

Taking Dworkin Seriously

(Yanan PENG)

[Perspectives, Vol. 4, No. 1](#)

Professor FANG Liufang recently published his interesting review (Fang, 2002) of Professor Dworkin's trip to China in 2002.ⁱ This article, "Taking Academic Games Seriously," is extremely insightful and penetrating. I am deeply impressed. It rightly points out the awkward situations in which Chinese academic games take place. It also concerns itself with the strategies that Chinese scholars can use to promote the fundamental social transition in China. To this extent, I firmly stand by Professor Fang.

However, I hesitate to stand by his position towards Professor Dworkin, which may reflect a common Chinese response to foreign criticism and pressure. I would like to describe my opinions on this issue—that is, how to take Dworkin seriously. I will argue that we should focus on the substantial content, not the moral and rational bases of foreign criticism, and that we need to promote substantive dialogue with foreigners without overthrowing the procedural foundation of their voices.

There might be an inherent contradiction in Professor Fang's article, if I read it correctly. In the first three paragraphs, his criticism on Chinese academic games appears to be even much more diabolical than Dworkin's! I extremely appreciate this insight.

However, Professor Fang begins to make a U-turn in the fourth paragraph. He starts to defend, though somewhat reluctantly,ⁱⁱ the low-profile response to Dworkin's "provocation" by Chinese scholars.ⁱⁱⁱ It may be seen as a subtle departure from his previous despairing picture of Chinese academic games.

After defending the Chinese side, Professor Fang begins to attack the American guest. He criticizes Dworkin's comment on the *Zhang Jianzhong* case: he tries to take a neutral position and argues that Dworkin should not judge this "pure factual issue" on the bases of "news reports and Professor Jerome Cohen's comments on the case." To be sure, under the "principles of the rule of law advocated by Professor Dworkin himself," judges must base their judgments on the litigants' evidences, not on secondary sources. However, Dworkin is not a judge. Official records and informal reports are both secondary sources to him. The decision of whether or not to trust a source is a matter of faith and reliability. Different from Dworkin, Professor Fang chooses to believe the government and seems to be waiting sincerely for the judge's ruling.

Judges are respectable, but they are not always so, especially in the Chinese context, with which I suppose Professor Fang is more familiar than Dworkin. It is not a secret that the Chinese government sometimes, if not often, violates fundamental rights of individuals through the process of the so-called factual finding. We may stand by a wrong side if we always rely on the government's version of stories.

Professor Fang completes his U-turn in paragraph six. He challenges Dworkin's complaint that Chinese scholars pay much more attention to "relatively theoretical jurisprudential issues" than to specific cases. In his argument, Professor Fang rediscovers the significant progress of legal protection in China, achieved through "scholars' general discussion." He finally realizes that those actors in the "adverse-selection" game could also substantively promote Chinese legal reform. Professor Fang thus seems to draw a very different picture of Chinese academic games here.

I absolutely agree that these two pictures are both true. They reflect the different sides of Chinese academic games. The interesting thing is the opportunistic position shift made by Professor Fang. Under the impact of a "patriot" complex, many Chinese scholars who can boldly criticize aspects of Chinese society in their classrooms often respond to foreign criticisms with a defensive and resistant attitude, no matter how similar the foreign criticisms are to their own. I start to assume that Professor Fang's article is also influenced by that complex at this point. And it seemed to be proven true when I finished reading this essay.

After Professor Dworkin made use of his freedom of speech in China, which he found to be "puzzling" and "surprising" because of the latitude given to him by the Chinese authorities,^{iv} Professor Fang could at this point remind us of the awkward reality of how foreign and Chinese academics are treated differently. On the contrary, he reminds us that Dworkin might not "possess more moral courage" because he did not need to run any risk that his Chinese colleagues would run. This is a very brilliant perspective. And it is, in a sense, fairly true.

To be sure, it is very likely that Professor Dworkin enjoyed much more freedom of speech in China than his Chinese colleagues because of his ethnicity and nationality. But that is not Dworkin's fault. It actually results from the Chinese government's cautious discrimination. I am not sure whether Dworkin would have kept silent if he had been a Chinese professor without any privilege of a distinguished American guest. In fact, many native Chinese scholars are even bolder than Dworkin. They have demonstrated no less courage than what Dworkin showed in China. This hypothetical question aside, I am more interested in what Dworkin should do in his current role if he must not appear to "possess more moral courage."

Dworkin seems to have had many other options. He could have not taken advantage of his freedom of speech and pretended that he did not perceive any disaster in China. He could have just shown up in these "inferior shows" for "social purpose." After all, red wine is much more pleasant than the "red corner"^v at a Chinese banquet. Unfortunately, Professor Dworkin was so foolish as to take this right seriously. He came, complained, and criticized. This "spirit of Don Quixote" really made us uncomfortable.

In the shade of Dworkin's false courage in "fighting," Chinese people's "compromising" and "tolerating" must be both forgivable and reasonable. As expected, Professor Fang continues to evaluate these "human natures" on which "authoritative politics are actually built," thus pushing his domestic defense to a new level—not only is scholars' "general

discussion” a smart strategy, but most people’s choice to “wait passively” may also be a rational decision.

After justifying Chinese’s silence and impotence, Professor Fang goes further to challenge foreign criticisms. Regardless of the similarity between the opinion of Dworkin and that of many other Chinese insiders, Professor Fang thoroughly overthrows the foundation of foreign criticisms.

In this argument, Professor Fang begins with the statement that “everyone has the right to choose the manner in which he or she bears his/her own moral responsibilities.” This personal sovereignty argument is very similar to Dworkin’s second principle of human rights that “one person has special responsibility for the success of each life—the person whose life it is.” (Dworkin, 2002, p.65) Professor Fang thus seems to pick up his rival’s weapon. However, he uses it in quite a different way. In Dworkin’s hands, this principle is a sword to pierce tyranny.^{vi} In Fang’s hands, this theory is a shield against foreign pressure. This might be a typical attitude of many Chinese nationalists: “Yes, we are in trouble, but whatever, it is our own business and has nothing to do with you. Why do you care?”

Not only do foreigners have no reason to care, but they also have many reasons to shut up. Professor Fang continues to allege that outsiders “have neither moral superiority nor actual wisdom to TELL others what risks to take at what time and in what circumstances.” And to ask insiders to rise up may even be an immoral evil.

I do not recall Dworkin calling upon Chinese scholars to “rise and fight.” And I suspect that Professor Dworkin would readily support Professor Fang’s statement that “people can fight in more than one way.” However, even if Dworkin had really asked his Chinese colleagues to run risks that he would not run himself, would he deserve to be described as evil? I hesitate to say so.

Calling upon others to sacrifice themselves can be justified in many cases. For example, we can hardly blame a General when he commands his soldiers to go to battlefields and run the risks that he will not directly run into himself. I also do not think that the World Bank was evil to ask a country to implement a financial reconstruction therapy and shoulder the risks that World Bank itself would not confront. Even Karl Marx called upon foreign proletariats to overthrow the rule of the bourgeoisie and run the risk that he would not run. Suppose that in 2002, an American scholar came to Beijing and called for revolution. He or she could very likely be deemed immature, but not necessarily immoral.

I also hesitate to say that foreigners must not have “actual wisdom” to provide applicable plans. Human societies are as similar as they are different. Foreign civilizations may accumulate relatively abundant experiences in certain areas, which can be applied to other societies. And foreigners may also be able to understand the situations of other cultures by many means. It is not impossible that certain foreign projects, under certain circumstances, might be even more workable than certain domestic ones. Native

ignorance is not a rare phenomenon. Furthermore, even if not applicable as a whole, a foreign lesson may still be, at least partially, inspiring and educational. Accordingly, we may listen to the foreign voices carefully before we come to our conclusion. This position seems to be more reasonable than unexceptionally assuming foreign opinions to be lacking in “actual wisdom.”

Certainly, foreign theories must be localized according to specific domestic situations. However, the dogmatization of Marxism is not Marx’s fault. The accompanying disasters also cannot justify requiring Marx to shut up. “Do not blame your food because you have a bad appetite.”^{vii} If outsiders provide a bad suggestion and then insiders accept, it is the insiders, not the outsiders, that should be blamed and be responsible for any tragic result.

The key point lies in the free speech and personal sovereignty arguments. Everyone, even the outsider, has a right to express his or her opinions. It is the insiders’ responsibility to deliberately consider all the suggestions and make final decisions.

True, “no one can make decision for others.” (Fang, 2002) But I did not believe that Professor Dworkin had such a decision-making power. He did nothing that overstepped his privilege to free speech. What he did was only to attend several workshops and express his views. I cannot possibly imagine that Dworkin intended to put a gun to a Chinese guy and force the latter to run the risks that he would not run.

More shocking to me, Professor Fang seriously calls for not taking foreign lessons seriously. He insists that taking them seriously would unexceptionally result in “a major disaster.”^{viii} I would rather believe that Professor Fang adopts a very different definition of “taking foreign lessons seriously” from mine.

In my opinion, taking foreign solutions seriously does not mean accepting or rejecting them in entirety. It means deliberately researching their necessity, possibility, feasibility, and applicability. Chinese people have experienced many disasters when we adopted some foreign suggestions without deliberate consideration. China also missed many historic opportunities when we shut the door to foreign inspirations. In these two cases, foreign lessons were taken thoughtlessly, not seriously. It is hard to find any disaster caused by taking foreign lessons seriously. Probably Professor Fang can find one.

In my view, Professor Fang's article raised a question worth of thinking by all Chinese intellectuals: how should we use our limited time and energy to respond effectively to foreign criticism and pressure? On the foreigners’ side, it is important for them to understand their Chinese audience before they give speeches. For example, it is meaningless, and maybe even purpose-defeating, for foreigners to argue for fundamental rights before Communist bureaucrats. But when facing frank and direct criticism from the so-called outsiders, it is also unnecessary for Chinese intellectuals to overreact and even doubt their morality. If we Chinese scholars can redirect our energy and time spent on questioning the moral and rational foundation of foreign lessons to reading, thinking and learning their substantive contents, I believe that we will achieve more.

(The author is a JSD candidate at Yale Law School.)

References:

1. Dworkin, Ronald. "Taking Rights Seriously in Beijing." *The New York Review of Books*, September 26, 2002, pp.64-67. Available at http://www.oycf.org/Perspectives/19_123102/takingRights.htm (last visited on March 11, 2003).
2. Fang, Liufang. "Taking Academic Games Seriously." *Perspective* Vol.3 No.7 (December 31, 2002). Available at http://www.oycf.org/Perspectives/19_123102/takingAcademic.htm (last visited on March 11, 2003).

ⁱ Professor Ronald Dworkin visited China in May 2002 and published his report in September 2002 (Dworkin, 2002).

ⁱⁱ Professor Fang states that he has "no intention to defend those Chinese scholars who call themselves liberals." See Fang, 2002.

ⁱⁱⁱ See Fang, 2002. "Nevertheless, keeping a low profile in government organized semi-official academic events usually is not due to lack of courage or being hypocritical, the simple truth is that people may not want to answer certain questions under certain circumstances."

^{iv} Professor Dworkin was "puzzled" and "surprised" to have opportunities to speak and discuss on such sensitive issues in China. See Dworkin, 2002, p. 64.

^v "The Red Corner" is a Hollywood movie about a brilliant American attorney (played by Richard Gere) who was trapped in the Chinese criminal legal system. See relevant movie review at, e.g., <http://www.all-reviews.com/videos-4/red-corner.htm> (last visited on March 11, 2003).

^{vi} See Dworkin, 2002, p.65. "The second principle requires that government respect the rights that individuals need to direct their lives: the right, among others, to practice any religion freely, to speak their minds on matters of political and moral consequence, and to choose political positions and associates for themselves."

^{vii} A line of poetry by Tagore is similar but subtly different: "Do not blame your food because you have no appetite." See Rahindranath Tagore, *STRAY BIRDS* (No.40), at 16, New York: The Macmillan Company, 1916.

^{viii} See Fang, 2002. "Unfortunately, whenever those lessons were taken too serious and actually implemented, China saw a major disaster."