

Book Review

Human Rights and Constitutionalism

[*Ren Quan Yu Xian Zheng*]

By Haocheng Yu

Foundation for China in the 21st Century,
Oct. 2002 (in Chinese)

Review by Hu Ping

In October 2002 the U.S.-based Foundation for China in the 21st Century published Yu Haocheng's essay collection, *Human Rights and Constitutionalism*. Weighing in at 616 pages, the volume brings together 117 essays by Yu, who is a director of Human Rights in China. The book also includes a forward by Yu, as well as forwards by Columbia University Professor Andrew Nathan and Su Shaozhi, the former director of the Institute of Marxism-Leninism-Mao Zedong Thought of the Chinese Academy of Social Sciences, and an old friend of Yu Haocheng. Three articles about the author are appended to the book.

Yu Haocheng is a long-time expert on Chinese law. He previously served as the publisher and chief editor of the Public Security Bureau's *Masses (Qunzhong)* publishing house, as senior editor of *Jurisprudence (Faxue Zazhi)* and as publisher of *Legal Consultant (Falü Zixun)*. Because of his support of the pro-democracy movement in 1989 he was expelled from the Communist Party and imprisoned for a year and a half before he came to the U.S. in 1994 as a visiting scholar.

I came to know Yu Haocheng in the 1980s. At that time Yu had published many admirable articles promoting democracy and advocating the rule of law, and was unyielding on his insistence on freedom of expression. While at the helm of the PSB's *Masses* publishing house Yu oversaw the publication of Solzhenitsyn's *Gulag Archipelago* in Chinese, which was exceptional for a Communist country at that time. Since Yu came to the U.S. I've had considerably more contact with him. I was amazed to discover that even though Yu joined the Communist Party before he reached the age of 18, and had been subject to the Party's influence and involved in its work for many decades, he retained his capacity for deep reflection and was not brainwashed into blind acceptance of the

Party's teachings. His ideological criticism of the Party and his grasp of liberalism and constitutionalism are rare among the older generation of Party intellectuals.

This volume provides a comprehensive overview of Yu Haocheng's thinking.

The large majority of the articles included in *Human Rights and Constitutionalism* were written after Yu came to the U.S. They cover a very broad range of topics, but focus on an exploration of human rights and their legal protection, and the constitution and rule of law. There are also articles criticizing the Chinese Communist Party's one-party rule, exhortations in favor of political reform and discussions of implementing a federal system in China. As Su Shaozhi points out in his forward, as a legal scholar, Yu Haocheng presents creative and critical insights and trenchant observations. He is also powerfully persuasive in his critique based upon law and legal principles, of the Chinese Communist authorities' authoritarian political system and anti-democratic thought and political measures. Precisely because Yu Haocheng comes from an old military cadre background, he knows the Chinese Communist Party from top to bottom. As a result, his criticisms are deadly accurate, and especially easy for Chinese readers to understand and accept.

Let's take for example the essay entitled, "Are Civil Rights the same as Political Rights?" This essay analyses the regulations in Chinese criminal law pertaining to deprivation of political rights. We know that the Chinese authorities, when sentencing certain types of "criminals" – in particular political prisoners or prisoners of conscience – lay down not only a custodial sentence of so-and-so-many years in prison, but also an additional period during which the "criminal" is deprived of political rights. What exactly is referred to by deprivation of political rights? According to China's present criminal code, this encompasses the following rights: 1. the right to elect and the right to be elected; 2. the right to the freedom of speech, of the press, of assembly, of association, of procession and of demonstration; 3. the right to hold a position in state organs; and 4. the right to hold a leading position in a state-owned company, enterprise, or institution or people's organization.

Yu Haocheng points out that only the

first and third of these actually constitute deprivation of political rights. The second is not a political right but a civil right, or basic, inalienable human right. The problem with the fourth is that it is overbroad; strictly speaking it should only deprive someone of the right to serve as a government official.

Yu Haocheng thus makes an important distinction between human rights, civil rights, and political rights. Some may argue that the problem with China's criminal code is due to the ignorance of Chinese Communist authorities regarding the difference between political, civil and basic human rights. However, Yu Haocheng suggests that even before the founding of the PRC, the Chinese Communist Party recognized the right to participate in elections, to recall an elected official, to initiate laws and to repeal laws as political rights, and that deprivation of political rights only encompassed these four rights, but that freedom of expression, publication, association and assembly were basic human rights that fell outside the ambit of deprivable political rights. Yu Haocheng brilliantly observes that only after the PRC was founded did the Chinese Communist Party for political reasons purposefully extend the scope of political rights to allow for deprivation of civil rights and basic human rights.

Many scholars have assumed that the PRC government has been unable to implement a rule of law due to lack of understanding, but Yu Haocheng points out that the Chinese Communist government has in fact clearly understood the rule of law. If China's current law is full of provisions that are not in accordance with the spirit or implementation of the rule of law, it is a result of the government purposely perverting it. For that reason, the author places no hope in the Communist authorities to implement constitutionalism and the rule of law, but places his hope on the awareness and struggles of the people

This article is an edited translation of the original Chinese review published in HRIC's online journal *Ren Yu Renquan*.

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Translated by Stacy Mosher