, how international human rights norms might already have contributed to human rights protection under China’s Constitution and laws, and might China reconcile its governance with the rule of law? Are democratic practices entirely absent in China; if not, in what forms do they manifest? At a fundamental level, is it possible that China’s experience may help augment our understanding and the development of international human rights law and democracy through a mixture of convergence and divergence? These questions raise interesting and important issues from scholarly, political and legal standpoints that this chapter examines.

This chapter first discusses China’s conceptions of human rights and democracy, cognisance of which is essential not only to understanding the human rights situation in China but also to the legitimacy of international human rights law and the merits and flaws of liberal democracy. As noted in Chapters 1 and 2, many Western States and scholars assume that China does not subscribe to international human rights law and is a non-liberal State least likely to be compliant with international human rights norms and principles. This chapter thus proceeds to explore the evolution of China’s approach to

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5 Many Western scholars confuse authoritarianism with totalitarianism and define it as absence of democracy and meaningfully protected human rights. Anne-Marie Slaughter, in ‘International Law in a World of Liberal States’, 6 European Journal of International Law (1995), 593, 514 and 509, argues that liberal States constitute ‘a world of peace, democracy, and human rights’ and ‘[l]iberal international relations theory applies to all states. Totalitarian governments, authoritarian dictatorships, and theocracies can all be depicted as representatives of some subset of actors in domestic and transnational society, even if it is a very small or particularistic slice’ (emphasis in original). As noted in Chapter 2, an authoritarian dictatorship is a misnomer. An authoritarian government relies on inculcation in its people of certain beliefs, norms and values in order to maintain and exercise control, and not on overt coercion as a dictatorship does. In addition, an authoritarian government may be a democratically elected one, as many Western governments evidence.