

DIRITTI COMPARATI

Comparare i diritti fondamentali in Europa

CHINA CHARTER 2008

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L'elezione di Aung San Suu Kyi al Parlamento birmano ed il quasi contemporaneo viaggio del Presidente del Consiglio Mario Monti in Cina hanno riportato al centro del dibattito italiano il tema dei diritti fondamentali e della democrazia in Asia.

Per contribuire al dibattito, secondo la prospettiva del nostro blog, è forse utile ripubblicare e far circolare la "**Carta 2008**", un manifesto di resistenza ed opposizione politica, sottoscritto da intellettuali ed esponenti della cultura cinese – alcuni dei quali in carcere anche per questa ragione -, che invoca il rispetto dei diritti umani e l'adozione dei principi del costituzionalismo liberal-democratico.

Il merito di avere riproposto alla nostra attenzione questo manifesto è di Peter Häberle, che ne ha discusso in una recente conferenza tenuta presso l'Università di Roma La Sapienza, valorizzandone, soprattutto, il valore politico e gli scenari che prefigura.

Di seguito il testo:

"Charter 08"

I. Preamble

This year marks 100 years since China's Constitution,¹ the 60th

anniversary of the promulgation of the Universal Declaration of Human Rights, the 30th anniversary of the birth of the Democracy Wall, and the 10th year since the Chinese government signed the International Covenant on Civil and Political Rights. Having experienced a prolonged period of human rights disasters and challenging and tortuous struggles, the awakening Chinese citizens are becoming increasingly aware that freedom, equality, and human rights are universal values shared by all humankind, and that democracy, republicanism, and constitutional government make up the basic institutional framework of modern politics. A “modernization” bereft of these universal values and this basic political framework is a disastrous process that deprives people of their rights, rots away their humanity, and destroys their dignity. Where is China headed in the 21st century? Will it continue with this “modernization” under authoritarian rule, or will it endorse universal values, join the mainstream civilization, and build a democratic form of government? This is an unavoidable decision.

The tremendous historic changes of the mid-19th century exposed the decay of the traditional Chinese autocratic system and set the stage for the greatest transformation China had seen in several thousand years. The Self-Strengthening Movement sought improvements in China’s technical capability by acquiring manufacturing techniques, scientific knowledge, and military technologies from the West; China’s defeat in the first Sino-Japanese War once again exposed the obsolescence of its system; the Hundred Days’ Reform touched upon the area of institutional innovation, but ended in failure due to cruel suppression by the die-hard faction . The Xinhai Revolution , on the surface, buried the imperial system that had lasted for more than 2,000 years and established Asia’s first republic. But, because of the particular historical circumstances of internal and external troubles, the republican system of government was short lived, and autocracy made a comeback.

The failure of technical imitation and institutional renewal prompted deep reflection among our countrymen on the root cause of China’s cultural sickness, and the ensuing May Fourth and New Culture Movements under the banner of “science and democracy.” But the course of China’s political

democratization was forcibly cut short due to frequent civil wars and foreign invasion. The process of a constitutional government began again after China's victory in the War of Resistance against Japan , but the outcome of the civil war between the Nationalists and the Communists plunged China into the abyss of modern-day totalitarianism.

The "New China" established in 1949 is a "people's republic" in name, but in reality it is a "party domain." The ruling party monopolizes all the political, economic, and social resources. It has created a string of human rights disasters, such as the Anti-Rightist Campaign, the Great Leap Forward, the Cultural Revolution, June Fourth, and the suppression of unofficial religious activities and the rights defense movement, causing tens of millions of deaths, and exacting a disastrous price from both the people and the country.

The "Reform and Opening Up" of the late 20th century extricated China from the pervasive poverty and absolute totalitarianism of the Mao Zedong era, and substantially increased private wealth and the standard of living of the common people. Individual economic freedom and social privileges were partially restored, a civil society began to grow, and calls for human rights and political freedom among the people increased by the day. Those in power, while implementing economic reforms aimed at marketization and privatization, also began to shift from a position of rejecting human rights to one of gradually recognizing them. In 1997 and 1998, the Chinese government signed two important international human rights treaties.² In 2004, the National People's Congress amended the Constitution to add that " respects and guarantees human rights." And this year, the government has promised to formulate and implement a "National Human Rights Action Plan." But so far, this political progress has largely remained on paper: there are laws, but there is no rule of law; there is a constitution, but no constitutional government; this is still the political reality that is obvious to all. The ruling elite continues to insist on its authoritarian grip on power, rejecting political reform.

This has caused official corruption, difficulty in establishing rule of law, the absence of human rights, moral bankruptcy, social polarization,

abnormal economic development, destruction of both the natural and cultural environment, no institutionalized protection of citizens' rights to freedom, property, and the pursuit of happiness, the constant accumulation of all kinds of social conflicts, and the continuous surge of resentment. In particular, the intensification of antagonism between the government and the people, and the dramatic increase in mass incidents, indicate a catastrophic loss of control in the making, suggesting that the backwardness of the current system has reached a point where change must occur.

II. Our Fundamental Concepts

At this historical juncture that will decide the future destiny of China, it is necessary to reflect on the modernization process of the past hundred and some years and reaffirm the following concepts:

Freedom: Freedom is at the core of universal values. The rights of speech, publication, belief, assembly, association, movement, to strike, and to march and demonstrate are all the concrete expressions of freedom. Where freedom does not flourish, there is no modern civilization to speak of.

Human Rights: Human rights are not bestowed by a state; they are inherent rights enjoyed by every person. Guaranteeing human rights is both the most important objective of a government and the foundation of the legitimacy of its public authority; it is also the intrinsic requirement of the policy of "putting people first." China's successive political disasters have all been closely related to the disregard for human rights by the ruling establishment. People are the mainstay of a nation; a nation serves its people; government exists for the people.

Equality: The integrity, dignity, and freedom of every individual, regardless of social status, occupation, gender, economic circumstances, ethnicity, skin color, religion, or political belief, are equal. The principles of equality before the law for each and every person and equality in social, economic, cultural, and political rights of all citizens must be implemented.

Republicanism: Republicanism is “joint governing by all, peaceful coexistence,” that is, the separation of powers for checks and balances and the balance of interests; that is, a community comprising many diverse interests, different social groups, and a plurality of cultures and faiths, seeking to peacefully handle public affairs on the basis of equal participation, fair competition, and joint discussion.

Democracy: The most fundamental meaning is that sovereignty resides in the people and the government elected by the people. Democracy has the following basic characteristics:(1) The legitimacy of political power comes from the people; the source of political power is the people. (2) Political control is exercised through choices made by the people. (3) Citizens enjoy the genuine right to vote; officials in key positions at all levels of government must be the product of elections at regular intervals. (4) Respect the decisions of the majority while protecting the basic human rights of the minority. In a word, democracy is the modern public instrument for creating a government “of the people, by the people, and for the people.”

Constitutionalism: Constitutionalism is the principle of guaranteeing basic freedoms and rights of citizens as defined by the constitution through legal provisions and the rule of law, restricting and defining the boundaries of government power and conduct, and providing appropriate institutional capability to carry this out. In China, the era of imperial power is long gone, never to return; in the world at large, the authoritarian system is on the wane; citizens ought to become the true masters of their states. The fundamental way out for China lies only in dispelling the subservient notion of reliance on “enlightened rulers” and “upright officials,” promoting public consciousness of rights as fundamental and participation as a duty, and putting into practice freedom, engaging in democracy, and respecting the law.

III. Our Basic Positions

Thus, in the spirit of responsible and constructive citizens, we put forth the following specific positions regarding various aspects of state administration, citizens’ rights and interests, and social development:

1. Constitutional Amendment: Based on the aforementioned values and concepts, amend the Constitution, deleting clauses in the current Constitution that are not in conformity with the principle that sovereignty resides in the people, so that the Constitution can truly become a document that guarantees human rights and allows for the exercise of public power, and become the enforceable supreme law that no individual, group, or party can violate, establishing the foundation of the legal authority for democratizing China.

2. Separation of Powers and Checks and Balances: Construct a modern government that separates powers and maintains checks and balances among them, that guarantees the separation of legislative, judicial, and executive powers. Establish the principle of statutory administration and responsible government to prevent excessive expansion of executive power; government should be responsible to taxpayers; establish the system of separation of powers and checks and balances between the central and local governments; the central power must be clearly defined and mandated by the Constitution, and the localities must exercise full autonomy.

3. Legislative Democracy: Legislative bodies at all levels should be created through direct elections; maintain the principle of fairness and justice in making law; and implement legislative democracy.

4. Judicial Independence: The judiciary should transcend partisanship, be free from any interference, exercise judicial independence, and guarantee judicial fairness; it should establish a constitutional court and a system to investigate violations of the Constitution, and uphold the authority of the Constitution. Abolish as soon as possible the Party's Committees of Political and Legislative Affairs at all levels that seriously endanger the country's rule of law. Prevent private use of public instruments.

5. Public Use of Public Instruments: Bring the armed forces under state control. Military personnel should render loyalty to the Constitution and to the country. Political party organizations should withdraw from the armed forces; raise the professional standards of the armed forces. All

public employees including the police should maintain political neutrality. Abolish discrimination in hiring of public employees based on party affiliation; there should be equality in hiring regardless of party affiliation.

6. Human Rights Guarantees: Guarantee human rights in earnest; protect human dignity. Set up a Commission on Human Rights, responsible to the highest organ of popular will, to prevent government abuse of public authority and violations of human rights, and, especially, to guarantee the personal freedom of citizens. No one shall suffer illegal arrest, detention, subpoena, interrogation, or punishment. Abolish the Reeducation-Through-Labor system.

7. Election of Public Officials: Fully implement the system of democratic elections to realize equal voting rights based on "one person, one vote." Systematically and gradually implement direct elections of administrative heads at all levels. Regular elections based on free competition and citizen participation in elections for legal public office are inalienable basic human rights.

8. Urban-Rural Equality: Abolish the current urban-rural two-tier household registration system to realize the constitutional right of equality before the law for all citizens and guarantee the citizens' right to move freely.

9. Freedom of Association: Guarantee citizens' right to freedom of association. Change the current system of registration upon approval for community groups to a system of record-keeping. Lift the ban on political parties. Regulate party activities according to the Constitution and law; abolish the privilege of one-party monopoly on power; establish the principles of freedom of activities of political parties and fair competition for political parties; normalize and legally regulate party politics.

10. Freedom of Assembly: Freedoms to peacefully assemble, march, demonstrate, and express are citizens' fundamental freedoms stipulated by the Constitution; they should not be subject to illegal interference and unconstitutional restrictions by the ruling party and the government.

11. Freedom of Expression: Realize the freedom of speech, freedom to

publish, and academic freedom; guarantee the citizens' right to know and right to supervise . Enact a "News Law" and a "Publishing Law," lift the ban on reporting, repeal the "crime of inciting subversion of state power" clause in the current Criminal Law, and put an end to punishing speech as a crime.

12. Freedom of Religion: Guarantee freedom of religion and freedom of belief, and implement separation of religion and state so that activities involving religion and faith are not subjected to government interference. Examine and repeal administrative statutes, administrative rules, and local statutes that restrict or deprive citizens of religious freedom; ban management of religious activities by administrative legislation. Abolish the system that requires that religious groups (and including places of worship) obtain prior approval of their legal status in order to register, and replace it with a system of record-keeping that requires no scrutiny.

13. Civic Education: Abolish political education and political examinations that are heavy on ideology and serve the one-party rule. Popularize civic education based on universal values and civil rights, establish civic consciousness, and advocate civic virtues that serve society.

14. Property Protection: Establish and protect private property rights, and implement a system based on a free and open market economy; guarantee entrepreneurial freedom, and eliminate administrative monopolies; set up a Committee for the Management of State-Owned Property, responsible to the highest organ of popular will; launch reform of property rights in a legal and orderly fashion, and clarify the ownership of property rights and those responsible; launch a new land movement, advance land privatization, and guarantee in earnest the land property rights of citizens, particularly the farmers.

15. Fiscal Reform: Democratize public finances and guarantee taxpayers' rights. Set up the structure and operational mechanism of a public finance system with clearly defined authority and responsibilities, and establish a rational and effective system of decentralized financial authority among various levels of government; carry out a major reform of the tax system, so as to reduce tax rates, simplify the tax system, and equalize the tax

burden. Administrative departments may not increase taxes or create new taxes at will without sanction by society obtained through a public elective process and resolution by organs of popular will. Pass property rights reform to diversify and introduce competition mechanisms into the market; lower the threshold for entry into the financial field and create conditions for the development of privately-owned financial enterprises, and fully energize the financial system.

16. Social Security: Establish a social security system that covers all citizens and provides them with basic security in education, medical care, care for the elderly, and employment.

17. Environmental Protection: Protect the ecological environment, promote sustainable development, and take responsibility for future generations and all humanity; clarify and impose the appropriate responsibilities that state and government officials at all levels must take to this end; promote participation and oversight by civil society groups in environmental protection.

18. Federal Republic: Take part in maintaining regional peace and development with an attitude of equality and fairness, and create an image of a responsible great power. Protect the free systems of Hong Kong and Macau .On the premise of freedom and democracy, seek a reconciliation plan for the mainland and Taiwan through equal negotiations and cooperative interaction. Wisely explore possible paths and institutional blueprints for the common prosperity of all ethnic groups, and establish the Federal Republic of China under the framework of a democratic and constitutional government.

19. Transitional Justice: Restore the reputation of and give state compensation to individuals, as well as their families, who suffered political persecution during past political movements; release all political prisoners and prisoners of conscience; release all people convicted for their beliefs; establish a Commission for Truth Investigation to find the truth of historical events, determine responsibility, and uphold justice; seek social reconciliation on this foundation.

IV. Conclusion

China, as a great nation of the world, one of the five permanent members of the United Nations Security Council, and a member of the Human Rights Council, ought to make its own contribution to peace for humankind and progress in human rights.

Regrettably, however, of all the great nations of the world today, China alone still clings to an authoritarian way of life and has, as a result, created an unbroken chain of human rights disasters and social crises, held back the development of the Chinese people, and hindered the progress of human civilization. This situation must change! We cannot put off political democratization reforms any longer. Therefore, in the civic spirit of daring to take action, we are issuing Charter 08. We hope that all Chinese citizens who share this sense of crisis, responsibility, and mission, whether officials or common people and regardless of social background, will put aside our differences to seek common ground and come to take an active part in this citizens' movement, to promote the great transformation of Chinese society together, so that we can soon establish a free, democratic, and constitutional nation, fulfilling the aspirations and dreams that our countrymen have been pursuing tirelessly for more than a hundred years.

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