

# BALANCING INDIVIDUAL RIGHTS AND GROUP INTERESTS: WHO DECIDES?

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**H**ow our two countries define, determine, and balance individual rights and group interests fundamentally impacts mutual perceptions held by our respective peoples and governments. The commonly accepted view is that individual rights are more valued in the United States—and the West more generally—while collective interests are more valued in China—and Asia more generally. Chinese people often view Americans as selfish and uncaring toward family and society and perceive our democracy as chaotic, inefficient, and unjust. At one extreme, some Americans believe that the Chinese people and government do not respect individual rights or value each human life, and that individual interests are unfairly subordinated to economic development and asserted state or Communist Party interests without due process.

In fact, our two countries and cultures may not really be so far apart in how we view the importance of both individual rights and group interests, especially in this complex era of wrenching economic, social, and political change.

We both agree that individuals are important and that they contribute to and promote group interests. Both our traditions respect and encourage

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individualism in the sense of self-realization of the individual. In theory and in practice, in both our countries any individual (who typically had to be male) could and can rise to a position of economic, social, and political power and even become head of state. Indeed, Americans attribute the inspiration for our own open and competitive civil service system for selecting career government employees to the Chinese imperial examination system, which recognized and rewarded individual merit through a system of neutrally administered written examinations.

We even seem to agree in principle on many of the most important individual rights. China's 1982 Constitution enumerates a list of fundamental rights of citizens that sound familiar to Americans, including the right to vote and stand for election; freedom of speech, press, assembly, association, procession, demonstration, religion, person and correspondence, and the right to criticize and complain to the government.<sup>1</sup> China also now recognizes the right to own private property and receive compensation if it is taken by the government in the "public interest,"<sup>2</sup> and recently amended its Constitution to provide that the state "respects and preserves human rights."<sup>3</sup>

Turning to how we value "group interests," our two peoples both cherish family and community, have rich traditions of associational activity, and feel strong loyalty to our respective countries. We both love our heroes and heroines who bravely sacrifice their interests and themselves for a greater good. We also agree that, as members of larger groupings and communities, the highest expression of which for most of us is the state, individuals must be willing in some respects to accommodate their own particular rights and interests to legitimate group or "public interests."

In the United States, we think of this compromising of individual rights as a "social contract," entered into voluntarily by members of society who cede limited powers to government, subject to continuing majority consent and certain constitutional guarantees of individual rights. In China, this compromise is expressed as the constitutional principle that "citizens, in exercising their rights and freedoms, may not infringe upon the interests of the state, of society or of the collective, or upon the lawful freedoms and rights of other citizens,"<sup>4</sup> appearing to give prominence to group interests.

While we both recognize the importance of group interests, what is less clear is how we respectively define “group interests.” Are these national, state or provincial, community, family, industry or other kinds of interests? Chinese tend to emphasize the exercise of individual rights *in service of* and *duties to* the nation and the collective while, in the United States, which was founded by individuals fleeing repressive governments, our discourse tends to emphasize protecting individual rights against infringement by others, including the nation-state and those acting on its behalf.

This difference in emphasis, despite many shared values relating to individual rights and group interests, has led our two societies and countries to organize ourselves with different approaches and institutions to define, deal with, and balance individual rights and group interests. Where the United States and China seem to differ most in institutional design for dealing with this balancing act is in *who decides* what is the “group” or “public” interest at stake in a given issue, and *how it is decided*.

Instead of elaborating on the differences and nuances in the respective ways we view and value individual rights and group interests, this paper will explore two issues that impact how decisions about individual rights and group interests, expressed as government policy and law, are made and that affect our mutual perceptions: (1) the role of civil society in involving individuals in the process of defining, promoting, and protecting various group interests and in balancing individual rights and group interests; and (2) the related issue of how the state views and handles criticism and dissent as part of the process of determining “group interests” and balancing them against asserted individual rights.

## **THE ROLE OF CIVIL SOCIETY IN DEFINING THE COLLECTIVE INTEREST**

A dynamic associational life is one hallmark of American society. We have since our earliest days formed groups to promote a wide variety of common interests, whether charitable, business, religious, political, recreational or social. The formation and operation of these groups is largely unregulated,

so long as they do not violate any laws and, traditionally, the state intervenes only when groups seek benefits from the government such as incorporation, tax preferences, and the ability to raise funds from the public. The growth of associations in the United States was further spurred by passage of the 1946 Administrative Procedure Act, which mandated that government agencies must inform the public, seek their input during the drafting phase, and provide an explanation of adopted regulations and decisions that affect the rights and interests of individual and corporate citizens. All kinds of groups and associations in the United States have played an important role in collecting, reconciling, and promoting various individual and associational interests in dialogue with the state as it attempts to work out laws and policies in the greater “public interest.”

Chinese people, like their American counterparts, have a long history of associational and charitable activity. The contexts and motivations may have differed somewhat, but the impulse to associate outside of government around professions, place of origin, religious and political beliefs, philanthropic goals, hobbies, and other common interests seems to be a human impulse shared by all peoples around the world. Indeed, freedom of association is recognized in the Chinese Constitution and an array of Chinese laws and regulations now legitimate and regulate this “third sector” lying between government and the individual citizen.

The major differences between the United States and China with respect to the formation and role of civic organizations lies in the requirement under Chinese law for government sponsorship and approval to form and maintain an association or social group, and informal limitations on the ability of those groups to advocate—through participation in law and policy formulation and through China’s legal system—for the protection and promotion of the individual and collective rights and interests represented by those organizations. Yet, despite continued restrictions on the right to form such groups, registered non-governmental, non-profit and service-oriented groups have continued to proliferate year-by-year, and the numbers of unregistered, informal grassroots groups working in such areas as rural health, children’s and women’s rights, environmental protection and labor rights, has skyrocketed into the millions.<sup>5</sup>

At the 17<sup>th</sup> Congress of the Chinese Communist Party in October 2007, Party General Secretary Hu Jintao seemed to envision an expanded role for China's fledgling "civil society," as more than just a mechanism through which to implement government policy. In addition to calling for expansion of "citizens' orderly participation in political affairs at each level and in every field," Hu supported the role of "people's organizations" in providing public services and protecting the lawful rights and interests of the public, and encouraged social organizations to help expand the public's participation, reflect the people's demands and increase their self-governance capability.<sup>6</sup> These sentiments were repeated nearly word for word in the work report delivered by Premier Wen Jiabao to the National People's Congress in March 2009.<sup>7</sup>

It is important that the utility of civil society in helping mediate between state and society is recognized and given legitimacy in official statements emanating from the Party-State. These kinds of statements signal leadership thinking and endorse cautious experimentation in new directions, including that of greater citizen participation in legislation and policymaking that affects various interest groups and individuals. Nonetheless, the Chinese government's apparent continued discomfort with assertive non-governmental actors puzzles the American public. We read in the Western media of non-profit groups and public interest law firms in China being charged with having failed to abide by a variety of regulatory requirements and shut down in apparent retaliation for attempting to represent the interests of the most vulnerable in society when they come in conflict with the state.

One of the main purposes and utility of such groups is precisely to help government determine what are the various individual and group interests and issues at stake in a given situation and to better "harmonize" the often competing interests involved to reach an acceptable compromise. Why should a strong, successful, and much-admired government fear challenge from and occasional conflict with individuals and civil society groups?

This question leads us to a second issue that illustrates the differences between our two countries in balancing individual rights and group interests: the treatment of criticism.

## THE CHALLENGE OF DEALING WITH CRITICISM

In the United States, the right to peaceably criticize government and advocate for certain actions or policies to protect individual rights and various group interests are an important part of our democracy and are protected as free speech and expression. In China, the Chinese people similarly have the constitutional right of free speech, as well as the right to criticize government and officials, and to bring complaints regarding alleged violations of law or dereliction of duty.<sup>8</sup> As China's economy becomes more market-oriented, society more pluralistic and complex, the people more sophisticated and expected by government to do more for themselves, we have witnessed what appears to be a growing assertiveness on the part of the Chinese people. They are demanding more resources and information, equal opportunity, and fair treatment by the government, and complaining about and criticizing government when they see failures and injustices.

The ingrained, traditional response of monarchs to criticism from their subjects has been to view those critics as troublemakers and enemies. This imperial reaction lives on among leaders in all kinds of political systems, including the United States and modern China. No one enjoys criticism, however just and accurate it may be. However, constructive criticism is not necessarily the same as opposition.

Western democracies have developed a variety of mechanisms to permit and deal with peaceful criticism and dissatisfaction, and to take account of such criticism in determining the individual rights and deciding the "group interest" at stake in the particular issue. In the United States, such mechanisms include petition, the right to participate in legislation and policy-making, media reporting and editorials, peaceful protests and demonstrations, public interest litigation, elections and recall procedures. We have also developed federal law protecting "whistleblowers" who reveal wrongdoing on the part of companies and government.

We read in Western media about courageous Chinese individuals exposing villages afflicted with AIDS derived from unsafe blood collection and transfusion methods, doctors releasing information about a new disease later named "severe acute respiratory syndrome" (SARS), and exposés of child slave labor

in small mining operations, of tainted milk powder that killed or injured thousands of Chinese children and posed a threat internationally, and of shoddy school construction that contributed to the high number of schoolchildren killed in the Sichuan earthquake of May 2008. We are puzzled when we subsequently read that many of these brave whistleblowers end up in jail, accused of defamation, leaking state secrets and/or subverting state security.

These seeming over-reactions by the Chinese state to the “citizen critic” and “rights defenders” are puzzling to and create negative images within the American public of an insecure Chinese state that distrusts its own people. Despite a long tradition of the noble official remonstrating with his emperor about perceived wrongdoing or erroneous policies, to the Western eye it appears that China lacks a framework for dealing constructively with criticism and unfavorable publicity, as well as dissent and policy opposition, even though its Constitution recognizes the basic right of Chinese citizens to criticize, complain, and supervise their government.

Despite these and other recent publicized instances of a coercive government response to criticism and protest, the Chinese leadership has over the past several years demonstrated its recognition of the need to develop new mechanisms of dealing with complex issues and diverse interests, vowing to build a more transparent, participatory, and accountable government. Indeed, Chinese leaders have been quietly instituting new mechanisms to promote greater transparency of and public participation in the law and policymaking processes,<sup>9</sup> so that government makes better-informed decisions that gain better compliance by the public and reduce the rapidly growing number of disputes.

Both China’s National People’s Congress Standing Committee and the State Council have pledged to publish essentially all draft laws and regulations for comment from the general public prior to finalization. The Chinese government at all levels is experimenting with public hearings, different kinds of open meetings and procedures to solicit written input on draft laws and policies and to respond to those comments. Chinese leaders espouse the need for open and transparent government “under the sunshine.” China has adopted its first-ever “freedom of information” statute, obligating government agencies to make public a wide range of information and to disclose

information from their files upon request from the public. National open government developments benefit from experimentation in governance and legal reforms at local levels in places like Hunan province, Shanghai, Chongqing and Shenzhen in Guangdong province.

Through a series of administrative laws giving citizens new rights including to sue government and obtain a hearing about or an explanation of adverse government action, China's leaders have begun to make government itself subject to the law, to curb abuse of discretionary powers, to listen and respond to different voices representing diverse interests and to become more accountable to individuals and the general public. Indeed, China is developing a legal system that is beginning to pay more attention to due process and the importance of protecting individual rights against abuse of state power as fundamental to achieving the stated goal of a "harmonious society."

Chinese leaders are also recognizing that government legitimacy is enhanced by allowing citizens to participate and criticize. In his March 2010 work report to the National People's Congress, Premier Wen Jiabao vowed to "innovatively revise the methods and mechanisms of the government's legislative work and expand public participation in it," while safeguarding "the democratic rights of the people as masters of the country, particularly their rights to vote and to stay informed about, participate in, express views on, and oversee government affairs."<sup>10</sup> Moreover, Wen for the first time admonished fellow deputies that government also needs to "create conditions" for the people to *criticize government* and called for a greater role of the media in overseeing government and ensuring that its operations are carried out "in the sunshine."<sup>11</sup>

Nonetheless, as U.S. President Barack Obama has often stated, including in announcing his Open Government Initiative to improve our own federal government and increase public trust,<sup>12</sup> it is difficult to turn an enormous aircraft carrier in mid-course. Transition to new methods of dealing with competing interests, criticism and conflict, especially conflicts between individual rights and asserted group interests, will take time and require bureaucratic culture changes.

## IMPACT ON MUTUAL PERCEPTIONS

Both of our countries are in constant transition, as the world becomes more complex and interconnected, and as our respective societies face new social, economic and political challenges. From the U.S. perspective, governments govern best when they listen to and are openly accountable to the diversified and often contentious sectors of society and when they devise mechanisms to engage individuals and groups in continually defining and re-defining various kinds and levels of “group interests” and balancing those against individual rights at stake. This process often looks unruly and inefficient, as illustrated by the frequently uncivil and even violent controversy and debate surrounding health care reform in the United States in the summer of 2009, where even after compromise legislation was passed, criticism and opposition continues. However, Americans see this kind of open debate and give-and-take as the basis of a dynamic society, a resilient economy, and a stable polity.

The United States perception of China is of a country that, through this prism, looks relatively intolerant of criticism and individual and collective activism, which views these as threatening opposition to the Party and state, rather than as necessary inputs to ensuring that decisions are made with a better understanding of the complexity of acting in the “public interest” at any given time.

On a bilateral and international level, there is the sense that regimes that do not tolerate and accommodate criticism and dissent, whether from individuals, groups or other entities, and do not make policy decisions collaboratively and transparently at home are unlikely to prove willing and able to do so in the international sphere and thus pose a potential risk to the international order.

China’s leadership today does seem to recognize that, in principle, a harmonious society is not one without any conflict, but one in which conflict is resolved in a way that is accepted by the parties involved and the general public, so that social order and government legitimacy are maintained.

The challenge for both our countries is to establish and continually improve frameworks that permit advocacy for and reconcile competing individual and group interests and to promote decision making that self-consciously balances individual rights and various group interests in a transparent manner, based

on the best available information at the time, and explains the final decision to the affected public. Hopefully, decision-making processes in both our countries that are more transparent, participatory and collaborative will help build not only domestic trust and support but greater bilateral and international trust as well.

## NOTES

1. Constitution of the People's Republic of China, last amended March 14, 2004, Chapter Two, available in English at: [http://english.gov.cn/2005-08/05/content\\_20813.htm](http://english.gov.cn/2005-08/05/content_20813.htm).
2. Ibid., Article 13.
3. Ibid., Article 33.
4. Ibid., Article 51.
5. The numbers of registered social organizations, civil, non-enterprise entities and foundations was 430,791 as of February 2010, up from some 414,000 at the end of 2008 and 354,000 the end of 2006; see Ministry of Civil Affairs statistics as of February 2010 at: <http://files2.mca.gov.cn/cws/201008/20100804145335737.htm>.
6. Hu Jintao, Report to the 17th National Congress of the Communist Party of China, October 15, 2007, available in English at <http://www.china.org.cn/english/congress/229611.htm>.
7. Wen Jiabao, Report on the Work of the Government, March 5, 2009, available in English at [http://www.npc.gov.cn/englishnpc/news/Events/2009-03/14/content\\_1493265.htm](http://www.npc.gov.cn/englishnpc/news/Events/2009-03/14/content_1493265.htm).
8. Constitution of China, Articles 35 and 41.
9. Jamie P. Horsley, "The Development of Public Participation in the People's Republic of China," in Ethan J. Leib and Baogang He, *The Search for Deliberative Democracy in China* (Palgrave Macmillan, 2010).
10. Wen Jiabao, Report on Work of the Government, delivered to the Eleventh National People's Congress on March 5, 2010 and adopted March 14, 2010, available in English at: [http://www.chinadaily.com.cn/china/2010npc/2010-03/15/content\\_9593380.htm](http://www.chinadaily.com.cn/china/2010npc/2010-03/15/content_9593380.htm). These "democratic rights" in Chinese are: 选举权、知情权、参与权、表达权和监督权 [*xuanju quan, zhiqing quan, canyu quan, biaoda quan he jiandu quan*].
11. Ibid.
12. See <http://www.whitehouse.gov/open>.