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Creative Tensions and the Legitimacy of Human Rights Education – A Discussion on Moral, Legal and Human Rights Education in China

This paper is a discussion of human rights education in China. Three major channels for dissemination of legal knowledge and shaping of values are examined - moral education, formal legal education and informal public legal education - against the background of the UN definition of human rights education and in relation to different approaches to human rights education discussed in the first section of the article.

Keywords:

China, human rights education, legal education, moral education, approaches to human rights education, human rights education in China, human rights categories, values

1 Introduction

Existing literature on human rights education is limited in volume and rarely reflects on the underlying assumptions of different approaches to human rights education. The field of human rights education is one of action rather than reflection, partly because most of its funding is provided by development agencies, traditionally more concerned with quantitative outputs than with accumulating knowledge¹. In addition, the subject of human rights education is a rather new one and while it has bearing on many different academic disciplines, it has not quite developed into a research area of its own.

This paper is a discussion of human rights education in China. In its statement in response to the United Nations Decade for Human Rights Education, the Chinese government suggested three ways in which human rights education is carried out in China, namely through moral education, formal legal education and informal public legal education². The paper is a discussion of these three channels for dissemination of legal knowledge and shaping of values in China, against the background of the UN definition of human rights education and in relation to a few different approaches to human rights education introduced in the following section.

2 Transformation, Consensus and Ambivalence - Different Visions for Human Rights Education

Felisa Tibbitts has divided human rights education into three broad categories: the knowledge and awareness model, the accountability model and the transformational model. The first model is concerned with transmitting knowledge of human rights and places relatively little emphasis on the development of skills and moulding of attitudes. In the accountability and transformational models on the other hand, formal knowledge about human rights is only one component of a larger educational program that may involve for example skills-development related to for example communication, conflict resolution and activism. Whereas the knowledge and awareness model is predominantly lecture-oriented, the latter models require more complex and reciprocal longer-term commitments to learning and education from all involved (Tibbitts 2002).

The UN definition of human rights education clearly envisions human rights education not as an end in itself but as an empowering process, a means of transformation and a mechanism to address abuses (Tibbitts 2003). When the General Assembly proclaimed the United Nations Decade for Human Rights Education (1995-2004), it defined human rights education as a "life-long process by which people at all levels of development and in all strata of society learn respect for the dignity of others and the means and methods of ensuring that respect in all societies" (UN Doc. A/RES/49/184). In accordance with the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child and several other international human rights instruments, the UN Guidelines for National Plans of Action for Human Rights Education defined human rights education as "training, dissemination and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes" (UN Doc. A/52/469/Add. 1).

While the knowledge and awareness, accountability and transformational models may complement each other, Magendzo describes ways in which different approaches to human rights education may have such different points of departure and purpose so as to be mutually contradictory. A fundamental tension exists between what he calls problematising education and consensus-oriented education. The latter approach is based on the implicit or explicit assumption that conflicts between groups of people are fundamentally and essentially wrong. Conflict is regarded as dysfunctional and destabilising, as belonging to disorder and anarchy, and to be eliminated within the established institutional framework (Magendzo 1994; Vergara, Estevez 1994). Accordingly, students are presented with a consensus theory of science, with history as a chain of events where events follow one another as if they were the results of a linear and natural process. Human rights education based on these assumptions becomes "aseptic", uniform and contextless, and thus it "loses its scientific and moral character" (Magendzo 1994).

Problematising education, on the other hand, treats conflict and contradictions as the basic driving forces of society and exposes the

dilemmas, tensions and divergent viewpoints that exist in science and society (Magendzo 1994). Accordingly, Peter Rosenblum suggests that we adopt an attitude of "ambivalent activism" in approaching human rights, viewing human rights complexly and acknowledging both the transformative and conservative nature of human rights. The role of the teacher in human rights education is to expose the students to unresolved tensions and different discourses and to explore the ramifications of these together (Rosenblum 2002).

3 Moral, Legal and Human Rights Education in China

Education in any country is, to varying degrees, a small-scale manifestation of the political values system in that country. This is particularly true of moral education, character education, citizenship education and similar education explicitly aimed at shaping the students' moral and political outlook. In China, whereas the content of moral education - *deyu* in Chinese - has changed dramatically with political and ideological campaigns over the last fifty years, the importance and priority attached to it at policy-making levels has been constant. While moral education has a 3000-year old history in China, it was introduced as part of basic education only after the founding of the People's Republic of China in 1949 and currently forms a compulsory part of education from elementary school throughout university (Li Ping et al. 2004).

Because of moral education's ever-changing content concurrently with various ideological campaigns during for instance the Great Leap Forward and the Cultural Revolution, it soon became associated with doctrinaire extremism and perceived by students as hollow and false. In the 1980s, teaching moral education became increasingly difficult (Li Ping et al. 2004). In response to the loss in credibility and limited impact of moral education on the students, the 1990s saw a revival of "traditional Chinese values" in moral education. A few years later, in line with a Program for Improving Civic Morality issued by the Central Committee of the Chinese Communist Party in 2001, the concept of "citizenship" was introduced into the subject, placing more emphasis on the student's independent social position and personality, and at balancing duties and rights. *Deyu*³ in its present form is assigned the tasks of

"reinforcing student confidence in the reform and opening up, stressing the need to modernize, to strengthen their trust in the Party and the government, to cultivate a pioneering and innovative spirit, to increase their awareness of the importance of self-reliance, competition, efficiency, democracy, the rule of law, and finally, the need to promote progress in socialist culture and ideology through vigorous effort" (Li Ping et al. 2004).

Whereas previous key words were class struggle, contradictions and revolution, moral education today stresses unity, harmony, stability and peaceful evolution, an integration of Confucian thinking with an authoritarian political system, partly inspired by the politics of former prime minister of Singapore Lee Kuan Yew. Like in moral education in, for

example Singapore (Li Maosen et al. 2004) and Chile (Misgeld, Magendzo 1997), the values disseminated through moral education are said to be necessary for social cohesion, modernisation and economic development.

Li Ping et al. see the move in deyu towards citizenship education as a "historical transformation" and urge further reform. The discrepancy between the idealistic society suggested in deyu and real-life observations outside the class room is too large. The methods of instruction are "teacher-, textbook- and class-centred", and should instead put more emphasis on critical thinking and reasoning skills (Li Maosen et al. 2004). More fundamentally, the authors argue, it "ought to be possible to present the logic of a given ideology or morality in such a way that creative tensions exist between official positions and other political and moral alternatives", favouring multilateral communication aimed at offering students "critical, creative tools to enable [them] to live intelligent, feeling and vigorous lives" (Li Ping et al. 2004).

As mentioned above, one of the assigned tasks of Chinese moral education is to strengthen awareness of the rule of law. The last 25 years has seen a reconstruction of the legal system of great significance and proportions. Most visitors to China with an interest in law and development are taken aback with the dimensions and implications of the legal reforms that are being discussed, the legislative work that is being carried out and the pace at which it is taking place. Whereas China had no more than two functioning law schools at the end of the virtual collapse of the legal system during the Cultural Revolution, more than 300 law schools have since been established across the country. Including the establishment of professional in-service training institutes for prosecutors, judges and police throughout China, one observer has called this "the creation of the world's largest training system" (Yang 2002). Law as a field of research and profession is only increasing in popularity. New teaching methods and course materials are developed and tried out to promote students' critical thinking and practical skills, replacing the predominantly abstract, theoretical and formalistic style of instruction.

China is however a country of considerable contrasts and stratification. The school conditions for children and the level of education of the average police officer, judge and prosecutor in a given city depend very much on the geographical location. Whereas universities in Beijing offer courses taught by visiting professors from well-known foreign universities, many elementary schools in the western provinces do not provide education free of charge. And whereas some judges in Shanghai are versed in both Chinese and European law, only about 30% of judges nationwide have university degrees and a considerable number of judges have not received any legal training at all. When the first National Judicial Exam was organised in 2002, only 7% of the 360,000 people that participated in the exam in order to qualify as judges, prosecutors and lawyers passed it (Yang 2002). There is thus a pressing need both for legal training and for education of better quality.

A third important channel for developing values and disseminating knowledge about the law is through public legal education (pufa jiaoyu). Four five-year long public legal education campaigns have been implemented to date, disseminating knowledge about the law and the legal

system at all levels, through posters, websites, educational programmes on TV and radio, newspapers, displays on streets, school and work place activities and so forth. Public legal education provides basic factual information about the legal system as well as moral guidance, and aims at instilling both a sense of duty to "do the right thing" and to work as a deterrent against unlawful acts (Zhang et al. 1999). Targeting government officials as much as the general public, later legal education campaigns have placed increasing emphasis on citizens' "lawful rights and interests" disseminating information about for example consumer rights, village and township elections and procedures for complaining against administrative decisions⁴.

The focus of the current five-year campaign is on promoting knowledge about the Chinese Constitution which, significantly for the topic of this paper, was amended in March 2004 to include the statement that "the State respects and protects human rights". While the implications of this amendment are limited by the fact that there is no mechanism in place in China for constitutional review, the change was of high symbolic value as even the term "human rights" was controversial and politically sensitive only a few years ago. The amendment has further legitimised human rights education and research in China and promoted discussion of human rights also outside the limited circle of legal scholars and diplomats.

Nevertheless, current formal and informal legal education in China cannot substitute for human rights education. Unlike moral and legal education, human rights education is based on the notion of the individual as a member of the human race, not as a citizen of any particular state, and calls for a transcendence of national law and politics (Tibbitts 1994). As several Chinese legal scholars have pointed out, the emphasis in Chinese formal and informal legal education is on citizens' compliance with national laws and regulations, including laws that are not in conformity with international human rights standards (Sun et al. 2005; Gu 2005). Consequently, certain aspects of informal and formal legal education contradict human rights education. A researcher at the Public Security Bureau explains the difference in the following way: "The essence of legal education is to handle cases in accordance with the law, regardless of whether that law is good or bad. The essence of human rights education is 'people as the basis' (yiren weiben) and creating conditions that guarantee the realisation of human rights" (Cui 2005).

The final part of this section, then, will look at education in China that explicitly aims at disseminating knowledge about human rights, namely human rights courses at Chinese law schools. These courses began to appear in the mid-1990s and currently around 15 Chinese universities offer separate courses on human rights courses, mainly at law schools in Beijing and other major cities in the eastern parts of China. Sun et al. divide the different approaches to teaching human rights at Chinese law schools into two broad categories: the theoretical - national approach and the normative - international approach. The first is mainly concerned with theoretical, conceptual, historical and philosophical aspects of human rights. Substantive rights are covered but mainly from the perspective of rights one "ought to have" (yingran quanli), discussing natural rights in European and North American rights-philosophy as well as the origin and history of

rights-thinking in Chinese legal philosophy⁵.

The second approach, on the other hand, treats human rights primarily as the rights contained in the international human rights instruments. The course may touch briefly on theories, concepts and historical developments but the focus is on learning about the major human rights instruments and their corresponding mechanisms. A fundamental shortcoming with both approaches, however, is that they fail to make the crucial link between theory and practice, and between international standards and domestic law (Sun et al. 2005), leaving many students with an impression of the international human rights regime as distant, irrelevant and largely non-applicable to Chinese reality. While international human rights law has traditionally been regarded as largely equivalent to "any foreign law" or discussed mainly in the context of international relations, Chinese human rights scholars are increasingly trying to bridge the gaps. Three recently published human rights textbooks are good examples of these efforts⁶.

4 Conclusion

Less than two decades ago, the Chinese government dismissed human rights as a bourgeois and Western concept of little relevance to China. The discourse of human rights has, since then, to a certain extent been "normalised" in China. Of course, a change of discourse does not necessarily imply anything other than that. The potential of non-tensional, apolitical education to challenge social injustices and promote human rights is certainly limited. On the other hand, human rights educators need to take both need and opportunity into account (Tibbitts 2002). Promoting and reforming human rights education is necessarily a negotiation between conservation and change, and between intense and gradual change (Magendzo 1994). Nevertheless, as Magendzo also points out, if we wait for politicians to legitimize human rights education, we will probably wait a long time.

National initiatives taken within the UN Decade for Human Right Education were typically ad-hoc conferences and not coherent overall strategies to strengthen human rights education. This is true also in China. While legal education and human rights education are closely related, and while there is nothing inherently contradictory between moral education and human rights education, legal and moral education as currently taught cannot substitute for human rights education. They are however two potential channels through which knowledge about international human rights principles might be disseminated and - importantly - meaningfully contextualised and debated in relation to Chinese history, culture, government policy, law and real-life problems.

Nevertheless, the international human rights standards remain central to human rights education, not only in the sense that students should learn about their rights as defined and widely agreed in the various global and regional human rights instruments, but also, in the words of the former UN Special Rapporteur on the right to education, in the sense that human

rights in education are prerequisite for human rights education. Human rights in education means "ensuring that all parts of the curriculum, including the whole process of education, conform to minimal human rights standards" (Tomaševski 2001). To return to the discussion in the first section of this paper, this understanding of human rights education seems to imply a move away from the knowledge and awareness approach to a transformational approach, and from consensus-oriented education to problematising education. Indeed, the very question of whether human rights necessarily implies a break with the consensus-oriented culture that China is so routinely described as, whether this is a fair description, and whether the major obstacle to "building a culture of human rights" lies in Chinese culture or elsewhere could be an interesting question for a human rights class to explore. In any case, suggesting (as many governments do) that human rights education has always been part of the curriculum or treating human rights knowledge as a memorisation of articles and paragraphs stands in sharp contrast, if not contradiction, to the understanding of human rights education as a transformational project. Lest human rights education should meet the same fate as moral education, where the discrepancy between the idealistic society described in the class room and real-life observations made outside the class room is so large that the subject loses its credibility, space has to be made for discussion of the conflicts of interest inherent in the very notion of human rights, and for the ambivalence and creative tensions constitutive to human rights education.

Notes

¹For a discussion on the lack of reflection and evaluation in human rights education see Human Rights Education Associate's discussion forum at <http://www.hrea.org/lists/hr-education/markup/msg01228.html> .

²See Summary of national initiatives taken within the Decade for Human Rights Education available at <http://www.ohchr.org/english/issues/education/training/initiatives.htm> for a brief summary of the statement.

³Li Ping, Zhong Minhua, Lin Bin and Zhang Hongjuan prefer the term "deyu" to the term "moral education" in order to differentiate Chinese moral education, which encompasses ideological, moral, legal and mental education, from moral education in its narrow sense. See Li Ping et al. 2004.

⁴See <http://www.legalinfo.gov.cn> for information about the public legal education campaigns.

⁵For an introduction to Chinese human rights thinking during the last century in English, see Angle, Svensson 2001. See also Stephen C. Angle 2002 *Human Rights and Chinese Thought: A Cross-Cultural Inquiry* for an interesting discussion on Chinese ideas of human rights and how these relate to, and challenge, international standards and Western human rights thinkers. In Chinese, see for example Xia Yong. 2001 (revised edition). *Renquan Gainian Qiyuan: Quanli de Lishi Zhexue* [The Origin of the Concept

of Human Rights: the Historical Philosophy of Rights]. Beijing: Zhongguo Zhengfa Daxue Chubanshe.

⁶See Guoji renquanfa jiaocheng xiangmu xiaozu [International human rights law course project group] (eds.) 2002 Guoji Renquanfa Jiaocheng [International Human Rights Law Course]. Beijing: Zhongguo Zhengfa Daxue Chubanshe; Xu Xianming (ed.) 2004 Guoji Renquanfa [International Human Rights Law]. Beijing: Falu Chubanshe; and Li Buyun (ed.) 2005 Renquan Faxue [Human Rights Law]. Beijing: Gaodeng Jiaoyu Chubanshe.

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